

"Disowning Knowledge:
An Augustinian Critique of the Idea of Intellectual Property"¹

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In this essay I attempt three things.

The first is to contrast, necessarily in very broad and schematic terms, two incompatible understandings of possession or ownership. I call the first of these Christian, and I do indeed think that it is characteristically Christian (perhaps also Jewish and Islamic), though I won't make any attempt to establish that it is. I call the second pagan, meaning by this only that it is neither Christian nor Jewish. The second, pagan, understanding of ownership is not new: Ambrose and Augustine both delineate and criticize it in the fourth century, for instance, and elements of it are evident in Roman law long before that.² But it is especially characteristic of modernity, and especially lively for us. The Christian and the pagan understandings of ownership are essentially and fundamentally incompatible, and it will be part of the point of my depiction of them to highlight this incompatibility. I use the terms 'Christian' and 'pagan' not as nuanced historical descriptors, but rather to designate ideal types of a broadly normative sort, which is to say to indicate what I think Christians and pagans ought to think were they to be consistent with their own best intentions.

The second thing I attempt is an application of these two understandings of ownership to the question of intellectual property. This difficult and interesting phrase, a phrase which Christians, I'll later argue, should think oxymoronic, I understand to embrace two related categories of thing that may be owned. The first is

ideas, which are by definition incorporeal, prior to and independent of any particular expression in words, gestures, music, images, or anything else that gives them a public presence. Intellectual property in this sense is always and necessarily incorporeal, or as lawyers mysteriously prefer to say, intangible (why focus only on the sense of touch?). But intellectual property may also be in particular, corporeal expressions of ideas—collections of words, daubs of paint on canvas, mathematical formulae glowing on a screen, and so on. These expressions are, we can say derivatives of ideas, ideas which have taken form and are now present at hand. Intellectual property, according to this usage, may be property in ideas, or property in expressed ideas, or both. I realize that not everyone would agree that there may be unexpressed, and therefore incorporeal, ideas, and that even among those who think there are or may be, there is likely to be deep disagreement about what account to give of them. I shall neither defend nor further explain this claim here, other than to note that some such distinction is essential to legal discussions of intellectual property (copyright law, for example, rests upon it), and that various forms of it are widely appealed to in ordinary, common-sense discourse.³

In both senses of the phrase 'intellectual property' we're dealing with entities whose existence is not separable from human work. Goldbach's Conjecture, for example—that every even number greater than two can be expressed as the sum of two primes—is, if true, a state of affairs independent of Goldbach having conjectured it or my having communicated his conjecture to you by embodying the idea in a particular set of English words. The state of affairs in question, then, obtains without human work. But Goldbach had to do some work (of exactly what kind it would be complicated to say) in order to come up with his conjecture, as did I in order to embody and communicate it. All intellectual property, whether it's property in ideas or

their embodiments, is property in something to which human work has contributed. It is not, then, as I'm using the term, property in a state of affairs or condition of things that obtains independently of such work. Here I should note that intellectual property law does recognize, sometimes, the possibility of property rights in just such states of affairs or conditions of things. Since the U. S. Supreme Court's 5-4 decision in the 1980 case, *Diamond v. Chakrabarty*, patenting of living organisms has been legally possible; and although that case was limited to organisms modified by human work, the US Patent & Trademark Office has, since then, issued a number of patents on particular unmodified gene-sequences or DNA fragments. Patent is, in lawspeak, itself a form of intellectual property, and it does seem likely that this move toward permitting patenting (and perhaps also trademarking) of entities or states of affairs that obtain independently of human work will gather momentum. But I won't here use the term 'intellectual property' to cover such things.

The third thing I attempt, necessarily briefly, is a case study. Given their incompatible understandings of ownership and property, and, therefore, of how to apply these understandings to intellectual property as defined, how should advocates of the Christian and pagan understandings respectively think about plagiarism? Plagiarism has no uncontroversial definition (and, I rather suspect, no definition that makes sense, which goes a long way toward explaining why so many find the idea so puzzling), but a workable minimal one might be: *unacknowledged taking and public use of others' expressions of ideas*. On this definition, a very high proportion of all literature and music and painting is plagiarized to a greater or lesser extent—probably all of it. And in uneasy awareness of this, some expand the definition of plagiarism to include reference to what those who perform it know (perhaps, in order to plagiarize, you need to know you're doing it), or to what they intend to do (perhaps, in order to

plagiarize, you need to intend to convince others that you're not doing it). But I'll defer consideration of those complications until I come to that discussion.⁴

And why plagiarism? Well, it serves as a good illustration of the fact that our late-modern intellectual practices and our attitudes toward them are intimate with a disputable and largely pagan understanding of the relations we do and should bear to the work of our minds and hands and voices, as well as to the relations that such work does and should bear to the work of others. The principal reason why our universities and colleges and schools teach and think that there's something wrong (morally wrong, usually) with plagiarism, is because of pagan understandings of what it means to own intellectual property. Christians ought not to have such an understanding, and an analysis of differences about plagiarism shows that understandings of abstract theoretical questions about property do sometimes have direct impact upon pedagogical and catechetical practice, and thereby upon understandings of what the intellectual life is for. The remarks on plagiarism, therefore, are intended as small contributions to the larger enterprise of thinking about what intellectual appetite is and how it ought to be rightly ordered.

1. Ownership: Pagan vs. Christian

Ownership is a relation that we human beings may have to things other than ourselves. (We may also, on some accounts, notably John Locke's, have that relation to ourselves, but I'll leave that possibility aside in what follows.⁵) What we own is our property. So far, agreement between Christians and pagans may extend, but not much further.

For pagans, the defining property of ownership is the capacity for sequestration: to own something is to be able to sequester it. To sequester something,

in turn, is to set it apart, to separate it, to control access to and use of it, to remove it from the common sphere, the realm of the public, to the realm of the private. The maiden sequestered in her tower by the over-protective father is set apart from, separated from, the public world of gallant princes and battles and feasts and weddings. The disputed assets sequestered by the court in a frozen bank account have been definitively removed from access and use until the dispute has been resolved. The vowed religious, sequestered in his monastery, no longer wanders the highways of the world. The common land sequestered by enclosure is removed from public access and appropriated to the lord of the manor's exclusive use. The book sequestered from the bookstore to my study's shelves by purchase and relocation is no longer available for public browsing or purchase by anyone else unless I choose to make it so. The theorem's proof is completely and unambiguously sequestered in the head of its discoverer until she chooses that it should be made public. Sequestration, then, is what pagan ownership most centrally consists in, and it is a form of control with three aspects.

First, there is control of access: no one but you, the owner who has performed the act of sequestration, can have access to or contact with what you own unless you give permission. Your hands must stay off my car, my books, and my house, unless I invite you to touch. Owners, if they choose, may sequester what they own by isolating it from any contact with others, and when they do this they take control of access to its extreme: their property becomes accessible to them alone, like the miser's hoard examined only when no one else is present, or the work of art kept in a private room for the delectation of no one but its owner. More often, access is granted by permission: others are asked to admire the hoard or the artwork, but even when this is done, sequestration is the frame and the presupposition: admiration or any other

contact with the property in question is granted only under acknowledgment that this is indeed property, an object that may be removed from the gaze of others at any time according to the whim of the owner, exactly because the owner controls it.

Second, there is control of use, which involves use not only of the property itself, but of whatever it may produce or give rise to. Whatever uses your property may be put to are for you alone, unless, again, you choose to grant them to others. This, in lawspeak, is *usufruct*. Suppose, to return to Goldbach's Conjecture, you have an idea about how to prove it. If you own that idea, then any use to which that idea may be put is at your exclusive disposal. You may keep it locked up in your head or on your hard drive or on paper in your fireproof cabinet. Or, you may deploy its elegant heuristics as aids in the construction of other proofs; or, I suppose, you may set it to music or depict it in oils. As with control of access, control of use may also be given away by you, the owner, or temporarily granted to another.

Third, there is control of disposal. Not only do you control access to and use of whatever you own, you may also do with it what you will: you may destroy it; you may give it away; you may keep it hidden; you may display it to all comers; you may, to the extent possible, alter it, deface it, kill it if it lives, improve it, decorate it, nurture it, and so on. Essential to the pagan grammar of ownership is that you are not bound to your property by eternal or inalienable bonds: you may by fiat cease to be its owner, or another possible owner may by force remove your property from you; but otherwise, since your property cannot remove itself from your ownership, it remains yours until you relinquish it, or until some other potential owner takes it against your will and without your power to prevent the taking. It remains, that is, passive before you.

No system of positive law codifies or recognizes the property-relation in quite this threefold way, and all limit the ideal type in various particular ways.⁶ You never, as a matter of fact, have complete control of access, use, or disposal of any of your corporeal property in any actual system of positive law. You can't, for example, legally dispose of your old car anywhere you choose; you may not legally prevent officers of the law with proper warrants from having access to your property even if you wish to do so; and you may not legally use your lawfully-owned shotgun in any way you choose. But any codification of the relation of owners to their property will inevitably be predicated upon an understanding of sequestration as an act of control with the three aspects I've noted, and will treat the exceptions to those three kinds of control which it will always find necessary to legislate as exactly that—as exceptions which need to be justified, exceptions which make sense only against the background of an understanding of what property essentially is: something sequestered for the exclusive access, use, and disposal of some sentient being or beings. Complete (pure) sequestration is also complete (pure) ownership; and whatever is completely sequestered is property without remainder.

Another talismanically powerful word for what aspiring pagan owners seek is *dominion*. This word, derived as it is from *dominus*, which is in turn the Latin rendering of the scriptural name of God, in Hebrew the tetragrammaton, indicates the power of a lord to govern or control, most usually land, but also sometimes persons or portable property or other life-forms. It is one way of speaking, theologically, about the relation God bears to the world (though one which requires correction and amplification by others if it is to be rightly understood), and the English version of Scripture completed by James I's translators in 1611 used the word 'dominion' to label the relation that God grants to human beings over the world and its contents. But

when God recedes into the background or is forgotten, the word becomes the standard term for the relation human beings bear to their property, carrying all the mentioned connotations of sequestration's control of access, use, and disposal. If the pagan owner's aspirations for sequestration and seizure have been realized, dominion is the result. Another way to put this is to say that the pagan owner is a god, or would like to be.

The Christian understanding of property is inevitably different. It is axiomatic for us that all corporeal goods are brought into being by God out of nothing and are sustained in being only so long as God chooses to do so. God is, therefore, both efficient and final cause of all corporeal goods, to use the Aristotelian schema; we can also say that God is necessary and sufficient condition for the coming-to-be and continuing-to-be of any corporeal good. These theological axioms yield the conclusion that only God possesses or owns any corporeal good as pagans understand ownership, because only he has or could have the power to sequester it into privacy (which would be to take it out of being altogether) or to grant it public display (which is just what he does when he creates); these are, recall, the defining characteristics of pagan ownership.⁷

Augustine, to take an example, makes these points graphically in a sermon on a text from the prophet Haggai: "Mine is the silver, mine is the gold" (2:8).⁸ Haggai here speaks in the first person for God, and these words are said as part of a promise that the destroyed Temple of Solomon will be restored, and that the wealth of the nations will flow into it. It's of this future wealth that God declares possession. But what, asks Augustine, can it mean for God to say that gold and silver are his, to claim, it seems, that he owns such things? This question, Augustine says, has been pressed by the Manichees, a quasi-Christian group of which he had been a practicing member

for some nine years before his baptism in 387, as an argument against identifying the God of the Old Testament with the God of the New. How, they had asked, can a God who owns gold and silver be the same God who rejected Mammon (Luke 16:9)? In response, Augustine says that gold and silver, like all corporeal things, are created goods. This means that God called them into being (*instituere ut sit*) and distributed them so that some have them and some lack them (*alteri adsit alteri desit*). This is the sense in which God possesses or owns them: without him they are not, and without his free gift no human can have use of them. This is also why, says Augustine when God commands almsgiving he's not talking about giving away your own things (*de re illius cui iubet*), but rather about giving away his own.

So much for the theological point: God is sole owner and we are granted use of what he owns for a shorter or longer time. But, of course, this use is regulated by human law, the law of the Roman Empire for Augustine—for us, the law of England or the USA or wherever. What account does Augustine give of these laws? He typically approaches this by contrasting the human rights enshrined in the laws of kings and emperors with the divine rights written into the fabric of the cosmos by the act of creation. The former, the laws of the Roman Emperor, for example, do indeed grant property rights; but the fact that they do so and the way in which they do so—which includes the sanction of violent punishment up to and including death for offence against the law; and which includes, as well, the enforcement of patterns of use of corporeal goods that entail the poverty and suffering of many in ways that directly contravene God's intentions for a justly-ordered human society, a *res publica*—is an effect of the fall. It is only because of human sin, both inherited and actual, that such laws are needed; they are not needed in the first grace, the graceful gift of creation (Adam and Eve owned nothing); and so Augustine never uses the

language of natural rights to describe property ownership. Secular laws providing such rights have just the same status, in his view, as do laws giving the officers of the state the right and perhaps the duty to torture prisoners in order to get confessions from them. All such laws are a regrettable and temporary necessity, fully explicable as an artifact of sin. Not only this: they also enshrine an incoherent understanding of what it is to own property. If, as the theological position just staked out claims, only God can own in the full and proper sense, then human laws that purport to grant rights to ownership in perpetuity must be at best simulacra of the divine law. That law, rooted in the order of creation which is also the order of love, has no conceptual space for the idea of human ownership on the model of divine ownership.

Augustine does, nevertheless, want Roman property laws to be obeyed. He is perfectly capable, for instance, of using them against groups like the Donatists when he wants to expropriate their property for the use of the Catholic Church. But he wants them to be obeyed with the understanding that what they regulate is use rather than freehold possession. He says, for example, that the temporal law orders or controls only "those things we are said to possess for a time," but that nonetheless laws and rights of this kind do, to a limited extent, serve peace and the proper ordering of human society, and should be obeyed. These laws, however, are irretrievably implicated with violence: they "coerce by fear, violently bending and twisting those miserable souls for the ruling of whom they are designed." The good they bring about is that of restricting and constraining by a limited use of fear and violence what would otherwise be an unlimited use of these same horrors by warring individuals and groups. This view of the nature of, and the reasons for obeying, secular property laws is of a piece with Augustine's broader political theory; but the point of interest for us is that secular laws governing ownership do not, for Augustine,

establish a natural right to property, and typically mislead both those who make such laws and those who must obey them into thinking that human ownership ought to be understood like God's. But it ought not: human ownership reduces without remainder to temporary use of corporeal goods given freely for such use by God. It is not a matter of sequestration's power of control, but rather one of grateful receipt of gift.⁹

Substantially similar understandings of what it means to own property can be found in the vast majority of Christian thinkers from the fourth through the fifteenth century, even if the language used to express it is sometimes very different.¹⁰ On this Christian view, then, use is the most basic category through which to interpret possession's sequestration: we possess or own corporeal things only temporarily, by courtesy and convention, as stewards of gift. Any stronger concept of possession would approach and infringe upon an understanding of ownership that is proper only to God. Christian owners of property, therefore, understand themselves as creatures and not as gods, and their property as gift for temporary use, to be used and held in trust as a steward uses and holds in trust the property of his master.

2. Ownership of Intellectual Property: Pagan vs. Christian

Both pagans and Christians apply their understandings of property in general to intellectual property in particular, which is to say to ownership of ideas and their embodied expressions. This means that pagans seek, ideal-typically, sequestration and control of what they know, understanding it as a potentially wholly-owned possession; while Christians seek, again ideal-typically, stewardship of what they know, recognizing all knowables as such because of their participation in God. Each needs a particular pedagogical régime in order to discipline the intellectual appetite so that it resonates and accords with the understanding of intellectual property each has.

These régimes will inevitably be different, which means that Christians and pagans—and recall, again, that these are labels of convenience for ideal types, not nuanced historical descriptors—will advocate and attempt to institutionalize different intellectual practices, which is to say different methods of teaching, learning, discovery, invention, and display. These practices won't be different in every respect: common humanity and a common human environment ensures significant similarity, a similarity which Christians have often recognized by noting the importance of what is to be learned from serious engagement with the expressions of what pagans take themselves to know: Augustine reads Vergil, Aquinas reads Aristotle, Jonathan Edwards reads Locke, and so on. But Christian and pagan pedagogical régimes nonetheless differ about matters of importance, as will become evident in the discussion of plagiarism below. But before engaging in that discussion, a few words more about the approach to intellectual property that characterizes pagans and Christians, first with respect to objects of knowledge and ideas about them, second with respect to method, and third with respect to expression.

Objects of knowledge, for pagans, are ideal-typically discrete, passive before and transparent to the gaze of the knower, and capable of being fully known by the ideal knower who has been catechized in the right way. Knowables are understood to form an ordered ensemble, and spatial metaphors are likely to be important to pagans in thinking and talking about them. The ensemble of knowables may be laid out on a grid and represented in spatialized charts and diagrams, as, for example, Peter Ramus did, or tried to do, with all knowables in his lectures and publications in the sixteenth century,¹¹ and as our high-school and college textbooks still often attempt. A pedagogical régime aimed at arriving at correct ideas—which is to say, knowledge—of such knowables will begin with an emphasis upon demarcation by definition of the

particular that is to be known from all others. This is a gesture of separation, of cutting the thing to be known out from the herd of other things to be known, roping and hogtying it, and then, by gazing closely at it, coming to know all there is to know about it, arriving at exhaustive knowledge of it. This act of demarcation by definition is precisely analogous in its form to the quasi-legal act of defining property: in order to know just what is owned (sequestered, controlled) it's essential to know what makes it what it is and not something else, what separates it from other potential property, and so lawyers drawing up contracts must spend a good deal of time in being as definitionally precise as possible about what is owned. Boundaries must be established, lines drawn, definitions offered. So also with the first steps in coming to know what there is to know according to the pagan intellectual property model.

Demarcation by definition provides the groundwork, the fundament on which the edifice of knowledge is then built in a disciplined manner, following a methodic blueprint that will guarantee success. Classic analyses of this approach can be found in, for instance, Part Two of Descartes' *Discours de la methode* (1637), in the opening chapters of Francis Bacon's *Novum Organum* (1620), and in John Locke's *Essay Concerning Human Understanding* (1690). There are earlier roots, but this interest in arriving at a completely reliable method for mastering—and thereby owning—ideas is very characteristic of early modernity. So also are its applications, as for example in Spinoza's *Ethica*, composed probably between the late 1660s and early 1670s by way of a *more geometrico* or geometric method, whose axioms and demonstrations were intended to express in a way convincing to others, complete and accurate understanding of the topics it treated. No one writes like this any more, of course, and no one—not even Spinoza—ever thought that the method evident in the *Ethica* was suitable for investigation and presentation of contingent historical questions, for

example. Spinoza's own *Tractatus Theologico-Politicus*, which in considerable part investigates the historical questions involved in dating and ordering the books of the Old Testament, does not use such a method. But the essential idea remains with us now: we, pagans as we all are in this respect, still think, though more diffusely, of knowables as discrete, transparent, capable of being completely known to those who can demarcate them by appropriate definition and apply appropriate method to considering and understanding their relations one to another. The idea of the discipline, for example, as a particular branch of investigation with its own carefully demarcated and defined set of knowables, and its own highly specialized methods for approaching, understanding, and displaying knowledge of those knowables, is the direct inheritor of Cartesian methodism and Spinozist geometrism. Classic works to consult here include Immanuel Kant's *Der Streit der Fakultäten* (1798), and Max Weber's "Wissenschaft als Beruf" (1919). And our universities are ordered by discipline.¹²

For Christians, things are different. Knowables are, first, gifts of God which participate in their giver, and which would neither have come into being nor been able to continue in being without that gift. This means that the first and last response to them is surprised gratitude that they exist and that we exist as their potential knowers. Understanding knowables as God's gifts, and thereby as participants in God, has another implication as well, however: it is that they cannot be isolated, demarcated, and exhaustively defined as pagan seekers after intellectual property would like to do. Their relation to God is what constitutes them most fundamentally, and this relation does and must remain largely opaque to us because the God in whom they participate is known to us here below only by negation and analogy, and therefore the relation of any particular being to God is inevitably also largely opaque. This opacity, however,

is itself a matter for intellectual rejoicing because it provides, for Christian knowers, an instance of the intellect's awareness of its limits—something uncongenial to pagan knowers. The partial opacity of all things to the intellect's gaze does not, of course, mean complete opacity. Much can be known, and much of what Christians know about creatures is also what pagans know. But the frame for knowing, and the understanding of knowing's limits, is quite different. Christians, when they think clearly, do not seek as pagans do for transparent definition, perfect method, and exhaustive knowledge. Rather, what we seek is to understand the peculiar specificity of each particular being's participation in God—the way, that is, in which God's glory is partially evident in and partially occluded by this being, whatever it is, whether equation or mammal or rock or galaxy or social institution or what you will—and in so seeking to deepen our intimacy with it. We do not seek to master, dominate, or own it: that, because of Christian understandings of property and ownership in general on which I commented just now, would be incoherently impossible. We can contemplate what there is; we can reconfigure it and rejoice in our capacity to do so (as well as lament at our capacity to do so wrongly); but we can barely manage to act as its good stewards, much less its lords and masters.

What I've just written is very compressed. Every particular could do with much more exposition than I've space to give it here. But even in compressed form, it should be clear that the deep difference between pagan and Christian attitudes to and appetites for knowledge, the difference, we might say, between a disciplined attempt at a self-aggrandizing definitional demarcation and expropriation into an exhaustive and transparent system, on the one hand, and a self-abnegating contemplative gratitude for the gift's givenness and its opacity as such, on the other, leads to equally pronounced differences in the voice with which, and the conventions by which, ideas

are expressed. Pagans and Christians both have ideas, of course, and sometimes the same ones; but their different understandings of what it means to have an idea issues in correspondingly different understandings of what it means to express one. Among these differences—and the only one I'll comment on here—is a difference about laying claim to ownership not only of the idea, whatever it is, but also of its embodied expression in text or music or image. Christian knowers, when for example they write under their own names or sign their paintings, do it not because of an interest in ownership or credit or glory or praise or reputation, but for some other reason: to signal lineage, perhaps, or gratitude, or participation in a certain kind of authority. These things can sometimes be better done by writing anonymously, as 'a Carthusian' perhaps, as the Carthusians used always to do and still sometimes do; or by writing pseudonymously; or even by pseudepigraphy, which is to say by writing under some other real person's name—such as St. Paul, or, famously, Dionysius the Areopagite. But for the pagan knower, it will be fundamental and essential to lay explicit claim to ownership of expression, and the literary phenomena I've just mentioned will by them be regarded with a moral suspicion. And the fact that you probably regard them with just such a suspicion shows—or at least suggests—that you are pagan in your sensibilities about ownership of the expression of ideas, at least, and perhaps about the ownership of ideas as well.

I'll illustrate this point now by commenting on attitudes to plagiarism, of both a legal and a moral sort.

3. *Two Attitudes to Plagiarism*

Let me remind you of the minimal definition I earlier suggested of plagiarism: *the unacknowledged taking and public use of others' expressions of ideas*. Plagiarism

in this sense is not a legal category, and therefore does not, *ex definitio*, label a legal offense. Unacknowledged taking of this sort becomes an offense in law only when it involves copyright infringement, which more often than not it does not. Shakespeare, although he frequently and massively engaged in plagiarism as defined, committed no legal offense in doing so because there were effectively no copyright laws at the time (the first remotely systematic English copyright law was the Statute of Ann, passed in 1709/1710).¹³ And, to take a more recent case, when Bob Dylan in his most recent album, 'Modern Times' released last year, used (and therefore took) without acknowledgment some lines verbatim from the Victorian English poet Henry Timrod (1828-1867), what he took was not protected by copyright and was, therefore, free for the taking. Plagiarism of course may be and sometimes is infringement of copyright, and therefore theoretically actionable in law; but illegality is not, in the minds of those who think there's something wrong with plagiarism, what they think is wrong with it. It is true that the twentieth century saw an enormous expansion in the proportion of words given public expression in writing coming under copyright's protection, as well as of intellectual property more generally. But still, there's a lot in the public domain, and this gets plagiarized just as much, if not more, as what's not (or no longer) there.

Pagans are unanimous, however, in their condemnation of plagiarism in spite of the fact that it is usually legal. Our universities and high schools don't like it, and enormous pedagogical effort is spent on defining it and trying to explain to puzzled students what it is and why they shouldn't do it. Some universities have a standard definition of plagiarism, require its mention or quotation in course syllabi, and threaten students with dire consequences should they be discovered to have indulged in it. And at higher levels, a substantiated accusation of plagiarism can cause serious damage to a literary or academic career. It is certainly the case that such accusations

are increasing in frequency because of technological changes. Google and its like make it increasingly easy to search for verbatim equivalences across enormously large textual databases, and I have visions, probably accurate, of legions of eager searchers for evidence of plagiarism hunched over their keyboards waiting for the new book from the famous novelist or academic of your choice to see whether he or she, too, can be caught in this net. And for an especially Orwellian example of this, I recommend that you consult the website www.turnitin.com. This provides a service to teachers, principally in the US, in high schools and colleges and universities. They can type in suspicious-looking sentences or paragraphs from student papers and receive back almost at once an "originality report," which highlights phrases and sentences in different colors according to the degree of verbal similarity they bear to material in the database, which is vast. The whole thing is quite terrifying, and I've no doubt that literature written before the eighteenth century—and much since—would, by the standards of www.turnitin.com come back glowing a radioactive red for unoriginality. And while it's common to find excuses for plagiarism, usually of the 'I didn't know I was doing it' variety, it's rare to find a defense of it. We are, almost all of us, united in icy disapproval of those who take and make unacknowledged use of words uttered or written by others—and of course also of those who do analogous things with paint or music or dance or film. But why? What are the grounds for such disapproval?

There are two principal ones, and a third subsidiary one. The first is that plagiarism is theft, which is to say that the unacknowledged taking in which it consists is no more and no less than a taking of someone else's property, namely the property of the one whose expression it is. On this view—and it comports beautifully with the pagan understanding of ownership and intellectual property I've been talking

about—the words spoken or written by Aristotle or Aquinas or Pascal or Abraham Lincoln are their property whether they're dead or alive, and whether or not they notice its use by someone else. Even if, then, you can't ask them for permission to use their words, you're obligated by the fact that the words belong to them to acknowledge the use you're making of them. This pattern of thought is what informs the frequent use in academic honor codes and the like of comparisons of plagiarism to the theft of material goods; and we are encouraged in this way of thinking by the legal view that words can indeed be owned, and thus stolen, and that it is only an accident of history that results in some words not being legally owned. This ground for disapproval of plagiarism, then, likens the plagiarist to a thief, and requires acknowledgment of the act of taking and using in order to turn thievery into morally appropriate homage.

The second ground for judging the plagiarist reprobate is that he is dishonest. This is a more common, indeed almost a universal, ground for disapproving of plagiarism. According to it, the plagiarist is dishonest because, and just to the extent that, he knowingly misrepresents as his own words (or music or painting or whatever) what he knows to be someone else's. The ordinary motive for doing this, though certainly not the only imaginable one, is deceit: the plagiarist, these critics think, intends and wants to deceive the intended audience of his words into thinking they are his and not the person's from whom he has taken them. In doing this, it might be thought, the plagiarist puts on the mantle of the author rather than that of the scribe or the copyist, and is in so doing acting dishonestly. Now, this second ground for criticizing plagiarism presupposes the first. It requires, that is, a demarcation, more or less clear, in the mind of the plagiarist between the words that are his and those that are someone else's; only with such a demarcation in mind can the act of deceitful

misrepresentation which this second ground for criticizing plagiarism takes to be its characteristic wrong take place at all. And this is why so much pedagogical effort has to be devoted to clarifying the distinction in the minds of our students—unless we can convince them of it they won't be potential plagiarists, and we, pagan lovers of intellectual property that we are, regard it as a mark of intellectual maturity to be a potential plagiarist. Hence the rococo elaborateness of university codes providing instances of plagiarism. Since it is obvious to no-one, neither faculty nor students, when one should and when one should not acknowledge taking and using a form of words, because the definition of plagiarism offered does not yield remotely clear criteria for application, instances must be multiplied, distinctions subdivided and elaborated, and catechetical effort unremitting. And among the results of this is that the anxiety of acknowledged influence becomes the paranoid fear of unwitting plagiarism. And still more troubling, the very activity of reading and thinking and writing becomes constrained by and ordered to the need to avoid an offence that may all too easily occur.

There is a third rationale for criticizing and punishing plagiarism which I'll turn to in a moment. Before doing that, though, let's pause for a moment upon these intimately-linked understandings of plagiarism as theft of another's property, on the one hand, and as an act of deceitful misrepresentation, on the other. Both rationales see the expression of ideas as the creation of a kind of property; both comport well with a legal régime of rights in intellectual property, such as is at the moment proliferating among us; and both belong to an understanding of the intellectual life and its purposes which places the novel creative effort of the individual at the very center of its understanding of what the intellectual life is for. Consider the tropes with which we adorn our scholarly monographs and doctoral dissertations: "The new

contribution of this work is ..."; "The author has broken new ground in ..."; "A new field of investigation has been brought into being by this work ..."—and so on. It would be, to put it mildly, unusual to find a contemporary academic or literary author prefacing her work with a claim that often introduces medieval Indian Buddhist works: *na cātra kimcid mayā pūrvam anuktam vācyam*, which means, 'I'm not going to say anything at all here that hasn't been said before.' (There are analogues to this in premodern Christian literature, as well.) The idea, then, that there is such a thing as plagiarism and that it is a problem belongs to a very specific and almost entirely pagan understanding of the nature and purposes of the intellectual life, and in so far as we work as pedagogues to initiate students into that understanding, we work as pagans and not as Christians.

But now, briefly, on the third rationale for objecting to plagiarism, one that is at least slightly more agreeable to Christian sensibilities. Plagiarism, it might be said, is to training in literary composition as sending someone else to practice in your stead is to learning how to play football. That is, not very effective. This is at least partly true. You can't learn how to do anything well without doing it, and if developing the ability to generate uncopied—unplagiarized—sentences whether with pen, keyboard, or vocal chords, is what you're after, then, presumably, practising just that activity is the thing to do. But actually even this is not obviously true, and here the sports analogy I suggested breaks down, for in fact a very good way to learn to write well is to copy good writing, to parody it, to make a pastiche of styles, to keep a commonplace book with carefully-copied extracts, and to perform various other elementary exercises upon the prose of others. For most of these exercises, the distinction between your words and those of others need not be very important; what is important is the expression of beauty and truth, not the question of who first uttered

or wrote the words that do the expressing. Learning how to write is, or should be, like learning how to play the piano—five-finger exercises upon the work of others is where it starts, with imitation the greatest virtue; and free composition by variation on and homage to what's already there is where it ends, as for example in the succession that runs from the preludes of Bach to those of Chopin to those of Messaien. Neither originality nor ownership are to the point from a Christian perspective, and so neither is plagiarism. The literary compositions of the fathers of the Church, for example, are tapestries shot through with—and often largely consisting of—unacknowledged borrowings of the ideas and expressions of others, as are some of the greatest works of English literature—I've already instanced Shakespeare, but I'll now add Lawrence Sterne's *Tristram Shandy*, large tracts of which are plagiarized, and, in a different way, James Joyce's *Ulysses*.¹⁴ And why not? None of the three principal rationales for a moral and practical ban upon plagiarism are remotely convincing without acceptance of an understanding of intellectual property which has no place in properly Christian thought about the purposes of the intellectual and literary life.

So what have we achieved? We have before us an instance of how deeply characteristically modern understandings of property and ownership can enter, unawares, like thieves in the night, into Christian understandings of and attitudes toward an important aspect of life—in this case, the intellectual life, which is also in considerable part the literary life. What follows from this, I hope, should be deeper thought on the part of Christians about the nature of that life and the pedagogy appropriate to training in it. We Christians are, or should be, primarily interested in the public or common good, and not in the fragmented privatization with which a pagan focus upon absolute property—pure sequestration—is inevitably implicated.

NOTES

¹ A version of this essay was delivered in St. Chad's College Chapel on 23 May 2007 as the public lecture of the Department of Theology and Religion's Richardson Fellow. The version printed here preserves some of the informal features of its first oral presentation. My grateful thanks are due to the Department for appointing me as fellow, and to St. Chad's College for their unstinting hospitality. The material here will form part of a book on the nature of the intellectual appetite on which I'm currently working.

² See, e.g., Ambrose of Milan's *De Nabuthae* [On Naboth], transl. in Boniface Ramsey, *Ambrose* (London & New York: Routledge, 1997), pp. 117-144. Compare Augustine, *Confessiones*, 12.25; *De trinitate*, book 12, passim; *In Iohannis Evangelium*, tractate 6.25; *Sermo* 50, passim.

³ Siva Vaidhyanathan's *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity* (New York & London: NYU Press, 2003) provides a good (though polemical) introduction to recent thought on copyright and intellectual property. Compare Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (New York: Penguin, 2004); and William A. Landes & Richard Posner, *The Economic Structure of Intellectual Property Law* (Cambridge, Massachusetts: Harvard University Press, 2003); Rosemary J. Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (Durham, North Carolina, and London: Duke University Press, 1998); Charlotte Hess & Elinor Ostrom, ed., *Understanding Knowledge as a Commons: From Theory to Practice* (Cambridge, Massachusetts: MIT Press, 2007).

⁴ Recent work on plagiarism includes: Lise Buranen & Alice M. Roy, ed., *Perspectives on Plagiarism and Intellectual Property in a Postmodern World* (Albany, New York: State University of New York Press, 1999); Richard A. Posner, *The Little Book of Plagiarism* (New York: Pantheon, 2007).

⁵ For Locke on property see his *Second Treatise of Government*, ch. 5.

⁶ Important recent work on philosophical and legal understandings of property includes: Stephen Munzer, *A Theory of Property* (Cambridge: Cambridge University Press, 1990); Beate Rössler, ed., *Privacies: Philosophical Evaluations* (Stanford; Stanford University Press, 2004); John Sheehan & Garrick Small, "Towards a Definition of Property Rights," paper presented at the Pacific Rim Real Estate Society Conference, Christchurch, New Zealand, January 2002; Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988).

⁷ Among useful secondary sources on the history and grammar of Christian thought about property are: Oliver O'Donovan, *The Ways of Judgment* (Grand Rapids, Michigan: Eerdmans, 2005), chs. 14-15; Oliver O'Donovan & Joan Lockwood O'Donovan, *Bonds of Imperfection: Christian Politics, Past and Present* (Grand Rapids, Michigan: Eerdmans, 2004), pp. 73-92; Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church Law 1150-1625* (Atlanta: Scholars Press, 1997), pp. 131-169; Richard J. Dougherty, "Catholicism and the Economy: Augustine and Aquinas on Property Ownership," *Journal of Markets and Morality* 6/2 (2003), 479-495; Virpi Mäkinen, *Property Rights in the Late Medieval Discussion on Franciscan Poverty* (Leuven: Peeters, 2001); D. J. Macqueen, "St. Augustine's Concept of Property and Ownership," *Récherches Augustiniennes* 8 (1972), 187-229. David C. Schindler, "Towards a Non-Possessive Concept of

Knowledge: On the Relation Between Reason and Love in Aquinas and Balthasar," *Modern Theology* 22/4 (2006), 577-607.

⁸ I draw in this paragraph and the next principally upon Augustine's *Sermo* 50, Latin text at: <http://www.augustinus.it/latino/discorsi/index2.htm> (accessed 29 June 2006).

⁹ The discussion in this and the immediately preceding paragraph is based on Augustine, *In Iohannis Evangelium*, tractate 6.25, Latin text at:

http://www.augustinus.it/latino/commento_vsg/index2.htm (accessed 4 July 2006)

¹⁰ To support this sentence it would be necessary to engage the debates in Catholic theology about property beginning with the Franciscan controversies of the fourteenth century. On these, see the works by Mäkinen, Tierney, and O'Donovan cited in n. 7 above.

¹¹ The standard work on Ramus—and very illuminating it is—remains Walter Ong, *Ramus, Method, and the Decay of Dialogue: From the Art of Discourse to the Art of Reason* (Chicago: University of Chicago Press, 2004; first published 1958).

¹² The works mentioned in this paragraph are mostly easily available in many editions and translations. But it is perhaps worth giving some pointers toward study of the works by Kant and Weber, since these are somewhat less known, and because they conveniently bookend the nineteenth-century discussion of these matters. Kant's work *Der Streit der Fakultäten* [The Conflict of the Faculties] was first published in 1798. The German text appears in vol.7, pp. 5-116, of *Kants gesammelte Schriften* (the so-called 'Akademie' edition). The best English version, made by Mary J. Gregor & Robert Anchor, is in: *Immanuel Kant, Religion and Rational Theology*, ed. & transl. Allen W. Wood & George di Giovanni (Cambridge: Cambridge University Press, 1996), pp. 239-327. For a collection of studies of the work, see Richard Rand, ed., *Logomachia: The Conflict of the Faculties* (Lincoln, Nebraska: University of Nebraska Press, 1992). The German text of Max Weber's lecture "Wissenschaft als Beruf" [Science as a Vocation] is in his *Wissenschaft als Beruf, 1917/19. Politik als Beruf, 1919*, edited by Wolfgang J. Mommsen & Wolfgang Schluchter (Tübingen: Möhr, 1984), pp. 71-111. The only English version known to me is in H. H. Gerth & C. Wright Mills, ed. & transl., *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946), pp. 129-156.

¹³ On the early history of English copyright, see: Mark Rose, *Authors and Owners: The Invention of Copyright* (Cambridge, Massachusetts: Harvard University Press, 1993); Joseph Loewenstein, *The Author's Due: Printing and the Prehistory of Copyright* (Chicago: University of Chicago Press, 2002).

¹⁴ Thomas Mallon's *Stolen Words* (San Diego: Harcourt, 2001), helpfully analyzes the extent of Shakespeare's and Sterne's plagiarism—or at least their unacknowledged verbatim borrowing.