

What Else Is an Author? Observations on the Dialectic of Literature and Law

Alan Lindsay

ABSTRACT

This paper first traces the effects of changes in the law on the history of copyright and on the development of the Romantic notion of the author. It then brings that historical trajectory forward to suggest the effects of changes in current laws on the ways that authors and literature are perceived in society as well as on the types of cultural productions designated with such valorized terms. It argues that despite the resistance of some capitalistic concerns certain changes in copyright law are necessary in order to keep in step with technological and philosophical changes occurring in the late twentieth century. It also argues, however, that some notion of the author ought to be retained for theoretical and practical purposes in order to ensure that certain types of texts, texts which are essential for our contemporary historical moment, continue to be produced.

KEY WORDS

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I

In the slightly delayed aftermath of Michel Foucault's "What Is an Author?" research has burgeoned on the history of copyright and the historical creation of the modern notion of "author." The high points of this burgeoning to date have been the convening of a conference, the publication of a special issue of a journal and the proliferation of that journal in a book.¹ What this research has taught us is that the notion of the author currently dominant, the well-known notion of author-genius which was formulated in the nineteenth century throughout Europe, is the result of a confluence of factors (technological, economic, philosophical and legal)—factors that had been building for a long time before the protracted eighteenth-century debates which form the basis of all modern copyright law. One could choose many starting points for this story, but perhaps none better than the invention of the printing press. This is in any case a watershed moment without which copyright would not have become a problem. With the possibility of producing multiple copies of books comes the need to regulate: to insure that only the right people make the books and only the right books get made. And indeed regulation, albeit haphazard and uncertain, came immediately.² However, what was I believe the major effect of the printing press was less apparent, and that is the subtle but pervasive change in thinking that now became possible and eventually in fact occurred in which textual production and dissemination became tied ineluctably to the book—to the set, unalterable text. It is the theory that centers upon the object of the set text, whose image is the discrete book, which makes possible not only the fundamental thinking of our almost 300 year-old notions of copyright but also the notion of "author" upon which those laws depend. As one critic has succinctly put it, "Copyright law is a creation of print" (Lanham 280). It is clear that one of the things that went into making copyright possible is not merely books but a theory of text as book, what Lanham calls "our assumption that the book is the natural and only vehicle for the written text?"

(270).

But of course copyright as such is not an inevitable product of print technology. This technology first made it to the shores of England in 1476. And though regulation followed hard upon, copyright did not arrive for another 230 years, with the Statute of Anne in 1710. Further essential ingredients for the creation of copyright included a steep rise in literacy, a capitalist economy and the breakdown of the patronage system. In England and throughout Europe these were all in the mix by the middle of the eighteenth century. For the author this meant he must legitimize a long-stigmatized practice and make his living by his pen. Foucault ties the creation of the author to the point in history where an author can be punished for what he says. But more important seems to be the possibility that an author can and, now should, be paid for what he writes. (Along with printing came ample checks to ensure that punishable words not make it to distributable print.) Ironically, however, as Mark Rose and others have pointed out, it was in fact the book sellers who pressed hardest for copyright laws and the investment of those laws in the person of the author—from whom these booksellers could then buy the perpetual and exclusive rights to print. But that these booksellers were aided by the authors of the day (including the likes of Pope, Swift, Defoe, Johnson and Wordsworth) is an indication of the importance writers attributed to the still coalescing notion of author.

What I would like to suggest is that the next chapter in the story concerns the effects of law on the theory of literature, of the book and of the author, which will bring us, eventually, to the problems currently harrying literary theory, textual production and copyright law. In the eighteenth century of course the author was still thought of primarily as a craftsman. Pope's well worn formulations may not entirely fit his own productions but do reflect the dominant conceptualization: "True wit is nature to advantage dressed;/ What oft' was thought, but ne'er so well expressed." The idea of the author as an originator or original genius had not yet taken hold³ because the notion was that the author's task is to draw truths from nature and put them down on paper in pleasing formulations. And the point of it all was not so much the words (their arrangement, their style, their personal touch, in short their *art*) but the things presented. And this of course led to initial problems in the creation of copyright: the difficulty of finding a conceptualization of truth—or text—that could allow a person to own it.

The initial movement toward a conceptualizable notion of copyright drew on Locke's notion of labor. It was not the truths that were inscribed that were the basis of copyright but the labor that went into formulating

them. What Locke said in his *Two Treatises of Government* was this:

The Labour of [a man's] Body and the Work of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided and left it in, he hath mixed his Labor with, and joyned to it something that is his own, and thereby makes it his Property. (quoted in Rose 5)

However the Statute of Anne, which was primarily a codification of common law and contemporary practice, failed to settle the issue of copyright.⁴ Throughout the eighteenth century a series of important court cases along with further legislation refined English law so that by the end of the century a profound change had occurred, replacing Pope's theory of author as superior craftsman with Wordsworth's theory of poet as genius. It would be an oversimplification to suggest that this thing was simply the change in law. Yet clearly, investing copyright law in the person of the author not only helped change the ways that texts were written but the ways that texts and authors were conceived. It was an essential factor that made the Romantic notion of genius possible, the notion that underlies virtually all legal and much theoretical writing to the present day. So pervasive is this type of thinking in the law that even now in order to insure copyrightability, the law must invest any cultural production in the person of an individual even when no individual can be singled out as the primary creative force. In movie making or software production for example, primarily group creative efforts, the law recognizes the producer as the author, though the producer may not in fact have authored anything. As Bettig puts it, "copyright law denies the collective creativity that goes into making a motion picture, for it needs a 'creative subject' upon which to confer the rights of ownership" with the result that "the real creative subject within copyright law governing film is capital" (150). Not only that, but copyright law prevents creators from creating certain types of texts by putting limits on the abilities of artists to cite existing copyrighted materials—by, among other means, giving the copyright holder the power (within certain limits) to suppress published work. The law therefore serves as both a positive force, a catalyst, and as an inhibitor to textual creation: affecting in multiple and sometimes subtle ways how creators think and work—and how our theorizing about the ways they think and work may be formulated.⁵ Moreover, current law acts less in the interest of knowledge, art, dialogue, public debate—in short the public good—than for purely economic reasons.

Technology, economics, theory and law. The point of retelling this

story is to see it in relation to our current predicament. Technology has brought about new theory and new practices in the nature of texts; theory has brought out new practices and new technologies. Thoughtful theorists such as George Landow have called for appropriate revisions, reconceptualizations, in copyright law; but that law remains mired in the nineteenth-century notion of author-genius; a notion that was never quite true to the facts⁶ and which is no longer appropriate for many of the things that these laws are required to cover and even less appropriate for the things these texts may be asked to cover in the near future. We must then explore this situation a little more deeply, in order to explain why there has been little movement at the current crossroads.

II

If the theoretical possibilities suggested by the discrete object of the book made the copyright formulas we have inherited possible, future laws must deal with the possibilities and theories suggested by the likely successor to the book, the computer. Conveniently, though by no means coincidentally, the rise in computer technology is accompanied by a theory of text and textual production which is more than compatible, is indeed homologous, with that technology. I am of course referring to what is loosely known as "poststructuralism," with its emphasis on "text" over "work," "writer" over "author," and "writing" over "literature." But the law failed to keep pace with computers or theory.⁷

As Lanham has said, "The electronic word does not fit into the existing copyright marketplace, nor can we be sure... that the First Amendment will protect it as well as it has protected print" (280). Indeed, how could the First Amendment protect the electronic word, since the Amendment is only valid within the United States and the electronic word knows no boundaries. Moreover, computer technology simply does not easily support the author-genius concept any more than movie making does, though with the latter there is yet little problem because capital still must be reimbursed. But the problem is waiting to erupt. Lanham explains:

Let's assume that an enterprising young scholar undertakes to construct a hypertext edition of a famous novel with a vexed textual history. It will include all textual possibilities plus suggestions as to their relationships. And these will be presented in certain carefully determined related ways: the

reader can dial up, as it were, different coherent combinations of alternate readings. And with them all the available, or at least all the good, commentary on the text, embedded behind a set of 'buttons' which are reader-selectable. This commentary will be indexed to the individual passages in the text and cross-indexed by a user-selectable group of categories. Various recorded readings will be available, too, as well as animated three-dimensional diagrams illustrating basic stylistic patterns. Surrounding the whole will be a pedagogical framework with user-selectable levels. If you want guidance on how this text-delivery system might be used in secondary schools, you make the appropriate selections and a suggested pedagogy is offered. For various university applications, specific guidance is likewise offered. And the whole is conceived on an open structure: each user can make comments and these will become part of the system. Who "wrote" such a "text"? Who gets the royalties?... (282-283)

And this barely begins to suggest the problems. As Lanham also points out, computers can turn pictures into sound, sound to pictures. Who owns the musical rights to the *Mona Lisa*—or to an Andy Warhol? Lanham:

In the digital light of these technologies, the disciplinary boundaries that currently govern academic study of the arts dissolve before our eyes, as do the administrative structures which enshrine them. It is not only the distinction between the creator and the critic which dissolves, but the walls between painting and music and sculpture and architecture and literature. (275)

As I've said, there may be little problem yet where capital is involved. But even movies and music products are becoming, more user programmable. Two people watch the "same" picture; one experiences a safe, sentimental, another a dramatic, nihilistic ending; scenarios developed by the viewer with the help of her computer; a reader purchases a hypertext book, writes over it with his commentary, deletes what he doesn't want or need, updates the information, passes it on to a friend who does the same and has two friends; this goes on until who knows how little of the "original" author's words remain? This is the future with which copyright law will have to deal. And it is a future that that law will help to form, in a positive or negative

way, as it did the Romantic notion of the author. Exactly what effect the law will have on what is produced (as Art, if the notion of Art survives in recognizable form) and how the producers are conceived remains to be seen. Yet it seems to me that this unknown effect is one thing that may be putting a hold on copyright law. Mark Rose has voiced the fear:

Why, then, don't we abandon copyright as an archaic and cumbersome system of cultural regulation? Why don't we launch into the brave new world that Michel Foucault imagines at the end of "What Is an Author?" where the authorial function disappears and texts develop and circulate, as Foucault puts it, "in the anonymity of a murmur." The institution of copyright is of course deeply rooted in our economic system, and much of our economy does in turn depend on intellectual property. But, no less important, copyright is deeply rooted in our conception of ourselves as individuals with at least a modest grade of singularity, some degree of personality. And it is associated with our sense of privacy and our conviction, at least in theory, that it is essential to limit the power of the state. We are not ready, I think, to give up the sense of who we are. (42)

One reviewer of Rose's book has called him "curiously out of date" for this sentiment. And perhaps he is. The technology is moving along with our conception of ourselves even within the law's delay. But there is only so far that these can go without the aid of the law. However, Rose's fear, though I will have to say more about it, is only one thing holding back the law, and perhaps not the most significant. Another is the very economic environment that is impelling technology forward.⁸ In this respect capitalism is at odds with its own technology. On the one hand, the technology seeks to free up the creation of new texts and new technologies in ways that may not be possible without the liberalization of copyright laws; on the other hand, capitalism seeks an ever deeper investment in the notion of author—in its current applications if not in any vestigial sense it may still carry—in order to protect its current creations. A freer copyright law would likely make it harder to get paid because it would reduce the load of creativity on the side of the producer and increase it on the side of user. This may be where the technology is leading, but whether it is good for business remains to be seen. We can see the two directions starkly if we compare Bettig's analysis of the market situation with Lanham's analysis of the democratizing potential of computer technology. Lanham notes how

electronically created textbooks and electronic publishing democratizes through a universalizing of access to texts: with increases in technology, he writes, "our whole sense of scholarly 'location' would change. Academic urbanity would no longer be an affair of big research campuses. Such a system would be an extraordinarily democratizing one" (284), and "Electronic 'textbooks' are democratizing education in all the arts in the same way that the invention of printing reinforced the spread of Protestantism" (272). But Bettig warns,

In the mass media marketplace, the result [of law-supported, technology driven oligopolies] means significant barriers to market entry. In the mass media marketplace, the result is the reduction of access and voices. Consequently, the range of cultural materials upon which we are able to freely draw and to which we can freely contribute as we constitute our individual and social reality is narrowed, as is the realm of choices of what we can become. (152)

Taken together then there are forces being exerted in at least three directions on copyright law; one from capital (whose advocate is the copyright-holding corporations) trying to tighten restrictions, one from technology (whose advocate is the users of technology, including educational systems) trying to loosen restrictions, and one from a more conservative fear of what it will mean to our conceptions of ourselves if the law undergoes significant changes. It is this third, Mark Rose's, that primarily concerns me here because, although in relation to the other two it is certainly the weakest, it points to the most important and least understood relationship between literature and law, what I would call the creative aspect of the law. The fear Rose points to is that if liberalization of copyright in favor of technological realities inhibits the production of traditionally valued kinds of texts, we ourselves will undergo a thorough redefinition of who we are and of what it means to be a human being. If this is an awfully large claim to attach to a mere law, nonetheless it is the claim, and it is not without some justification. Individuals could possibly simply stop writing novels and poems, for example. Of course this would not happen right away. But it is not at all unlikely. If you don't have authors, you don't have as we understand them now. And the direction copyright law needs to move in from a technological point of view would seem to devalue the very notion of author, so highly invested when copyright was originally conceived. This is the real death of the novel—the novel as we have come to

know it and the huge investment in the academic structures that have come to support it. How long would individuals be able to fancy themselves authors once the notions upon which copyright law is based were eliminated from law as they have already been in theory? The law did its part to produce the very notion of artist that makes people work now for rewards other than financial; changes in the law would, it seems, work to reduce tangible and intangible rewards to those who produce what we now call "art" and would have a monumental effect on the production of any artifact not immediately commodifiable. Oh, the novel might not really die. But it will be transfigured. We might still have "Stephen King" novels, though eventually it wouldn't matter what committee or computer wrote them.⁹ We would no longer have Stephen King. We might still have literary novels, of a type, but perhaps they would be produced by communities of artists, perhaps under the guidance of a Master (as in the medieval guild system) or a movie-type director. I foresee a marked improvement in the reputation of Thomas Wolfe.

This is the fear voiced by Mark Rose. On the other hand, it is the dream of Michel Foucault, whose "What Is an Author?" focused the attention of many scholars on the eighteenth century's legal battles over authorship. Not to change copyright laws today would mean that law, theory and practice remain out of balance.

Yet, there is an optimistic appraisal that can be made, in the hope that it is possible to retain whatever is valuable in the notion of "author" or in the realization that if the category as such is doomed by changes in law, what follows may not be so bad. The most important thing to remember is that before copyright legislation was created, and before the notion of originality was given such prominence in textual production, people wrote different kinds of texts.¹⁰ Shakespearean writing may have been made impossible by copyright law. But the importance of Shakespeare has always been acknowledged: it simply does not lie in thinking up plots. Moreover, as Foucault makes clear (a point overlooked by all the essays that followed his, perhaps because it seemed so obvious to need notice) before the eighteenth century authors did exist, though in very different ways.

In any case, the question is not whether copyright law will change, but when and how. The unpredictable effects we will learn. The how problem, of course, matters most. There have been many calls for the law to reform, but as yet few plans for specific changes. Of those I have read the best is already in practice, as noted by Landow and Delany, "What is required is some kind of monitoring or sampling system that will automatically give credit to originators for the use of their texts. A crude

but functional example of such a system is Canada's 'Public Lending Right' program: this searches the holdings of ten major libraries with computerized catalogues, and makes an annual payment... for each 'hit' of a book by a registered author... (49). This suggestion is a compromise. It does not address the problems in the formulation of "author," nor does it work as well for print as it does for virtual text. Moreover, it cannot adequately ensure that textual producers be remunerated for their expenses since once a text is downloaded, it is infinitely copyable and recirculatable without reference to the source that meters the payments. Nor does it account for the communal creativity that distinguishes computer technology. If we were to rewrite copyright laws based upon the technological possibilities of computers and according to the philosophical devaluation of the notion and of the individual subject, we would have to make all texts available with minimum drag from this antique weight called the author. But that would reduce the stress on intellectual property rights and this goes contrary to the thinking of corporate capitalism. It would also threaten the production of texts. Will the issue be resolved by return to another old notion—a fair profit? This seems unlikely. Hence my modest proposal, or my proposal's modesty. A first step toward lightening copyright restrictions: a liberalization of the restrictions on free use. I want to suggest we take up Peter Jaszi's call for a system based on "use right rather than absolute property interest." He writes, "What is called for is a system that compensates creators but also facilitates reuse rather than impedes it, one based on use right rather than absolute property interest. That would be in keeping with the needs of the educational community and also with the theoretical critiques of authorship in which I have been investing some of my time. I think we should care a lot about writers. I'm not sure we should care so much about authors" ("Keep Off" 30). A second possibility is suggested by Woodmansee and Jaszi. They write, "While entrants into the new information environment may require some kind of legal security as an incentive to participate, they may not need the long, intense protection afforded by conventional copyright" (*Construction* 12). Accordingly, I would call for a distinction in law among different types of text. For example, those designed for an immediate effect and written corporately with the sole view in mind of profit and those whose value increases via user manipulation should be given a shorter term of copyright than those still produced within the Romantic notion of copyright that underlies the current laws.

One more point: Along with the Romantic notion of the author—and one of the initial concerns of the first writers of English copyright law—is the notion that a writer has the power to suppress as well as the power to

disseminate what she has written. The Canadian example moves in the direction of denying the writer the right to suppress published material. This is the direction in which the law must move. While I would, were it up to me, grant anyone the right not to publish, I would minimize the right of a writer to suppress already published materials. Nor would I fear greatly further careful liberalization of copyright laws in the direction of greater circulation and quotation of materials. The first effects of these changes would be something like a return of textual production to a mode much like that of pre-printing, or at least pre-copyright days.¹¹ The first effects of copyright liberalization would be, I expect, the greater production of interesting texts. There has been much worry over the past 25 years about the death of the novel. But every novel published today may already be an anachronism. I don't know if the novel will indeed die or not. I hope not. What is clear is that its future or its death will be determined by its relationship to the law.

III

If we can somehow manage a classification of texts that will distribute copyright privileges differently among various types, this will require some maintenance of the Romantic notion of "author." Is this wise? I would like to suggest that it is.

Having seemed to disparage the notion of "author," I want in part to redeem it: to suggest that nothing I've noted thus far requires the elimination of the notion—which theorists such as Jazsi seem to think must go if the law is to move—and much exists to recommend its modified persistence—on the other side, as it were, of necessary changes in law. What I really think we are moving toward, or at least should be, is not the death of the author—announced long ago but never quite effected—but a radical redeployment of the term. A redeployment within the awareness of the complexities outlined by Foucault and without the Romantic metaphysical pretensions.

Although it has never been stated so baldly anywhere, if I may redeploy the four factors mentioned above (technological, economic, philosophical and legal), all the current research into the question strongly suggests that this concept of author, at a certain point in history, is legitimized and shaped by philosophy through the law in response to capital. The true driving force is simply money. Or so it seems. But in fact the genealogy and mutations of authorship cannot be accounted for quite so

easily. That the notion of the author, as it is now understood, developed out of the breakdown in Europe of the patronage system—this fact is, of course, well known. But how and why the notion of author was shaped as it was and not in some other way that might still allow textual originators to get paid—this has received little attention. I cannot at this point offer a comprehensive answer to this question, but I intend to complicate the lineage. The notion of “author” is not in fact created simply out of capitalist necessity; it is rather created out of multiple, divergent needs and purposes.

As I’ve suggested, the well-established link between the expansion of capitalism and the creation of the author does not explain why the notion came into being as it did and not in another way.¹² Capitalism shaped the author—but not alone. The eighteenth century is, of course, also marked by a steep increase in religious skepticism: the first large-scale question of the validity of all existing religious authority: the rise in science and in protestantism—the difficulty of choosing between protestantism and Catholicism on purely theological grounds—fed into the inflation of the status of writer to author. Eagleton understands “genius” as given to the author in compensation for the humiliation of having to be paid for his work—but only “in part.”¹³ Though Eagleton’s formulation is thoroughly Marxist and pleasingly cynical, other forces were, as he knows, at work (or at play) with much more tenuous relationships to capital. Moreover the great variety of ways the term has been deployed, as sketched out by Foucault, suggest that the idea of the author responds to a significant number of discursive needs the precise lineage of which have not yet been traced. Nor is it obvious that after Foucault and Barthes these needs (or other correlary needs) no longer exist.

Before saying more on this, I wish to point out that the textual producer was the obvious choice for this distinction, given the status these producers already had in European history. While the notion of “original genius” was not posited before Edward Young in the middle of the eighteenth-century¹⁴ any more than were the current distinctions between types of texts, the notion of “authority” was. In the desire to validate Foucault’s claims regarding the creation of the “author,” what has not been systematically explored is the relationship of the pre-Neoclassical history of the author to the contemporary.¹⁵ Among others, Woodmansee wishes to show that the corporate nature of authorship was simply understood to be the case before the eighteenth-century invention of the author. She writes:

As we move backward in time, the collective, corporate, or collaborative element in writing... becomes even more pronounced.

From the Middle Ages right down through the Renaissance new writing derived its value and authority from its affiliation with the texts that preceded it, its derivation rather than its deviation from prior texts. ("On the Author" 17)

Woodmansee goes on to demonstrate her claim with sufficient citation and even to carry it forward into the late eighteenth century to the work of Samuel Johnson. While Woodmansee is correct, she does not tell the whole story. In fact, before the author was set within a limited scope of possibilities (such as Foucault outlines), it was not set. It played the whole field between collectivity and individuality.

As everyone who has read Chaucer knows, recourse to "mine auctor" is his common, playful means not only for gaining authority for his own texts but also for circumventing censorship or criticism: if it was written in the ancient texts, it must be so. He derives his texts from and at the same time confers authority on the ancient text via its author. (It is not "mine text" that he invokes but "mine auctor"). Foucault himself notes that a certain notion of authorship circulated before the eighteenth century:

There was a time when the texts that we today call "literary"... were accepted, put into circulation, and valorized without any question about the identity of their author; their anonymity caused no difficulties since their ancientness, whether real or imagined, was regarded as a sufficient guarantee of their status. On the other hand, those texts that we now would call scientific... were accepted in the Middle Ages, and accepted as "true," only when marked with the name of their author (149)

A most interesting case of authorial attribution, one that anticipates Foucault's concern regarding which texts of an author deserve the title "work," appears in the suppression of the writings of the theologian Erasmus in the middle of the sixteenth century. When Pope Paul IV (elected in 1555) drew up his *Index of Forbidden Books* he included not merely the supposed heretical works of Erasmus but "all his commentaries, annotations, scholia, dialogues, letters, censures, translations, books and writings, even if they contain nothing at all against or about religion."¹⁶ It seems clear that the name of an author has long been capable of contaminating any text it touches.

Clearly my intention is not to suggest that there is a right way to attach the notion of "author" to a text—not even that the notion of author is

in any form indispensable or inevitable. Rather I merely note, what has recently been obscured, that some notion of "author" is much older than the eighteenth century and that the notion is not simply a response to capitalism. And I do so to suggest that even if no economic necessity were to remain in the notion of author once the computer revolution is full blown—"writer" being potentially adequate to get a textual producer, individual or corporate, remunerated for the labor of producing text—a noneconomic function may yet remain for some version of this notion.

Foucault's complaint about "author," briefly, is that it is not only overladen with too many unsubstantiated and indeed invalid assumptions about human beings and "human nature," but also that it is too cumbersome and too diffuse to be theoretically useful. It cannot serve as the basis for a rigorous typology of texts. With this I have no argument. Foucault wishes to remove the author, provisionally and strategically, from the theoretical discussion of texts *because it can be done* and when it is done certain possibilities emerge that had been held back by the name of the author.¹⁷ There is no need to go into a detailed analysis of Foucault at this point. It is enough to notice that Foucault's analysis is, as I've said, provisional and strategic. His goal is not to remove the notion of the author *tout court*. "Such supposed unities as 'author' and 'oeuvre' must not be rejected definitively of course, but the tranquility with which they are accepted must be disturbed..." (*Archaeology* 25). What if only via such notions can certain viable reading practices proceed? Or, more to my point, what if such notions make possible certain textual functions which, no less valid than those by which they might be replaced, a culture might desire to retain—albeit in a manner partly disarmed by a postmodern self-consciousness of their limits? In short, can the notion of author be made useful—and should it be? What is gained if we decide to redeploy the term?

Without nature to turn to, without a transcendent grounding of our legal and literary concepts, the notion of the author is, I believe, still useful, theoretically as well as practically—as the most appropriate marker for those texts which are to have a certain privilege within the academy. This is by no means meant to limit what may or ought to be discussed within the academy or any of its departments. Nor would it, or ought it to be, a means for stigmatizing certain texts or writers, though it would emphatically be a way of organizing and evaluating certain types of texts—not primarily against or at the expense of those who attempt to scale mount Parnassus and fail but against those whose business in never was to be "literature."

The author is a concept whose theoretical uses—however limited, even arbitrary the concept—must now be explored, expanded in light of

poststructuralism, not dissolved as though there were some truer way for texts to circulate. There are only other ways, many good, as good, some perhaps better—for specific purposes, within specific, overdetermined contexts. But none truer, and none with the specific valence that the author has, whose character is the more precise once his pretensions are dissolved.

As I have suggested, the most common criticisms of “the author” are that it is elitist and false: that it perpetuates, on suspect grounds, already virtually intractable power structures. Among the reasons for its falseness is its implicit claim to unity: a unity that exists neither in the production of texts nor in the deployment of the term, a unity which, even if it did exist, could not cut off the text from interpretation. If valid, as I take all these criticisms to be beyond the need to prove them so again, then the term has been or is becoming disarmed. And may therefore with reasonable safety be taken up again. If the author has been well-proven to be fictional, its fictionality is of the same type that adheres to all concepts, as John Barth among others has so well demonstrated, even the concept of reality. Barth writes, “Even to say ‘Being simply is’ is to impose upon Reality the human conceptions of noun, verb, and adverb, the human logic of grammar and syntax, and thus to falsify it, since there are no categories in Nature’s warplless, woofless web” (*Friday Book 22*, Barth’s italics), and in another place,

How glibly I deploy even such a fishy fiction as the pronoun *I* as if—though more than half of the cells of my physical body replace themselves in the time it takes me to write one book..., and I’ve forgotten much more that I remember about my childhood, and the fellow who did things under my name forty years ago seems as alien to me now in many ways as an extraterrestrial—as if despite those considerations there really is an antecedent to the first person singular pronoun. It is a far-fetched fiction indeed...; but if I did not presume and act upon it, not only would I go insane; I’d be insane. (*Further Fridays 14*)

Again, the question is not simply whether “author” is a fictional term or not—belief in untruths is the minimal requirement for sanity—but how good a fiction it is. “Author” may not match any actual textual producer strictly; it is still the best way to designate certain types of textual producers as a guarantee or at least a hope that certain types of texts, texts I hold to be important today, continue to be produced. Among its other functions (not mentioned by Foucault), the term also implies an attempt to re-think or re-

work realities. To produce not just texts, but specific kinds of texts, or rather texts that do a specific kinds of things. If the Romantic author as an original creator has today lost much of the Romantic sense of "creator" (with its theological overtones) it retains a sense of one who deploys given materials to new ends. The author is the creative text-weaver who finds, or seeks, both movement and resistance. Here is how I think she fits in contemporary context.

As a reader of Thomas Pynchon and other entropic fiction, I would characterize a strong tendency of the contemporary world as the tendency toward leveling. I realize this is not the only way to characterize this world and that there are strong counter-forces at work as well, nor is this necessarily a special characteristic of our time, though it seems particularly strong to me. The leveling, the present as a period of leveling, the leveling carried out in the present is a leveling in the field of capitalism and of what we refer to under to short-hand of "theory." Contra Jameson, I will not suggest too close an association between these contenders (or others we could name) aside from this shared characteristic of leveling. It may be that all they have in common is the initial movement toward leveling.

Capitalism levels everything on the field of economic value. Poststructuralism levels text production by calling it all "writing." Again we can note that within all of this new, fluid hierarchies form. This does not obviate the usefulness of those forces of resistance of which the author is the most characteristic example. One legitimate, noneconomic function of the author today is as the producer of texts of resistance, Pynchon's "counter-force," resisting both the leveling and the hierarchizing or capitalism.

It is a task of the contemporary author to resist leveling within a framework that does not stigmatize leveling as a metaphysical enemy but as a force, no more natural than its own, that needs to be resisted because of its implicit claims to the position of the truth it denies. The task of the contemporary author is to resist leveling not on the Ground of Value, but by grinding out values. The resistance to leveling is the value that is required by the times. The author's status needs to be admired because the author can deliver us—however she comes by them—worlds that are not our own; tools and weapons for re-envisioning worlds. Not all author are equal—or absolutely singular. No absolute standand distinguishes one from another, no absolute arbitror exists. The title of author cannot be stamped on a metal and distributed once and for all (by the Pulitzer board, by the Nobel board, by the N.E.A.). But the concept ought to remain in circulation—as a resistor to leveling and as a bone of contention. Myriad inadequate but provocative

attempts exist to define that quality, that set of qualities, that distinguishes the author. There is no absolute set of qualities. But Barth's definition is still intriguing—one who combines "passion" with "virtuosity" someone who can do what "anyone can dream up and discuss but almost no one can do" like the jugglers and acrobats at Baltimore's old Hippodrome" (*Friday Book* 66) and yet at the same time creates texts that inscribe, in hardly theorizable ways, human passions, "that speak memorably and eloquently to our human hearts" (*Friday Book* 67). Kundera's definition of his project as the "exploration of being" is equally wonderful, or not equally, but quite wonderful. That the categories of author and literature should neither be lost nor made inevitable—this is the task, or a task, for contemporary authors. The leveling force is not the enemy but the positive ground of literature's and the author's contemporary possibility. It is what for the moment brings back the author. Roland Barthes has said: "It is not that the Author may not 'come back' in the Text, in his text, but he then does so as a 'guest' If he is a novelist, he is inscribed in the novel like one of his character,s figured in the carpet" (Barthes 161); John Barth elaborates, "it might be conceivable to rediscover validly the artifices of language and literature—such far—out notions as grammar, punctuation...even characterization! Even plot—if one goes about it the right way, aware of what one's predecessors have been up to" (*Friday Book* 86, Barth's italics)—even, I would add, the author.

But how would it be possible to do this when, as has been demonstrated again and again, the computer is the natural ally of capitalism and "theory" in the process of squeezing the author out of the textual dough? The first step it seems to me is not to ask how to do it. The first step is to contend that it ought to be done. That done, methods for retaining some notion of author, even within the production of certain types of hypertextual novels (by no means all) can certainly be developed. If different texts circulate over the web with differing relations to their originators—well, texts have always so circulated. The question is not whether it can be done—of course it can—but wether it should. Whether, since there will be different kinds of producers for different kinds of texts, there ought not to remain a place for the kind of text that has an author: an archive into which one can dip for the copy of the text as originally or finally produced—no matter what has happened to it since? The answer, I suggest, is yes.

Notes

¹ The conference: "Intellectual Property and the Construction of Authorship." at Case Western Reserve University. Cleveland, Ohio, April 18-21, 1991; the journal, *The Cardoza Arts and Entertainment Law Journal* (1992); the book, *The Construction of Authorship: Textual Appropriation in Law and Literature*.

² See Bettig for a discussion of the immanence of the printing press to regulation particularly in Venice and Britain.

³ Though not surprisingly, as Woodmansee points out, it had been thought up in its early formulations, particularly in England, by Edward Young in 1759. Young's emphasis on originality had little immediate effect in his home country, but much in Germany. See Woodmansee ("Genius") 430ff.

⁴ For the most comprehensive history of English copyright law see Rose, *Authors and Owners*, to which the following is indebted.

⁵ If economic necessity impelled the creation of copyright, the thinking of text that flows from copyright follows a significantly different exigency. It certainly follows economic constraints to some degree: the notion of author-genius sells books. But it functions probably more significantly as what Eagleton has called compensation for what would otherwise be a loss of status: "The peculiarity of the aesthetic is in part spiritual compensation" for the degradation for the writer's becoming "a petty commodity producer" (64). It is worth adding, though it doesn't follow the main line of my argument, that the new status of the author functions to replace one decaying social hierarchy with another. An author becomes a new type of nobleman.

⁶ See Woodmansee ("On the Author"). Woodmansee has indeed noted that "as creative production becomes more corporate, collective, and collaborative, the law invokes the Romantic author all the more insistently" ("On the Author" 28).

⁷ Woodmansee and Jazsi note this: "Today, however, that conversation [between literature and law] seems stalled. In particular, law has missed out on the contemporary 'critique of authorship'—the impulse, especially in literary studies, to put in question the naturalness and inevitability of Romantic ideas about creativity..." (*Construction* 8).

⁸ Economic concerns in fact run this debate from beginning to end, though for the most part critics have neglected to give them their full weight.

Certainly money explains why law is out of step with theory.

⁹ A certain number of novels are already, of course, being written more or less like this, by committee after market research, if not exactly by computers. See Betting, 150.

¹⁰ For enlightening discussions of collaboration in the Renaissance see Jeffrey A. Masten. "Beaumont and/or Fletcher: Collaboration and the Interpretation of Renaissance Drama" in Woodmansee and Jaszi.

¹¹ A sentiment I share with Woodmansee, see "On the Author" 26ff.

¹² The current practice of paying writers for their work without conferring upon them the status of "author"—as is the practice in corporations and the entertainment industry—itself has a long history. In England the practice was already well advanced in the sixteenth century by acting companies hiring playwrights (see Feather in Woodmansee and Jaszi, 191-209).

¹³ See Footnotes ⁵.

¹⁴ See Woodmansee, "The Genius..." 430ff.

¹⁵ For the most thorough study of this relationship, see Feather, in Woodmansee and Jaszi, who notes: "... just as the 1710 Act was little more than a statutory recognition of the rights of the trade, the Act of 1814 was an even more belated recognition that authors had always played their part in the commerce of letters, and for nearly two hundred years had been rewarded, however inadequately, for their labors" (209).

¹⁶ Quoted in Hans Kung, *Theology for the Third Milenium*. (New York: Doubleday) 1988, to which I am indebted for this story.

¹⁷ For Foucault's detailed discussion of his procedures and their justification see *The Archaeology of Knowledge*, especially Part II.

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