

Original/Copy/Kin: Rethinking Intellectual Property in American Literature, 1840-1930

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Abstract

My project reorients Benedict Anderson's well-known theory of the nation as an imagined community by attending to the rapid development of United States intellectual property law between 1850 and 1930 and the resulting social effects. If the nation is an imagined community, I ask, what does it matter that some forms of imagination can be made property, often owned by individuals, as authorized by federal law? How does the legal transformation of imagination into ownable, alienable goods alter or even condition the imagined national community? These questions are especially complex when considered in terms of the fraught history of possessive individualism in the United States, and I also study the intersections between copyright law, slave law, and family law. My overall claim is that the expansion of U.S. intellectual property law has been integral to a particular articulation of American nationalism, one that prioritizes individual property, originality, and the nuclear family. But while American literature circulates according to the provisions of U.S. intellectual property law, and although many nineteenth- and early-twentieth-century authors lobbied for augmented copyright protections, I argue that American literature is nonetheless a key resource for rethinking intellectual property and the particular version of national kinship it promotes. I look to American literature as a resource for denaturalizing intellectual property law and the versions of authorship, individuality, and kinship it assumes. By considering writings by William Wells Brown, Josephine Brown, Mark Twain, Charles Chesnutt, Charlotte Perkins Gilman, Willa Cather, and Edith Wharton, I analyze how the United States does, and might differently, coordinate the relationship between imagination, material property, and the national community. With this dissertation, I demonstrate that late-nineteenth- and early-twentieth-century American literature presents queer, interracial, extralegal, and even transhistorical families as integral to

creative pursuits. Not all of these kinships are benevolent, equitable, and equally chosen, but they all point to the constraints inherent in imagining national and familial kinship only in terms of legitimacy and property.

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Introduction

“I died years ago,” the world-renowned novelist confesses. “What you see before you is a figment of a reporter’s brain — a monster manufactured out of newspaper paragraphs, with ink in its veins. A keen sense of copyright is my nearest approach to an emotion.”¹ In 1900, Edith Wharton published a cautionary copyright tale. In “Copy: A Dialogue,” two long-lost lovers reunite after a twenty-year separation, but their authorial ambitions stymie the promise of rekindled affection. Penned at the outset of Wharton’s critically and commercially successful career and in response to recent additions to U.S. copyright law that were designed, in part, to protect authors’ livelihoods, “Copy” offers a surprising critique of proprietary authorship. As suggested by the fictional Helen Dale’s monstrous infatuation with copyright, “Copy” frames the two authors’ shared drive to possess and profit by their creations as antithetical to emotional sensitivity, to love, and to some kinds of kinship. This short play condenses and complicates many of the key debates in nineteenth-century intellectual property discourse: authors’ versus readers’ rights, transformations in the American reading public and their effect on publishing norms, and the adjudication of literature to private property or the public domain. But its conclusion is simple. Only by forgoing proprietary authorship can the two writers reclaim their affections for one another. Only then can they return to being, as Mrs. Dale puts it, “real people” (658). In Wharton’s dialogue, copyright contravenes full humanity.

“Copy” opens on Mrs. Dale perusing her many letters. Pleased with her fame, she obliges fans begging for autographs, though she *could* sell her signature for fifty dollars each (657). Although she puts off responding to more serious business, her secretary lists the inquiries that require her attention:

a letter from Stroud & Fayerweather to say that the question of the royalty on “Pomegranate Seed” has been settled in your favor. The English publishers of “Immolation” write to consult you about a six-shilling edition; Olafson, the Copenhagen publisher, applies for permission to bring out a Danish translation of “The Idol’s Feet”; and the editor of the *Semaphor* wants a new serial ... (657)

Although Mrs. Dale and her secretary treat such matters as routine and tiresome, these messages mark a major shift in the history of U.S. intellectual property. Just ten years before the publication of “Copy,” an American author would not have had the opportunity to worry about foreign publication prices, and before 1870 she couldn’t have permitted or prevented a translated edition of her work.² The 1891 International Copyright Act extended U.S. copyright protections to foreign-authored works and facilitated reciprocal agreements with select nations.³ For American authors, this law meant that their creations would no longer compete with cheap, pirated editions of British works in the U.S. marketplace, and it helped prevent foreign publishers from reprinting their books abroad without permission or remuneration. This law most altered American and British relations, given the shared language, but here the request for a Danish translation points to the statute’s broader effects. It also recalls, by contrast, the copyright infringement case that Harriet Beecher Stowe brought against the Pennsylvania publisher of an unauthorized German translation of *Uncle Tom’s Cabin* in 1853. Stowe lost the case, but here Mrs. Dale enjoys authority over even internationally published translations. In short, Mrs. Dale’s correspondence chronicles the late-nineteenth-century expansion of authors’ proprietary rights in the United States. The business may be a bore, but the widowed novelist’s ability to own and earn money from her creations is key to her pride and possibly her sustenance.

But the arrival of Paul Ventnor, the “greatest poet of the age” and the lover Mrs. Dale dismissed nearly twenty years earlier, casts doubt on the value of proprietary authorship (658). Although the pair’s conversation starts with flirtations and reminiscences, it quickly turns into a dispute over the ownership of the letters they wrote to each other almost two decades before. Each has preserved the other’s, and each wants the complete set to publish as part of his or her memoirs and to mine for inspiration, or as Mrs. Dale describes it, to self-plagiarize (660). But each is temporarily immune to the other’s strategic sentimentality, from Mrs. Dale’s declaration that she has earned the right to keep Ventnor’s letters with her loneliness to Ventnor’s revelation that her letters are “the only thing [he] has left,” a set of mementos he carries at all times.⁴ It is here that Wharton inserts a note of warning. The writers’ shared but incompatible desire to profit by their creations, their emotions, and their biographies proves the sole hurdle to their renewed love. Proprietary authorship, “Copy” cautions, is an isolating pursuit, a bulwark for vanity and a barrier to passion. It obstructs kinship, or, more specifically, a heterosexual affinity between contemporaries and colleagues.

The play ends quickly once the two authors realize this moral lesson. Their pretended tenderness for the letters morphs into real sentiment for each other and nostalgia for their pre-authorial lives, “The time when we didn’t prepare our impromptu effects beforehand or copyright our remarks about the weather! ... When our emotions weren’t worth ten cents a word, and a signature wasn’t an autograph!” (663). The couple’s connection is intertwined with their pursuit of creative freedom and a turn away from market demands. The lovers resolve to burn their letters and transform them into a private imagined world, hidden from the public’s prying eyes. Though Mrs. Dale’s final glance back at the fireplace may signal regret, the play overall

frames this conclusion as the novelist's rebirth. The emotionally-dead copyright fiend returns to her human form and learns to love again.

One of my goals in this dissertation is to understand the nature of Wharton's copyright-consumed monster. While it's possible to read "Copy" as the taming of an authorial shrew, the play also presents urgent questions about the rapid development of U.S. intellectual property law and the social effects that followed. How do creators and potential collaborators relate to one another when the law makes them competitors for intellectual property? What happens to intellectual communities when authors start to imagine their lives as material, as composites of potentially fungible goods? Considered within a national scope, how do changes to intellectual property law shape the project of imagining "America" and its people? To answer these questions, I look to American literature published between 1840 and 1930, a period of major transformation for both U.S. copyright law and the national body politic. I show how this literature defamiliarizes proprietary authorship, even when it is produced under that condition, and I analyze how the United States does, and might differently, coordinate the relationship between imagination and material property.

My other goal is to discern the various kinds of familial and national kinships that intellectual work makes possible, particularly those neglected in copyright law and extant theories of literary history. Wharton's suggestion that gender-equal proprietary authorship obstructs heterosexual love highlights an implicit bias in U.S. intellectual property law's projection of kinship: patriarchal authority and responsibility are written into the copyright acts. Not only does the law employ gendered language, particularly when referring to an author's potential inheritors, but also the belief that author-fathers needed to provide for their wives and children motivated early movements to extend copyright durations.⁵ Testifying before Congress

in 1906 to support a bill that would have lengthened copyright duration from a total of forty-two years to the author's lifetime plus fifty years, Mark Twain expressed his satisfaction that the proposed law would allow him to adequately support his daughters, even after his death. "I think that [duration] would satisfy any reasonable author, because it would take care of his children," he declared. "Let the grandchildren take care of themselves."⁶ Although the 1906 copyright revision floundered in Congress and the next copyright revision in 1909 only extended copyright durations to fifty-six years total, U.S. copyright law now protects authors' rights for their lifetimes plus seventy years.⁷ In other words, copyright now takes care of the grandchildren (and corporate interests).⁸

If we denaturalize the United States's approach to intellectual property, with its preference for individual, patriarchal authors and direct inheritors, what other forms of kinship become recognizable in creative work? What kinds of kinships precede copyright registrations, royalties, and renewals but go unnamed in the law? For example, in "Copy," Mrs. Dale's relationship with her secretary Hilda, who relishes staying up all night, "watching and listening" outside Mrs. Dale's study door and gleaning energy from the promise of creation, offers one alternative author-centric kinship model (657). With this dissertation, I demonstrate that late-nineteenth- and early-twentieth-century American literature presents queer, interracial, extralegal, and even transhistorical families as integral to creative pursuits. Not all of these kinships are benevolent, equitable, and equally chosen, but they all point to the constraints inherent in imagining national and familial kinship only in terms of legitimacy and property.

My overall claim is that the expansion of U.S. intellectual property law has been integral to a particular articulation of American nationalism, one that prioritizes individual property, originality, and the nuclear family. But while American literature circulates according to the

provisions of U.S. intellectual property law, and although many nineteenth- and early-twentieth-century authors lobbied for augmented copyright protections, I argue that American literature is nonetheless a key resource for rethinking intellectual property and the particular version of national kinship it promotes. This introduction surveys relevant scholarship on intellectual property, American nationalism, and literary history, and it specifies my project's interventions into those fields. My central aim is to use the recent scholarly interest in copyright to complement and contextualize the study of American nationalism. Extant theories of the nation, even when they acknowledge America's multiculturalism,⁹ frequently emphasize linear time, nuclear kinship, and fixed borders, a tendency that has led some prominent critics to dub the nation a faulty interpretive category, one that elicits revisionary histories and obscures more than it illuminates. While these scholars rightly criticize property-centric American nationalism, they implicitly frame this one prevalent and powerful iteration of the nation as the only possible one. I maintain that we can recognize more multiple and malleable nationalisms by rethinking the terms of U.S. intellectual property. All of the literature that I analyze critiques the American copyright system and its social effects, and most of it envisions a de-propertied or differently-propertied version of American nationalism.

I. Owning the Imaginable

The Constitution grants to Congress the power to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries” (Art. I. Sec 3). Derived from European copyright and patent laws as well as from some state statutes, this clause aims to balance private interests with public welfare.¹⁰ Ideally, intellectual property laws incentivize innovation by offering creators

limited-duration monopolies in their works while also ensuring that the general public benefits from individuals' inventions, ideas, and artworks by eventually ushering those same works into the public domain, making them freely accessible for audiences and future creators to study, cite, adapt, and revise. But there is no consensus on the exact parameters that will strike this balance, and debates about the scope of these protections are ongoing. One factor fueling these debates is that the system that we now refer to as intellectual property is remarkably intricate. As one introduction to the subject summarizes, the phrase "intellectual property"

stands in for a complex tangle of laws, policies, and values that govern the dissemination of ideas, expressions, inventions, creativity, and data collection. Each area of that law that sits under the umbrella of "intellectual property" has its own justification, history, and core values. These areas often work at cross-purposes.¹¹

More particularly, patent, copyright, and trademark law all operate under this general heading but protect different interests through different means. Briefly, patent law promotes invention while copyright law pertains to artistic and informational works. Trademarks allow companies to control the use of particular logos, names, and colors to help customers identify their products and services in the marketplace, and this branch of the law is therefore more concerned with safeguarding purveyors' public reputations than it is with the promotion of the arts and sciences. While these systems can be used complementarily, many of their principles are antithetical, and some of the law's stipulations, like the transferability of authorial rights or the distinction between ideas and expressions, are ostensibly paradoxical. But despite the disagreement and confusion that attend U.S. intellectual property law, its historical trajectory has generally been characterized by expansion – new benefits, longer durations, more corporate leverage – and now

some of its non-obvious assumptions, like the idea that authors should be able to own and profit by their creations, can feel natural and indisputable.¹²

The interdisciplinary field of intellectual property studies works to denaturalize the legal merger of creation with proprietorship, to demonstrate intellectual property law's wide-ranging effects, and to foster more general interest in proposed changes to the law. Although scholars disagree in their particular interpretations of the law, overall this criticism frames intellectual property as a discourse of power that manipulates the possibilities for cultural production. Jane Gaines in her book *Contested Culture: The Image, The Voice, and the Law* (1991) revises Michel Foucault's theory of the author function and articulates this field's foundational concerns.¹³ Foucault's point in "What is an Author?" (1967) is that an author is not an individual genius but rather an idea that serves to unite a set of texts, explain contradictions, justify ownership, and indicate responsibility in the modern literary market and critical terrain. But to Foucault's claim that the author acts as "the convergence of meaning," Gaines writes that the author functions as the "point of entitlement" within a legal-economic framework (23). For Gaines, the stakes of this revision are a recognition of the law's ability to make acts of entitlement and dispossession into normalized tautologies that impact cultural production and circulation. But for others, this entitlement spurs alternative inquiries, including questions about intellectual property law's economic justifications and consumerist effects, about the corporate and imperialist uses to which authors' legal protections have been applied, and about the continued impact of the Romantic theory of authorship on legal developments.¹⁴ Considered together, these studies demonstrate intellectual property law to be a system founded on the fusion of distinct and sometimes contradictory principles: intellectual property is where capitalist production and

exchange meets the Lockean idea that labor begets ownership meets the Romantic notion that genius authors create original, personality-infused works of art.

What a literary critical study can add to this field is an analysis of the imaginative effects of intellectual property law. When authors spotlight authorial characters (like Herman Melville's Ishmael and Pierre), redefine assumptions about individual creation (as in Zora Neale Hurston's declaration that "what we really mean by originality is the modification of ideas" [63]), or copy, combine, and reform source materials (as Nella Larsen does with "Sanctuary" and T.S. Eliot with "The Wasteland"), we can see their writings as grappling with the terms of creative production and circulation. When authors pair these tactics with reflections on nationalism and kinship, they represent the kinds of communities that proprietary authorship makes rewarding and easily imaginable.¹⁵ Methodologically, my dissertation aligns closest with Paul Saint Amour's book *The Copywrights: Intellectual Property and the Literary Imagination* (2003). Saint Amour responds against historical studies of copyright like Mark Rose's and Martha Woodmansee's works that "treat literary texts as largely incidental to copyright — as passive counters circulating on a field constituted and delimited by intellectual property law and other market forces" (12). Instead, he examines literature that is "preoccupied" with copyright as "textual spaces where lettered discourse wrestles with, or is made to wrestle with, its vexed status as property" (12). Consistent with earlier critical works, this approach allows for the defamiliarization of proprietary authorship, but it also enables an intervention into aesthetic debates about modernism, and Saint Amour identifies copyright metadiscourse as a form of literary self-consciousness that is responsive to socio-economic contexts. Although my focus is on nationalism and not modernism, I likewise interpret literary works as both examples of intellectual property (as products, subject to the law) and as critical reflections on intellectual

property (as ideas and artistic forms), and I draw on legal history, cultural studies, and book history to inform my close readings. Yet my method differs from history of the book criticism that sees authors primarily as exponents of increased intellectual property protections, as in Meredith McGill's useful and perceptive *American Literature and the Culture of Reprinting, 1834-1853* (2003). By reading American authors' writings as critically engaged with intellectual property's development and its social effects, I argue that American literature is a tool for perceiving intellectual property law's role in the promotion of property-centric American nationalism and for imagining alternative ways to organize authorship and community.

Some of the critics I cite above would disagree with my use of "intellectual property," for two reasons. First, my use of that phrase in my title and throughout my dissertation could be considered misleadingly broad. I mainly focus on copyrights, and the broader term also encompasses patents and trademarks. I prefer the more comprehensive "intellectual property" over "copyright" to account for the comparisons between copyright and patent law that appears in my third chapter and to emphasize what I see as American literature's more general engagement with the possibility of owning intangibles. Second, and more significantly, some scholars including Mark Lemley and Siva Vaidhyanathan would argue that my use of "intellectual property" is anachronistic. Lemley dates the first significant use of the term to the 1967 foundation of the World Intellectual Property Organization, though he concedes that the expression was in use well before that date (895). The difference, he argues, is that those earlier uses "do not seem to have reflected a unified property-based approach to the separate doctrines of patent, trademark, and copyright" (896). Following Lemley, Vaidhyanathan rejects the idea of "intellectual property" on historical and activist grounds. Seeing an overall switch in copyright discourse from "policy talk" to "property talk" starting in the early twentieth century, he claims

that the more recent focus on property both mischaracterizes the law's original intention to bolster the public sphere and forecloses conversation (11). "There is no powerful property argument that can persuade a people concerned about rewarding 'starving artists' not to grant the maximum possible protection," he asserts. "How can one argue for 'theft'?" (12). While I generally concur with Vaidhyanathan's concerns about the corporatization of information and the propertization of intellect, I am more skeptical of his (and Lemley's) historical narrative. I consider "property talk" in nineteenth-century copyright discourse non-negligible and I use the term "intellectual property" to signal the connections between copyright law and other kinds of property, particularly to slave law and family inheritances.

Stephen Best's book *The Fugitive's Properties: Law and the Poetics of Possession* (2004) is a major influence on my thinking about the relationship between slave law and intellectual property law. Working at the intersection of New Historicism, legal studies, and literary criticism, Best's organizing figure is the fugitive, a term that names both the runaway slave and the emergent forms of intellectual property made possible in the late nineteenth and early twentieth centuries by new recording and reproduction technologies. Best contends that the alienation of human properties like labor, ideas, and voice prove that slavery is not simply an abolished institution, but was the foundational "*form* of an ongoing crisis involving the subjection of personhood into property" through law in the United States (16, emphasis original). He consequently interprets the legal transformation of formerly inalienable aspects of personhood into types of intellectual property as the "afterlife of slavery" (14). Without equating slavery with intellectual property, this analysis describes how the history of slavery impacts our current property-centric approach to creation. While Best uses this insight to analyze the causal function of legal forms, I study how the propertization of human labor, traits, and creativity

influences the imaginative possibilities for American nationalism, both before and after the abolition of slavery. My first chapter — on the abolitionist William Wells Brown, his daughter Josephine Brown, and their composition methods — most directly links slavery to copyright discourse, though the following chapters also detail that history's influence on later approaches to intellectual property.

Other than noting the use of family care narratives to promote maximalist copyright protections, scholars of intellectual property do not pay much attention to the relationship between proprietary authorship, kinship, and inheritance. One exception to this oversight is Melissa Homestead's *American Women Authors and Literary Property, 1822-1869* (2005), which evaluates copyright law's intersection with coverture, the common law doctrine that barred married women from owning property for most of the nineteenth century.¹⁶ By observing nineteenth-century married women writers' tremendous productivity despite their inability to own their works, Homestead specifies a non-proprietary model for artistic creation that "belies the logic of copyright advocacy," an achievement that corresponds with my goals in this dissertation (3). However, Homestead's focus on legally codified families differs from my interest in the various kinship formations represented in copyright preoccupied American literature, including those unrecognized by intellectual property and family law. With this approach, I am able to identify the acts of dispossession that go into sustaining the myth of the single author, but also to note the violence emboldened by propertized kinships, as when the promise of inheritance motivates murders in Mark Twain's *Pudd'nhead Wilson* (1893-4) and Charles Chesnutt's *The Marrow of Tradition* (1901). My aim is to analyze the ways in which different kinds of families produce and are produced by acts of creation and sustained or not by

property provisions, but I want to avoid idealizing any one version of kinship as emblematic of the optimal organization of creation, property, and community.

II. Intellectual Property in the Imagined Community

With this attention to proprietary authorship and its social effects, my project reorients Benedict Anderson's well-known theory of the imagined national community. If the nation is an imagined community, I ask, what does it matter that some forms of imagination can be made property, often owned by individuals or corporations, as authorized by federal law? How does the legal transformation of the imagination into ownable, alienable goods alter or even condition the imagined national community? Although Anderson analyzes reading publics and print production to understand how nationalism operates, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (1983) conspicuously excludes any reference to copyright law and discourse, with the exception of one brief mention in the afterword to the 2006 revised edition. There Anderson reviews translations of *Imagined Communities* and describes his futile attempts to maintain control over every version, in every language. He then explains his change of perspective on his own authorship:

‘I shouldn’t be doing this,’ I said to myself. ‘It’s just political ventriloquism, and a non-commercial defence [sic] of the ludicrous American insistence on “intellectual” (!) property rights.’ ... I have decided to be a translational traitor. [*Imagined Communities*] is not my book anymore. (229)

Anderson's parenthetical exclamation hints at both the expanse and the oddities of copyright law and the strangeness of owning something so abstract as intellect. But intellectual property, particularly in the United States, is not a system an author can simply opt out of, as Anderson

professes to do here. The U.S. Copyright Act of 1976 declared that a “work is protected in all media and for all possible derivative uses as soon as it is fixed in a tangible medium of expression,” that is, from the moment it is written.¹⁷ Legally, *Imagined Communities* has been Anderson’s book since before he published it, and it will continue to be his book until 2085, 70 years after his death.¹⁸ Even before the 1976 amendment, when protection required registration in the United States, copyright law still determined publishing norms, types of protectable works, access to previously published materials, and the relative profitability of authorship as a profession. By neglecting intellectual property, Anderson misses an opportunity to study how federal supervision over the circulation of ideas might affect artistic representations of the national community. Moreover, he overlooks how the possibility of owning the copyrights to particular cultural products might affect social relationships within the imagined national community.¹⁹ With this dissertation, I demonstrate that strong U.S. copyright protections have not only safeguarded some authors’ livelihoods but also encouraged proprietary-imaginary relationships between Americans by framing the resources of shared culture as an assortment of profitable products.

My focus on nationalism breaks from the recent interest in international and transnational subjects within American Studies,²⁰ but I believe an analysis of intellectual property as a system that regulates how creations move within and across federal borders can help us conceptualize the particularities of American nationalism, even within a globalized system. In her impressively wide-ranging *Through Other Continents: American Literature Across Deep Time* (2006), Wai Chee Dimock argues that national literature is a faulty interpretive category, one based in the misguided “reproductive logic” that fabricates “a seamless correspondence between the temporal and spatial boundaries of the nation and all other expressive domains” (3). By imagining

literature as “the product of one nation and one nation alone,” she stresses, we neglect the broader sets of circumstances, influences, and chronologies that emerge in what we too simply call “American literature” (3). Dimock’s analysis of “American” literature at a global scale allows her to interpret particular works as responsive to ostensibly distant literatures and events, and her notion of deep-time kinships guides some of the thinking in my third chapter. But without disputing the effectiveness of Dimock’s methodology, I argue that we can think of American literature as a relatively distinct interpretive category in part because its dissemination is subject to federal regulation, and I hope to show that intellectual property law’s relationship to the production of an “American” culture is anything but simple. When we recognize intellectual property as system whose tenets have continuously been up for debate, we can both evaluate the proprietary nationalism it invokes and conceive of alternatives. I also demonstrate how this federal law’s effects can transcend the spatial and temporal boundaries of the nation, swaying international relations and facilitating surprising historical affinities. In short, while Dimock imagines literature as “the home of nonstandard space and time” as well as unlikely attachments, I propose that it is also possible to think nationalism itself in those more dynamic terms (4). Put differently, I study intellectual property discourse in order to answer Robert Levine’s call for theories of nationalism that center on intra-American conflict and international contexts.

The scholarship on nationalism and kinship is robust and diverse. Etienne Balibar’s essay “The Nation Form: History and Ideology” is particularly relevant to my thinking. There Balibar examines the production of national peoplehood and the designation of the individual as, first and foremost, *homo national*. Arguing that the formulation of “fictive ethnicity” enables the national community to seem both natural and determined, he shows how the invocation of genealogy through the “nationalization of the family” valorizes a national origin and national

destiny (96, 102). However, Balibar's theory is too focused on linear descent to account for the variety of kinships I see represented in American literature, and I also draw on Queer Theory studies of nationalism, including works by Sarah Ahmed and Mark Rifkin, particularly in my third chapter on "intellectual property utopias." Other historical accounts of representations of the family in American culture, such as those by Nina Silber, Hortense Spillers, and Walter Benn Michaels serve as models for my literary critical approach.

III. Kinship in Authorship

In each of my chapters, I consider two authors' representations of intellectual property, kinship, and nationalism. This organization facilitates a consideration of the authors' relationships to one another — their kinship in authorship, whether literal or metaphorical. Family metaphors are occasionally invoked in discussions of intellectual influence, as in Harold Bloom's masculinist account of poets' combative relationships with their predecessors²¹ and Henry Louis Gates, Jr.'s less linear conception of artistic inheritance in his theory of African American literary history and its signification on white American literature.²² I seek to add to and amend these descriptions of literary descent, in part by contextualizing them within U.S. property law.

I start by looking at the writings of a father and a daughter who jointly produce anti-slavery publications. My first chapter returns to a time when a possession-centered approach to imaginative pursuits was not yet settled, when originality was not necessarily understood as a national value. In "Written By Himself, and a Few Others," I analyze William Wells Brown's abolitionist writings and the accusations of plagiarism levied against him in order to investigate the connections between slave law and intellectual property law. I propose that attention to these

interlinked discourses reveals a second pursuit embedded with Brown's anti-slavery activism: his anti-copyright activism. While many American authors in Brown's time promoted the expansion of copyright law as a just protection of authors' incomes and an investment in a unique American culture, Brown recognized that this measure would reinforce U.S. property law, the very system he aimed to curtail through his abolitionist work. But this stance is complicated in his daughter Josephine Brown's often-ignored biography of her father, where the copyright page and the byline "written by his daughter" legally and publicly validates Brown's paternity, an acknowledgement that slave law systematically denied enslaved fathers. Overall, I interpret the Browns' oeuvre as fruitful for thinking about an alternative kind of national community, one in which property is not the primary determinant of human relations.

But despite the promise of the Browns' de-propertied national vision, after the Civil War copyright protections expanded into new and sometimes strange territories. In my second chapter, "Making Performance Property in Jim Crow Law and Fiction," I examine the production of racial knowledge in light of performance's ambiguous place within intellectual property law. Introduced in the 1850s but enforceable only at the end of the century, performance rights fit awkwardly within existing copyright protections: how could property be lost or gained through something so intangible and impermanent as a performance? I interpret performance rights as a distinctly Jim Crow invention that coordinated with other legal and social developments to make cultural and visual markers representative of supposedly innate racial essences. But Mark Twain in *Pudd'nhead Wilson* (1893-4) and Charles Chesnutt in *The Marrow of Tradition* (1901) highlight the fatuity of fixing identity and property through performance rights. These novels emphasize the transformative power of performances by using them to mask or reveal unacknowledged, interracial kinships. With their very similar plots,

Twain's and Chesnutt's books prompt a meditation on literary descent, and I propose that we can understand artistic influence in this case as horizontal rather than vertical.

My third chapter then offers alternatives to originality. In "Intellectual Property Utopias," I read Charlotte Perkins Gilman's *Herland* (1915) and Willa Cather's *The Professor's House* (1925) as mirror narratives that reject originality in order to imagine new versions of American nationalism. By exploring the Romantic and Lockean logics that undergird U.S. intellectual property law, these novels show how proprietary authorship obfuscates the collaborative work that enables creative work. Gilman's utopia remedies this problem in the form of an all-female nation in which each woman's creativity serves the common good and adds to the nation's property. But while Gilman's fiction leaves intact the racism endemic to American nationalism, Cather's novel both venerates the all-male creative family that academia authorizes and denounces U.S. intellectual property law as a form of settler colonialism. Together, Gilman's and Cather's novels present U.S. intellectual property as American nationalism's "straightening devise," to borrow Sarah Ahmed's term. While the creative process depends on queer and interracial affinities, intellectual property law negates these kinships, figuring the nation as a nuclear, white family by circumscribing collaborations into individual property. But Cather's and Gilman's novels act as anti-straightening devices and, considered together, they imagine a queer national future.

Although reflections on the practice of authorship are prevalent throughout American literature, these paired case studies from three different periods in American history and intellectual property history suggest new ways of narrativizing literary history. I conclude my dissertation by revisiting these three models of kinship in authorship: by law, through plot, and in

vision. Taken together, the literary works that I explore here can help us to rethink the more social effects of U.S. copyright law.

Chapter One

Written By Himself, and a Few Others: William Wells Brown's Anti-Copyright Abolitionism

The word “plagiarism” is rooted in the notion that people can be both thieves and thieved. The *Oxford English Dictionary* links a now-obsolete definition of “plagiary” as “one who abducts the child or the slave of another” to the more familiar sense of plagiarism as a literary theft.¹ With this etymology in mind, we can describe a variety of antebellum thefts as figurative plagiarisms. As Robert Levine suggests, slave owners “plagiarized” by stealing slaves’ rights to their own personhood, while abolitionists and Underground Railroad workers “plagiarized” by violating U.S. property law and separating chattel persons from their legal owners (6). But we can extend Levine’s thought experiment further: escaped slaves occupied a paradoxical position within this world of thievery. In his study of fugitivity in U.S. property law, Stephen Best shows how the 1850 Fugitive Slave Law contradicted what one abolitionist writer named “the cardinal principle of slavery, that the slave is not to be ranked among *sentient beings*, but among things” by implying that fugitive slaves had agency.² Best demonstrates that this law figured the escaped slave simultaneously as an “object of property and [a] subject of contract,” both a lost possession and an indebted person who owes their labor to their legal owner (9). Thus within Levine’s allegorical schema, we can imagine fugitive slaves as both self-plagiarists and plagiarized material: fugitive slaves stole themselves from the owners who stole their personhoods.

But we can extend this thought experiment even further: William Wells Brown, an abolitionist author notorious for his appropriative writing style, holds an even more contradictory place within this antebellum nexus of personhood, property, and theft. Accused of plagiarism by his contemporaries and his twenty-first-century critics alike, Brown had a lifelong love affair

with reprint. He routinely included other people's words within his own works, occasionally cited or quoted, but often not. By one critic's count, Brown copied at least 87,000 words from at least 282 texts over the course of his career.³ Within the historical framework that Levine and Best establish, we could figuratively dub Brown a triple plagiarist. As a fugitive slave, Brown "plagiarized" himself from the legal owner who stole his personhood; as an Underground Railroad worker, he "plagiarized" other slaves from their legal owners; and as a prolific author with a penchant for revision, recontextualization, and verbatim copying, he "plagiarized" words from other writers.

As these figurative convolutions indicate, the notion of plagiarism as literary theft depends upon stable concepts of personhood and rights-bearing subjectivity, ideas that were fiercely up for debate in the antebellum United States. This etymological schema therefore highlights the complicated and often cruel overlaps between slave law and antebellum intellectual property, two legal realms that unsettle the distinctions between personhood and property. While Brown's patchwork compositions have enjoyed renewed critical attention in recent years, scholars tend to neglect the debates about copyright, literary innovation, and professional authorship that influenced this anti-slavery activist and author. The extant criticism on Brown's compositional strategies divides into two schools of thought: a post-structuralist school that celebrates Brown's "plagiarisms" as playful transgressions and a historicist school that justifies Brown's "citations" as typical within antebellum reprint culture. Although ostensibly antithetical, these two interpretations similarly neglect the uneasy, uneven relationship between slavery and intellectual property discourse that made Brown's unoriginal writings simultaneously marketable and controversial. That is, while critics in the former category reclaim "plagiarism," hoping to strip the term of all moralizing contempt, and critics in the latter

category defend Brown against accusations of plagiarism, hoping to prove that term's inapplicability to antebellum literature, they all oversimplify the concept of literary property in American 1840s and 1850s. Brown started writing during a highly transitional era: not only was the nation beginning to fracture into slaveholding and free factions, but publication norms were also rapidly changing as originality emerged as an American value. Or, to describe these changes in terms more directly related to Brown's career, it was during the rise of the abolitionist movement that plagiarism became a national problem.

I propose that attention to these interlinked discourses reveals a second pursuit embedded within Brown's anti-slavery activism: his anti-copyright activism. In particular, Brown's textual appropriations implicitly denounce what was, in the 1840s and 1850s, an increasingly popular call for an international copyright law that would extend authorial protections to foreign creators, halt the circulation of cheap, unauthorized reprints of European literature in the United States, and thereby protect American authors against what many claimed was unfair competition. While numerous American authors promoted the proposed law as a just protection of their incomes and an investment in a unique American culture, Brown's compositions implicitly reject this measure that would expand and reinforce U.S. property law, the very system he aimed to curtail through his abolitionist work. By addressing two sides of U.S. property law, one obviously heinous and the other seemingly innocuous, Brown used his compositional strategies to complement his explicit condemnation of slavery and its dehumanizing illogic. That is, while Brown never conflates the circulation of texts with the circulation of slaves' bodies, he does use the former to condemn the latter. By reusing previously published writings, he imagined a de-propertied American culture. Of course, Brown's vision of an alternative nationalism did not prevail. As Stephen Best notes, the postbellum expansion of copyright law converted formerly inalienable

aspects of personhood into alienable intellectual properties. For Best, this development represents the “afterlife of slavery” in the law, the persistent thingification of persons in American culture (14). But returning to Brown’s messy, myriad, many-authored compositions offers a glimpse at an alternative trajectory for an American national community, one in which property is not a primary determinant of human relations.

Here a historical understanding of plagiarism helps index structural changes within the production of American literature and imaginative changes within the national community. Although it is tempting to describe plagiarism as a formal quality, empirically recognizable through the comparison of source materials with the work in question, the perception and condemnation of plagiarism depends upon extratextual circumstances. “Plagiarism” denotes the use of another person’s work or property combined with creative incompetence and undue advantage, a definition that has remained relatively stable since at least the eighteenth century. However, the inclusion of particular texts within this category is always a fraught and contingent process. As several historians of plagiarism have shown, institutional norms, literary trends, and the copying and copied authors’ relative social standing all contribute to the segregation of plagiarism from genius.⁴ Plagiarism is an aesthetic evaluation – truly original works are not plagiarized, even if they do copy – and plagiarism is a politicized evaluation that shames the accused. As Marilyn Randall summarizes, “plagiarism is, above all, a matter of opinion” (vii). In the antebellum United States, these opinions hinged on disputes about property law, the legal distribution of personhood, and, moreover, the future of American nationalism.

Consequently, even recent criticism that lauds Brown’s “plagiarisms” and “self-plagiarisms” risks universalizing a designation that is very much dependent on the politics of reception.⁵ To adopt this historically contingent term into our critical vocabulary ignores the

connections between antebellum intellectual property and slave law that meant to restrict literacy, authorship, and copyright ownership to white creators. To classify Brown's writings as plagiarisms obscures a host of complicating factors, not least of which is that fact that for an enslaved person even literacy would have been designated a theft in the antebellum United States.⁶ Thus, following Randall, I approach plagiarism pragmatically. That is, I contemplate the extratextual conditions that make this accusation of plagiarism possible and I study the social effects that an accusation of plagiarism engenders. More particularly, I consider the intersection of slave law and intellectual property law, transformations of print technologies and publication norms, rhetorical conventions within abolitionist discourse, and defenses of literary nationalism as integral to understanding Brown's alleged plagiarisms. Brown's autobiographical writings, which he revised and republished frequently between 1847 and 1859, register his intervention into the contemporary discourse on originality, authenticity, and personal property, though I also study his best-known publication, the four-edition novel *Clotel; or, The Presidents Daughter: A Narrative of Slave Life in the United States* (1853, 1860, 1864, 1867).

But why study plagiarism? Why not study originality as it became a national value and a prominent justification for literary property? Because plagiarism is the limit case that can identify shifts in literary and publication norms. It marks the difference between art and artifice, esteemed literature and disgraceful scams. Lara Langer Cohen is one of the few theorists of American literary nationalism to eschew originality as a focal point, opting instead to examine what she identifies as the fraudulence endemic to nineteenth-century American literature, the popular sense that national literature was only a spectacle, a hoax, or an imposture. As a result, Cohen deposes originality as the beacon of American literature, instead framing this value as a "second order phenomenon, which requires the idea of the copy to exist. It is the conceivability

of the derivative that is the prerequisite for imagining, and privileging, the authentic.”⁷ In other words, she affirms that a supposedly authentic American literature only became imaginable by chastising imitative writing. In my study of Brown, I build from this reasoning to contemplate the national dimensions of Brown’s supposed plagiarisms, a kind of fraudulence that Cohen does not consider. I ask, what purpose did allegations of plagiarism against a prominent African American abolitionist serve in light of the construction of a national literature, and in light of the nation’s simultaneous expansion and fracture? I show that Brown both critiqued and reimagined the contours of American nationalism by inhabiting a kind of authorship that could not abide individualized intellectual property.

I. Who Owns National Culture?

Does American literature depend for its existence on intellectual property protections? In the mid-nineteenth century, American authors, publishers, and readers vehemently debated this question. Disagreement proliferated as two approaches to the publication, distribution, and consumption of literature vied for cultural ascendance. Vestiges of the reprint culture dominant in the 1830s and early 1840s survived even as the advent of railway shipping connected formerly distinct publishers and facilitated a new literary movement, one that touted inventiveness, proprietary authorship, and American origins.⁸ The differences between these approaches were stark, and debates about the proper approach to literary creation were widespread and well known from the late 1830s through 1891, when the long sought-after International Copyright Act passed in Congress. When Brown started publishing at mid-century, the stakes in these disputes were higher than ever. With more literate adults than in any other country and a host of printing and distribution technologies at publishers’ disposal, only in “the 1850s did an American

author's copyright become a truly valuable property" (Homestead 108). And yet many critics believed that copyrights should not gain value at a cost to the American reading public. In a dispute that often pitted readers against authors, and New Democrats against their frequent allies in the Young America movement,⁹ Americans wrangled not only with questions of what a national literature should say, but moreover with how, and at what price, literature should find a national audience.

Advocates for reprint culture located literary value in circulation and informative utility. Characterized by a decentralized publishing network and the unfettered dissemination of literature and information, reprint culture seemed to many to epitomize republican values, to promote informed citizenship, and to prevent a centralized publishing power from circumscribing diverse, local cultures. Because no U.S. law or international agreement protected foreign authors' rights, book publishers regularly disseminated unauthorized, cheap copies of European-authored literature. Because writing published in newspapers was considered common property, magazine editors reproduced articles from American and foreign periodicals. Readers gladly consumed this inexpensive literature and adapted these texts for their own purposes. This approach was, in part, pragmatic. At the time, books were often prohibitively expensive. According to Ronald Zboray's study of antebellum readership, one hardcover book generally cost between 75 cents and \$1.25, or more than \$50 to \$150 in today's terms (11). Most inexpensive editions, costing around 12 cents, were foreign-authored works reprinted in the United States (12). As a result, readers as well as artisans including booksellers, paper makers, and printers often criticized authors' desire for stronger intellectual property protections as miserly (McGill 94). But the campaign against copyright wasn't simply practical. It was also ideological. Champions of reprint scorned the consolidation of cultural and market power that

they believed strong intellectual property protections would enable. In particular, they rejected the proposed International Copyright Agreement because they feared that protecting the interests of a foreign literary establishment would undermine their vision of an egalitarian literature. And yet this push for regional publishing power often complemented pro-slavery, “states’ rights” campaigns. By resetting type, southern American publishers could make content more “local” by excising British abolitionist sentiment.¹⁰ Reprint rhetoric thus conjured images of democratic readership while also defending slavery. By defining American literature according to circulation rather than authorial origin, advocates of reprint envisioned a decentralized national community where local authorities decided who could belong in the national community.

On the other side of this debate, literary nationalists called for original, American-authored texts that encapsulated the new nation’s unique culture and they sought strident copyright laws that would incentivize these kinds of creations. As American readership grew and copyrights became potentially quite profitable, authors advocated for stronger intellectual property protections. American authors and their European counterparts aimed to prevent what they considered the piracy of their work and they repeatedly petitioned Congress beginning in the 1830s.¹¹ Publisher George Putnam founded the American International Copyright League in 1837, while the American Copyright Club formed in 1843. Acclaimed authors including Charles Dickens, Edgar Allan Poe, Henry Wadsworth Longfellow, Washington Irving, and William Cullen Bryant joined the copyright movement (Seville 162-170). Evert Duyckinck, one of the American Copyright Club’s officers and a prominent advocate for American-authored literature in the *New York Literary World* and other magazines, encapsulated this movement by linking his distaste for reprint culture with authors’ disenfranchisement. Under reprint culture (which Duyckinck refers to, somewhat wishfully, in the past tense), he claims that “Native authors were

neglected, despised, insulted; foreign authors were mutilated, pillaged and insulted, besides” (148). While the critic notes that reprint culture is on the decline, he also professes that only “the *coup de grace* of the ‘International Copyright Law,’” can purge American literature of its “nastiness” while also keeping literature generally affordable (148). Although Duyckinck’s disdain for reprint culture is matched by his scorn for the “puffing” system – that is, literary nationalists’ unqualified praise for all American-authored literature, often without regard to quality – he imagines that American “character” combined with authorial protections can revive literary nationalism (149). He begs, “From a people simple, brave, devout, what are we not to expect when these energies shall be turned in the direction of National Literature?” (149). He implies, “What are we not to expect when their energies are protected by an internationally-recognized copyright law?”

This perspective, increasingly popular among authors and critics in the mid-nineteenth century, relies on two interlinked beliefs. First, it assumes that only authors born and based in the United States could produce literature that “spoke to” the particularities of American experience and culture, an idea that places authors at the center of national culture. And second, it assumes that American authors could only produce quality, original literature if they were professional authors who could earn a living from their creative efforts. Together, these suppositions conjured the notion of the American citizens’ so-called natural rights. As Melissa Homestead explains, the failure to secure copyright protections was seen as a failure to protect the privileges of white male citizenship, “the legal rights to which [copyright advocates] claimed authors as male citizens of the republic were entitled” (viii). But the literary nationalist position often failed to consider the perspective of American authors, including African Americans and women, who were already unprotected by these entitlements.

In short, in the mid-nineteenth century, the answer to that divisive question – does American literature necessitate intellectual property rights? – depended on the definition of “American literature.” If American literature designated an inexpensive and accessible literature circulated through a decentralized publishing network, then intellectual property protections would obstruct the production of American literature. But if that phrase designated a literature penned by American authors and reflective of what Longfellow named “the stamp of national character ... [drawn] from its scenery and climate, its historical recollections, its government, [and] its various institutions,” then strident intellectual property protections were necessary for the promotion of national literature.¹² These alternative conceptions of American literature coexisted for decades – although Duyckinck along with publishers Wiley and Putnam successfully marketed a series of original, American-authored books in 1845, the International Copyright Act did not pass until 1891 – and it was into this conflicted literary culture that William Wells Brown offered his patchwork, supposedly plagiarized publications.¹³

Abolitionist discourse fit awkwardly within copyright disputes. Although anti-slavery authors seemed to prioritize political efficacy and circulation over literary innovation and authorial rights, their writings often exhibited that “stamp of national character” that literary nationalists craved. Moreover, popular abolitionist writings exhibited American literature’s ability to garner international acclaim and profits. Christopher Mulvey notes that at mid-century, the slave narrative was “North America’s most successful literary form” (n.p.), and according to William Farrison, by 1851 Brown’s escape narrative had sold up to fifteen thousand copies in Boston, London, and Dublin (156-7). Famously, Harriet Beecher Stowe’s *Uncle Tom’s Cabin, or Life Among the Lowly* (1852) became a best-seller and much-pirated phenomenon abroad. In the novel’s first year, about three hundred thousand copies were sold in the United States, while

roughly a million and a half copies were sold in Great Britain (Hedrick 223, 233). Literary nationalist critics took note of these successes. Consider one pundit's reluctant boast that there existed one genre "wholly indigenous" to the United States: "the Lives of Fugitive Slaves."¹⁴ By apparently ignoring the narratives' abolitionist message and naming slavery as the source of American originality, this assertion exhibits some of the inconsistencies of literary nationalist logic: it could simultaneously exploit and promote American authors, endorse white nationalism and abolitionism, celebrate the nation and circulate its critiques.

The premise that abolitionist authors, and especially African American abolitionist authors, supported strong authorial protections has predominated literary criticism on this era. Although abolitionists were obviously critical of American nationalism in its current form, it often makes sense to see formerly enslaved authors working for their individual property rights, including their authorial rights, and against anti-copyright slavery apologists. Thus criticism on this subject tends to prioritize individual-authority and selfhood-based approaches to black abolitionist authorship, usually with Frederick Douglass as the model author. Although Douglass did not participate in the international copyright movement in any sustained way, in 1886 he did sign on to an open letter in support of the measure and he declared that

Whatever by mind or by muscle, by thought or by labor, a man may have produced, whether it shall be useful or ornamental, instructive or amusing, whether book, plow, or picture, the said producer has in it a right of property superior to that of any other person at home or abroad ("International Copyright" 629)

This assertion draws on the Lockean notion of possessive individualism and implicitly links Douglass's earlier abolitionist work with expanded copyright protections. Considered in light of his emphasis on manly autonomy throughout his autobiographical writings, Douglass's support

for the International Copyright Act frames authorial rights for all men as one piece of a broader campaign for a more equitable labor system that respects and rewards individual work.

But as Lara Langer Cohen points out, this authorial approach was not universal. Noting that it has been tempting to “see authorship as a counterweight to slavery ... [in which] authors wield power in proportion to that which slavery seizes,” Cohen argues that we should not assume that the author function was equally productive for all formerly enslaved authors. She posits that our assumption that black abolitionists would embrace a proprietary authorial position “has led us to overlook the possibility that a former slave, especially, might not necessarily have favored a model of writing that conceives the book for as continuous with the person who wrote it.”¹⁵ That is, Cohen indicates that a person formerly made property under U.S. law might reasonably avoid the translation of their personal experiences into a salable, circulating commodity, the model of authorship that literary nationalists and copyright advocates championed. For example, an 1844 reprint circuit between three abolitionist newspapers exemplifies an implicit tension between proprietary authorship and abolitionism. An article titled “A Fugitive Reclaimed” (printed first in the *Cincinnati Herald* and then in the Boston-based *Emancipator and Republican*) recounts how the poem “The Little Blind Boy” circulated through various newspapers without attribution to the newspaper that originally published it, the *Cincinnati Herald*, at that time titled the *Philanthropist*. The article’s author consequently assumes the task of “reclaiming the fugitive for the real owner,” that is, of identifying publicly the original author and publisher. And yet the description of a poem as “fugitive” within an abolitionist newspaper also mocks and condemns the very process of identifying original ownership: the abolitionist newspaper’s investment in proprietary authorship and the “real owner” seems either ironic or hypocritical.¹⁶ Although some African American writers like Douglass imagined owning the

products of their authorial labor as just, abolitionists also worried about the process of “putting things in their proper place” and making sure “property” stayed where it supposedly belonged. Considered in this light, William Wells Brown’s unoriginal, many-authored publications do not necessary represent a failure of authorship, but an alternative version of authorship.

But while abolitionist discourse fit awkwardly with the copyright debates, it was also central to them. Meredith McGill in her influential *American Literature and the Culture of Reprinting* (2003) identifies 1853 as the climax for reprint culture vs. literary nationalist antagonism. McGill notes that *Uncle Tom’s Cabin*, first published the year before, renewed discussion of American literature’s international status and comparisons of copyrights with other property rights. Justifying nationalists’ boast of American literature’s value, Stowe’s best-seller proved that there was an international market for American-authored literature, especially abolitionist writings. Yet the novel also owed an often unexamined debt to reprint culture, and it certainly inspired a variety of reproductions: as a few scholars have noted, the description of Eliza’s escape across the icy Ohio River, possibly the novel’s most famous and most recreated scene, appeared first in the abolitionist newspapers *Liberator*, *True American*, and *North Star* and then in Brown’s panoramic lecture in 1849 before its canonization in Stowe’s novel.¹⁷ For McGill, mixed responses to the novel’s popularity and Stowe’s authorial rights epitomized a nation at a crossroad, mired in disagreement about national literature as well as more fundamental debates about human rights, citizenship, and national belonging.

For example, in addition to theatrical productions, satires, translations, literary nationalist celebrations, and pro-slavery panic at *Uncle Tom’s Cabin*’s display of abolitionism’s transatlantic popularity, in 1853 the novel also incited a copyright lawsuit, a case that hinted at the paradoxical relationship between slave law and intellectual property law. In brief, when

Stowe sued a Philadelphia publisher for distributing an unauthorized German translation of *Uncle Tom's Cabin*, Justice Robert Grier, the presiding judge and a committed enforcer of the Fugitive Slave Act, faced a dilemma. As Melissa Homestead explains, if Grier ruled in favor of Stowe, he may have enabled his political adversary to earn more profits, but he may have limited the novel's circulation. If Grier ruled against Stowe, he may have restricted her profits and represented her as a pecuniary miser, but he also would have allowed her abolitionist message to circulate more easily, more cheaply, to more readers (134-5). Grier ruled against Stowe, and he invoked some of Stowe's enslaved characters to justify this limit on her authorial rights. He argued,

Uncle Tom and Topsy are as much *publici juris* as Don Quixote and Sancho Panza. All her conceptions and inventions may be used and abused by imitators, playwrights [sic] and poetasters. They are no longer her own – those who have purchased her book may clothe them in English doggerel, in German or Chinese Prose. (*Decisions* 2486)

By making fictional slaves into the standard bearers for the limitations on copyright and Stowe's authority, Grier inverts but nonetheless reinforces the logic behind anti-copyright activists' defense of local publishing. By excising abolitionist themes from reprinted materials, southern publishers used the public ownership of literature as a tool to justify the private ownership of slaves. Invoking the characters Uncle Tom and Topsy's popularity, Grier reverses this strategy, using the fictional representation of privately owned slaves to justify the public ownership of published writings. While Grier's ruling claims to make Uncle Tom and Topsy the equivalents of all other fictional characters, and thereby establish a legal universal for authors' limited rights, the particularity of Stowe's characters reemerges in the ruling's unintended effect: the unfettered

international circulation of abolitionist materials. In other words, Grier attempts to distinguish slave law from intellectual property law, but in fact he highlights their inextricable links.

But another 1853 event highlights the unstable relationship between intellectual property law and slave law, and another strategy for negotiating those connections. In that year, Brown published *Clotel, or the President's Daughter*, the first novel to be published by an African American author. This novel manifests the problems and paradoxes inherent in a literary nationalist brand of abolitionism. In particular, *Clotel* fulfills many of the literary nationalists' criteria, even though Brown published his novel in a foreign country and censured American nationalism for its foundation in racial exploitation. More specifically, *Clotel* is a peculiarly American novel, in part because it had to be published in London. Not only does Brown's novel rewrite the Founding Fathers mythology, imagining the lives of Thomas Jefferson's enslaved daughters, but it also responds to U.S. laws in a way few other texts could. After escaping slavery in about 1833, Brown became a prominent abolitionist orator and writer, and he travelled to England in 1849 to continue his anti-slavery work abroad. But after the 1850 enactment of the Fugitive Slave Act, which required all American citizens to return escaped slaves to their legal owners, Brown found himself effectively exiled, unable to return to his native country for fear of reenslavement. It was during this period that he penned *Clotel*.¹⁸ Thus the first novel published by an African American author *had* to be published abroad in order for its author to remain a free person. Thanks to still lax U.S. copyright laws and a robust international abolitionist movement, Brown's writings, his denunciation of U.S. federal law, could circulate relatively easily across and within national borders, even as increasingly nationalized slave law detained the author himself. Determined by the intersection of intellectual property and slave law, *Clotel* thus executes the literary nationalist mission, depicting and reflecting the particularities of that

peculiar American institution. And although *Clotel* could hardly be described as “original” – about twenty-three percent of the novel was copied verbatim from other sources– it was certainly representative of American culture, sampled from a variety of contemporary debates and publications.¹⁹

By manipulating the ambiguities in literary nationalist rhetoric, Brown’s novel decries the conditions of its own publication and engages with contemporary debates about copyright and American literary culture. Along with Brown’s other writings, *Clotel* figures a third interpretation of “American literature.” This oeuvre exemplifies a literature that values writing for its communicative utility (as reprint culture advocates did) and that explores specifically national concerns and themes (as literary nationalists and International Copyright activists stipulated). But moreover, *Clotel* and Brown’s other writings embody an American literature that intervenes in the nationalist and literary debates that enables and delimits its existence. In other words, *Clotel* imagines an American literature that not only *reflects* a national character, but also that seeks to *reconstitute* that character. For Brown, that meant disputing U.S. property law in multiple forms, and the vision of American nationalism that Brown projects in his novel and autobiographical writings is one in which the perpetuation of an originality/ownership dyad as a national value can only limit the national community’s development, intellectually and socially.

Critics of Brown’s compositional strategies tend to understate the complexity of the literary and publication culture into which Brown entered, and consequently they overlook his interventionist, anti-copyright brand of American literature. Poststructuralist-minded critics seeking subversive play in his writings ignore the lingering influence of reprint culture during Brown’s lifetime and overstate the enmity cast at supposed plagiarisms during the mid-nineteenth-century. Geoffrey Sanborn’s recent book *Plagiarama!* offers the most provocative

and persuasive articulation of this position, but many more casual users of the term “plagiarism” fall into this category as well.²⁰ Sanborn claims that “in mid-nineteenth-century America and England, plagiarism came with a scarlet P,” but this assertion ignores mid-century debates about intellectual property (17). Meanwhile, historically oriented critics including John Ernest, Christopher Mulvey, Robert Levine, and Lara Langer Cohen contextualize Brown’s works exclusively within reprint culture in order to thwart the accusations of plagiarism leveled against him. They name Brown a “cultural editor” and the citations in *Clotel* as “representative” within African American print culture.²¹ Because critics in both schools of thought disregard the unsettled state of American literary culture in the 1840s and 1850s, neither can account for the paradoxical reception of Brown’s writings in his time. The plagiarist-play school cannot explain Brown’s long and prolific career (he was the author of thirteen books and published into the 1880s) while the representative-reprint school cannot justify the criticism Brown received for his unoriginality, including a gentle but public rebuke from his colleague Frederick Douglass. In 1853, Douglass noted “We fear friend Brown has, like some other *literary* men, mistaken the beautiful sentiment of another for the creation of his own fancy!” and he identified the Rochester Ladies’ Anti-Slavery Society as the first authors of Brown’s review of *Uncle Tom’s Cabin* (n.p., emphasis original). By emphasizing that Brown shares this appropriative folly with other literary authors, but also that such an appropriation is a mistake to be corrected, Douglass’s admonition embodies the conflicting status of unoriginal writing in the American 1840s and 1850s: common and artistically motivated, but also condemnable. Classifying Brown’s compositional methods definitively as either “plagiarisms” or “citations” obscures this seemingly contradictory history, and consequently overlooks Brown’s representation of a transformative, de-propertied version of American nationalism.

That is, neither the plagiarist-play nor the representative-reprint critics recognize how Brown's appropriations amended the terms of "American literature." In general, Brown's appropriative writing style can be interpreted as a compositional version of anti-copyright activism, as a political strategy for inserting himself into contemporary debates about what counts as national culture. What Ann duCille famously terms Brown's "unreal estate," his fictional, recontextualized, and sometimes anachronistic use of documentary and historical events, can also be read as a critique of the newly popular aesthetic value – originality – and its attendant restructuring of American intellectual property (Coupling 18). According to Sanborn's archival research, significant portions of all of Brown's publications first appear elsewhere, with the 1853 version of *Clotel* (23% reprinted) and the 1873 book *The Rising Son; or, The Antecedents and Advancement of the Colored Race* (22% reprinted) as his most appropriative achievements (10 and appendixes). This copying is both extensive and diverse, and it is difficult to describe these appropriations with any generalizations. Sometimes Brown threw seven or eight copied words into one of his sentences, sometimes he copied paragraph upon paragraph verbatim. He borrowed from black and white authors, men and women. He reused abolitionist essays and stories, but he also turned pro-slavery rhetoric against itself. In addition, Brown was prone to self-citation and revision. For example, he significantly rewrote his novel *Clotel* three more times in his life and his second autobiographical narrative includes extensive quotation from his first autobiographical narrative. Thus while Douglass's censure of Brown's copying is an apt description of how unoriginal writing was received in the mid-nineteenth century, his use of the term "mistake" mischaracterizes Brown's methods. Brown shows himself to be an impressive reader who certainly would have been aware of the ongoing debates about copyright and literary nationalism and his unoriginality can be interpreted as a rhetorical strategy. By

composing his explicitly anti-slavery writings through an implicitly anti-copyright writing style, Brown extended the emphasis on access and affordability that was a signature of the anti-copyright movement towards more fundamental human rights. The free circulation of texts can encourage a democratic nationalism if it also promotes the freedom of all Americans.

Brown also intervened in contemporary intellectual property debates more directly through his choice of reprinted materials. Consider two examples, both from his nonfictional writings. First, in the autobiographical narrative that precedes the 1853 edition of *Clotel*, Brown resurrects the 1844 abolitionist reprint circuit about textual fugitivity cited above. By including the disputed poem “The Little Blind Boy” within his narrative, Brown claims personal knowledge about the poem’s subject without claiming proprietary authority over the poem, and thus Brown uses the circulation of texts to protest against the circulation of slaves’ bodies. Recounting his time as an enslaved assistant to a slave trader, Brown describes the slave trader’s decision to sell a blind child away from its mother before inserting the whole thirty-two line poem “The Blind Boy.” Somewhat unusually, Brown places the poem in quotation marks and openly notes that he is not the author. But instead of citing the author by name, he frames the intersection of newspaper circulation and the slave trade as the producer of the poem. After stating that he personally witnessed the child’s sale to an innkeeper, Brown explains how the poem came to be. A Northern woman stays at that inn, and hears the child’s story from a slave and the innkeeper. Then, “A few days after, the following poem appeared in one of the newspapers, from the pen of the lady who had seen the blind child” (53, Ed. Levine). With its passive construction and double prepositional phrase, Brown’s sentence simultaneously indicates and conceals an unnamed lady’s authorship. (The newspaper article “A Fugitive Reclaimed” identifies her as “Mrs. M.L. Bailey.”) Brown’s explanation of the text’s origins emphasizes

shared witnessing, not individual ownership. While copyright implicitly delimits responsibility by linking an idea, a subject, and a text to one person alone, Brown's use of this many times reprinted poem and his introductory description emphasizes shared responsibility for the depicted child's fate. To the newspapers' negotiations over abolitionism's stance in the copyright debates, Brown depicts the free circulation of texts as a means for representing the nation's common moral culpability.

Brown also entered the debate over what constituted "American literature" by appropriating words from literary nationalist critics. Consider Brown's inclusion of 238 words from William Ellery Channing's book *Slavery* (1836) within the third version of his fugitive slave narrative, *Memoir of William Wells Brown* (1859). The passage that Brown reuses laments slavery's corruption of domesticity and family life, a commonplace argument within abolitionist discourse. Channing asserts, and Brown reprints,

Go where a man may, home is the centre [sic] to which his heart turns. The thought of his home nerves his arm and lightens his toil. ... But the slave's home does not merit the name. To him it is open to violation, insult, outrage. His children belong to another, are provided for by another, are disposed of by another. (Channing 80, Brown 10-11)

Sanborn of the performative-play school of thought interprets Brown's use of Channing's words as an ironization of the byline "Written by Himself" that appears at the start of Brown's and many other fugitive slaves' narratives (*Plagiarama* 14). While none of the critics I classify as part of the representative-reprint school discuss this quotation in particular, their arguments frame similar passages as citations both typical of the era and usefully efficient given the urgent political work Brown hoped to achieve by publishing his narrative. Both interpretations are valid

but incomplete, and neither accounts for Brown's decision to appropriate language from Channing in particular.

Brown could have taken comparable lines from hundreds of abolitionist texts. Given *Clotel's* dialogue with women's fiction, what duCille describes as the novel's rewriting of the "coupling convention," we might expect Brown to source this account of domesticity from a sentimental novel.²² Instead, he draws these lines from an author who described himself as "sympathetic" to the abolitionist cause, but not of it ("Abolitionists" n.p.). More particularly, Brown reprints this idea from a report on slavery that underscores the importance of black male passivity. Channing introduces *Slavery* by warning against the danger that black insurrection poses to national unity and he contrasts white abolitionists' masculine virility with male slaves' passive femininity.²³ Appealing to other white men, Channing contends that

We suffer [the slave] to do nothing for himself. The more, then, should be done for him. Our physical power is pledged against him in case of revolt. Then our moral power should be exerted for his relief. His weakness, which we increase, gives him a claim to the only aid we can afford, to our moral sympathy, to the free and faithful exposition of his wrong. (6)

While Channing's lament of slavery's effects on domesticity seems to fit within Brown's narrative, in which Brown mourns his separation from his mother in particular, Channing's larger argument contravenes the *Memoir's* foundational claims: that a formerly enslaved man can effect national change and exert "moral power" through agency and authorship. Channing imagines that American national unity can only exist without or despite black agency. But as Robert Reid-Pharr points out, Brown's writings can be read as an attempt to "save the republic in spite of the fact of racial difference," with mixed-race, formerly enslaved people as the nation's

necessary heroes (48). Brown's heroine Clotel, Reid-Pharr argues, represents a "racialist (though anti-white supremacist) meditation on the tragedy and promise of American republicanism" (38). In other words, Brown's oeuvre suggests that only the descendants of enslaved men and women can ensure American futurity and unity. Channing's tome on slavery, on the other hand, demands enslaved men's passivity and excludes enslaved women's agency entirely.

Why would Brown draw a generic statement on slavery's effect on family and domesticity from a text that demands Brown's passivity, that implicitly condemns his escape from slavery, his authorship, and his activism? From a book that offers a vision of American nationalism that is antithetical to his own? We could say that Brown recognized Channing's investment in a structure of white supremacy that united slave-holding and nominally free states despite regional tensions, and that by ushering this 1836 language into a post-Fugitive Slave Law context, Brown identified the history of slavery's cultural effects on the nation as a whole. We could argue, following Levine, that Brown "steals from the texts of a culture that steals black bodies," that Brown textually retaliates against the dehumanization of African Americans even within the abolitionist movement (6). Or we could interpret Brown's appropriation within the context of Channing's literary nationalism. In an 1823 essay titled "The Need of an Original Literature," Channing condemns reprint culture for making American culture a "slave" to its European antecedents. He argues,

A people, into whose minds the thoughts of foreigners are poured perpetually, needs an energy within itself to resist, to modify this mighty influence, and, without it, will inevitably sink under *the worst bondage*, will become *intellectually tame and enslaved*.
(n.p., emphasis added)

That is, Channing feared that reprint culture would emasculate all Americans, and all American culture, and this rhetoric parallels his own attempt to emasculate enslaved men. But Brown's reuse of Channing's words simultaneously undermines Channing's arguments in both *Slavery* and "Original Literature." The reuse and reinterpretation of words represents a kind of political agency in Brown's corpus, hence his ability to transform Channing's words for his own purposes. In other words, while "plagiarism" connotes laziness and passivity, Brown's verbatim copying demonstrates an active reconstruction of this literary nationalist's language. In addition, Brown's memoir makes clear that Americans cannot experience "bondage" from European literature. His memoir replaces Channing's fear of figurative slavery with a condemnation of actual bondage, in part by contrasting his experiences abroad with those in the United States. He ends this version of his autobiography by reprinting his manumission papers and reflecting, by way of extensive quotation, on the meaning of a "home" nation for a formerly enslaved American. While a "white man comes 'home'" to honor his country, professing that "Where liberty is, there is my country," "the colored man ... sails under a higher flag : his motto is, 'Where my country is, there I will bring liberty'" (33). Considered in this light, Brown's invocation of Channing's theory of the "slave's home" aims to reconstitute that home, not to lament its defilement. By drawing from Channing's abolitionist text, Brown thus intervened in this racialized demarcation of active creation. He produced an alternative version of literary nationalism, one that was both literally un-enslaved and productively unoriginal.

III. Authentic Plagiarism

But even as he used abolitionist discourse to intervene in debates about literary nationalism, Brown also used his compositional strategies to critique the exploitation of African

Americans within the abolitionist movement itself. Brown refused originality, but he also refused the typification of black lives within abolitionist genres. The fugitive slave narrative was a genre that worked to conflate fugitive slaves' lives with their texts, their texts with their bodies, their bodies with the books that bore their names.²⁴ The standard byline "Written by Himself" or "Written by Herself" signaled this investment in verifiable authenticity: it promises to relay a personal experience, to deliver a unique, individuated account of slavery that could not be found elsewhere. And yet, paradoxically, that generic byline was also a sign that white abolitionists had selected, verified, and endorsed that personal narrative. John Sekora outlines the complex scheme that white abolitionists erected for determining the validity and utility of fugitive slaves stories, including a standardized set of questions that allowed white abolitionists to interrogate former slaves and identify the stories and personalities that would best appeal to white audiences (496). White sponsors presumed to understand the experience of slavery and they sought and published narratives that accorded with their assumptions that enslaved persons had little control over their lives, that feelings of kinship occupy a central place in their self-conceptions, and that an escape scene would constitute a turning point in their autobiographical narratives. Sekora summarizes this point by noting that the "facticity sought in abolitionist writing was, by definition, not that of individualized Afro-American life, but rather the concrete details of lives spent under slavery," a "layering of heterogeneous material into a collective and invulnerable whole" (497). Thus "Written by Himself" or "Written by Herself" – that assertion of authenticity, that pledge that a fugitive slave had penned their own autobiography – masked the desire to construct a uniform representation of slavery across abolitionist discourse.

This drive toward uniformity extended beyond the fugitive slave narrative and white abolitionists' authentication of black writers' stories. *American Slavery As It Is: Testimony of a*

Thousand Witnesses (1839), edited by white abolitionists Thomas Weld, Angela Grimke, and Sarah Grimke, compiled first-person reports on slavery, much of it from slaveholders and slavery apologists as published in Southern newspapers, but also from free African Americans and white abolitionists. The collection offered an account of slavery's material conditions and emotional effects, and one hundred thousand copies were sold in its first year.²⁵ In his "Advertisement to the Reader" and editorial "Note," Weld emphasizes the facticity and verifiability of the included testimony. He invites skeptics to inspect the compilers' original sources at the American Anti-Slavery Office in New York City. He solicits more "well-weighted" and "well-authenticated" testimony, clarifying that prospective witnesses should not fear repeating already included information and requesting that "no one withhold his testimony because others have already testified to similar facts. The value of testimony is by no means measured by the *novelty* of the horrors which it describes. *Corroborative* testimony – facts, similar to those established by the testimony of others, – is highly valuable" ("Note," n.p., emphasis original). Weld's call for testimony thus figures an amalgamation of authenticity and corroboration. According to this framework, the most useful form that abolitionist discourse can assume is repetition across distinct first person accounts, and *Slavery As It Is* achieves this goal by organizing testimony according to themes, including "Wanton Cruelties," "Labor," and "Food." Like the fugitive slave narrative genre, this collection relies on supposedly authentic, personal narratives yet suppresses individual voices in pursuit of a corroborated "invulnerable whole," an overwhelming facticity that would persuade readers and legislators to the cause of abolition (Sekora 497).

Brown reprinted 73 words from *Slavery As It Is* in *Clotel* and 141 words in *Rising Son*.

Even abolitionist fiction sought facticity. In her 1854 *Key to Uncle Tom's Cabin*, Harriet Beecher Stowe supplied a set of factual "sources" for her fictional representations. While the

novel itself trades in racial and eschatological types and organizes repetitive scenes into what Jane Tompkins terms “a system of endless cross reference,” the *Key* extends that system to include an index of external, non-fictional references (512). Reiterating Weld’s call for complementary testimony, the title page declares that the book presents “the original facts upon which the story is founded, together with *corroborative* statements verifying the truth of the work.”²⁶ Because *Key* purports to corroborate fiction with fact, the five-hundred page tome exemplifies the process by which abolitionist discourse transforms individual lives into generic types. Consider Stowe’s first “source,” in which an unnamed black woman is both judged according to and made inspiration for a racial type (60). Noticing the woman’s despondent facial expression, Stowe classes the woman as “unlike her race generally,” a remark that alludes, by negative example, to the minstrel figure of the happy slave (2). But when *Key* reports the reason for the woman’s sullen disposition to be a slave trader’s threat to sell the woman’s child, Stowe also details the production of a new type. Stowe implicitly reveals the unnamed woman to be inspiration for the character Eliza, whose memorable escape across the Ohio River was adapted and staged hundreds of times.²⁷ Thus in accordance with the abolitionist quest for facticity, *Key* produces the kind of standardized racialized “authenticity” that Sekora associates with the fugitive slave narrative. In abolitionist discourse, corroboration acts as consolidation.

Corroboration elevates authentication over individual authenticity.

Within this context, Brown’s propensity for reprint ironically accords with white abolitionists desire for verifiably “authentic” stories that, more importantly, corroborate previously published representations of slavery. Throughout his long career, Brown repeatedly undercut the promise “Written By Himself” that appeared on the title pages for his 1847 and 1848 fugitive slave narratives. (In his later publications, Brown opted for the self-referential

byline “By the Author of.”) And yet Brown’s increasingly unoriginal narratives provided white abolitionists and readers with the information they wanted about slavery – that is, the information that they (thought they) already knew. In his 1848 “enlarged” revision of his fugitive slave narrative, Brown added an appendix in which he reused a total of 447 words from previously published abolitionist materials. Although perhaps “inauthentic” to Brown, these texts had already been deemed authentic and useful by abolitionist publishers, and their reprint constituted the logical extension of the drive toward corroboration. When read in terms of abolitionism’s strong desire for corroboration and weak preference for authenticity, Brown’s alleged plagiarisms pit those two supposedly complementary values against one another.

Brown’s use of 101 words from a eulogy by Robert Purvis is the only appropriation from another African American author in the 1848 version of his autobiography. Purvis’s eulogy in part works to celebrate the power of the abolitionist movement. He recalls the history of the growth of the abolitionist movement, noting that “Instead of one society [dedicated to immediate abolition], with twelve men, we have upwards of *six hundred* [societies], with thousands and tens of thousands of the choicest and best spirits in the land as members” (12, emphasis original). Purvis’s eulogy also celebrates a white abolitionist, Thomas Shipley, and soothes white fears. But Brown uses Purvis’ language to initiate a more radical condemnation of slavery than appears elsewhere in his narrative and in Purvis’s speech. The copied text reads as follows:

You cannot keep the human mind forever locked up in darkness. A ray of light, a spark from freedom’s altar, the idea of inherent right, each, all, will become fixed in the soul ; and that moment his ‘limbs well beyond all measure of his chains,’ that moment he is free ; then it is that the slave dies to become a freeman ; then it is felt that one hour of

virtuous liberty is worth an eternity of bondage ; then it is, in the madness and fury of his blood, that the excited soul exclaims,

“From like without freedom, oh! who would not fly ;
For one day of freedom, oh! who would not die?” (Brown 117, Purvis 15).

Purvis introduces this passage with an assertion that, given that slaves have not already revolted, they certainly will not initiate a race massacre after emancipation. Purvis’s argument is that insurrections exist only where slavery exists, and this passage is part of an attempt to ameliorate white Americans’ fear that emancipation will incite and legitimate black Americans’ violent retribution for slavery.

Ironically, the use of a pre-approved abolitionist sentiment allows Brown to introduce a more radical version of abolitionist discourse. Brown reuses this passage in order to defend Nat Turner, the kind of black anti-slavery activist who Purvis implicitly argues is not representative and will not succeed in inciting violence. Immediately following the reprint of Purvis’s words, Brown condemns the nationalization of slavery and in particular the role of Northerners in ensuring the subjugation of African American slaves. Here Brown reorients one of Purvis’s central arguments: while Purvis soothes his listeners, assuring them that African Americans will not rebel after emancipation, Brown refocuses that idea to imagine the rebellion that is inevitable if emancipation does not come soon. Their ideas are complementary, but the authors’ tones differ starkly. Of the use of U.S. troops to quell Nat Turner’s rebellion, Brown writes,

Yes! Northern men, men born and brought up in the free states, at the demand of slavery, marched to its rescue. They succeeded in reducing the poor slave again to his chains; but they did not succeed in crushing his spirit ... unless the slaveholders liberate their victims, and that, too, speedily, some modern Hannibal will make his appearance in the

southern states, who will trouble the slaveholders as the noble Carthaginian did the Romans. (118)

With this invocation of a black Hannibal, Brown implicitly realigns Purvis's accommodating words with the words of David Walker pamphlet whose *Appeal to the Colored Citizens of the World* (1829) many slave-owners feared would incite rebellion if successfully distributed in the South. In this reprint, the phrase "You cannot keep the human mind forever locked up in darkness" obtains a new meaning. No longer does it invoke the sense that slaves will eventually achieve intellectual freedom, an enlightened realization of their natural rights. Instead, in Brown's narrative, it becomes a warning and an ultimatum. By considering Brown's appropriation and reinterpretation of Purvis's words, we can see how Brown's use of reprint allowed him simultaneously to fit within the generic parameters of abolitionist discourse, by allowing him to paradoxically combine authenticity with corroboration and to intervene in the sometimes commodifying effects of those generic conventions.

Even outside of his reprinted materials, Brown regularly flaunted the assumptions and conventions that attended abolitionist discourse. In his first publication, the 1847 edition of *Narrative of William Wells Brown, A Fugitive Slave*, Brown recounts a visit to a fortune-teller in a scene that renders his narrative a pastiche of the fugitive slave narrative genre. Brown relays that he stepped into the soothsayer's room and Uncle Frank "soon lit a lamp, and coming up, looked me full in the face – saying, 'Well, my son, you have come to get uncle to tell your fortune, have you?' 'Yes,' said I. But how the old man should know what I had come for, I could not tell" (52). But Brown does not only ridicule his "gullible age" with this encounter (51). He also mocks the uniformity of supposedly authentic fugitive slave narratives, noting that

Among the many things [Uncle Frank] told me was one which was enough to pay me for all the trouble of hunting him up. It was that *I should be free!* He further said, that in trying to get my liberty, I would meet with many severe trials. I thought to myself, any fool could tell me that! (52, emphasis original)

This anecdote immediately precedes Brown's account of his own escape. As this passage suggests, the escape scene is one of the generic features of the fugitive slave narrative, yet is also one the trickiest. While the escape is the event that makes the narrative itself possible, it is also the moment at which the autobiographical indictment of slavery risks morphing into a hero narrative, the moment when the author's representative story becomes an exemplary story. By anticipating this scene with a joke about its ubiquity as both a hope for enslaved persons and an incident in the fugitive slave narrative, Brown effectively signals his discomfort with the scene and separates his personal narrative from the implications of this heroic episode. Overall, Brown's concurrent enthusiasm for Uncle Frank's prediction of freedom and disenchantment with his prediction of danger parallels the author's simultaneous investment in and critique of abolitionist discourse.

This simultaneous exemplification and repudiation of abolitionist discursive conventions culminates with Brown's 1853 revision of his fugitive slave narrative into a third-person autobiography. Appended to his first edition of *Clotel*, this narrative recites many of same events recorded in the 1847 and 1853 narratives, with one crucial difference: rather than refer to himself in the first-person, Brown narrates the adventures of "William" or sometimes, simply, "the slave" or "the fugitive." In doing so, Brown highlights the distinction between himself as author and himself as narrative subject, molded according to the terms of the genre. Again Brown's escape scene exemplifies the fugitive slave narrative's abstraction of "lives spent under slavery,"

to reuse Sekora's words. In this version, Brown depicts the narrativized version of life explicitly as an event to be interpreted, as fodder for readerly sympathy. Referring to himself only as "the poor slave" and the "fugitive" in this scene, Brown proclaims that

It *must have been* a picture which *would have inspired* an artist, to see the fugitive slave roasting the ears of corn that he found or took from the barns during the night, at solitary fires in the deep solitudes of woods. (76, emphasis added)

With this sentence's use of the conditional perfect tense ("would have inspired"), Brown multiplies the distinction between the authorial self and the narrated self. This scene redirects subjectivity from William, whose "love of freedom" we can only guess at in this scene, to both an hypothetical artist/witness and the imagined reader of the narrative. The third person perspective represents the logical continuation of the search for typical stories of slaves' lives, but Brown's use of this perspective allows him to carve out space for a more personal version of his story, but one that inheres in his author persona rather than in the narrative representation of his life.

III. Written By His Daughter

The study of Brown's version of authorship – multiple, unoriginal, and highly performative – troubles many of the methodological assumptions that undergird literary scholarship. Often, even as we study the networks that enabled antebellum authorship, the single author remains, as Foucault says of the author function, the point at which meaning converges. This tendency holds true in the study of Brown: critics often propose that his writings require new interpretive approaches, yet most of the criticism on Brown still makes him the point at which meaning converges, the interpretive category that allows them to make the anti-individual subjectivity arguments. Brown remains the sole focus of whole books, chapters, and articles.

Even as scholars pay attention to antebellum reprint culture, they often implicitly frame William Wells's compositions as the final stopping point for reprinted materials. Yet Brown's writings were popular, and often cited and appropriated by other authors, even if Brown did so to a greater extent. Up until this point, I have similarly positioned Brown as the individual meaning-maker in his anti-individualist approach to authorship, but I here propose that we need to find methodologies that break away from the single-author function, just as our arguments do.

To that end, I submit Josephine Brown's *Biography of An American Bondman* as an underutilized resource for thinking outside the scope of single authorship. *Bondman* is a textual oddity: it is a biography largely composed in the first person. Published in Boston in 1856, the text recounts many details of William Wells Brown's life that contemporary readers of abolitionist discourse would have already been familiar with, stories related in William Wells's 1847 and 1853 fugitive slave narratives. Although Josephine writes in the first chapter that "she fancies that the relation which that she holds to" her father will pique readers' interest (5), in fact, *Bondman* incorporates few of the personal touches we might expect from a biography written by a close relative: it contains only one mention of fatherly care and almost no account of family life at all. Josephine's mother Elizabeth Schooner is entirely absent from the text, and Josephine herself only appears once, very briefly and not by name. In a chapter on William Wells's effective exile in London, *Bondman* reads, "The passage of the Fugitive Slave Bill laid [Mr. Brown] liable to be arrested whenever he should return to his native land. ... Mr. Brown therefore resolved to remove his two daughters to England, so that he could see to their education" (73). This is the only mention of Josephine and her older sister Clarissa in the biography.

Instead of personal details, *Bondman* offers a biography that is partly written in the first person. For example, when Josephine discusses her father's escape from slavery, she quotes extensively from his 1847 narrative:

William, however, had resolved to make the attempt, without any regard to consequences. In his published narrative he says: - During the last night that I served in slavery, I did not close my eyes a single moment in sleep. ... If I could have been assured that my [relatives] were dead, I should have felt satisfied. But I imagined I saw my mother in the cotton field, followed by the merciless task master. (38)

Although biographies often include quotations from their subjects, *Bondman* does so to an exceptional extent. By Sanborn's estimation, about twenty-nine percent of *An American Bondman* is comprised of sections like this, with paragraph upon paragraph of quotations from William Wells ("Craft," 907). *Bondman* is a biography that centers on "I."

Perhaps because of its overlaps with William Wells's publications, *Bondman* has received almost no attention from literary critics. Despite renewed critical attention to William Wells in recent years and despite the inclusion of *Bondman* in the Schomburg Library of Nineteenth-Century Black Women Writers, a project underwritten by Henry Louis Gates, Jr., Josephine Brown remains a name mostly unknown in American literary history. Yet it is exactly because of *Bondman*'s overlaps with William Wells's previously published writings that makes this biography a useful resource to bring into the study of unoriginal, de-propertyed authorship. The "Written by Himself" that appears before Brown's fugitive slave narratives can be read, in the context of his penchant for reprint, as an ironic rejection of abolitionist genre conventions, as an implicit critique of the movement to expand U.S. property law through increased copyright protections, and as a signal that he both worked in and manipulated the political discourse into

which he wrote. But how are we to read the byline “By His Daughter” that appears on the *Bondman* title page? Neither Josephine nor William Wells Brown is named on that title page. Readers are only told that this book is authored based on the relationship between a father and a daughter. What does it mean to replace individual authorship with a signifier of kinship? This inquiry is especially pertinent given that *Clotel, or the President’s Daughter*, centers on the inheritances that fathers do and do not leave to their daughters. In other words, how are we to read *Bondman*’s “By His Daughter” in light of William Wells’s fictionalization of Thomas Jefferson’s disinheritance of his enslaved children, in light of the abolitionist sense of authenticity, and in light of slave law’s separation of fathers and daughters?

The only semi-significant criticism on *Bondman* does not help answer these questions. In fact, Sanborn’s reading of the biography serves to consolidate William Wells’s authorship. Sanborn argues that William Wells was likely the sole author of *Bondman* and that the book is an autobiography masked as a biography for marketing and activist purposes (“Craft” 907). William Wells was certainly partly responsible for the creation of *Bondman*: the biography is largely composed of quotations from his previously published materials. Sanborn also enumerates some other credible reasons for questioning Josephine’s authorship. Most persuasively, he notes that *Bondman* includes the kind of large scale copying that was a hallmark of William Wells’s writings. (For example, *Bondman*’s fourth and fifth chapters are near-verbatim copied from Joseph Ingraham’s travel narrative *The South-West*.) Sanborn’s argument that Josephine did not write *Bondman* is certainly plausible. Yet this approach does not help us grapple with the theoretical questions that this book raises: How are we to read a first-person biography? And how are we to read written “By His Daughter” within the context of abolitionist discourse?

Whether written collaboratively by Josephine and William Wells or penned entirely by William Wells performing as Josephine, *Bondman* can help us envision a way of creating and circulating literary texts that the concepts of individual authorship and intellectual property cannot encompass. This first-person biography figures authorship as a personal, but not a solitary endeavor, as a relational pursuit that copyright law would reduce to individual property. While William Wells's use of a third person perspective in the 1853 version of his fugitive slave narrative allowed him to achieve the abolitionist value of corroboration by ironizing its drive toward authenticity, it is in *Bondman* that the "I" can reappear, that a record of a personal experience can emerge despite the production of the fugitive slave as a generic type. Through extensive quotation, the biography allows for the re-incorporation of William Wells's voice, of his first-person perspective, into the narrative of his life. Whether in fact or only in form, Josephine emerges as a reader of her father's life. With its reconceptualization in *Bondman*, William Wells's fugitive slave narrative indicates an alternative audience: not only does William Wells write for his white sponsors and his potentially sympathetic readers, he also writes for the child who inherits his story and his property, his child who might have been born a slave if he had not escaped.

The quotations in *Bondman* may also index conversations not available to that general audience, not included in William Wells's production of himself as a type. The quotations in *Bondman* are not always copied verbatim from William Wells's previously published narratives. Although principally the same in content and style, the quotations include some slight revisions and a few ostensibly novel additions. After recounting William Wells's yearning for his mother, a passage that appears almost exactly in both the 1847 and 1853 narratives, *Bondman* adds, "these thoughts made me very sad indeed" (38). Additionally, in its final description of the

escape, the biography blends a passage from the 1847 narrative with a song from William

Wells's collection *The Anti-Slavery Harp* before continuing with an apparently new conclusion:

“Nothing but the fear of being arrested and returned to slavery prevented me, at this time, seeking shelter in some dwelling. Even when in this forlorn condition, I would occasionally find myself repeating –

‘I’ll be free! I’ll be free! And none shall confine
With fetters and chains, this free spirit of mine;
From my youth I have vowed in my God to rely;
And, despite the oppressor, gain freedom or die!’

Dreary were the hours that I spent while escaping from America’s greatest evil” (40, italicized words are new)

These lines and a few others have no source in William Wells’ previously published accounts of his life. Although brief and fairly abstract, these small moments reinsert personal experience into the escape scene. They temporarily refocus attention from the appearance of the generically titled “slave” of the 1848 edition to the emotional experiences of an “I,” of a father. Whether amended by Josephine or by William Wells in Josephine’s, the extensive quotations in this biography temporarily enable the insertion of interiority into the fugitive slave narrative.

In addition, these apparent quotations but potentially original passages confuse the conventions that produce individual authorship. Although quotations do indicate the circulation of ideas and lines of influence, they also work to demarcate individual authors from one another. Whether amended by Josephine or by William Wells making use of Josephine’s name, the extensive but not verbatim quotations in *Bondman* reject that demarcation of individual voices. These quotations produce the appearance of two single authors contributing individually to the production of a biography. However by including potentially new material within the quotation marks, *Bondman* represents the often-unrecognized collaborations enable authorship. In other words, *Bondman* lives up to its title page: with these sourceless quotations, it figures a kind of

authorship based in relationship and collaboration despite the proprietary logic that was becoming increasingly popular in U.S. literary circles.

Bondman's extensive and sometimes unsourced quotations extend a rejection of individual subjectivity that Laura Soderberg argues is a hallmark of William Wells' reuse of characters and scenes in his four editions of *Clotel*. Noting that William Wells shifts characterizations, plot lines, and descriptions for different and renamed characters as he revises the novel, Soderberg argues that Brown solved one of the major problems associated with the politics of sentimental writing: that the readers' pity for individual characters will eclipse their recognition and redress of systematic ills. Because Brown's multi-edition novel undercuts characters' distinctness by blurring and reassigning their storylines, the *Clotel* series does not produce any individual characters with which readers could exclusively sympathize. Instead, by reusing his stories for different characters, Brown produces both a personalization of injustice and a sense that these injustices are always radiating out towards unknown, other persons. Soderberg summarizes this point by noting that Brown's published revisions represent "a strange approach to character, an attempt to write a version of the self that would be founded on similarity and repetition, rather than on atomistic individualism" (243). While individual characters might remain recognizably similar within each novel, "Brown's sequence of novels shifts from depicting private disasters of exemplary characters into a more structural history that moves between the individual figure's particular suffering and the legal and social positions into which multiple figures can be slotted" (243). In other words, this "slotting" method allows Brown to thwart the problem of the hero narrative that he also attempted to work against with his third person fugitive slave narrative. As a result, Brown is able to show how the trauma of slavery resonates outward, particularly to descendent generations.

If we apply Soderberg's logic to *Bondman*, the Browns' de-individualized authorship also seems well suited to the representation of slavery as an institutional problem even within the ostensibly individual-focused genre of biography. As with the different editions of *Clotel*, the bulk of the language and the rhetorical style remains unchanged from William Wells's fugitive slave narratives into *Bondman*. But that near-identical language is credited to another author, and Josephine appears both the inheritor of her father's trauma and a creative collaborator with her father. Both trauma and authorship are de-individuated and the biography thus combines anti-slavery activism with anti-individual intellectual property activism.

Yet *Bondman* also allows the daughter to profit by her father's life story, and thus legally establishes – through its copyright – a connection between father and daughter that slave law consistently denied. The dictate that children “followed the condition of the mother,” meaning her freedom or enslavement, ensured that property descended to “legitimate” heirs. Although Josephine was born to two free African American parents and this doctrine would not have applied to her, William Wells, as a former slave, certainly understood the precariousness of his legal fatherhood in the antebellum United States. Hortense Spillers in her study of father/daughter relationships as represented in some African American literature describes this system as “figuratively banish[ing]” black fatherhood. “North American slavery in its laws ... asymmetrically complicated notions of fatherhood,” she explains. “In effect, the African person was twice-fathered, but could not be claimed by one and would not be claimed by the other,” that is, by the black father and the white owner-begetter, respectively (“Permanent” 232). In other words, slavery outlawed the hereditary, “vertical arrangement” of the father/daughter relationship (“Permanent” 249). But *Bondman*'s title page presents a symmetrical, linear articulation of black fatherhood. There William Wells and Josephine claim one another as legal,

biological, and literary kin, and its copyright in the unmarried Josephine's name allows the daughter to hold property in her father's story despite his experience of systematic dispossession. *Bondman* does not need to include personal details to achieve a representation of the Brown's father/daughter bond because "By His Daughter" notifies the public of their consanguinity. Despite Williams Wells's anti-copyright composition strategies, with *Bondman*, the Browns used copyright law to legalize a kinship that slave law negated. That is, although most of William Wells's writings implicitly denounce extended copyright protections, here we can see him and his daughter employing intellectual property law to denounce slave law.

IV. Conclusion.

Plagiarism emerged as a new national problem in the 1840s and 1850s, and the condemnation of "literary theft" promoted a national community oriented around originality. It endorsed an approach to the imagined arts founded on property, a system that keep the profits from and creation of American literature in the hands of authors who could legally hold property, those authors who could be and had legitimate heirs. Brown's dual intervention into intellectual property discourse – his use of reprint to resist the growing copyright movement and his use of copyright to commemorate legally his relationship with his daughter – countered this drive to expand U.S. property law and regulate the national family. But, by negative example, Brown's interventions also show how the newfound denunciation of "plagiarism" worked to control national kinship.

A final example from *Clotel* illustrates how a property-oriented approach to authorship could work to represent American kinship as linear and nuclear, even though the slaveholding nation was comprised of mixed-race families with "legitimate" and "illegitimate" branches. With

his use of Lydia Maria Child's 1847 short story "The Quadroons" in his 1853 edition of *Clotel*, Brown presents a more accurate account of American national kinship than Child's focus on nuclear kinship can accommodate. Compare these two quotations, the first from Child's story, the latter from Brown's novel, and both descriptive of a mixed-race woman's conversation with her white husband about the law's failure to recognize their marriage:

...when [Edward] playfully asked how [Rosalie] could keep him if he wished to run away, she replied, "Let the church that my mother loved sanction our union, and my soul will be satisfied, without the protection of the state. If your affections fall from me, I would not, if I could, hold you by a legal fetter." (Child 62).

... when [Horatio] playfully asked how [Clotel] could keep him if he wished to run away, she replied, "If the mutual love we have for each other, and the dictates of your own conscience do not cause you to remain my husband, and your affections fall from me, I would not, if I could, hold you by a single fetter." (*Clotel* 80)

When presented this way, the recent critical allegation that Brown committed a "literary theft" against Child seems plausible, especially in light of the proposed expansion of copyright and proprietary authorship during the 1840s and 1850s. But when we consider Child's and Brown's plots, we can recognize this near-verbatim copying as offering an alternative account of national kinship. Child's "The Quadroons" centers on a mixed race woman, her white owner/husband, and their child Xarifa. The story ends when Xarifa discovers that her mother was a slave and therefore that she is a slave, a realization that provokes her insanity and, eventually, her death. Although "The Quadroons" is a story about slavery, it is moreover a story about kinship and linear descent, and because all the characters die in the end, the narrative is both tragic and

conceptually tidy. Thus while Child explicitly opposed colonization societies, her story's plot betrays a similar logic: the removal of black characters solves the plot's problems.

Brown's *Clotel*, on the other hand, is famously un-tidy. The novel is known for its excessiveness, for its fragmented form and interlaced narratives. Although Brown's copied the bulk of Child's story to compose the start of *Clotel*'s story, he also breaks up the text of "The Quadroons" and uses its tragic conclusion to end another character's plotline. That is, *Clotel* and Horatio's daughter Mary does not die of insanity, as we might guess from the novel's intertext with Child's story. Instead, *Clotel*'s niece suffers Xarifia's death. Again, the language in Child's and Brown's works are very similar:

[Xarifia's] loving heart was broken; and that beautiful head fractured against the wall in the frenzy of despair. ... the slaves buried her; and no one wept at the grave of her who had been so carefully cherished, and so tenderly beloved. (Child 76)

In a few days the poor girl [Jane] died of a broken heart, and was buried at the back of the garden by the negroes; and no one wept at the grave of her who had been so carefully cherished, and so tenderly beloved. (*Clotel* 209)

Yet despite this sentence-level similarity, by using Child's narrative to compose two different characters' storylines, Brown removes the logic of linear descent from "The Quadroons" when he incorporates it into *Clotel*. In addition, while characters die in *Clotel*, they also live through horrors. In Brown's novel, we are left with survivors, people still subjugated in a deeply violent national community and yet integral members of the national family. In *Clotel*, the problem of property doesn't die with particular slaves or even with the end of American slavery itself, as Brown's final version of the novel *Clotelle; or, the Colored Heroine* (1867) is published after the Civil War.

When we consider this reorganization, we can see how Brown revises Child's story, even though he though he copies most of her words exactly. Through his reprinting, his copying, his plagiarism, Brown is able to disrupt the linearity of Child's story. Brown's novel presents a more useful account of kinship in a slave-holding nation – it's broken, it's nonlinear, and it's founded in exploitation. To look at Brown's appropriations and see only a literary theft is not only to ignore antebellum transformations in American literary culture, but also to deny Brown's account of national kinship. To favor only the original author when we read antebellum literature, to promote a property-centered approach to the imaginative arts, is to endorse an intellectual property system that keeps the profits of American literature in the hands of legitimate heirs. It is to pretend that the national family has always been symmetrical and equitable.

Chapter Two

Making Performance Property in Jim Crow Law and Fiction

In January 1898, the famous black cakewalkers Bert Williams and George Walker challenged the white millionaire William K. Vanderbilt to a dance off. After hearing of Vanderbilt's popular success as an amateur cakewalker, Williams and Walker donned fashionable attire and hand delivered a note to his Fifth Avenue address. They wrote,

In view of the fact that you have made a success as a cake-walker, having appeared in semi-public exhibition and having posed as an expert in that capacity, we, the undersigned world renowned cake-walkers, believing that the attention of the public has been distracted from us on account of the tremendous hit which you have made, hereby challenge you to compete with us in a cake-walking match, which will decide which of us shall deserve the title of champion cake-walker of the world. (qtd. Johnson 105)

Perhaps aware of his disadvantage on the stage, Vanderbilt never responded.¹ The note was a publicity stunt, but the questions of skill and ownership, authenticity and audience, were serious issues, particularly when it came to the tortuous history of the cakewalk. A dance style characterized by high, forward kicks and a coupled, usually circular promenade, the cakewalk traced its roots to African secular traditions and the slave quarters of Southern U.S. plantations. Throughout the nineteenth-century, black performers used the cakewalk to display innovative dance moves and to mock white mannerisms. But in the 1890s, blackface minstrel troupes incorporated cakewalk scenes into their finales, Madison Square Garden hosted national cakewalking competitions, Europeans picked up on the trend, and, in 1908, the first International Conference of Dancing Masters selected the cakewalk to represent the United States.² “In a time

of racist polemics, lynchings, and disenfranchisement,” Brooke Baldwin explains, “the black cakewalk had become a white fad” (215). In turn black dancers like Williams and Walker lampooned the white dancers’ attempts to master the form. In her history of American national dances, Megan Pugh describes this cycle of appropriation and mockery when she summarizes, “race, and jokes about race, were central to the meaning of the cakewalk. At whose expense wasn’t always clear” (16).

Though Williams and Walker’s note was a joke, it also pointed to the real costs of cultural appropriation. Recent critics of this event tend to emphasize more abstract consequences of appropriation like recognition, reputation, and the possibility of representing “America” in a globalized context. While scholars including Baldwin and Joanna Levin make important arguments about the representational and cultural stakes embedded in the cakewalk dispute, I contend that concerns about property and remuneration are intertwined with, not secondary to, those stakes.³ Williams and Walker frame their challenge as a response to lost revenue when they charge Vanderbilt with diverting “the attention of the public” away from their superior performances and their labor. The white dancer’s success, in their interpretation, is not simply a matter of unfair competition. It is a violation that will be redressed once they hold, irrefutably, the “title” to the cakewalk. They seek the remuneration for their labor that their cakewalking predecessors were denied. With this proprietary language, their challenge parodied recent complaints made by dramatists and theater managers troubled by “piratical” performances that deterred audiences and their money away from authorized productions.⁴ Though the pair bet only fifty dollars on the competition – Williams reportedly told Walker “It’s a shame to take the money, so make the stakes small, George” (qtd. Johnson 106) – their note makes property in performance a central concern.

In this chapter, I study how performance rights entered intellectual property law in the second half of the nineteenth century and, in turning to two fictional works that imagine theater's cultural effects reverberating beyond the edges of the stage, the role of proprietary performance in a segregated nation. Twin narratives infatuated with twin-like resemblances and transgressions of the color line, Mark Twain's *Pudd'nhead Wilson* (1893-4) and Charles Chesnutt's *The Marrow of Tradition* (1901) revolve around improbably successful and high-stakes performances. In each, an aristocratic degenerate young man called Tom risks his inheritance by gambling and losing his benefactor's favor. Both Toms attempt to save face and bank account by dressing up in (what they believe to be) race-crossing clothes and makeup, attempting to steal money from older relatives while in disguise, semi-accidentally killing those relatives, and nearly having the wrong men lynched for the murders. (Although there is no definitive evidence that Chesnutt conceived of *The Marrow of Tradition* as a rewriting of *Pudd'nhead Wilson*, these similarities are noteworthy, and I conclude this chapter with reflection on what I call Twain and Chesnutt's "literary kinship.") Through shared plot points, the novels explore the connections between performance and property claims, a relationship that, as I detail below, underwent considerable legal transformation in the seven years that separated the two publications. But by rendering the often abstract debates about performance and property in concrete and dramatic narratives, Twain's and Chesnutt's novels, like Williams and Walker's publicity stunt, pinpoint the questions of performance and property that copyright law is ill equipped to resolve, questions of individual transformation and kinship in a segregated national culture.

I. Intellectual Property Law and the Problem of Performance

The de-propertied nationalism that William Wells Brown's and Josephine Brown's writings helped imagine would not come to pass. Starting in the mid-nineteenth century, copyright protections ballooned. In 1856, dramatic compositions were added to the list of protectable works and performance rights were established. Then, two months before the end of the Civil War, Congress passed an amendment to U.S. Copyright law to extend protections to photographs and their negatives for the first time, an addition that some have speculated was due to the popularity of Matthew Brady's war photography. Foreign-authored works, commercial art, motion pictures, and music licensing followed in the successive decades, and a 1909 general revision of the Copyright Act extended the maximum term of protection to fifty-six years after publication (up from forty-two years after publication in the antebellum era).⁵ Now derisively termed "copyright creep," this three-pronged expansion – of the types of protected works, of authorial membership, and of protection durations – was in part a pragmatic response to technological inventions like the phonograph and motion picture camera. But these changes were also, as the Browns' alternative practices remind us, politically and economically strategic. While these additions arose from debate and disaccord, their successive enactments ensured an affinity between creative and proprietary pursuits in the United States.

Here I focus on one of the earlier and more peculiar additions to US. copyright law, performance rights, in order to consider how these protections related to other nineteenth-century legal and social developments. Fleeting and intangible, live performance clashes with the founding principles and requirements of American intellectual property law. U.S. copyright stipulates that a work must be fixed in a tangible medium in order to qualify as a protectable property.⁶ A script for a play, a musical score, a set of lyrics, a motion picture – all fixed,

reproducible, and, if suitably original, all copyrightable. A live performance, on the other hand, is ephemeral, almost always collaborative, and not exactly reproducible, even if it is repeatable.⁷ An actor couldn't register a copyright by depositing a copy of a performance at the Library of Congress or Copyright office, a requirement for protection until 1976. And while identifying the author of a written play is relatively straightforward, selecting the author of a live performance, deciding between the playwright, director, and various actors, is not so simple.

More theoretically, the "imprint" rationale for the establishment of authorial copyrights – the Romantic notion that an artwork contains traces of its unique author – conflicts, at least ostensibly, with the personal transformation that dramatic acting enables and necessitates. The idea that authors leave particular if intangible marks of their individual personalities on their creations, and that authors therefore deserve control over and remuneration for these imprinted artworks, structured early defenses of copyright and remained influential in later debates. For example, in 1774 Francis Hargrave defended British literary property, the progenitor of American copyright law, by proposing that "Every man has a mode of combining his ideas peculiar to himself" and his creations, therefore, will always have some features that "establish its identity" and tie it to author (6-7). Likewise, in 1791 Johann Gottlieb Fichte repurposed this imprint analogy to condemn German reprinting practices (Biagioli 1851). As a few critics have pointed out, the Romantic notion of genius clashes with many tenets of modern copyright, particularly in that copyright necessarily makes the author's supposedly unique traces widely reproducible.⁸ Nevertheless, the idea of authors' personal investment in and imprint on their creations through their labor worked well to justify authors' rights and the expansion of U.S. copyright law, including in the nineteenth-century arguments in defense of the International Copyright Act.

The criterion for authorial imprint is somewhat vague, but the assertion that individual writers express their thoughts through recognizable language patterns is plausible. Locating an imprint in live performance is more complicated. If the playwright is also the author of the live rendition, his or her traces compete for proprietary imprint status with the actor's physical presence. If we consider the actor the author, their appearance on the stage seems to supersede the imprint requirement: their physical being, not just traces of their personality, is recognizable in the artwork. But dramatic acting also requires the temporary transformation the actor's individuality, in addition to or contra those personal traces.⁹ Though more abstract, the "imprint" rationale for copyright protections coordinates with unfixedness and collaborative authoring to make performance an imperfect match with U.S. intellectual property law.

Yet despite this discordance, in the mid-nineteenth century "performance rights" entered U.S. intellectual property rights for the first time. A part of the expanding interest in authors' rights, the exclusive right to perform a work publicly, or to allow such a performance, became a benefit of copyright protections. The 1856 Congressional Copyright Act Amendment declared that any author or proprietor of a dramatic composition (along with "his heirs and assigns") has "the sole right ... to act, perform, or represent the [the dramatic composition], or cause it to be acted, performed, or represented, on any stage or public place during the whole period for which the copyright is obtained." While U.S. copyright protections had always included the right to determine how the copyrighted work was disseminated in printed form, now the author/proprietor had the right to determine how the copyrighted work circulated in enacted form. But performance rights are, through a slippery distinction, only a secondary privilege of copyright protections: because they are unfixed, performances cannot be owned under the law, but performances of registered, written works can be prevented or permitted. In other words, this

law established that while a live performance is not, by itself, a kind of intellectual property, a live performance can either flaunt copyright status or evince its violation.

However, dramatists and musicians criticized this law as insufficient and practically unenforceable. Only in 1897, more than four decades after performance rights were first codified, would Congress strengthen these performance rights by establishing measures for their enforcement. That year's copyright act specified that any person performing publicly a copyrighted dramatic or musical composition without the consent of the proprietor (or, again, "his heirs or assigns") would be liable for damages. If the unauthorized performance "be willful and for profit," the performer could be convicted of a misdemeanor and imprisoned for up to one year. More significantly, this law made injunctions against piratical plays more powerful by expanding the jurisdiction of federal courts. Pleased with this amendment, in 1897 New York dramatist Daniel Frohman clarified why the 1856 law was defective in this regard:

Nominally, if anyone filched one of my plays, and was producing it, I could secure an injunction restraining such production. But the difficulty was that an injunction which was granted in one district did not hold beyond the limits of that district, and the pirates simply had to move. We were compelled to follow them with court proceedings in all parts of the country, or let them have their way about it. ("Dramatic Piracy Stopped" 10)

The new law made an injunction issued in any federal court enforceable across the country. Although the need for this law hints at regional differences – that same dramatist accused Western Americans of thinking that "if a new play was brought out in New York, they ought to have the benefit of it, free of charge" (10) – its enactment underscored the national scope of imagined audiences and of property laws. The 1897 president of the New York Dramatists' Club Bronson Howard emphasized this point by framing the law as a matter of national pride and

destiny. In his celebratory retelling of the bill's signing to a room of playwrights and politicians, he proclaimed that the whole trajectory of American history propelled President Grover Cleveland to sign the copyright amendment into law. He declared that Cleveland "knew that all precedent coming down to him from those who had sat in the same chair in the White House pointed to the pen that was lying beside the bill upon his desk" ("Copyright Act Welcomed" 5). Then, with predictable dramatic flourish, Howard produced the pen. This pronouncement obscured the debates that characterized nineteenth-century intellectual property discourse, but it also recognized the newly triumphant proprietary approach to creative pursuits.

But given that many of the most popular late-nineteenth-century performance styles like blackface minstrelsy, vaudeville, and the cakewalk all depended on stolen, shared, and collaborative materials – on cross-racial appropriations, a host of stock characters, and a variety show format – these additional regulations on performance may seem ill-matched with the flux of their cultural moment. But we can interpret these regulations as part of a broader campaign to fix racial and authorial identity in a multicultural but violently segregated nation, a campaign that simultaneously countered and contextualized these performance styles. In his study of Jim Crow era Southern music, *Segregating Sound*, Karl Hagstrom Miller traces how "Music developed a color line" across the turn of the century (2). Miller attributed this new racialized demarcation to three late-nineteenth and early-twentieth-century phenomena: legal segregation, folklorists' investment in racial authenticity, and technological innovations in musical distribution. The result, he argues, was the "cultural component of segregation," the development of a supposedly authentic "correlation between racialized music and racialized bodies" that served to consolidate racial and regional identities (7, 4). If we consider cultural side of segregation more broadly, we can add to this list the codification of performance rights in U.S. copyright law. This addition

highlights how the new creator-owner-performer merger in intellectual property law coordinated with other legal and social developments to make cultural and visual markers representative of supposedly innate racial essences. In other words, despite the apparent mismatch between metamorphic qualities of performance and the favor for fixedness in copyright law, performance rights propelled the imprint rationale for authorial ownership one step further: not only would traces of the author's unique and essential self materialize in written works, but also in sanctioned performances. The authorized performers might not be the actual copyright holders, but they would nonetheless represent the author's proprietary will. In addition to the protections that performance rights conferred to dramatists and musicians, these amendments to copyright law consolidated identity by making it legitimately performable. In a segregated nation, this supposed alignment of essence, authorship, performance, and ownership was useful: it imaginatively neutralized the threat that the nation's multiracial cultural history, miscegenation, and "passing" posed for white nationalism.

Pudd'nhead Wilson and *The Marrow of Tradition* are critiques of this coordinated fixing of racial and authorial identity. Both novels use a pseudo-detective story form to emphasize the persuasively metamorphic power of performance. They use performance scenes to make known persons undetectable but, at the same time, to invoke unrecognized, mixed-race kinships. Together, these effects challenge the extension of the authorial imprint logic by making the performer's personal identity mutable and intertwined with other people's. But while these novels' original publication dates were separated by less than a decade, their immediate historical contexts, in terms of performance and property, differed significantly. Twain set *Pudd'nhead Wilson* in antebellum Missouri and penned his novel before the 1897 copyright amendment made performance rights achievable and before the 1896 *Plessy v. Ferguson*

decision validated racial segregation (though the debates that preceded that decision certainly inflected Twain's writing). Chesnutt wrote his novel in the wake of these legal developments, in response to a white supremacist massacre in Wilmington, NC in 1898 and a highly publicized race riot in New Orleans in 1900, and after Bert Williams and George Walker had made the cakewalk "not only popular, but fashionable" in the late 1890s.¹⁰ Some of these differences emerge in the representations of performance and property in these two novels. *Pudd'nhead Wilson* centers on "unauthorized performances," metaphorical representations of the illicit enactments that copyright law, particularly in its weaker iteration, could not prevent. The novel highlights the transformational power of performance, but it also presents the capacity of a white supremacist culture to absorb performative transgressions for its own purposes. *The Marrow of Tradition* ends with a tentative hope for less violent interracial and intrafamilial relationships, but Chesnutt also uses performance to imagine the enormity of the racial reconciliation he imagines for future Americans.

II. Unauthorized Performances in *Pudd'nhead Wilson*

Pudd'nhead Wilson is a notoriously strange novel. Semi-severed from its antecedent narrative "Those Extraordinary Twins" and a "tragedy" that embraces farce,¹¹ its politics are difficult to reconcile: the novel denounces slavery and, allegorically, post-Reconstruction racial oppressions, but it also frequently codes white as "good" and black as "bad." That is, Twain's novel criticizes the idea of absolute racial difference as a sham and the brutality it purports to legitimate as odious. But as scholars critical of Twain's racial representations have shown, the novel also echoes some of the white supremacist discourse it elsewhere resists: *Pudd'nhead Wilson* is populated by black criminals, the enslaved heroine Roxy conforms, in many scenes, to

minstrel stereotypes, and Twain matches his mockery of the First Families of Virginia with sympathetic, vulnerable characterizations.¹² One way to understand this contradiction is to note the centrality of performance in Twain's denouncement of racial oppression. While in some sections, the novel represents slavery as a moral evil (as when an overseer beats a ten-year-old girl for feeding Roxy), in other sections, Twain presents the greatest fault of structural racism not in moral terms but in logistical ones. The novel shows that slavery and, by extension, Jim Crow oppressions are susceptible to deceptive ploys, to being manipulated by amateur performances. In Twain's novel, it isn't always black humanity that makes slavery and other injustices reprehensible.¹³ Rather, in *Pudd'nhead Wilson*'s more farcical moments, performative ruses mark the practical failures that make racial oppression a flawed system.

Criticism on this novel has often focused on its presentation of racial performativity, "passing," and racism or on its outlook on property and economics.¹⁴ By considering these two sets of narrative elements together and in light of the nineteenth-century invention of performance rights, we can see how *Pudd'nhead Wilson* highlights the fatuity of fixing identity and property through performance. Performance rights extended the notion of authorial imprint to link personal essence with authorship, ownership, and now legitimated performances, but Twain's novel focuses on off-stage performances and their ability to remake rather than consolidate identity. By using the language of the theater to describe ordinary "performances," and with frequent invocation of blackface minstrel tropes and tools, Twain prompts readers to recognize how the U.S. property system relies on coordinated and "authorized" performances to justify racial segregation in both the antebellum South and the post-Reconstruction nation. But *Pudd'nhead Wilson*, penned while performance rights were theoretically protected but practically unenforceable, also features a series of "unauthorized performances," enacted

contrary to various owners' proprietary wills, and it underscores how efficiently these acts can redirect property ownership, even when the performers themselves are property by law. While the establishment of performance rights worked alongside other nineteenth-century developments to secure authorial and racial identity, performance in Twain's Dawson's Landing is transformative and potentially transgressive. Unauthorized performances can escape detection and disturb rather than reinforce property law, an obstacle to Jim Crow legislation and culture. Yet the detective story conclusion squashes this disruption and reestablishes the dominion of white supremacist property law, and with this ending the novel indexes the limits on performance's revolutionary potential.

A keen advocate for copyright reform and a writer known for his theatricality, Twain's fictional representation of performance rights reflects a personal investment in intellectual property and meditates on the assumptions about identity, control, and property that the 1856 law espoused. Twain's position on intellectual property was complicated and it changed over the course of his career. In a letter to William Dean Howells in 1880, Twain admired the reprint culture that weak copyright protections facilitated because he inferred that the cheap availability of books benefitted many more readers than the number of authors that an international copyright act would aid. He imagined that "A generation of this sort of thing ought to make this the most intelligent & the best-read nation in the world" (334). That is, while Twain asserted that mass reprinting still constituted literary theft, he admitted that its effects might justify the system, professing, "Morally, this is all wrong – governmentally it is all right" (334). But by 1886, Twain's opinions on the benefits of reprint had changed. In his contribution to a collaborative open letter in support of international copyright in *The Century Magazine*, Twain laments that the inexpensive, foreign-authored books that Americans read "are distributed and devoured by

the nation strictly in these proportions : an ounce of wholesome literature to a hundred tons of noxious” (International Copyright 634). Repeating common complaints concerning American readers’ infatuation with European frivolities and authors’ rights to the products of their mental labor, Twain concludes his statement with the pronouncement that “these cheap books are the costliest purchase that ever a nation made” (634). Personally frustrated with the reprint system, he even tried to trademark the phrase “Mark Twain” to prevent piratical publishers from reproducing his writings and selling them at a discount. That effort failed, but other maneuvers, like travelling to Canada so that he could secure British and American copyrights near simultaneously, worked better.¹⁵ After the International Copyright Act passed in 1891, Twain focused his efforts on extending the duration of copyright protections. Headed toward bankruptcy, Twain likely felt the desire to own and profit by his literary productions especially strongly while he was writing *Pudd’nhead Wilson*. As Ron Powers explains, at that time he was “desperate” to “make a lot of money as fast as he could ... It was this desperation, as much as comic insouciance, that fueled the delirious assemblage, separation, and bizarre reconstruction” of *Pudd’nhead Wilson* and *Those Extraordinary Twins* (x). In other words, Twain’s personal debts compounded his moral objections to literary piracy.

In addition, some of Twain’s compositional methods ostensibly contradicted his late-career advocacy for expanded authorial protections. Siva Vaidhyanathan observes in his history of the author’s “political passion” for copyright activism that Twain also “boasted of lifting stories and ideas from others” for his own fiction (37, 56). Moreover, in a letter to Helen Keller in 1903, Twain bemoans the accusations of plagiarism that Keller recently endured. He declares that there is not “much of anything in any human utterance, oral or written, *except* plagiarism” and he rewrites the idea of an authorial imprint as “the little discoloration” that an author adds to

source materials (731, emphasis original). This celebration of creative appropriation seems to undercut the notion that a person can hold property in creative expressions, the fundamental premise of copyright law that Twain elsewhere endorsed.¹⁶ So how do we reconcile Twain's compositional methods with his activism? For Vaidhyanathan, the answer is twofold. First, Twain, like all humans, was complex and sometimes self-contradictory.¹⁷ Second, Twain distinguished between plagiarism (the use of another's idea or expression without citation) and piracy (the publication of an entire work without the author's or the original publisher's consent). In other words, he saw a significant difference between compositional appropriations and indiscriminate reprinting.

Considered in this biographical context, we can interpret the implicit critique of performance rights in his novel as representative of his changing, equivocal approach to the general idea of literary property. Similar to his endorsement of reprint culture despite his self-interest in his letter to Howells, *Pudd'nhead Wilson* imagines the implications that the codification of performance rights held for a segregated national community, effects far broader than those on Twain's own back account. *Pudd'nhead Wilson* confronts property in performance as an attempt to fix racial and authorial identity in the nineteenth-century United States, a transformative period that his novel encompasses between its antebellum setting and its Jim Crow context. Twain's novel also implicitly assesses a common rhetorical tool of nineteenth-century intellectual property discourse. In pro-copyright activism, white American authors often compared their vulnerability in the reprint system to the systematic dispossession suffered by enslaved persons. For example, in *The Century Magazine* collaborative letter in favor of international copyright that Mark Twain signed, George Parsons Lathrop declared that

Of all existing brutalities, of all legislative crudities, of all cruelties inflicted by a civilized people upon a particular class, of all contemptible thefts known to mankind the meanest, the lowest, the pettiest, the most debased and despicable, is the brutality, the cruelty, the theft, practiced against authors by the United States of America. (631)

While it is possible that this extravagant language signals irony or political strategy, its inclusion in the open letter nevertheless indicates the importance of the language of “theft” and of rhetorical exaggeration in the pro-copyright movement. More directly, Charles G. Leland in that same letter writes that “There are few great nations which have not one crying infamy to disgrace them ... we have had two. The first, slavery, we have abolished; the meaner and pettier outrage against the rights of a class [i.e., authors] we still retain” (631). The theoretical justification for this comparison was that both weak copyright laws and slavery permitted thefts of labor that contradicted the Lockean premise of possessive individualism.¹⁸ In contrast, in its portrayal of performance and property, *Pudd’nhead Wilson* shows how the expansion of copyright law, and more particularly, the extension of the authorial imprint logic, could coordinate with Jim Crow era laws and customs to perpetuate the myths about detectable racial essences that underwrote slavery. In short, we can read *Pudd’nhead Wilson* as an implicit criticism of this rhetorical tendency as well as a representation of the flaws inherent in using performance to stabilize identity.

Twain set his Jim Crow era novel in antebellum Missouri. As context for the transgressive performances it spotlights, *Pudd’nhead Wilson* presents a series of “authorized” performances, characters’ consciously racialized self-presentations. Dawson’s Landing is a distinctly performative town — the local judge, for example, parades his patriarchal stature as he tours visitors around all the “splendors” the town has to offer (47) — and the white characters

maintain a “reputation” of whiteness and, more generally, the idea of absolute racial difference through particular speech patterns and social customs, even though mixed-race characters like Roxy who is “Only one sixteenth ... black, and that sixteenth did not show” indicate that distinction to be invisible and invalid (13). Twain highlights these performative and contradictory expressions of supposedly essential racial differences when he imagines the cognitive dissonance that someone meeting Roxy for the first time would experience: “From Roxy’s manner of speech, a stranger would have expected her to be black, but she was not” (13). The stranger would expect an alignment of racial essence with phenotype with voice, but Roxy foils that expectation. But even though the novel mocks the characters’ prevailing impression that particular kinds of performances reliably denote race, these performances also facilitate the segregation of the townspeople into white and black, property holders and property.

Segregation law in the late-nineteenth-century increasingly upheld the idea that white people's mundane racial performances could function as a kind of property. Consider, for example, that one of Homer Plessy’s complaints against the Louisiana law that prescribed the racial segregation of railway cars was that it denied him “the reputation [of being white] which has an actual pecuniary value” and which he could plausibly access because he “phenotypically appeared to be white” (qtd. Harris 1747, 1749). As Cheryl Harris explains in her survey of whiteness as a kind of property in the United States, the *Plessy v. Ferguson* decision, even as it espoused the concept of “separate but equal,” did *not* deny Plessy’s claim that white supremacy rendered the reputation of whiteness socially and economically valuable. She shows that the court “lent support to the notion of race reputation as a property interest that required the protection of the law” (1749). But contra Plessy’s experience, the ruling upheld the idea that conductors could reliably arbitrate race (and therefore race reputation) although it evaded the

question of “a clear standard defining who was white” (1749). Even without such a standard, the ruling sustained the assumptions that racial essences existed and that these essences corresponded with phenotype in a manner generally apparent to train conductors.¹⁹

Moreover, the *Plessy v. Ferguson* decision negated the complications that mixed-race persons posed for this system through the declaration that the judiciary system could justly remedy any “mistakes”: if a legally white man were denied entry to a white car, he could sue for damages against his property in his whiteness, but the court argued that a legally black man like Plessy who appeared white would have “been deprived of no property, since he is not lawfully entitled to the reputation of being a white man” (qtd. Harris 1749). As Eva Saks shows in her study of miscegenation law, nineteenth-century courts produced the legal fiction of “blood” to render race internal and therefore legally legitimate despite claims like Plessy’s. But *Plessy v. Ferguson* also introduces visible race markers as constituting an off-stage kind of performance right: a legally white person’s right to perform their whiteness publicly as a form of property and as a guarantee of social and economic benefit. Although *Pudd’nhead Wilson* was published before the *Plessy v. Ferguson* decision, Twain likely had knowledge of the pending trial and, as Eric Sundquist notes in his influential account of Twain’s grappling with racial inequality in this novel, the case “brought to a climax the series of Supreme Court decisions, legislative maneuvers, and developments in sociological theory that had already created the atmosphere in which Twain’s wrenching text was composed” (228). While performative whiteness was not yet federally codified as a kind of property, it acts as a claim to property in Jim Crow America and in Twain’s fictional antebellum town.

But unlike in the court’s vision of segregation, in Dawson’s Landing unauthorized performances are rampant, genuinely transformative, and for most of the novel undetectable.

Legal race does not always correspond to phenotype, as the *Plessy v. Ferguson* law assumes, and performances do not always embody an owner's legitimate, proprietary will, as the 1856 copyright act attempted to ensure. The novel's central drama starts when Roxy chooses to switch her enslaved son Chambers for her master's son Tom, swapping their clothes and cradles, and initiating a twenty-year impersonation that contradicts the belief in detectable racial essences and that contravenes her owner's proprietary will. I describe this plot as a performance rather than an act of racial passing because Twain uses the language of costuming and rehearsal to frame the original switch as an improvised performance. Upon realizing that her enslaved child could be "sold down the river," Roxy devises a scheme to avert this fate: she plans to drown herself and her child in the Mississippi instead (19). But Twain delays the promised suicide/infanticide with a scene that draws heavily on minstrel tropes. First, Roxy decides she must dress for the occasion. The sight of her never-worn new gown, a "cheap curtain-calico thing, a conflagration of gaudy colors and fantastic figures," gives her pause (20). "No," she declares, "I ain't gwine to be fished out, wid *everybody lookin' at me*, in dis mis'able ole linsey-woolsey" (20, emphasis added). Her funereal but ebullient preparations continue from there: she styles her hair "like white folks," adds ribbons and "atrocious" artificial flowers to her dress, and clothes her son in one of his young master's gowns (20). Roxy prepares for her tomb, but also for the audience that she imagines will admire her and her son's drowned corpses. The narration mocks Roxy's attempt to costume herself as a tragic heroine, and this scene transforms her character from a sentimental mother into the vain fool of the minstrel stage.

Yet this scene also prompts an alternative performance that underscores the mendacity of legislated racial difference and the vulnerability of white property. After trading the infants' clothing, Roxy realizes that only she can tell the difference between the two infants and that only

costuming signals to a wider audience their different races and stations. She then switches the children themselves and saves her son from slavery by making him her master. As playwright and lead actor for this deception, Roxy turns her attention from costuming to rehearsal, or what Twain repeatedly calls “practicing.” She explains to her son Chambers, “You’s young Marse *Tom* fum dis out, en I got to practice and git used to ‘memberin’ to call you dat, honey...” (23, emphasis original). She does remember, and her one-night rehearsal translates into a twenty-year persuasive performance. By switching the heir with a child he is slated to inherit, Roxy’s ploy is a threat to the white patriarchal family. Sandra Gunning argues that Twain frames Roxy’s decision to switch the infants as an “attempt at white genocide,” wherein “white fathers are made to father ‘legitimate’ mixed-race offspring,” and although Roxy’s transgression is more limited and amateurish than genocide, Gunning’s points about the transformation of the white family and white fatherhood highlight how the novel invokes the biological kinships that existed between slaves and their legal owners but also how Roxy’s performance remakes those relationships (58). (Chambers’s father is not Tom’s father, and neither of those men survive the first four chapters. Instead, Tom’s uncle Judge Driscoll stands as the representative white patriarch in this novel.) But as this language of legitimacy indicates, the rearrangement of kinship is also a property claim. At the start of *Pudd’nhead Wilson*, Roxy, having temporarily “got religion” resists the temptation to steal a few dollars from her owner (16). But by the next chapter, she is redirecting the whole of her master’s estate to her son, perhaps an indication that “getting religion” means not the moralization of petty thefts but a large-scale redistribution of property. In sum, Roxy’s version of performative property repudiates the consolidation of identity enabled by the 1856 Copyright Act. While the law aimed to make performances representative of the author/owner’s

creative imprint and proprietary will, Roxy secures property for her heir kin through a performance that undermines a legal owner's rights.

Twain's narrative indicates the transformative power of Roxy's performance by referring to the children by their newly-given names – "This history must henceforth accommodate itself to the change which Roxana has consummated," the narrator recognizes – a switch that I too will make (26). In one of the novel's more convoluted representations of performance, Chambers informs his presumed mother Roxy that Tom, Roxy's biological son and the assumptive heir, has been disinherited. This is the second time that the novel's presumptive heir has lost his inheritance, the first time by her own doing, and Roxy balks at the breakdown of her plan to support herself through Tom. She rebukes Chambers as an "imitation nigger," but Chambers corrects her to declare that "Bofe of us is imitation *white* - dat's what we is - en pow'ful good imitation, too" (55). The irony of this conversation operates at multiple levels. According to the law that Pudd'nhead Wilson will reinstitute at the novel's conclusion, Chambers is white, unknowingly imitating his slave. But segregation laws based on blood theories of race would categorize Roxy and her son as "imitation white," with the appearance of whiteness but none of its legal and social benefits. Sundquist reads this scene as portraying "race as a role" and indicating "that it is imitation, training, practice, and habit that created" supposedly natural racial distinctions (231). But in the context of the second kind of proprietary performance legally sanctioned in the Jim Crow United States, the white person's right to their reputation of whiteness, Roxy's performance grants "imitation white[s]" like she and Tom proprietary rights in their whiteness. Roxy's rebellion against the slave system is notably limited in that it conforms to the notion that humans can be made property, a factor she almost regrets but comforts herself by exclaiming "'Tain't no sin - *white* folks has done it!," and it upholds the racist and colorist

idea that white appearance can and should confer social and economic prosperity (22). But in addition to undermining the white patriarchal family, her act anticipates Plessy's challenge to segregation law through this interest in his visible but not legal whiteness and it effectively expands the performative property in whiteness that *Plessy v. Ferguson* would codify.

In addition to Roxy's subterfuge, *Pudd'nhead Wilson* chronicles another series of "unauthorized" performances that it presents in more morally dubious terms. A gambler who believes he has been written out of his uncle's will, Tom assumes various disguises as he steals from other Dawson's Landing residents to repay his debts. He dresses as a young white woman in "a neat and trim summer dress, patterned in broad stripes of pink and white" who "practic[es her] steps, gaits, and attitudes" to escape detection (50). Later he borrows "Roxy's dress, with the stoop of old age added to the disguise" so that he can raid his neighbors' homes as they enjoy the visiting Italian twins' masterful piano playing (72). Finally, Tom blackens his face in preparation for robbing the man he once believed to be his uncle but who he now knows would own him if Tom hadn't "imitated" whiteness since infancy. Tom creeps up on a sleeping Judge Driscoll and spies a tin cashbox and bank notes. Then,

When [Tom] was passing his uncle, the old man stirred in his sleep, and Tom stopped instantly – stopped, and softly drew the knife from its sheath, with his heart thumping, and his eyes fastened upon his benefactor's face ... [Tom] reached for his prize and seized it, dropping the knife-sheath. Then he felt the old man's strong grip upon him, and a wild cry of 'Help! help!' rang in his ear. Without hesitation he drove the knife home — *and was free*. (151, emphasis added)

This scene echoes an earlier account of a slave robbing his owner of a hen, "perfectly sure that in taking this trifle from the man who daily robbed him an inestimable treasure — his liberty — he

was not committing any sin that God would remember against him in the Last Great Day,” an evaluation that, in the tradition of Lockean thought, frames liberty as a kind of property (17). But while the reader knows that Tom is also legally a slave stealing from a would-be master, his stab at freedom is not represented in equally sympathetic terms compared to the other slave’s defiance. While the hen-thief’s act precipitates philosophical assurance of morality, Tom’s robbery turned murder engenders only a criminal’s (or a performer’s) concern with witnesses (151). In other words, while Twain frames Roxy’s and the hen-thief’s deceptions as more than justifiable within the context of slavery’s brutality, Tom’s proprietary performances do not function as righteous redistributions of power but instead as coextensive with the white supremacy he has enjoyed since infancy.

Two contextual differences produce the novel’s moral distinction between Tom and the hen thief. First, the novel portrays Tom as morally corrupt, even in comparison to the other slaveholders. He cannot sustain an empathetic disposition towards Roxy, even after he learns that she is his biological mother and, through the swap, his benefactor. When Roxy, now a freewoman, suggests that Tom can sell her as a slave to pay for his gambling debts, invoking the key sentimental question, “En does you know anything dat a mother won’t do for her chile?,” Tom not only accepts her offer but overlooks her terms, opting to sell her “down the river” instead of placing her on an upcountry farm for a year (126). Tom’s refusal to play the grateful son to Roxy’s sentimental mother marks a core depravity that scholars have long struggled to pinpoint as innately or culturally motivated.²⁰ The second reason that Tom’s claims to white property seem less righteous than Roxy’s or the hen thief’s is the inverse of the first: Twain cues us to imagine a familial connection between Judge Driscoll and Tom at the moment of the murder. Although the attack is in part a slave’s assertion of freedom, Tom imagines the judge not

as a slaveowner but as an “uncle” and a “benefactor” the moment before he stabs him. It is the juxtaposition of this benevolent kinship with the violent redistribution of power and wealth that identifies Tom’s thefts as wanton more than righteous. While Roxy’s parallel violation of the white patriarchal family and white property signals the depravity of racially oppressive systems, Tom’s thoughts signal allegiance to one of these institutions but his actions constitute the violation of the other. This mismatch, Tom’s self-conception in terms of the white patriarchal family during his assault on white property, confuses the novel’s moral terms: a potentially righteous assault on an owner is instead represented as a greed-based patricide of sorts.

Overall, Tom’s failure to imagine Roxy as a sentimental mother paired with his conception of his owner as kin signals both an “unauthorized” performance’s transformative power and its transgressive limitation, i.e. its ability to reinforce rather than disrupt “authorized” racial performances. For Roxy’s twenty-year performance *is* transformational: it remakes the white patriarchal family. It begets new kinships. Cindy Weinstein reads *Pudd’nhead Wilson* as a critique of the sentimental novel and argues that the story of “Roxy’s relationship with the child who thinks she’s his mother remains untold, because to tell it opens up the possibility that slavery might sustain loving relationships, a pro-slavery position” (15). She proposes instead that the novel “biologizes maternal sympathy in order to critique the biologism of race” (15). But this interpretation misses how Roxy’s performance does produce non-biological kinships. While Roxy imagines motherhood only in terms of biology and Twain omits her kinship with “Chambers” from the novel, the murder scene indicates that “Tom,” despite his role as the ungrateful son, is thinking about kinship in alternative terms, as socially and financially constructed. After all, Tom only ever calls Roxy “Ma” to her face, even after he learns of his parentage. He still thinks of her as “Roxy.” But he thinks of Judge Driscoll as “uncle” to the end.

If the point of neglecting Roxy's and Chamber's relationship is to avoid any kind of pro-slavery representation, Twain's attention to Judge Driscoll and Tom's relationship fails in that regard: what we see is the slavery apologist's fantasy of a paternalistic relationship between an owner and a slave, a myth of fatherly care that Vincent Woodard and Orlando Patterson argue served to obscure the owner's dependence on and consumption of slaves.²¹

Pudd'nhead Wilson not only chronicles the persuasive and redistributive power of unauthorized performances, but also recounts its limitations. Roxy's mistake is to imagine that she can regulate the effects of her unauthorized performances, that she can, for example, "play a slave" without circulating as property (126-7). But her "practicing" engenders transformations that are beyond her control and that extend rather than upend racial oppressions. The narrator recounts her failure to imagine the "natural result" of the switch:

the little counterfeit rift of separation between imitation-slave and imitation-master widened and widened, and became an abyss, a very real one – and one side of it stood Roxy, the dupe of her own deceptions, and on the other stood her child, no longer a usurper to her, but her accepted and recognized master. He was her darling, her master, and her deity all in one, and in her worship of him she forgot who she was and what he had been. (28)

Roxy's performance, even though its implications belie the prospect of discerning racial differences and organizing property law around those differences, proves no match for that system of racial oppressions that she lives in and that she has internalized. Just as Tom confuses owner and uncle at the moment of the murder, Roxy merges owner, son, and idol into one child, forgetting her leading performance in her more familiar role as slave. From the start, unauthorized performance falters before the racial and proprietary stability that authorized

performances enforce. Again, Stephen Best's insight in *The Fugitive's Properties* that some formal elements of slave law haunt late-nineteenth-century intellectual property law is instructive here. While obviously distinct in scale and atrocity, these legal systems are "two spheres eccentric to the law of real property and emphatic about property's extension into the fleeting and evanescent" that share the translation of formerly inalienable human characteristics into sellable commodities (16). This context links the novel's setting with its historical moment: Roxy's transgressively proprietary performance not only participates in slavery's thingification of humans, but also metaphorically in its more obscure and banal iteration in Jim Crow intellectual property law. Roxy's proprietary performance ultimately bolsters white supremacist fantasies, as the racially oppressive system can redirect "unauthorized" performances towards its own "authorized" ends.

The novel concludes with a farcical courtroom scene. When visual markers prove unreliable, a late nineteenth-century technology can be anachronistically used to redress Roxy's violation of white property. The much-ridiculed lawyer "Pudd'nhead" Wilson uses fingerprints to reveal what Twain's readers have known from that start: that "Tom" is Chambers and "Chambers" is Tom. As Michael Rogin points out, Wilson's investigative tool recalls the forefather of eugenics Francis Galton's interest in fingerprinting as a way to prove identity scientifically and enforce racial segregation. Wilson's "records" likewise indicate a desire to permanently fix identity in a way that is both impossible and effective (12). As Susan Gilman explains, "Wilson's classification is supposed to fix everyone's identity, but what it really does is make every supposedly white person potentially black," with the white residents' "craving to discover... reversed into the fear of exposure" ("Sure" 102). But the revelation that an "unauthorized" actor can successfully perform whiteness only very briefly obstructs the myth

that race is fixed and fixable. Although the prints cannot indicate racial essence (as Galton had hoped), in a slaveholding town structured by “authorized” performances of race, Pudd’nhead’s store of grease-prints can reinstate the segregation required in his time and Twain’s. Roxy’s long transgressive and transformative performance proves easy to reverse: “Tom” is sold down the river to settle his owner’s debts, while “Chambers” “found himself rich and free” (178). The situation may be a little “embarrassing,” but a “counterfeit” won’t undo the slave property system (28, 178). The reversed roles are quickly righted. With this conclusion, Twain presents one more proprietary performance that perpetuates the myth of racial essences and stable identities: after his leading role in the courtroom drama, Wilson is positioned to do more legal business in Dawson’s Landing than he ever has before.

III. Performing Kinship

While Roxy’s performance hides her kinship with her son-turned-master, in Chesnutt’s *The Marrow of Tradition*, a racial performance makes a previously unrecognizable kinship visible. The novel’s lynching plot, a presage to its culminating white supremacist massacre, starts with an absurdly convincing blackface performance. When the white aristocrat-degenerate Tom Delamere dances a cakewalk in blackface, his act is a renowned success: not only does he “sen[d] the Northern visitors into spasms of delight at the quaintness of the darky dialect and the darky wit” and win the cake “by an unanimous vote,” but he also inaugurates a scheme to expedite his inheritance by robbing his wealthy great-aunt while in his disguise (118). This plan for settling a slew of gambling debts works because Tom doesn’t simply hide his identity under a mask of burnt cork. He impersonates and frames a particular man, Sandy Campbell, his grandfather’s servant. Tom’s blackface performance transforms “Sandy” from a “model servant,

– faithful, docile, respectable, and self-respecting” into a “black scoundrel” in the eyes of the town’s white citizens (156, 157). The cakewalk reintroduces Wellington, NC to “Sandy,” the man that the townspeople will later cast as their villain, the person they nearly hang for allegedly burgling, raping, and murdering the town’s irritable matriarch Polly Ochiltree. In other words, by facilitating his thievery, Tom’s dance appropriates and transforms Sandy’s public identity to launch a convoluted property claim. Tom uses his performance to conceal one illegitimate kind of property acquisition (a white man’s theft from his great aunt) with a contrived, more scandalous one (a black man’s theft from a white woman).

But Tom’s persuasive performance as “Sandy” also indicates the two men’s unacknowledged kinship. Though never explicitly disclosed, Sandy and Tom’s incredible likeness, with faces so similar that a veneer of blackface makes the one indistinguishable from the other, parallels the novel’s central interracial kinship: half-sisters Janet Miller and Olivia Carteret resemble one another so closely that “anybody mought ‘low dey wuz twins, ef dey didn’ know better,” as Olivia’s servant and the narrator of the family history explains, and Chesnutt interweaves accounts of the two women’s shared father’s estate with the cakewalk and near-lynching scenes (110). Despite this parallel, the other characters never acknowledge Tom and Sandy’s kinship and most never recognize Tom as the cakewalker. That the Northern audience believes that they watched a “genuine negro cakewalk” should not surprise us (117). As Eric Lott shows in his analysis of blackface minstrelsy, white audiences assumed that blackface performances exhibited real black culture. He argues that “white people believed the counterfeit, often sympathetically ... as if the originals had somehow gotten lost” (20). For Tom’s Northern audience, familiar with both minstrelsy and the cakewalk, the blackface mask paradoxically

signals both authenticity and caricature,²² and the spectacle alleviates their misgivings about bankrolling Southern industries.²³

But what is notable is that the blackface mask dupes the Wellington residents who know both men. After discovering the murder of Mrs. Ochiltree, the white community “resolve[s] itself spontaneously into a committee of the whole to discover the perpetrator of this dastardly crime” and these amateur detectives question everyone who witnessed the cakewalker’s movements (154). Through their makeshift investigation, Chesnutt presents the testimony of presumably more reliable witnesses who nevertheless confidently identify Tom-as-Sandy as Sandy. Lee Ellis, a white journalist who prides himself on his objectivity, twice makes this mistake. When he sees Sandy and blackfaced Tom in close proximity, he does not immediately recognize Tom’s disguise, but instead observes that “the two were as much alike as twin brothers.”²⁴ Sandy’s fellow churchgoer Sister ‘Manda also fails to see Tom’s artifice, asserting that “She had recognized his face, his clothes, his voice, his walk - there was not shadow of a doubt that [the cakewalker] was Brother Sandy” (119). Finally, even Sandy himself, “three sheets to the wind,” sees the disguised Tom sneaking home after the murder and notices that “the figure ahead of him wore his best clothes and looked exactly like him” (146, 147). The inebriated Sandy responds by imitating his imitator, following him step for step, and naming the other figure his “ha’nt” (147). While Chesnutt does offer various justifications for this persistent misrecognition (a theory of absolute racial difference in Ellis’s case, inflexible moralism as Sister ‘Manda’s motivation, and drunkenness for Sandy), these excuses obscure the most obvious reason that the men are indistinguishable: that Sandy and Tom are related. If we interpret Tom’s pre-emptive theft of the family money in light of this kinship, we can see that the pair’s resemblance identifies Sandy as a potential heir to the fortune he did not steal and Tom’s theft as an encore of previous

disinheritances. Through the failure of the investigative committee to recognize this kinship and the history of rape and dispossession it intimates, Chesnutt not only highlights the white citizens' willful oversight of miscegenation, but also reveals their faux detective work as another spectacle for white audiences, an amusing first act that must end (and therefore must start) with the conclusion of black guilt in order to set up the grand finale, the public lynching. John Mac Kilgore observes that for the white Wellingtonians the promised lynching is a "cultural commodity [that] celebrates official American values – it makes money, encourages tourism, and entertains the entire family" (65). In this perspective, the foregoing "investigation" is therefore serious business that both justifies extralegal mob rule with a pretense of due process and facilitates this wholesome show (65). But by framing this detective sequence in the context of other Jim Crow era performance styles, Chesnutt spotlights the production of whiteness and the "well-choreographed spectacle[s]" that ensure white supremacist rule.²⁵

Although literary critics have likewise overlooked Sandy and Tom's implied consanguinity in Chesnutt's novel, the kinship clues in the cakewalk and its aftermath establish the Ohio lawyer's gloss on performance rights.²⁶ The 1897 addition to copyright law made performance rights enforceable for the first time, a change that I argue complemented contemporary legal and social developments to fix racial and authorial identity. Performance rights extended the author/owner's proprietary will to live enactments of their copyrighted texts and the 1856 and 1897 laws framed live performance as stable and controllable, easily classified into authorized and unauthorized versions. In short, strengthened performance rights were a distinctly Jim Crow era invention. But even more than in *Pudd'nhead Wilson*, *The Marrow of Tradition* clarifies that while performance rights aimed to secure racial and authorial identity, in practice this addition to intellectual property law could not be used to police the color line, and not only because of legal

limits on copyright's expanse.²⁷ Recall the projection of linear, patriarchal kinship in the performance rights laws: the ability of an "heir" to execute his forefather's proprietary will works its way into intellectual property law. Inheritance reinforces parental authority and legal kinship. But in Chesnutt's novel a performance can hint at alternative kinships. Tom's exploitation of Sandy's public identity reveals that his presumed rights to his great-aunt Polly Ochiltree's and to his grandfather John Delamere's estates are, like Olivia Carteret's inheritance of her father's wealth, dubious and partial. After Olivia burns the marriage certificate that identifies her half-sister Julia as equally "legitimate," equally able to inherit their father's land and wealth, the certificate's "ghost ... haunted her" (207). This discomfort isn't simply guilt, but also a nascent recognition that her claim to the family property isn't absolute or unquestionable. Likewise, Tom's cakewalk performance facilitates a property claim, but it also makes that claim debatable. Grace Hale in her study of Jim Crow spectacle culture and whiteness argues that the fortification of white identity depended on the creation of the color line and white people's exclusive ability to cross it. She demonstrates that "Containing the mobility of others allowed whites to put on blackface, to play with and project darkness, to let whiteness float free. These transgressions characterized and broadened modern whiteness, increasing its invisibility and its power" (8). But part of Chesnutt's intervention in this performative culture is to link this mobility with a newly visible kinship and the fallibility of white property claims. The cakewalk identifies another possible heir. It hints at an alternate inheritance.

To be sure, the representation of race, kinship, and spectacle in *The Marrow of Tradition* is justly more alarming than redemptive. In this realist but spectacle-laden novel, off-stage "performances" of white supremacy like Sandy's near-hanging and a white raid on African American people and businesses work to fortify the color line. Staged performance, on the other

hand, affirms cross-racial kinship and underscores the nation's multi-racial cultural legacy, even as the novel tracks the interfamilial thefts that make this performance successful. It is this violence, based largely on the Wilmington, NC massacre of 1898, that led William Dean Howells, the well-known critic and Chesnutt's former advocate, to condemn the novel's "bitter, bitter" representation of race relations in the U.S (456). More particularly, Howells proposes that Chesnutt "is of that race which has ... to get rid of the cakewalk, if it will not suffer from a smile far more blighting than any frown" (456). For Howells, the cakewalk is a signifier of unrefined flamboyance, and therefore he believes that Chesnutt should be especially careful to write "without flourish," without sensationalism, and presumably without the cakewalk scene in *The Marrow of Tradition* (456). But it is Chesnutt's inclusion of the cakewalk, that parodic, many-authored, stolen-then-reclaimed dance form, that contextualizes the closest thing to hope in this novel: the prospect of recognized kinship counteracting America's racial violence, the sentimental vision that the conclusion imagines, though with serious reservations and alongside its condemnation of the national history of racialized dispossessions.

Performance cannot remedy the problems with property that *The Marrow of Tradition* chronicles, though John Delamere's last minute revision of his will inches towards justice. After denying the accusations against Sandy and finding "the wrapper of a package of burnt cork" in Tom's room, Mr. Delamere changes his will to leave Sandy three thousand dollars and the remainder to the town's black hospital and training school (180). "Tom Delamere was not mentioned in the will" (187). While Tom's performance facilitates his theft, its tools here undermine his alibi and risk his inheritance. Mr. Delamere dies just two days later, but his final will is ignored, a "suppression ... justified by the usual race argument": "Mr. Delamere's property belonged of right to the white race, and by the higher law should remain in the

possession of white people. Loyalty to one's race was a more sacred principle than deference to a weak old man's whims" (188). Mr. Delamere's personal attempt to rectify his grandson's theft of Sandy's identity flounders in the face of the white gentlemanliness he espoused through his life and the proprietary performance of whiteness that he embodied. Chesnutt portrays John Delamere as the most benevolent white person in Wellington, the man with good intentions working within a corrupt system, but the neglect of his final will highlights the paucity of his efforts, of his limited recognition of the thefts his slave turned servant has suffered.

But in a world where paper is untrustworthy – where wills are liable to be burned and buried, letters read and then ignored by unintended recipients, newspaper articles used as fodder for violence – live performance paradoxically offers a kind of permanence that other, more “fixed” forms cannot match. Print circulation in *The Marrow of Tradition* is dangerous and unreliable. A set of papers tossed carelessly into the fire eradicates all historical record of a marriage (203-4). A newspaper article, plucked from its context and republished months later, incites a riot (196). In their analyses of Chesnutt's novel, Gordon Fraser and Dolen Perkins chronicle the unreliability of print publication, and both demonstrate how *The Marrow of Tradition* responds to and imaginatively amends this potentially dangerous kind of circulation. But neither considers how performance works to circulate information in Wellington. Public performance, or what Jane Gaines calls the “activation” of printed materials, is also prone to interference and misinterpretation, and the Wellingtonians comprise a particularly unperceptive audience (120). But in comparison to print forms, Chesnutt demonstrates that performance can also serve as a relatively reliable vehicle for exhibiting kinship and registering histories of disinheritances. While turn of the twentieth-century intellectual property law propertized formerly inalienable human qualities (like the face, voice, and performance style that Sister

‘Manda misconstrues as Sandy’s), Chesnutt demonstrates that these newly “thingified” features nevertheless point to social and familial relationships that belie the nation’s property system. In the cakewalk scene, intellectual property law’s protection of individual authors and their direct heirs’ property claims meets Chesnutt’s criticism of property in selective kinship. The cakewalk scene presents an alternative version of the imprint logic that founds U.S. copyright law: Tom’s performance exhibits a previously undetectable facet of his unique self, the imprint of an unacknowledged interracial kinship. In other words, his proprietary performance does reveal something of his authorial essence, but it complicates rather than consolidates identity.

With the cakewalk scene, Chesnutt also intervenes in the genre that Susan Gillman has named the “American race melodrama” by making the white body the marker of racial mixing. Sandy and Tom’s apparent kinship rewrites the Delamere family’s official history. In that story, John Delamere is the great reuniter. As Sandy recollects to his employer before his threatened lynching, “Mars John ... w’en my daddy, ‘way back yander befo’ de wah, wuz about ter be sol’ away f’om his wife an’ child’en, you bought him, an’ kep’ us all on yo’ place tergether, did n’t you, suh?” (170). Here, Mr. Delamere is an unrelated benefactor, and his purchase of Sandy’s father is construed as a gift. But considered in light of Tom and Sandy’s likeness, this history is incomplete. One alternative stands out: that Mr. Delamere is Sandy’s paternal grandfather, and his purchase of Sandy’s father is a near-acknowledgement of his paternity. But by making Tom’s face the one that signals the family’s interracial history and completely excising Tom’s parents from the text, Chesnutt focuses attention on the white grandson’s mysterious parentage and refuses to make the mixed-race body the evidence of miscegenation (171). In her reading of “Désirée’s Baby,” Alys Eve Weinbaum cautions against following the clues to race too closely and interpreting the story’s conclusion as evidence that the husband, not the wife, is responsible

for the baby's blackness. Both parents could be mixed-race, Weinbaum points out, and searching for the "source" of miscegenation reinforces the national myth that black and white can be easily segregated (16). This interpretation can be applied to the Delamere family history as well. With Sandy and Tom's kinship, Chesnutt does not specify an instance of mixed-race marriage or miscegenation that can be disregarded, with all evidence burned, as Janet Miller's parents' relationship is. Instead, Chesnutt offers more abstract evidence of the nation's multi-racial history. That is, he refuses to make the mixed-race body the site of racial detection and he refuses to print the claim of miscegenation that he hints at in the performance scene. Both moves counteract the national myths about racial essence and the separability of black and white, the assumptions that undergird Jim Crow performance rights.

The novel ends when Olivia Carteret, her son sick with croup, arrives at her half-sister Janet Miller's doorstep to beg Janet's husband Dr. William Miller for medical care. With her own child dead, struck by a stray bullet in the raid that Olivia's husband instigated, Janet interprets Olivia's presence and offer of half their father's property as insults. The family recognition that Janet has craved is now "tainted with fraud and crime and blood" (246). And yet Janet allows her husband to care for Olivia's child. Janet admonishes her sister, "that you may know that a woman may be foully wronged, and yet may have a heart to feel, even for one who has injured her, you may have your child's life, if my husband can save it!" (246). Janet gifts her half-sister the continuation of her family line and she indirectly gifts her nephew the to-be-inherited family property that Olivia has, until this moment, refused her. Critics have used this scene to read Janet as the novel's unsung heroine, with her "domestic feminism" a more merciful ethics than the progressivist professionalism that the many doctors in Wellington embrace, or with her willingness to see Olivia's child live as a symbol of Chesnutt's "future-oriented 'politics

of fusion.”²⁸ This scene does rewrite the “romance of reunion” between Northern men and Southern women that Nina Silber shows was key to postbellum fantasies of national unity. Instead, *The Marrow of Tradition* suggests two Southern sisters, black and white, as a kinship metaphor for a healed post-Reconstruction nation.

But while Janet’s refusal of the family property bolsters her sentimental virtue, that selfless goodness cannot redress the property thefts that recur throughout *The Marrow of Tradition*. The “ha’nt” of Sandy’s self that he sees in Tom and the “haunt” of the burned marriage certificate that torments Olivia together mark Janet’s forgiveness as insufficient as a model of reconciliation: specters of past disinheritances will arise to bedevil future Americans (147, 207). Janet’s goodness does nothing to redistribute wealth or enact reparations. Rather, her refusal of her father’s money and the promise of the Cartaret son’s survival combine to ensure that, as John Delamere’s lawyer proclaims is just, white property “should remain in the possession of white people” (188). Identifying the constraints on legal “corrective justice,” Trinyan Mariano observes that Olivia’s sense of guilt is “a poor substitute for reparations” and I add that Janet’s generosity is likewise limited (563). In Sandy’s and Tom’s case, the cakewalk scene signals the kinship that makes national reconciliation imaginable. But as a proprietary performance, Tom’s cakewalk is also a theft that reenacts past thefts, the latest addition to a compounded debt that the sentimental conclusion cannot settle. While in copyright law, performance rights worked as part of a broader campaign to fix racial and authorial identity, in *The Marrow of Tradition* proprietary performances both unsettle identity and reanimate the call for redistributed national property.

IV. Conclusion: The Jim Crow Faux Whodunit

Pudd'nhead Wilson and *The Marrow of Tradition* are faux whodunits. They trace the characters' detection of a murderer, though the readers know from the start who has committed the crime. Twain's and Chesnutt's readers witness farcical detective sequences in which the criminal's disguise thoroughly fools his fellow characters. Unlike the classic whodunit, in which readers can participate in the detective process, identifying clues and imagining plots, these faux whodunit novels are steeped in dramatic irony, with readers aware of the criminal's machinations and the detecting characters' faults from the start. And unlike the twentieth-century "inverted" detective story, in which "the focus is explaining how, rather than *why*, a crime was committed," readers of Twain's and Chesnutt's novels not only know exactly how *and* why the crime was committed, but also why bands of detectives miss the clues and misplace blame.²⁹ These novels do not draw their dramatic energy from the mystery and suspense of the detective story at all. Instead, they investigate how performances – from staged impersonations to offstage, seemingly banal disguises – can thwart detection and successfully remake public identity. The faux whodunit provides a frame for emphasizing the persuasively transformative power of performance. While the legal protection of performance rights coordinated with other Jim Crow era developments to make identity stable and manageable, performance itself makes identity complicated, social, and potentially metamorphic.

But these novels also turn an anthropological eye toward these detective sequences, placing them within the context of other Jim Crow era spectacles, part of a focus on whiteness that Stephen Knadler argues requires the white reader to "ponder the unnaturalness of their race" (429). The detective scenes can function as parades of white honor, as in *The Marrow of Tradition* when the white Wellingtonians set up an independent task force to catch the murderer,

despite their foregone conclusion of black guilt (154). Or detection might exhibit white technological prowess, as Pudd'nhead Wilson's reestablishment of the color line through fingerprint evidence does. Evidence is brandished or buried, villains selected, ridiculed, and then redeemed. "Detection" forms a kind of entertainment in and of itself, at once a performance of rationality and a "sinful diversion" used to reinforce the nation's social and proprietary segregation (*Marrow* 119). While individual performances might transgress the color line to establish or reveal interracial kinships, these investigative spectacles reinforce the color line. Together Twain's and Chesnutt's novels show that performance rights, a Jim Crow innovation paradoxically unable to police the color line, operate at the intersection of these two forces: the transgressive and the conservative, the metamorphic and the stabilizing.

If *Pudd'nhead Wilson* and *The Marrow of Tradition* are twin narratives infatuated with twin-like resemblances and transgressions of the color line, how are their authors related? Theorists of literary history and influence including Ralph Ellison and Harold Bloom describe lines of influential descent, forbearers chosen and unchosen, but always predecessors whose works are imbibed, revised, and then projected into a new literary moment.³⁰ While it's possible that Chesnutt chose to rewrite Twain's novel, I wonder if horizontal family metaphors can describe their literary kinship. For if the novels-as-twins metaphor is apt, then Twain and Chesnutt are less like father and son than they are estranged co-parents, each exploring the connections between performance property and identity in a segregated United States, but Twain focused on off-stage, "unauthorized" performances and Chesnutt oriented toward on-stage, "authorized" ones. Each creates with similar material but through different perspectives and they are a pair consanguine through their akin creations.

Chapter Three

Intellectual Property Utopias of the Early Twentieth Century

In the early twentieth century, American authors enjoyed the intellectual property system that many of their literary predecessors had craved. The lobbying efforts of Mark Twain, Harriet Beecher Stowe, Washington Irving, Louisa May Alcott, Frederick Douglass, and Edgar Allan Poe, among many others, had paid off. The 1891 U.S. International Copyright Act extended protections to foreign-created works and facilitated reciprocal agreements with select nations, securing greater financial profits and more authorial control for American and non-American creators alike. In addition, the 1909 Copyright Act allowed authors to own their copyrights for twenty-eight years, with the option of one twenty-eight year renewal, an extension that allowed authors to profit by their creations for, at minimum, most of their remaining lifetimes. Many American readers and publishers had campaigned against these enlargements of copyright law, claiming that the inexpensive availability of literature promoted American democracy. But these amendments, combined with broad changes to American citizenship like the fourteenth amendment and the end of coverture laws, can be interpreted as instituting an alternative version of democracy in American literature: by 1910, more Americans could pursue authorship as a viable and profitable career than ever before.

Yet despite these expanded benefits, two early-twentieth-century American authors penned novels that imaginatively revise U.S. intellectual property law. Building from the plethora of literary utopias produced at the turn of the century, Charlotte Perkins Gilman's *Herland* (1915) and Willa Cather's *The Professor's House* (1925) propose new standards for

intellectual property and they envision the national social networks that would accompany these reinvigorated approaches to authorship, creativity, and property. More particularly, they employ the renunciation of originality as a wellspring for national fantasy. Cather and Gilman focus on author-figure characters to project a United States where intellectual property encourages intimacy, not competitive individuality. They propose alternatives to uniqueness and individual property and their novels promise that rethinking intellectual property is a tool for reimagining the terms of U.S. national belonging. Different concerns motivate these two intellectual property utopias. For Gilman, women's continued economic dependence on men and, more personally, her inability to work as an author without financial support from her husband prompt her vision of a socialist nation of all women creators. For Cather's titular character Professor Godfrey St. Peter, the increasing corporatization of authorship and his dissatisfaction with the domestic life that his authorship funds drive his fantasy of a queer intellectual community outside his university. But together, these utopias frame the U.S. intellectual property system, with its focus on originality and the creation of individual property, as detrimental to the national community.

For members of the Internet age, the utopian potential of an intellectual property revolution will not be surprising. Because intellectual property links the materiality of publication, profit, and inheritance to the imaginative acts of creation and inspiration, amendments to its present form can yield far-reaching and various effects. Any system that regulates cultural production must necessarily produce theories of value and social relations, and current open-source and revised copyright initiatives explicitly aim to reinvigorate the commons and democratic politics.¹ What may be disconcerting for twenty-first-century thinkers is that Cather's and Gilman's utopian thought operates within rather than against the nation form. The

more recent attempts to rethink intellectual property law focus on developing global systems for communication and innovation. Aiming to circumvent maximalist copyright protections and the resulting depletion of the public domain, these movements mean to bypass the limits to creativity that federal laws impose. These anti-national movements make particular sense in light of U.S. corporate lobbying for stronger international protections and U.S. economic interest in intellectual property dependent fields like software production and pharmaceuticals. But these factors should also provoke the study of the nation form in terms of intellectual property, and their mutual dependence on the material effects of imaginative acts. Together, *Herland* and *The Professor's House* propose that changes to intellectual property law could remake the nation itself.

Influential theories of the nation tend to emphasize linear time, the nuclear family, and straight lines of descent. Benedict Anderson emphasizes the “empty time” epitomized by clocks, calendars, and serial newspapers in his analysis of national communities (24-25), and Wai Chee Dimock cites the dependence on a short historical consciousness and strict geographic boundaries as some of the limitations inherent in using the nation as an interpretive category (1-6). In addition, as George Lakoff indicates, our language is replete with the metaphor of the nation as a kind of family, “with the government, or head of state representing the government, seen as an older male authority figure, typically a father, ” a notion that Lakoff argues inflects liberal and conservative political positions alike (153). In this conceptualization, the reproduction of the nation requires the reproduction of patriarchal authority, and the nuclear family is the nation in figurative miniature. Overall, despite scholarship that considers American *culture* in terms of dissent, multiculturalism, colonialism, and globalism,² discussion of the nation itself often focuses on linearity and the

heterosexual, reproductive family. Consider, for example, Etienne Balibar's persuasive interpretation of nation building in "The Nation Form: History and Ideology." Balibar asserts that nationalism demands continuity, or at least a narrative of continuity. He imagines the nation as a vertical construction: nationalism requires the retroactive selection of an origin, the anticipation of a collective destiny, and a myth that seamlessly joins these imagined endpoints. Historical contingency must be forgotten, he claims, and alternative futures foreclosed. Disparate events and alternative forms of belonging must be fit into a narrative he names "the nationalist myth of linear destiny" (88). Chaos and contingency must narrow to a single narrative, a straight line of national ascension.

But, of course, the narrative of national ascension that Balibar describes is only seemingly seamless. In her phenomenological study of queerness, Sarah Ahmed emphasizes that just because a narrative appears to be a straight line does not mean we should trust that continuity. Balibar assumes the false naturalization of "the national myth of linear destiny," but Ahmed gives us a name for the interpretive practices that facilitate that narrative smoothing: "straightening devices" (96). If heterosexuality is imagined as a "straight line" that reinforces a commitment "toward the reproduction of the family line," then queer intimacies stand as misdirections, aberrations to be brought back in line (71,74). Straightening devices accomplish that realignment by interpretively converting non-heterosexual intimacy, e.g. a lesbian couple, into a heterosexual type: of Ahmed's partner a neighbor asks, "Is that your sister or your husband?" (95). While Ahmed figures these devices in terms of sexual and familial intimacy, it is also possible to think about straightening devices in terms of the nationalist narratives that Balibar examines. At a national level, straightening devices are those narratives and interpretive strategies that

present the nation as a linear-progressive construction, and especially as a community symbolically based in vertical kinship and a genealogical-nuclear family model.

Theories of national linearity and patriarchal authority are useful for describing and criticizing a history of property-centric American nationalism. Expanded U.S. intellectual property law – with its preference for individual authors with discernible lines of descent and its reduction of the contextual, contingent, and collaborative circumstances that make authorship possible into individual property – has bolstered this expression of American nationalism. In other words, it functions as a national straightening device. But through the imaginative revision of intellectual property, *Herland* and *The Professors House* present the queer, interracial, and even transhistorical kinships that make authorship possible. As a result, they figure homosocial and queer communities as the centerpieces of their fictional nation communities, not as misdirections or aberrations that need to be realigned. In short, these two narratives are national queering devices.

Herland is a classic example of the utopian form. When three explorers land, through semi-mysterious means, in an unknown but obviously sophisticated community, they first balk at the citizens' foreign ways, but eventually recognize the Herland government, ideals, and people as superior to those of the United States. *Herland* exemplifies Gilman's political philosophy, including her white supremacist theory of "civilization," her revised Darwinism, and her favor for eugenic reproduction. That is, although the novel criticizes many American traditions and systems, it leaves intact the racism endemic to the history of American nationalism. Cather revises the utopian form in *The Professor's House*, and with her framed narrative, she is able to identify the discontent that motivates St. Peter's utopian dreams, the benefits and intimacies that an alternative approach to authorship would enable,

and the problems that its inset utopia cannot solve. As a result, it simultaneously offers a nurturing queer community as a model of American nationalism and critiques intellectual property, in both U.S. history and in St. Peter's fantasy, as a tool of settler colonialism. Considered together, these novels demonstrate the efficacy of utopian thinking for proposing changes to intellectual property as well as the flaws inherent in the form.

I. Rethinking Originality

The two main philosophical foundations of U.S. intellectual property law project two sometimes overlapping, sometimes distinct theories of originality. The Romantic idea that authors are unique individuals who imprint parts of their personality onto their creations invokes what I call robust originality, an indication of innovation and quality. The idea of creative individuality does not accord with all Romantic compositional methods, all uses of the discourse of genius, and all aspects of modern copyright.³ However, the myths of individual genius and robust originality still pervade intellectual property discourse. In his article "On the Author Effect: Contemporary Copyright and Collective Creativity," legal scholar Peter Jaszi demonstrates the flexible utility of the author-genius idea to serve various and sometimes surprising interests, as when it is used to justify copyright in computer software and work-for-hire doctrine.⁴ He shows that the idea of "Romantic 'authorship' is alive and well" in American legal culture throughout the twentieth century, even though its assumptions can limit the legal engagement with "collective, corporate, and collaborative" writing practices (38). In other words, while *ex nihilo*, totally individual innovation accounts for very few (if any) acts of creation, that concept still shapes the way we distribute property in creative works.

Lockean possessive individualism is the second foundation for U.S. intellectual property law, and it introduces a more modest kind of originality. John Locke's influential theory proposes that labor justifies possession. He argues, "every Man has a *Property* in his own *Person*" and in the goods he has "mixed his *Labour* with" to the exclusion of all others (287, 288, emphasis original). Eighteenth-century advocates of proprietary authorship adapted this theory to designate the "sweat of the brain" as a kind of labor that validates ownership and nineteenth-century copyright proponents likewise condemned weak intellectual property protections as thefts of labor.⁵ This theory informs the minimum legal requirement for producing a work capable of being copyrighted in the United States: the author or authors must employ some modicum of creative labor, as demonstrated by not exactly copying any other work. This application of Locke's theory assumes that copying does not require significant creative labor, an idea that William Wells Brown's and others' compositional practices disprove, but the law uses this distinction between verbatim copying and labor to distinguish works that are claimable as intellectual property from works that are too derivative, imitative, or blasé to count as protectable, marketable goods. Unlike robust originality, practical originality implies nothing about quality, novelty, or interest. It only signals the exertion of some labor recognizable by the courts.

Robust originality and practical originality share one assumption in common: that the author is an identifiable individual. Their combination in U.S. intellectual property law is imperfect, and tension between these two versions of originality produces some improbable logic. Because Anglo-American intellectual property law regulates authorship according to practical originality but implicitly relies upon and bolsters robust originality, the individual author occupies a paradoxical position. Jane Gaines's observation that "All works of

authorship are original ... [b]ecause they originate with authors” ventriloquizes the tautology that undergirds proprietary authorship (63). Because U.S. intellectual property law relies simultaneously on the Lockean premise that the individual owns property in the self and the Romantic notion that an artwork is imprinted with the particular characteristics of its creator, the deceptively simple belief that the author is an individual confirms both that the author owns the artwork and that the artwork is unique. Gaines summarizes, “All works originating from an individual are individual works of authorship,” and are therefore original, and are therefore owned by the author as intellectual property (63). Paul Saint Amour analyzes the collective vanity that this circular logic enables and discloses the irony inherent when we employ practical originality to sustain robust originality. Every author is original. Everyone is a genius, so long as they don’t copy someone else. “[E]ach one of us is a Keats” (Saint Amour 8). In sum, copyright acts simultaneously as a “great cultural leveler” and as the contemporary abettor for the cult of genius (Gaines 64). But originality, in all forms, is a tortuous fiction, and Charlotte Perkins Gilman and Willa Cather show that when the contours of the single author are proven malleable, Lockean and Romantic originalities start to fracture and the social possibilities for an intellectual property culture multiply.

II. Her Authorship, Their Property

For Charlotte Perkins Gilman, the logic of lines is not simply limited, unable to account for the labyrinthine forms that national kinships might assume. According to this early feminist writer, an overreliance on linear thinking is the sign of a degenerate mind, of a defect in the natural order of human prosperity. At the start of her first novel *What Diantha Did* (1909-1910), Gilman contrasts her ambitious heroine with a group of women whose

dependence on patrilineal society signals their abasement. The Warden women cannot think or act autonomously, in part because they are infatuated with the family lines that bind them to each other and to an aristocratic past. Gilman writes,

The mother, a poetic soul, had named [her daughters] musically and with dulcet rhymes : Madeline and Adeline were the two eldest, Coraline and Doraline the two youngest. It had not occurred to [Mrs. Warden] until too late that those melodious terminations made it impossible to call one daughter without calling two ; and that “Lina” called them all. (4)

Literally ending each daughter’s name with a “line,” Gilman suggests that the pressure to align with gender expectations not only organizes the Wardens’ spatial and sexual orientations, as Sarah Ahmed argues, but moreover that linear logic dictates the women’s fates. No matter their unique interests or capabilities, the women’s narratives promise to end the same way: perpetuating the family line (though not the family name) that their parents have bestowed upon them.⁶ The prophecy of their names proves three-quarters true, and at the novel’s conclusion, only Doraline shocks her family by “going over to Diantha’s side” to work as an accountant and manager (244). At her novel’s outset, Gilman’s use of these linear names achieves two effects. First, she contrasts these characters with her protagonist Diantha, named for the dianthus flower, to refute pseudo-biological defenses of gender difference. While Diantha exhibits what Gilman considered to be natural human traits – prudence, public-mindedness, and aspiration – the Warden women betray the pernicious effects of the patriarchal preoccupation with women’s sex function. Extravagant, proud, and financially reliant upon their brother, these women do not work for their community and instead squander their potential on useless crafts. Drawing on reformer-Darwinist Lester F. Ward’s distinction between women’s essential superiority over

men and their presently degraded status, Gilman thus characterizes the Warden women as unnatural aberrations from human progress precisely because their behavior corresponds with contemporary gender expectations. Second, Gilman uses these linear monikers to introduce the limits imposed on women's autonomy in a patrilineal society. She seems to ask, how could Lina, Lina, Lina, or Lina act or create independently if even their mother can't distinguish them?

With her utopian novel *Herland* (1915), Gilman remedies both problems at a national level. In her imagined nation of only women and girls, the elimination of patrilineal logic restores women's natural ascendancy and consecrates their autonomy. The novel chronicles three American men's scientific expedition and their entrance into Herland, a country hidden in the mountains in an undisclosed and remote location. Over the course of the novel, the male explorers learn the Herlander customs, adopt their language, and fall in love with three of their citizens. Through the interactions between outsiders and experts, a hallmark of the utopian form, Gilman discloses the systems, technologies, and personalities that she portrays as integral to the creation of an equitable and harmonious national community. In particular, through parthenogenesis, the asexual reproduction of unfertilized embryos, these women have rendered men unnecessary. In turn, they have developed a communitarian ideal of maternal management, homosocial national kinship, and what the narrator describes as an astoundingly civilized nation.

Although *Herland* is not generally interpreted as a representation of authorship, the Herlanders have inaugurated an alternative system of intellectual property, one able to revere the individual creator in part through the support of community childcare and nation-wide biological kinship. Consider a conversation between the intruders and the Herlanders about naming. "No surnames at all then?" demands Terry O. Nicholson, the most macho of the male intruders into Herland. "No family name?" (75). The suggestion confuses Herland's women in its apparent

superfluity, as do most of the men's questions. Two Herland mothers defend their use of unique given names in lieu of family names by clarifying the differences between children and works of authorship. Somel explains that they are proud to sign their names to their works, and "not only on books and statues ... You will find little names on the houses, on the furniture, on the dishes sometimes." Then why not "sign" the children with surnames? "Because the finished product is not a private one," Moadine asserts (76). Despite her characters' communitarian values – their concerted childcare, land use, and governance – Gilman uses this description of individual authorship to assert each Herlander's autonomy. Though enjoyed by many, aesthetic works in Herland are authored by identifiable individuals. In this nation almost all work is communal, and yet authorship emerges as an exceptionally individual endeavor. In Herland, Gilman preserves the single origin of intellectual property, as manifest in a woman's single name.

Gilman's utopian nation is organized around this apparent contradiction: the novel repeatedly affirms that the Herlanders are autonomous women, yet the citizens think and act in perfect conformity. Each Herland woman is self-determined and prolific, but she is also "moved by precisely the same feelings, to same end" as her fellow Herlanders (22). She bears a unique name, selects her own profession, and makes personal contributions to the nation's prosperity. But despite those independent acts, she is, first and foremost, a sister, bound to her fellow citizens by biological kinship and a "common impulse" (42). A slew of scholars have identified and offered explanations for this seeming inconsistency. Jennifer Hudak traces the individual's peculiar status in the novel to Gilman's belief that civilization was interdependent with evolution. Though evolutionary theorists studied lines of descent, Gilman's revised Darwinism was circular and tautological. She believed that a civilized nation would promote evolutionary progress because each citizen would recognize and pursue the correct path towards human

perfection, and that intensified evolution would thus reinforce the nation's civility. Civilization assists evolution assists civilization, *ad infinitum*, and through self-discipline, the individual would ensure that cycle's perpetuation. As Hudak explains, in Gilman's view, "humanity would progress to the extent that each individual would agree on the best course for society, and that they would do their best to follow that course," and consequently each person would be a civilized individual to the extent that they operate in agreement with all others (457). Kristin Carter-Sanborn makes a complementary point when she notes that Gilman presents individual will and the "force of nature" as indistinguishable in a properly advanced society (20). Accordingly, in Gilman's revised Darwinism the Herland women's autonomous conformity presents not a contradiction but rather proof of their shared nature, their shared civilization.

By addressing Gilman's concept of civilization, Hudak and Carter-Sanborn, among others, highlight the intersection of Gilman's feminism and the white supremacist logic that informs her utopian writing. Gilman's theory of civilization is a complicated and exclusive one. As Gail Bederman details, Gilman rejected the popular belief that human progress required extreme *sex*-distinction, that more civilized societies enabled and required the assignment of sex-specific tasks and roles. Instead, she asserted that the ideal human civilization necessitated acute *race*-distinction and, among Anglo-Saxons, the cooperation of men and women. To Gilman, white men's disapproval of white women's non-domestic work thus stymied their mutual racial development. "Productive work, outside the home, was part of the cosmic, divinely ordained process of keeping the white race moving ever onward, toward a perfect civilization," while the separation of men's and women's domains left an unnatural vestige of primitivism within the white American home (Bederman 128). In this context, Gilman's novel acts both as a didactic call for white women to recognize and act on their evolutionary duty and as a fantasy of racial

purity. The Herlanders are explicitly labeled “Aryan,” and their massacre of the nation’s enslaved population 2000 years before the narrative’s start can be read as this Jim Crow era author’s wish for a revised national origin story (54). If *Herland* seemed to her readers an improvement on the contemporary United States, it is partly because Gilman relegates racial difference to the Herlanders’ primitive past, the prequel to their utopian civilization.

Recent critical interventions link Gilman’s white supremacy to her feminism, and reframe *Herland* as a nativist and racist vision for a modified United States rather than an egalitarian or universalist promotion of women’s autonomy.⁷ But these interpretations do not account for the particular significance of authorship and nationalized property within this utopia. If read as an intellectual property utopia as well as a feminist one, two of *Herland*’s central tenets – the promotion of an Anglo-Saxon civilization and the development of women’s autonomy, especially of women’s authorship – appear mutually reinforcing. *Herland* responds to U.S. property law and the limits imposed on women’s authorship in the early twentieth century to propose an alternative organization of creativity and materiality, individual authorship and national property. As a result, the novel imagines a nation that can safeguard women’s autonomy and authorship. But by negative example, *Herland* implicitly suggests that if uncivilized women enjoyed this autonomy, their primitive ideas would spell disaster for the nation, and therefore authorship must be regulated according to race. *Herland* and “The Yellow Wallpaper” (1892) have long been central to studies of women’s authorship and its limits.⁸ Further attention to Gilman’s revision of intellectual property – her representation of an amended relationship between creation, profit, and nationhood – demonstrates how her notion of idealized intellectual property justifies the novel’s eugenic nationalism.

Autonomous conformity, the novel's abiding paradox, is central to the formation of this intellectual property utopia. The Herland women's authorship is made possible by a surprising partition: the separation of individuality and originality. Disputing these two concepts' apparent reciprocity, Gilman reformulates the parameters of the author, and not only by assuming a female creator. She also reconstructs authorship by dismantling the Lockean and Romantic theories of individuality that establish originality as a legal and aesthetic standard in the United States. Instead, *Herland* proposes a theory of individuality with symbiosis at its core. What Somel's and Moadine's single names denote, then, is not the author-subject instated in U.S. rights discourse, but instead a sister-author, an author whose national kinship makes possible, motivates, and rewards her creation. This version of individuality renders originality both impossible and undesirable, but that loss is not without its recompense within Gilman's white nationalism: the Herlanders trade originality for a single national origin, for a "pure stock," and for the promise of a perfectible national population (122). For Gilman, unoriginal individuality would enable a body politic so alike, so congenial, so uniformly good that tracing family lines would be futile. Every Herlander *can* trace her "exact line of descent" to the nation's shared first mother, but, as one woman asks, "Why should she?" (75). In Herland, vertical kinship (the patrilineal descent that the male explorers in *Herland* and the Warden women in *What Diantha Did* similarly revere) is replaced by homosocial national sisterhood.

Though her triple name could not rival the simplicity of her characters' one-word signatures, Gilman attempted to revitalize her own authorship with her magazine *The Forerunner* (1909-1916). While the political potential of unoriginality may not have been on her radar yet, the limitations imposed on women's authorship in the early-twentieth-century United States certainly were. Unable to find a publisher for her increasingly radical writings, but

determined to profess her version of utopia, “to voice the strong assurance of better living, here, now, in our hands to make,” Gilman turned to self-publication in 1909 (“Purpose” 32).

Emblazoned in the first issue with the title “The Forerunner by Charlotte Perkins Gilman, Owner and Publisher” and in later issues with the expanded byline “Written, Edited, Owned, and Published by Charlotte Perkins Gilman,” the monthly magazine proclaimed the possibility of individual authorship and, more specifically, the tenacity of one woman’s conception of a better United States.⁹ The magnitude and self-referentiality of this project framed *The Forerunner* as a single person’s great work: Gilman wrote more than 36,000 words per year for the magazine alone, penned its advertisements personally, funded its production costs with other writings and lectures, and promoted her previously-published books within its pages.¹⁰ *The Forerunner* was, nearly, a one-woman feat, and this editorial control allowed Gilman to load the magazine with her racist-feminist fantasy of white American women recognizing their full human potential and building a safe, prosperous, and hygienic nation.

But, as a few critics have noted, this appearance of authorial autonomy obscured some collaborative work and financial assistance, as well as the liabilities of self-publication for a woman in the early twentieth century. Gilman’s Charlton Publishing Company was co-founded with her second husband Houghton Gilman, her pages printed by subscriber Rudolph Rochow, and her magazine distributed by various women’s political organizations.¹¹ In addition, despite efforts to garner subscribers to fund the magazine’s production costs, she had to borrow money from her husband to sustain the magazine.¹² In a study of the author’s finances, Joanne B. Karpinski enumerates three social conditions that inhibited Gilman’s attempt to turn her self-authored and self-published magazine into financially self-sufficient venture:

[Gilman] was a middle-class woman who shouldn't have needed to be paid for her work. ... [S]he was attempting to cultivate a financially unyielding field by aiming to educate rather than cater to prevailing tastes. Last, but not least, it should be taken into account that her primary intended audience of middle-class women had little independent disposable income. (41)

In other words, sexism compounded a predicament inherent to proprietary authorship. As Martha Woodmansee points out in her study of eighteenth-century intellectual property debates, the establishment of the author as owner produced a paradox: when authors became independent professionals, they also became more reliant on commercial success for their livelihoods ("Genius" 432). Although expanded U.S. intellectual property protections had the potential to be democratic, allowing authors who were not independently wealthy to pursue authorship as a viable career, professional authorship in a capitalist market also had the potential to reinforce existing inequalities and expectations. If original authors wanted to eat, they had to be popular. As Karpinski indicates, the patriarchal nuclear family posed additional limits to authorial self-sufficiency for many women in the 1900s: men's control of family spending and the prevalent assumption that women were financially supported by their husbands and therefore did not need to be remunerated for their labors reinforced the risks of proprietary authorship. Gilman analyzes the deleterious effects of women's financial dependence and advocates reform in her 1898 book *Women and Economics*, and *Herland* extends that argument by imagining a national system that would reward women's labors, including their authorship.

Herland first appeared in the pages of the *Forerunner*, and Gilman used her utopia to imagine reforms that would redress the vulnerabilities of women's authorship and intellectual property.¹³ *Herland* is in part a critique of capitalist economics, and it envisions a socialist nation

that affords each woman the time, money, and education she needs to pursue her chosen career. Herland is a nation in which every woman's autonomy – her ability to sign her name to her creations – is the cornerstone of economic and family norms. Perhaps prompted by Gilman's own difficulties navigating authorship alongside motherhood, childcare in Herland is public and professionalized, and the citizens do not rely on wages or direct profit for their sustenance.¹⁴ As a result, each Herland woman can be both a mother and a professional, a possibility that repeatedly astounds the male interlopers, despite their admission that millions of American mothers "of the poorer sort" do work (61). Gilman promised elsewhere that socialism would not ban private property but instead "restrict our definition of what is private property, just as was done when human slavery was abolished," and in *Herland* she translates this implicit comparison of white women's oppression to slavery into a rectification of post-emancipation U.S. property law ("Why" 7). Although the Herlanders savor "the highest, keenest, most delicate sense of personal privacy" within their own rooms, their nation eradicates most personal property (125). As in Edward Bellamy's best-selling utopia *Looking Backward* (1887), a major influence on Gilman's politics, in Herland the cultivation of public resources is the highest national priority.¹⁵ In Herland individual labor is not inspired by the promise of private property, nor by competition – "But don't you *like* to work?" the baffled women ask the American men (60, emphasis original). Instead, all work is motivated by service and enjoyment, and it is repaid in recognition. The individual authorship of books and music, art and houses, begets not profits but appreciation. "We want to know to whom to be grateful," Somel explains of signed works (76). In Herland, authorship, like all other professional achievements, is the record of an individual's accomplishment, but it is always valued in terms of its benefits for the sister-author's fellow citizens.

As a result of this emphasis on service and mutual benefit, the Herland system of intellectual property differs from the U.S. version in its preference for freely available and widely distributed information (what twenty-first century intellectual property utopians would call “open source” information) over individually authored works, and in its expansion of the types of goods and knowledge that fit into the categories of art and information. Products often considered crafts or consumer goods in the United States are in Herland exalted as works of authorship, identified as the results of creative labor and individual expression. Somel’s revelation that the Herlanders “sign” furniture and dishes in addition to books and sculptures is not simply proof of their personal pride (76). It is also testimony to an expansive esteem for individual women’s labors in a variety of forms. Meanwhile, knowledge, like all other vital resources, is communally owned and utilized in Herland. The American narrator Vandyke Jennings declares the superiority of this approach to information, observing that “With mechanical appliances for disseminating information almost equal to ours at home,” the Herland women have ensured a general intelligence unparalleled in the United States (65). Here Vandyke seems to refer to recently developed technologies like the phonograph, camera, and motion picture camera, some of the same devices that instigated the expansion of U.S. intellectual property protections in the late nineteenth and early twentieth centuries. While in the United States these reforms increased the number and types of protectable goods, the Herland government enacts a different way of managing the intersection of technology and information. In Gilman’s utopia, information technologies augment the public domain rather than the marketplace. Every biological discovery, every preserved scrap of Herland history, every tidbit of intelligence gleaned from the American men is freely available to the whole population. The novel implies that it is this willingness to distribute and act on communal knowledge that

sustains the nation's prosperity, and *Herland* therefore models an alternative, and purportedly superior, approach to the tangible and intangible components of intellectual property.

Imaginative work is valued not in discrete, purchasable goods, but in the material wellbeing of all the nation's citizens.

Consequently, in *Herland* even recognizably authored works do not confer individual proprietary rights. Gilman's novel contests the notion that the author is also the owner of her works, a premise of U.S. intellectual property law that frames authors as both independent creators and as competing vendors. In the United States, patents protect inventors' rights to their products and copyrights protect the authors' fixed expression. In *Herland*, creators' proprietary rights do not exist in this way. The women use and share each other's ideas without claiming individual rights or profits from their inventions and expressions. In place of an atomized society, Gilman proposes a system in which creators are cooperative and all mutually useful property is collectively owned (287, 288, emphasis original). In *Herland*, an author cannot own her works as U.S. authors do because such ownership would deplete their public intellectual property. The *Herland* author cannot limit access to or use of her works, she cannot earn money from that access or use, and, given the *Herlanders'* congeniality, she presumably cannot or would not accuse other authors of infringement should they copy or produce similar works. In *Herland* each woman is honored for her authorship, but that honor does not confer a monopoly right. Given these divergences from the U.S. market-based system, using the term "intellectual property" for *Herland's* approach to authorship may seem a misnomer. But Gilman's socialist politics do not force her to reject the concept entirely, only to amend the relationship between its two components. In *Herland*, each woman's intellect produces the nation's property.

Gilman's rejection of proprietary authorship in *Herland* is twofold. First, she asserts that women should not need to be paid for their individual works, not because their husbands care for their needs or because their labor is not valuable, but because her participation in the homosocial national sisterhood both facilitates and rewards her work. Second, she denounces the manufacture of authorial rivalry under the U.S. intellectual property system. *Herland* frames the legal transformation of intellect, an unlimited imaginative resource, into a scarce and marketable commodity as an inexcusable bout of irrationality. For example, the American men's lecture tour around Herland serves to deride the value of exclusive expertise. While Terry is excited to act as "an Authority to such audiences," he soon finds that the women do not revere him as a singular source of wisdom (65). Instead, the Herlanders have already disseminated and memorized all the knowledge of the outside world that the American men can offer. Rather than adoration, the so-called authorities receive a barrage of questions beyond their erudition. In Herland, shared intellectual property trounces proprietary, competitive authorship, a feature of Gilman's utopia that responds to the status of Anglo-American women's writing in her time. As Elaine Showalter indicates in her study of Victorian women's authorship, critics and readers often conceived of women as writing as members of their sex, not as unique individuals. This assumption both increased competition between women writers and denied the possibility of their unique self-expressions (342-3). Gilman's vision of autonomous conformity and non-proprietary authorship presents the opposite situation: authors produce autonomously, and their works bear their unique names, but they do not rival one another.

But Gilman's representation of autonomous conformity presents a quandary for her intellectual property utopia. What comprises the self-expressions imprinted in those privately authored works? How unique can these synchronized women be? In *With Her in Ourland*,

Gilman's 1916 sequel to *Herland*, Vandyke's Herlander wife Ellador leaves her remote homeland to travel the world, study its various cultures, and consider the advisability of reinstating in Herland a "bi-sexual race," that is, a population of both men and women (*Herland* 54). Among many outrages, Ellador is particularly disturbed by the state of the U.S. body politic. Although Ellador considers the United States the best hope for Anglo-Saxons' destined progress among foreign nations, she also laments that the United States does not adequately use its national borders to manage the racial and intellectual makeup of its civilization. A democratic nation, Ellador contends, demands a "*like-minded*" population, a necessity that the United States has flaunted in its admission of the myriad masses (321, emphasis original). "The real union is the union of idea; without that--no nation," avers Ellador (*Ourland* 321). Against Vandyke's reference to the melting pot, the ubiquitous metaphor for American heterogeneity turned tolerable, Ellador challenges,

And do you think that you can put a little bit of everything into a melting-pot and produce a good metal? Well fused and flawless? Gold, silver, copper and iron, lead, radium, pipe clay, coal dust and plain dirt? (323)

With this material image, Ellador sets up a psychological defense of nativism. She proclaims that African, Asian, "poor and oppressed," and non-English speaking peoples cannot, without extensive training, be brought into the "psychic relation" of American nationalism (321, 323). As Kristen Egan points out, this fear of contamination is rooted in Gilman's sanitarianism and her belief that immigrants carried diseases that could infect the "native" population and "invade the interior of the individual" and the nation (84). But this anxiety about contaminated interiors is not just about bodies and germs. It is also about minds. Via Ellador, Gilman professes that a civilized nation requires intellectual agreement, and that agreement requires racial uniformity.

While Ellador claims exceptions for certain advanced individuals able to circumvent race determinism, overall *With Her in Ourland* presents national origin, race, and individual minds as almost synonymous. In Ellador's description of the national "union of idea," Gilman fuses the eugenic fascination with race and the national gene pool with her interest in the production of ideas (324). *With Her in Ourland* asserts that without like-mindedness, a possibility rooted in racial uniformity, the United States can never fully attain its fated superiority. When considered in light of *Herland*'s idealized version of authorship, Ellador's diatribe implies that in a civilized nation all authors' self-expressions must contribute to that "union of idea."

In other words, Gilman's critique of intellectual property in the United States is not simply an economic one. It is also a racial critique and thus for Gilman a genetic critique. Shared intellectual property entails both the collective use of knowledge and the communal regulation of national intellect. If every author's self-expression is to contribute to the nation's ever-increasing "standard of perfection," then each self must also be perfect – eugenically, uniformly perfect.¹⁶ Though apparent in some of her earlier writings, this association of biological relatedness, racial uniformity, and national prosperity culminates with Gilman's parthenogenetic people.¹⁷ *Herland* presents an origin story that enables the "union of idea" that Ellador promotes. This narrative, as Alys Eve Weinbaum clarifies, centers on the women's "refusal to engage in interracial reproduction," with parthenogenesis as their reward for resisting miscegenation ("Writing" 284). About two thousand years before the American men's arrival, the country's large, "bi-sexual" population occupied a large tract of land and communicated with other nations through waterways, commerce, and war. But after a series of military defeats and a volcanic explosion killed most of the nation's men and blocked the only passage to the sea, the country's white women found themselves isolated from the outside world, with only enslaved men for potential

reproductive partners (54). Gilman's national fantasy frames enslaved men as white women's oppressors: the "infuriated virgins," faced with a slave revolt, "instead of submitting, rose in sheer desperation and slew their brutal conquerors" to wrest control over the now all female nation (55). Despite their isolation, the women set about improving their land, burying the dead, and caring for one another's needs until "the miracle happened – one of these young woman bore a child," the first of five daughters (56). Each child inherited her mother's parthenogenetic power, and thus the women of Vandyke's record were eventually born. In Herland, each citizen descends from that one "Queen-Priestess-Mother," and consequently even Moadine's description of the "literal sisterhood of their origin" is an understatement (57, 66). All Herlanders share one woman's genes – split, mutated, and adapted – and all their self-expressions, according to Ellador's nativist psychology, are therefore necessarily attuned. While their national sisterhood initially seems to retain the logic of lines, but replace the vertical kinship that structures patrilineal descent with the "deep, horizontal comradeship" that Benedict Anderson sees as the hallmark of the national community, this reproductive technology collapses time and thwarts even that revised linear logic (7).

Herland imagines a means for eliminating unknown and foreign elements from national reproduction. Yet unlike most eugenicists who traced lines of descent to forecast the deleterious effects of miscegenation and blood admixture, Gilman employs parthenogenesis to mitigate the historical transformations that descent implies by populating an entire nation with one body, self-reproduced millions of times. Parthenogenesis functions as what Walter Benn Michaels calls an imaginative "technology of reproduction" in his study of nationalism in turn-of-the-century American literature (48). It offers a version of reproduction that assuages nativist anxieties about racial purity and national belonging by eschewing the "contamination" of sexual reproduction in

a multi-racial nation (51). Parthenogenesis is optimal in this sense because it allows the women to reproduce the nation without the threat of contamination that sexual reproduction, with its messy bodies and amalgamated families, always portends.¹⁸ The Herland women's asexual reproduction even outmaneuvers the mostly masculinist imaginative technologies that Michaels identifies because parthenogenesis, according to Gilman's pseudo-biological notion of human development, is a literal means for human reproduction. As Thomas Galt Peyser notes, parthenogenesis for Gilman was not a "wild rhetorical device," but a natural development of human evolution.¹⁹ Again following Lester F. Ward, Gilman believed that the female was the "race-type," the male "her assistant" (*Moving* 74). That is, she held that the woman's social status and genetic makeup determined her civilization's place on the evolutionary ladder. She believed men were ancillary, and extremely civilized women like the Herlanders could eventually make use of parthenogenetic reproduction as some species of hymenopterans do (*Herland* 67). When considered in light of Gilman's complicated evolutionary theories, parthenogenesis therefore looks like the ideal nativist reproductive technology: it is the endogamous replication one woman, and it is supposedly an actual, naturally occurring phenomenon.

However, the Herland women do employ some eugenic methods of population control, in part to ensure adequate resources for each woman's sustenance and in part to safeguard their like-mindedness. Drawing on the faith in an objective reality common to eugenics and scientific management, Gilman depicts a "one best method" approach to the reproduction of bodies and ideas.²⁰ *Herland* presents the eugenic approach to human reproduction and the censorial approach as parallel processes. Each qualified woman gives birth only once, using a mental form of birth control to prevent additional pregnancies, and "those held unfit" are not permitted to

reproduce at all (69). Meanwhile, the Herlanders perpetually review and prune their shared ideas to guarantee the perpetual serviceability of their thoughts: “We have no laws under a hundred years old, and most of them are under twenty,” admits Moadine (63). The Herlanders have no “bad qualities,” no “morbid or excessive types” because they “breed out” all atavistic flaws (82, 77, 82). Any woman displaying “atavistic” flaws is prevented from bearing a child (92), either through persuasion or through a more extreme method that *Herland* only suggests (82), but Gilman’s first utopian novel *Moving the Mountain* (1911) makes explicit: “We killed many hopeless degenerates, insane, idiots, and real perverts, after trying our best powers of cure” (136). The Herland women eugenically eliminate all women who exhibit the lingering effects of the first parthenogenetic woman’s sexual conception, the only source of supposed contamination at their national origin.

Similarly, the Herlanders excise all desultory and nefarious ideas from their national culture. The women that the American men meet are unfamiliar with “horrible ideas” because the Herlanders “left them out” – of their religion, of the historical record, and of their “simplified” language – once they developed beyond their foremothers’ primitive beliefs (111, 102). The Herlanders consider “disproportionate egotism” a particularly odious flaw, and their systematic eradication of this character trait represents the fusion of their eugenic and censorial methods (82). To the Herland women, egotism is a defect of disposition and an imperfection of thought. Because a narcissistic woman considers herself superior to her sister citizens, an idea that would wreck the nation’s communitarian governance, the other Herlanders must prevent her from reproducing, from perpetuating that idea genetically (82). This twin management of bodies and ideas successfully delivers the nation’s cordial homogeneity. After a “‘pure stock’ of two

thousand uninterrupted years, the Herlanders smoothly and firmly agreed upon the most basic principles of their life” and their like-mindedness is thus permanently established (122).

Originality has no place in Herland. Original individuals would disturb their carefully cultivated uniformity, original thought would abolish their like-mindedness, and original creation is therefore both undesirable and impossible in this parthenogenetic nation. Consider how Herland’s population differs from the Romantic vision of a unique author, the “guiding rationale” for U.S. copyright law (Craig 214). In 1774, Francis Hargrave advocated for proprietary authorship by pinpointing the author’s recognizable imprint on his artworks – a pattern or style of self-expression that differentiated his works from all others’ (Biagioli 2001). Hargrave claimed the existence of the authorial imprint by associating the artwork’s unique details with the idiosyncrasies of personal appearance:

Every man has a mode of combining and expressing his ideas peculiar to himself. ... A literary work *really* original, like the human face, will always have some singularities, some lines, some features, to characterize it, and to fix and establish its identity...” (6-7, emphasis original)

Here, as Jane Gaines and Howard S. Becker have elaborated, the characteristics of authors and their works are mutually determined: the artworks are original because humans are original, and vice versa.²¹ Though Somel indirectly disputes any causal interpretation of Hargrave’s analogy – “Do you find your physical variation accompanied by a proportionate variation in ideas, feelings, and products?” she challenges the Americans – and though Vandyke reports that the Herlanders vary “individually in a wide range of feature, coloring, and expression,” the novel overall links race with genes with phenotype, and thus upholds and even extends Hargrave’s association of physical characteristics with intellectual expressions (78). But while Hargrave uses this

figurative correlation to justify the individual's right to own "*really* original" works, Gilman literalizes that association to devalue originality and justify eugenic nationalism. The kind of creativity that Hargrave describes – the production of singular artworks by singular authors, the acclaim for an original self-expression precisely because it emanates from a unique source – is the opposite of Gilman's intellectual property utopia. "We are all descended from a *common source*," Moadine declares, and thus even when the women do express themselves through autonomous authorship, they nonetheless contribute to their national "union of idea" (75, emphasis added). Therefore with *Herland* Gilman confirms Hargrave's analogy but repudiates his point: intellectual expressions *do* correspond with physical bodies, Gilman verifies, and that is all the more reason to protect the nation's racial homogeneity. If the women Gilman deemed uncivilized were to exercise autonomous authorship, *Herland* implies, their different and anarchic ideas would disturb the national unity and prosperity.

Herland renounces both versions of originality inscribed in U.S. intellectual property law and culture. With the Herlanders' rejection of proprietary authorship and capitalist economics, Gilman voids the utility of practical originality, the minimum legal standard for registering a work of authorship. And by disputing the Romantic veneration of unique authors and their anomalous self-expressions, she denounces the cultural celebration of robust originality, of innovative and radical artworks. Instead, the kinds of intellectual and artistic expressions that Gilman presents as ideal are harmonious, indistinct, and nation-serving ones. With her utopian depiction of public intellectual property, Gilman thus rationalizes eugenic nationalism by rooting national prosperity in shared ideas, and tracing shared ideas to racial uniformity. Her ideal nation is a biologically and intellectually conforming one. Yet the novel consistently asserts that these coordinated Herlanders are autonomous individuals, and at least one critic lauds this utopian

feature as the cause for *Herland*'s persistent popularity among feminist critics, claiming that Gilman's novel has "brought us all a step closer to ... achieving a society where women are autonomous and self-actualizing" (Hall 161). But the autonomy that the Herlanders enjoy is a very limited one. They cannot access the rights-bearing autonomy of U.S. property law, and they cannot produce a unique artwork or idea. Instead, the Herland women savor the autonomy of signing their single names. The autonomy that Gilman consecrates in her intellectual property utopia is simply the possibility of a byline.

III. For Boys Like You and Me

Utopias are founded in what Kenneth Roemer names "pessimistic optimism," the intersection of discontent and the motivation to enact or at least envision change (6). In *The Professor's House*, part of the discontent that inspires Godfrey St. Peter's utopian fantasy is the limited efficacy of his byline, the failure of his original authorship to insulate him from the problems of his professional and personal life. A framed utopia, Cather's novel presents in three distinct sections: (1) St. Peter's grievances with his family and his profession, (2) a utopian solution, conveyed as his late student and almost son-in-law's adventure story, and (3) St. Peter's psychosocial response to that fantasy nationalism. The inset utopia titled "Tom Outland's Story" proposes a substitute for originality and envisions the gratifying personal relationships that a revamped intellectual property law could institute. Yet the novel as a whole also presents that ostensible utopia as both familiar and suspect, a fantasy that simultaneously rejects and assumes contemporary U.S. nationalism. It spotlights the enduring effects of settler colonialism on American national fantasy even as it registers an alternative kind of national kinship by dignifying the queer and ephemeral intimacies that emerge around and through intellectual work.

In sum, the tripartite structure of *The Professor's House* figures the motivation for and reception of an intellectual property utopia. Cather produces a self-reflexive utopia, one that can identify its own weaknesses while also preserving the possibility of national change.

More particularly, Cather's intellectual property utopia is a national queering device that remains critical of American nationalism. "Tom Outland's Story" replaces the nuclear family with the intellectually-produced queer family as the emblem for national belonging, and this "Story" frames intellectual property as a particularly effective reproductive technology. *The Professor's House* therefore not only makes queer intimacies imaginable, but also represents them as the potential foundation for a national community. But in its self-reflective, fragmented form, this utopia both envisions that alternative future and offers insights into the actual history of U.S. nation building. *The Professor's House* thus counters Balibar's theory of nationalism by attending to the often-ignored peoples that do not line up with the official national direction. The nation form does not necessitate linearity, the novel stresses, but can admit queer, transhistorical, and substitutive intimacies to realize its desires.

In order to present Outland's intellectual property utopia as initially preferable, Cather first immerses readers in St. Peter's professional frustrations. A number of university policies distress this professor. He laments that students are permitted to take classes in "commercial studies" for credit, that anti-intellectual politicians determine the budget, and that "the aim to 'show results' ... [is] undermining and vulgarizing education" (120). In addition to his pedagogical concerns, St. Peter's professional dissatisfaction also signals apprehension with the translation of knowledge and intellectual work into property and profit. Though the novel's first section centers on two goods protectable under intellectual property law – St. Peter's eight-volume set of histories and his former student Tom Outland's tremendously profitable invention,

an engine apparently indispensable to new aviation technologies – St. Peter prefers to only think of the latter as a kind of property and marketable good. From the professor’s perspective, the former is “his great work ... ‘this dazzling, this beautiful, this utterly impossible thing!’” (16). Terms of aesthetics and ambition proliferate in the Professor’s descriptions of his own writings, and this language obscures the fact that these histories are copyrighted and profitable products. Although the belated recognition of *Spanish Adventurers in North America* has afforded St. Peter a new house and allowed him to forget the “straitened circumstances” that bind other university professors, the fact that this money derives not from direct profits but from prize money is important to St. Peter (119). This distinction allows him to imagine that his monetary prize signals the public realization of the value of original, “uncommercial” scholarship (121). St. Peter likes to think that even within the institutional constraints of a university, there remains the possibility of uncoupling property from intellectual work. Cather famously made similar distinctions between commercial writing and artistic writing. In her 1920 essay “On the Art of Fiction,” she asserted that

Writing ought either to be the manufacture of stories for which there is a market demand ... or it should be an art, which is always a search for something for which there is no market demand, something new and untried, where the values are intrinsic and have nothing to do with standardized values.

Here Cather attempts to distinguish between robust originality and mere practical originality.²² However, as Matthew Lavin notes, the 1920s literary market accommodated and profited from authors’ anti-commercial sentiments. As with St. Peter’s prize money, anti-commercial work is rewarded financially. Cather and her character denounce profit-driven intellectual work, but they cannot or do not opt out of proprietary authorship entirely.

St. Peter's concerns also reflect on the turn-of-the-century development of corporate intellectual property in the United States. As Oren Bracha explains, "For the first half of the nineteenth century courts vigilantly guarded the status of authors as the primary owners of their creations" (127). In the early nineteenth century, although the law made copyright assignable to others, the courts ensured that individual authors were the first owners of their copyrights. However, this rule changed as employers began suing for proprietary rights in their employees' creations and a "work for hire doctrine" was established in the first decade of the twentieth century (125). Under this doctrine, employee-authors did not need to assign their copyrights to their employers via contract. Instead, that assignment was presumed to be inherent in employees' agreement to labor for their employers. Paradoxically, the courts drew on the notion of the authorial imprint to justify this change. Bracha shows how courts "project[ed] the authorship of the creators on the employer...endow[ing the corporation] with all the creative subjectivity. The employee-artist, on the other hand, is imagined as a mechanical extension that simply carries out instruction." (133). Corporations could own copyrights because their creations were the result of individuals' intellectual labors, but individual intellectual labor no longer guaranteed individual copyrights. The status of intellectual property rights universities is more complicated than it is in corporations, and the property status of academic work is still the subject of much debate and many court cases.²³ But we can still see St. Paul's concerns as responsive to the possibility of his employer's ownership of his writings. Embedded within St. Paul's anxieties about the commercialization of academic work is an ambiguity about intellectual property: disdain at giving up his work and property to a profit-driven university meets his distaste for imagining his work as productive of property at all instead of as a gift or as the natural result of his vocation.

In the first section of *The Professor's House*, Cather seems to reflect on this process and to signal this overlap between intrinsic and standardized values. Against the author and her character's wishes, this section suggests that property cannot be easily severed from the "dazzling" pursuit of knowledge or art (16). Cather threads St. Peter's passionate descriptions of scholarship with attention to international trade and intellectual property protections. She requires the reader to shuttle between debates concerning Outland's patent and descriptions of the professor's histories, between details of St. Peter's private workspace and accounts of the familial and financial dilemmas that surround intellectual property. This oscillation occurs both in terms of narrative time (the first chapter describes St. Peter's study, the second introduces Outland's engine, etc.) and through narrative space. Three conversations explicitly addressing Outland's patent and its profits appear at the start of *The Professor's House*: two take place in St. Peter's writing room and the third in the laboratory of Dr. Robert Crane, Outland's former physics professor who is asserting rights to the patent despite being one of the "staunchest" exponents of non-commercial studies at their university, or so St. Peter assumes (121). Against Crane's claims, St. Peter declares, "whatever poor Crane can find out about [the extent of] space is more good to him than all the money" that the Outland patent yields (72). Yet Cather's placement of these profit-centric conversations in the locus of supposedly non-commercial scholarship negates the distinction between property and pure intellectual enthusiasm that St. Peter's comparison requires.

But St. Peter's discontent is not only professional. It is also familial and domestic. The Professor also attempts to disentangle the pleasures of writing from the disappointments of the family life that his writing funds, but he finds his daughters visiting his attic office and thoughts of his wife interrupting his work. Because he shares a workroom with the family seamstress, St.

Peter discovers his histories mingling with the dress patterns that trace his two daughters' maturing bodies. "In the middle of the box, patterns and manuscripts interpenetrated" (13). For the father, these documents are unpleasant signs of his daughters' sexualities and their less-than-ideal pick of husbands. These reminders of fatherhood and its limitations invade his scholarship, checking his authorial power by recalling his impotent attempts to control the St. Peter legacy and the family line.

The final factor that motivates St. Peter's utopian fantasy is a patent dispute that taints his memory of his would-have-been son-in-law, Tom Outland, the brilliant young scientist who died in the first World War before he could marry St. Peter's daughter Rosamond. St. Peter is a man plagued by nostalgia: nostalgia for an academy unburdened by utilitarian demands on scholarship and nostalgia for a his intimate relationship with Outland. But the present also has its pressing concerns for St. Peter, most notably, the problems concerning who owns the rights and profits to Outland's estate. Who has a legitimate claim to Outland's engine? Do his almost-widowed fiancé Rosamond and her new husband, as the benefactors of Outland's will? Or do Outland's collaborators and mentors? And who will have control over Outland's legacy, his name and his scholarship? St. Peter, who we can think of as Outland's more-than-mentor, his more-than-but not-quite father-in-law, tries and fails to sunder these claims from each other and from his lingering devotion to his deceased student.

So why does St. Peter need fantasy nationalism? Why doesn't "originality" liberate St. Peter from the cross pollination of intellect and property, of profession and interpersonal drama? Originality is supposed to transmit distinction, as superiority and as separateness, but in *The Professor's House* originality doesn't deliver. His "great work" cannot save him from his dissatisfying relationships, but rather his histories and Outland's engine seem only to embroil

him in the demands of fatherhood, marriage, and collegiality (16). Practical originality is impractical: it doesn't help the novel's characters negotiate the rights to a dead man's patent. Robust originality is feeble: St. Peter's claim to be "doing something quite different" with his histories does not protect him from his family's and colleagues' financial concerns (22).

These originalities fail to shield St. Peter from these material and interpersonal concerns in part because a third version of originality circulates in this novel, one that disputes the importance of the individual creator that the other two definitions assume. Mrs. Crane, the wife of the physics professor claiming rights to the Outland patent, proposes a more communal kind of originality when she protests the removal of Outland's engine from her husband's laboratory. "It had lain there because it belonged there, and was made there!" she pleads (119). Shared originality designates a social nexus at the origin of intellectual work. It comprises the relational and spatial conditions that make intellectual property possible, that allow it to originate. Throughout her dispute with St. Peter, Mrs. Crane generates a list of these conditions and their social consequences: pedagogy (Dr. Crane's assistance with and criticism of Outland's invention), physical location (Dr. Crane's laboratory), and familial inheritance (the transfer of Outland's profits to Louie Marcellus, Outland's ex-fiancé's new husband and St. Peter's son-in-law). These considerations are not legally defensible, "'There are some things the law don't cover,' said Mrs. Crane mysteriously," and her list therefore recommends an alternative organization of intellectual property (120). She contends that the value of intellectual work remains rooted at the site of origin. While robust and practical originality assume a fleeting origin, shared originality takes into account the transformative effects of production and profit on the origin and considers these consequences when determining financial and proprietary rights. Shared originality also revises the Lockean and Romantic theories of individuality that the other

originalities presuppose. Mrs. Crane doesn't entirely dispute the idea that individuals own property in themselves or the belief that authors impart traces of their unique personalities to their works, but she does contend that these theories do not justify exclusive proprietary rights. Instead, Mrs. Crane acknowledges and demands that St. Peter acknowledge the acts of care, encouragement, and criticism that bring an original work into being. Shared originality therefore aligns with feminist and poststructuralist critiques of the single author, and when Mrs. Crane calls for the financial recognition of her husband's pedagogical support, she asserts that "originality" can neither assume nor enforce the sovereignty of the individual. Her argument curbs St. Peter's faith in the legitimacy of Outland's will, and it reminds the reader that intellectual property is a social endeavor: it leaves intimacies and antipathies in its wake.

Although Mrs. Crane's ideas initially unsettle St. Peter, the promise of a social and spatial, affective and extra-legal, responsive and contingent approach to intellectual property appeals to the professor. Mrs. Crane's description of shared originality combines with two other insights to inspire St. Peter's foray into utopian fantasy. The second occurs when St. Peter's son-in-law and the subject of his anti-Semitic fears Louie Marcellus inadvertently prompts St. Peter to imagine a replacement for the heterosexual family structure that distresses him. Upon entering the Professor's workspace, Marcellus exclaims, "Your children were born here. Not your daughters – your sons, your splendid Spanish-adventurer sons!" (144). This revised kinship projects both the restoration of St. Peter's patriarchal potency and the alleviation of his racist anxieties. Walter Benn Michaels points out that the nuclear, heterosexual family as metaphor for the nation is both the key to nativism and its vulnerability. In this framework, reproductive marriages both sustain the nation and require sexual contact outside the family. As Michaels summarizes, "the technology of biological reproduction [is] simultaneously the technology of

miscegenated contamination” (12). But the intellectual reproduction that Marcellus suggests allows for male virility and neutralizes the threat that Marcellus himself represents for St. Peter’s racially “pure” family.

Third, St. Peter’s distaste for women’s attempts at originality coordinates with his disappointment in the effects of his own originality to stimulate his longing for an intellectual property system that does not center on that standard. Discussing his preferred daughter, St. Peter ironically lauds her difference from other young women. “‘The only unusual thing about Kitty,’ her father used to tell his friends, ‘is that she doesn’t think herself a bit unusual. Nowadays the girls in my classes who have a spark of aptitude for anything seem to think themselves remarkable’” (52). Here St. Peter finds pleasure in the originality of unoriginality. Not only does he cite his daughter’s realistic self-knowledge as a source of her superiority, but he also proposes, by way of contradiction, a creative methodology: eschewing originality to foster novelty. This three-part combination of the rejection of originality with the vision of an all-male, personally selected family with the promise of a social and emotional approach to authorship is the foundation of St. Peter’s intellectual property utopia.

The personal drama that comprises the novel’s first and third sections, titled “The Family” and “The Professor,” respectively, is interrupted by “Tom Outland’s Story,” recollections that the now-dead adventurer recounted to St. Peter one romantic evening years earlier. Although absent from the “Story” itself, St. Peter is the implied outsider looking into this utopia and he finds in this adventure tale the utopia he longs for. Though the disputes about national fidelity and the ownership of the ancient artifacts in this inset narrative resonate with the questions that haunt St. Peter in the frame sections, the “Story” also implicitly presents an alternative to those debates. It confirms St. Peter’s inability to separate property from intellect

and family from profession. But it also offers a new model for intellectual property, one that seems to promise a more pleasurable and more secure community. That is, while the adventure tale offers St. Peter a temporary reprieve from his troubles, Outland's narrative also seems able to obviate St. Peter's frustrations by projecting a new national and familial community. "Tom Outland's Story" is also St. Peter's fantasy.

Men, building a home together. Men, sharing a passion and a goal. Men, digging up centuries-old cadavers and dropping one off a cliff. Despite its title, the most nurturing home in *The Professor's House* is an alternative site: Cliff City, the remains of a Native American civilization hidden atop a mesa and untouched for hundreds of years. "Tom Outland's Story," the novel's inset and retrospective adventure tale, details the young man's exploits in New Mexico and the pseudo-scholarly community he builds at Cliff City.²⁴ For Outland and his band of excavators, this city fuses the intrigue of a lost civilization with the pleasures of queer affection. As the amateur archaeologists work to resurrect Ancestral Puebloan culture, cataloguing surviving artifacts and spinning fanciful tales of the city's lost inhabitants, they transform the city into a playground for twentieth-century primitivist fantasy and themselves into a "happy family" with "filial piety" for the Cliff Dwellers (176, 226). Even the architecture of Cliff City seems to reflect this queer affection. After his first encounter with their city, Outland uses a comically phallic language to describe a round tower rising from the cliffs: "It was beautifully proportioned, that tower, swelling out to a large girth a little above the base, then growing slender again. There was something symmetrical and powerful about the swell of the masonry" (180). The space enables their homosocial affinity. Yet as the jettison of the body that they name "Mother Eve" indicates, this utopian domesticity is also carelessly masculinist and colonialist.

Outland's experience of this intellectual and intimate community is explicitly national, and he embarks on a pilgrimage to Washington, D.C. in an attempt to convince a Smithsonian archaeologist to "revive this civilization into a scholarly work."²⁵ The young adventurer fails in this quest, and he returns to another, and now more personal betrayal of his queer nationalist plan. Upon learning that his fellow aficionado Rodney Blake has sold most of the Cliff City artifacts to a German dealer, Outland delivers his "Fourth of July talk" wherein he converts his affection for the cliff dwellers into a nationally justified proprietary claim (221). He lambasts his friend, dubbing him a traitor to his country, "like Dreyfus," and he declares that the artifacts "weren't mine to sell, nor yours! They belonged to this country, to the State, to all the people. They belonged to boys like you and me, that have no other ancestors to inherit from."²⁶ Here Cather shows the nativism inherent in Outland's nationalism with an echo of St. Peter's own anti-Semitism. She also reveals the central change to U.S. intellectual property law that the "Story" imagines: Outland replaces the "by" that enables modern proprietary authorship with "from." He proposes a receptive model for intellectual claims, wherein "boys like" Outland and Blake can claim ownership over native artifacts because they are open to learning from them, treasuring them, and using them to build an intellectual community.

Cather presents this receptive intellectual property as utopian to the extent that it facilitates some exceptional forms of intimacy. In his "Fourth of July" speech, Outland constructs a national collectivity that fosters more flexible and varied interpersonal relationships than the contemporary United States. Though Outland calls on the State to legitimate his proprietary claims ("They belonged to this country, to the State"), he also projects an idealized nation that would sanction through property the kinds of relationships he experiences atop the mesa: his homosocial affection with his fellow excavators and the interracial "filial piety" he

cultivates for the Cliff Dwellers (226). Unlike robust and practical originality, which consecrate individuality, this receptive claim is based in interpersonal, if imagined, relationships. The “Story” supposes that while the United States government does not currently recognize its duty to protect the artifacts for “boys like you and me,” the nation, in its ideal and eventual form, will coalesce around imaginative and queer structures of desire.

The intellectual community offers the most satisfying, most affectionate version of family life that *The Professor's House* exhibits. Queer Theorist Scott Herring argues that we should interpret St. Peter and Outland's closeness as a “friendship” to avoid anachronistically applying twenty-first-century understandings of homosexuality to Cather's ambiguous representations of gender. But “friendship” obscures the narrative relation between this queer connection and St. Peter's nuclear family life. While the professor frets over the St. Peter legacy, resents his sons-in-law, and tolerates his wife, through interpretation he sustains affection for, and to some degree from, the Spanish explorers, the Cliff Dwellers, and Outland. While the placement of colonizers and Native Americans on the same family tree may seem questionable, this incongruity and the choice of ancestors that this intellectual technology of reproduction allows is part of what makes this intellectual family so desirable in St. Peter's queer nativist nationalism. By studying Outland's journal, contemplating Cliff City, and researching Spanish exploration, the Professor performs what Rita Felski names “self-extension” in her defense of recognition-oriented reading (39). Finding “resonances” of the self in the distant and the strange, the dead and the foreign, St. Peter finds new forms of self-knowledge and reorients himself within the space and history of America (Felski 39). Like Thea Kronborg of *The Song of the Lark* (1915), Outland and St. Peter find intellectual rejuvenation by engrossing themselves in Cliff Dweller culture.²⁷ In this novel, intellectual pursuits foster gratifying and intellectually productive queer connections through a

legitimizing semi-academic environment. This family may be immaterial, imaginatively constructed through research and nostalgia, but this self-extensive kinship cultivates pleasure and intellectual support. Replacing the combative sociality that shared originality describes, receptive intellectual property produces pleasurable relationships. It is erotic, supportive, and world defining.

“Tom Outland’s Story” replaces a linear model of familial and national kinship with its own complicated and emotionally vexed form of reproduction: receptive intellectual property begets substitutive family making. Though the novel initially presents these replacements as inferior to biological reproduction, substitutive family making ultimately functions as a solution for St. Peter’s familial and profession disappointments. Tom Outland acts as a surrogate son to both Godfrey St. Peter and Rodney Blake in *The Professor’s House*, and in his “Story” he imagines such replacements as both logical and strange. Of Blake’s care, Outland explains that “[Blake] ought to have had boys of his own to look after. Nature is full of such substitutions, but they always seem to me sad, even in botany” (165). Perhaps referring to grafted fruit trees, Outland characterizes substitution as natural but disappointing. Common, but ought to have been otherwise. Surrogacy might be biologically feasible, the young scientist suggests. And it might be temporarily comforting, as this memory of illness and recovery indicates. But substitution in this framework is not wholly reparative, emotionally or biologically. It lacks. It disappoints.

But through the relationship of “Tom Outland’s Story” to the novel’s other sections, Cather makes substitution into a utopian tool for reproduction. Cather’s frame narrative manifests Outland’s notion of troubling but naturalized replacement, as the “Story” stages this substitutive logic formally. This “Story” presents a series of substitutions for texts mentioned and themes developed in the first section. It replaces St. Peter’s histories with Outland’s

recollections, Outland's invented vacuum with his discovery of an ancient indigenous community's structures, and Outland's anthropological diary with his adventure tale. Recapitulating Outland's perspective on substitutive care, Cather naturalizes these substitutions with the central placement of "Tom Outland's Story" and its structural equation with the novel's two other parts, but also troubles this version of replacement with the section's thematic and textual divergences from the novel as a whole. Cather presents these formal substitutions not exactly as "sad," as Outland would have it, but certainly as interpretively disruptive. The texts that could demonstrate St. Peter's and Outland's intellectual work or legitimate the claims or counterclaims to Outland's inheritance are conspicuously absent in this novel of academic work and right. Instead, this series of replacements in "Tom Outland's Story" – of author, of subject, and of genre – presents intellectual property, like plants and families, as subject to substitution. This version of the novel's replacement logic troubles the notion of intellectual property as one person's right to own and profit by an intellectual project, the "individualism at the root of US intellectual history" that Christopher May and Susan Sell describe in their history of intellectual property law (105). These substitutions cast doubt on the scholars' claims to autonomy, and thus to the individual property rights consecrated by originality, and thus bolster the validity of Outland's receptive intellectual property.

The interpreter, Cather suggests, does not control his subject matter, but rather is implicated in the latter's substitutive, unruly rules. The author of the eight-volume *Spanish Adventurers*, St. Peter "was commonly said to look like a Spaniard" despite his "mixed stock" white heritage (4). Even more representative of this interpreter/interpreted conflation, St. Peter imagines he has adopted a version of his historical subjects' perspective on his own writing about those historical subjects. Noting the lack of early critical "encouragement" for his work,

St. Peter professes to have “cared as little as the Spanish Adventures themselves what Professor So-and-So thought about them” (23). In suggesting St. Peter’s physical and mental kinship with his scholarly subjects, Cather frames substitutive family making as a process that functions not only materially and emotionally through care for surrogate sons, but also retroactively and intellectually through the imagined adoption of surrogate fathers. The transformation in St. Peter’s and Outland’s relationship aptly demonstrates this possibility: though in life Outland functioned as a surrogate son, in death he acts as a kind of intellectual father for St. Peter, an ancestor who bequeaths St. Peter his legacy in the form of an anthropological diary. Outland also explains this process of imagining surrogate fathers almost explicitly, as he declares “filial piety” for the mesa and the Cliff Dweller community whose city he inhabits and studies (226). These interpreters do not merely resemble what they study. St. Peter and Outland claim to be their subjects’ heirs, the offspring of that which they interpretively create. If intellectual property is characterized by surrogacy, then Outland entangles himself in that process by finding fathers in the cliff dwellers, just as St. Peter conflates himself with his subjects, and just as Cather manifests Outland’s perspective in her novel’s form. The creation, acquisition, and representation of intellectual property are all inherited, and strangely, pleasurably so.

Yet when substitutive family making meets receptive intellectual property, this utopia reveals its weakness, its rehearsal of United States settler colonialism. The claim to substitutive inheritance is only made possible by ignoring other potential inheritors, descendants who claim cultural affiliation rather than intellectual lineage. By the twentieth century, the Cliff Dwellers have no living genealogical descendants, but that fact does not designate Tom Outland as their only potential heirs.²⁸ Outland’s “filial piety” speech outlines the logic that allows interpretive

work to generate this revisionary national history. Recalling his solitary time on the mesa, Outland explains,

It all came together in my understanding, as a series of experiments do when you begin to see where they are leading. Something had happened in me that made it possible for me to co-ordinate and simplify, and that process, going on in my mind, brought with it great happiness. It was possession. The excitement of my first discovery was a very pale feeling compared to this one. For me the mesa was no longer an adventure, but a religious emotion. I had read of filial piety in the Latin poets, and I knew that was what I felt for this place. It had formerly been mixed up with other motives; but now that they were gone, I had my happiness unalloyed. (226-7)

The term “unalloyed” is a double negative: it announces the restoration of purity only by foregrounding taintedness, difference. While Outland uses this term to describe his own emotional transformation, it is also useful for considering this character’s ability to encompass religiosity, kinship, and possession within intellectual conceptualization. By figuratively associating experimental “understanding” with “religious emotion,” claiming for this scholarly practice an unspeakable but intrinsic truth-value, Outland elides the discord between intellectual practice that does not individuate and an individual’s right to own intellectual property. The interpreter’s assertion of a filial relationship with his subject matter intervenes to subsume cultural or genealogical lineage to an act of knowledge creation. Outland is able to claim possession not simply through scholarly discovery, but through substitutive lineage. Productive and pleasurable as it may be, the imagined family is not equally chosen. In this nationalist fantasy, property circulates only between men, and women including St. Peter’s daughters and “Mother Eve,” the discarded corpse accused of adultery by her excavators, cannot protect their

chosen families. Moreover, while the Cliff Dweller men may serve as surrogate fathers, the privileges of ownership are reserved for the white male inheritors.²⁹ Overall, substitutive lineage justifies settler colonialism by making the extra-national cliff dweller community into the pre-national: by making the natural, if sad, acts of disinheritance that nation building requires.

In the 1920s, Cliff City would have seemed like an especially appropriate site for this combination of utopian speculation and settler colonialism.³⁰ In a study of popular interest in Cliff Dweller ruins, Michael Tavel Clarke argues that turn-of-the-twentieth-century Americans consumed Cliff Dweller narratives to negotiate the changing composition of the U.S. population. As mass immigration, the Fourteenth and Fifteenth Amendments (1868 and 1870), and the Indian Citizenship Act (1924) reconstituted the legal and cultural parameters of U.S. national belonging, the Cliff Dweller narratives found in novels, poems, and anthropological studies provided a discursive space for both rejecting and admitting those changes. These stories incorporated a host of contradictions that allowed for these conflicting uses. Cliff Dwellers were “savage” Indians but also “civilized” agrarians. In addition, according to the standard narrative, the Cliff Dwellers were massacred by nomadic tribes, a fate that “contradicted American faith in the foreordained victory of civilization over savagery and thus also challenged American faith in its new program of overseas imperialism” (Clarke 400). But because the Cliff Dwellers also seemed to represent an ancient and enlightened American history that matched European history, their narrative seemed to authorize the emergence of the United States as a global power. Finally, and most importantly for white consumers, because the Cliff Dwellers were dead, discursive identification with their culture was non-threatening. As Clarke summarizes the appeal of these narratives, “identification with the Cliff Dwellers ... was a form of cultural appropriation ... that allowed for the experience of pluralism (of cultural melding) while evading the difficult

questions posed by the expansion of citizenship and the usurpation of property” (402). In a nation characterized by racial violence, these narratives offered Americans a means for reconciling current discord in the national community with mythological histories of “pure” nationalism.³¹ When Outland’s advisor interprets Cliff City’s former inhabitants as “perhaps, too far advanced for their time and environment,” he draws on the popular belief that different races evolved towards civilization at different rates to exemplify the anachronistic affinities that immersion in Cliff Dweller culture produced (198). The lost civilization, as the amateur anthropologists envision it, is more appropriate to the world of the twentieth-century United States than it was to a pre-United States native America, yet another contradiction that allowed Cliff Dweller narratives to support utopianism and cultural appropriation simultaneously.³² But Outland’s idea of receptive intellectual property represents more than the “cultural appropriation” Clarke describes. It also produces selected nativist kinship and rehearses settler colonialism.

To eschew originality and make an willingness to receive knowledge the standard for intellectual property is an exceptional proposition: it combines right feeling with proprietary right, and it unites devotion to scholarly (or pseudo-scholarly) study with entitlement. According to this logic, the orphaned Outland and “the other boys” like him deserve to own the native artifacts because they enjoy studying Cliff Dweller culture and because it offers them an emotional and intellectual version of kinship. Because they “have no other ancestors to inherit from” but venerate the Cliff Dwellers, their possession of the artifacts is justified through a kind of customized inheritance (219). Our characters do not claim to be originators, but they do envision themselves as heroic revivers. But notwithstanding its fantastic elements, Outland’s principle relies upon, and rehearses, U.S. national history. While receptive intellectual property

may seem innovative, declaring property rights based only on desire is textbook settler colonialism. Considered in this context, the utopian “Story” no longer looks wholly new, novel in its anti-originality. Instead, receptive intellectual property looks like another manifestation of the doctrine of discovery, the legal justification for settler colonialism in the Americas that the U.S. Supreme Court functionally renewed in the nineteenth century. In the opinion for 1823 case *Johnson v M’Intosh*, Supreme Justice John Marshall recalled the colonial rationale that European discovery, not indigenous occupation, constituted property rights. Laying the groundwork for Native American lands jurisdiction, Marshall argued that the United States had inherited Britain’s discovered property after independence and consequently that Native American lands can only be sold to the U.S. government, not to private purchasers (Riley 369-372). Marshall’s and Outland’s versions of inheritance seem to diverge: one designates the U.S. federal government as heir to British rule, and the other names U.S. citizens the heirs to native America. Yet these inheritances share a goal and a methodology: to convert native property into U.S. property through imaginative family structures.

Fantasy nationalism reverts to national history. At the end of *The Professor’s House*, the intellectual property utopia has failed to preserve Outland’s new family, to transform U.S. nationalism towards more egalitarian kinship, or to deliver St. Peter from the prosaicism of property and family. By the novel’s final section, St. Peter avoids all forms of sociality. He believes himself to be “cultivating a novel mental dissipation – and enjoying a new friendship ... [with] the *original*, unmodified Godfrey St. Peter,” an idea that proposes the final iteration of “originality” in this novel (239, emphasis added). Like the cows that turn “wild” when they reach the mesa (169), post-“Tom Outland’s Story” St. Peter thinks of himself the “primitive” St. Peter (241), “unchanged ... untouched” (242). Historical context tempers this claim to “novelty” –

teaching young boys to embrace their “savage” selves was the hallmark of one popular early-twentieth-century pedagogy³³ – and Cather represents this primitivist reverie as anything but salubrious when it almost kills St. Peter. In the end, *The Professor’s House* presents its inset narrative as noisome at best and fatal at worst: Outland and his ilk are sloppy excavators (recall the jettisoned corpse), Outland dies in World War I, Rodney Blake disappears, and Godfrey St. Peter, the auditor of “Tom Outland’s Story,” contemplates suicide. Critics have argued that the novel’s cynicism stems from World War I’s negation of progressive histories, but it also seems the result of insular, utopian thinking.³⁴ Yet despite the flaws of its utopia, despite the novel’s apparent repudiation of utopian possibilities, *The Professor’s House* still confirms that rethinking intellectual property is a tool for reimagining the terms of U.S. national belonging. Through her attention to the interaction of settler colonialism and intellectual property, to the substitutive inheritances that desire can facilitate, Cather demonstrates that the nation form does not innately depend upon linear time or biological modes of reproduction. It holds out the possibility of putting queer kinships at the core of the nation.

IV. Conclusions

The Professor’s House and *Herland* seem to envision opposite utopias. Cather figures queer male intimacies that transcend time, space, and race. Gilman presents a biologically related, present-minded nation of only women. Cather’s novel reflects on the history of settler colonialism in the Americas. Gilman’s novel offers a fictionalized plan for a future United States. Cather’s utopia is inconclusive and self-critical, while Gilman’s is didactic and self-assured. Finally, Cather depicts unoriginal creation to contest the possibility of individual authorship. Meanwhile Gilman preserves the possibility of autonomous authorship by rejecting

the market-based intellectual property system that makes Godfrey St. Peter wealthy. But nevertheless the shared investment in queer experiences of nationalism marks Cather and Gilman as literary kin in the most abstract sense of the phrase. They are related in vision, both using their novels to denaturalize U.S. intellectual property and identify queer nationalism as a possibility.

Considered together, *Herland* and *The Professor's House* also demonstrate the power and the inherent flaws in utopian thinking for proposing changes to intellectual property. The fiction form allows them to imagine the far-flung effects that changes to authorship and property would enable. These reflections on authorship move beyond discussions of term limitations, types of protectable goods, and authorial membership. They also intimate the social effects that an intellectual property revolution could instigate and the transformations to American nationalism that could result. But the classic utopian form is also inherently insular and utopian novels struggle to account for ambiguity, contingency, and problems not resolved by their central premises. But with her creation of the framed utopia, Cather proposes a way to fuse criticism and self-consciousness with ambitious fantasy.

Conclusion

Literary Kinship

By considering authors' works in pairs, I have attempted to bypass the language of original and copy, progenitors and debtors, source and revision that often shape our conversations about the relationships between authors who work with similar or shared materials. These terms invoke many of the same ideas that U.S. intellectual property law assumes: (1) that authors are individuals who can lay claim to their creations, or at least their particular expressions of their ideas, though possibly only for a limited period of time, (2) that new authors who encounter earlier authors' creations or who work with similar ideas and sources have a secondary claim to that material, i.e. that the first claim is primary, and (3) that in order to translate that secondary relation into a primary and proprietary claim of his or her own, the new author must cite, credit, improve, surpass, and/or significantly revise the earlier authors' expressions. While key to the study of revision and useful for tracking authors' influences and disciples, this set of theories is not the only way to conceive of the production and circulation of ideas and art.

One way to move away from this implicitly property-centric account of authorial connections is to diversify the kinship metaphors we use to describe these relationships. The language of "fathers" and "sons" and, more generally, "ancestors" and "relatives" figures literary influence as vertical kinship.¹ Like the nation-as-family language that George Lakoff, Nina Silber, Walter Benn Michaels, and others study, these literary kinship metaphors are primarily vertical in orientation: they model the descent of ideas and forms from earlier authors to later authors on the descent of traits and property from parents to children. In his essay "The World

and the Jug,” Ralph Ellison starts to complicate this narrative by arguing that some literary relationships are chosen while others are given. But non-vertical and non-figurative family arrangements are also fruitful for contemplating literary kinship.

I propose that we can further expand our conception of literary kinship by attending to literal family inheritances between authors, using horizontal kinship metaphors to describe similar works by near-contemporary authors, and, most abstractly, by thinking about visionary kinship between ostensibly dissimilar works. In Josephine Brown’s biography of her father William Wells Brown, literary property confirms a parent-child relationship that was routinely denied to black fathers and their children under slavery. The twin-like resemblance between the plots of *Pudd’nhead Wilson* and *The Marrow of Tradition* suggests that we can imagine Mark Twain and Charles Chesnutt as these sibling-texts’ co-parents, united by their akin creations but still articulating distinct perspectives. Charlotte Perkins Gilman in *Herland* and Willa Cather in *The Professor’s House* use opposite techniques and familial figures to propose intellectual property utopians, but they are nevertheless akin in their projection of queer nationalism. By interpreting literary kinship through these more variable contexts and metaphors, we can reimagine literary inheritance in more mutual terms.

Notes

Introduction:

¹ “Copy” 658. Wharton conveys similar concerns about authorship, privacy, and intimacy in her 1900 novella *The Touchstone*.

² The 1870 U.S. Copyright Act added control over translations and other derivative works to the author/owner’s protected rights.

³ Also known as the Chace Act, the 1891 International Copyright Act was the result of decades of lobbying. I detail the debates preceding its enactment in my first chapter. The final section of the act stipulates that U.S. copyright protections will only be afforded to a foreign author only if that author’s state offers reciprocal rights to American authors or if the state is part of an international agreement that the U.S. may, “at its pleasure, become a party to such agreement” (sec. 13).

⁴ “Copy” 661. The question of copyright in unpublished materials is particularly complex. As William M. Landes and Richard A. Posner discuss in their economic analysis of intellectual property law, “why should the copyright in letters belong to the letter writer rather than to the recipient who ‘owns’ the letter and has the right to sell it, destroy it, show it to friends, or give it to a university library, but (because he is not the copyright holder) not to make copies of it?” (126). Part of the answer is that copyright law distinguishes between ownership of the copyright and ownership of the physical work. But this question is further complicated if we want to read “Copy” historically because it was published when copyright protection required registration (not just the act of creation) in the United States. In short, there is no simple legal answer to who owns which letters in this play.

⁵ Among others, the 1891 and 1831 Copyright Acts are concerned with widow’s rights.

⁶ “Copyright” 314. In a 1905 open letter to the register of copyrights, Twain used Harriet Beecher Stowe’s daughters (alongside Washington Irving’s daughters) as the exemplary children of authors to be pitied for their inability to live on the profits of their parent’s literary estate (“Concerning” 3-4). Despite this imagined maternal inheritance, Twain’s focus on authors’ daughters throughout his pro-copyright activism suggests a patriarchal concern with providing for female dependents and a programmatic response to gender-discriminatory property laws. As Melissa Homestead notes in her analysis of nineteenth-century women’s relationship with literary property, with particular attention to Stowe, many women could not hold literary property (or any other kind of property) under coverture laws.

⁷ Copyright durations were extended to the author’s lifetime plus fifty years in the 1976 Copyright Act and the 1998 Sonny Bono Copyright Term Extension Act extended it to the author’s lifetime plus seventy years.

⁸ Late twentieth-century extension of copyright durations combined with work-for-hire provisions has allowed large companies like Disney and Time-Warner to maintain ownership over cultural content and products that would have, under earlier laws, joined the public domain decades ago. Concern about corporate influence in the expansion of U.S. intellectual property law is a hallmark of recent criticism on the subject. For example, Oren Bracha traces the nineteenth-century incorporation of authorship while Susan Sell considers the law's more recent and international effects in her analysis of corporate power in the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). I discuss the state of this field more generally later in this introduction.

⁹ For overviews and responses to the interest in multiculturalism within American studies in the 1980s and 1990s, see Kaplan, "Left Alone with America": The Absence of Empire in the Study of American Culture" and Radway, "What's in a Name? Presidential Address to the American Studies Association, 20 November, 1998."

¹⁰ Lyman Ray Patterson traces U.S. copyright law's relationship with European laws and compares the constitutionally guaranteed protections with those of earlier state laws, many of which required that reasonably-priced editions of copyrighted works be made available to the public. Other scholars who survey the development of modern intellectual property in eighteenth-century, and who compare the systems in different European nations to one another and to the current U.S. system, include Martha Woodmansee, Carla Hesse, Mark Rose, Benjamin Kaplan and Peter Jaszi.

¹¹ Siva Vaidhyanathan, *Intellectual Property: A Very Short Introduction*, 10. Jane Gaines's *Contested Culture* and Melville Nimmer, et.al's textbook on copyright also offer useful introductions to intellectual property.

¹² Mark Rose lists the ways in which scholarship participates copyright's promotion of the author as proprietor, and cites criticism that predates the current interest in intellectual property and describe copyright as innate and ancient, even though it is a modern innovation (2-3). Paul Saint Amour also reflects throughout his book *Copywrights* on academic institutional practices that make criticizing authorship, originality, and intellectual property tricky, sometimes self-contradictory and sometimes self-aggrandizing.

¹³ Although I think it usefully explains the field's foundations, *Contested Culture* is not the earliest or most-cited work in intellectual property studies. In addition to Foucault's "What is an Author?" (1969), important contributions to intellectual property studies that predate Gaines's book include Benjamin Kaplan's *An Unhurried View of Copyright* (1967), Roland Barthes's "The Death of the Author" (1967), L. Ray Patterson's *Copyright in Historical Perspective* (1968), and Martha Woodmansee's "The Genius and the Copyright: Economic and Legal Conditions of the Emerges of the 'Author'" (1984).

¹⁴ William Landes and Richard Posner analyze various intellectual property provisions through an economic lens and generally find its principles sound. Rosemary Coombe takes a more critical stance towards the law in her extensive study of the "cultural life" of intellectual

properties. Her interest in how the consumption of cultural products can complement or supplant legal citizenship in the formation of national communities parallels some of my own ideas in my third chapter, although her focus is on twenty-first century ways of interacting with popular culture. U.S. corporate influence on copyright law and U.S. economic interest in intellectual-property dependent fields like software design, pharmaceuticals, and entertainment are major concerns in scholarship on late-twentieth and twenty-first century intellectual property, including in works by Paul Saint Amour, Siva Vaidhyanathan, Rosemary Coombe, Ronald Bettig, Mark Rose, and Peter Jaszi. Oren Bracha's analysis of the nineteenth-century antecedents to this later corporate influence provides a major context for my interpretation of "intellectual property utopias" in my third chapter. Zorina Khan argues that U.S. intellectual property law has successfully fostered democracy and facilitated the United States's status as a global power, though she doesn't consider how those protections now work as tools of imperialism. Susan Sell's study on globalization and intellectual property is better on that topic. Finally, interpretations of the applicability of Romantic ideas of authorship to more recent laws and creative methods have been ongoing since the field's inception. I tend to agree with critics like Peter Jaszi and Oren Bracha who see the myth of individual genius as influential in copyright discourse even when it is a poor fit with contemporary practices. Mark Lemley and Mario Biagioli disagree with this position and see the idea of the Romantic author as fundamentally at odds with recent creative and legal developments.

¹⁵ For the language of the imaginable in relation to nations and aesthetics, I am indebted to Elizabeth Maddock Dillon's "Reassembling the Novel."

¹⁶ Jane Howard and Gillian Silverman also consider the relationship between authorship and kinship, but they do not discuss intellectual property in detail.

¹⁷ See Siva Vaidhyanathan *Copywrongs*, 24. See also the major textbook on copyright by Melville Nimmer, et.al, especially their chapters on fixedness (section 1.03) and duration (section 5.01).

¹⁸ *Imagined Communities* was first published in London, but the aforementioned 1981 International Copyright Act ensures reciprocal protections in the United States. Since 1988, British copyright law also protects copyrights for seventy years after the author's death. In his chapter "The Reign of the Dead: Hauntologies of Postmortem Copyright" in *The Copyrights*, Paul Saint Amour persuasively argues that post-mortem copyright serves "no less a cultural function than to determine and police the border between the living and the dead" (124). In brief, he interprets

¹⁹ Anderson's theory of the nation has adapted and criticized many times since his book's original publication. While I do not know of any other critic who reinterprets Anderson's theory using intellectual property, Wai Chee Dimock's, Elizabeth Maddock Dillon's, and Alys Eve Weinbaum's explanations of his theory's limitations when we think about the nation in terms of time, colonialism, race, and gender have been influential on my own analysis.

²⁰ Paul Giles's *The Global Remapping of American Literature* (2011) is an example of a prominent work within this subfield. Winfried Fluck's "A New Beginning? Transnationalism" surveys the rhetoric, assumptions, and uses of transnational American Studies.

²¹ Bloom imagines authors as propriety fathers and sons. His central argument is that "what divides each poet from his Poetic Father ... is an instance of creative revisionism," a dynamic but nonetheless linear theory of artistic inheritance (57). In adapting Freud's concept of the family romance "so as to place less emphasis upon phallic fatherhood, and more upon *priority*, for the commodity in which poets deal, their authority, their property, turns upon priority," Bloom implicitly alludes to authors' stake in their potential copyrights in addition to what he call poetic strength (64, emphasis original.)

²² Following Ralph Ellison, Gates proposes a theory of "tertiary revision" (122). He argues that three factors combine to make up literary ancestry. He clarifies that "These elements include texts that provide models of form, texts that provide models of substance, and the text at hand. ... Several of the canonical texts in the Afro-American tradition seem to be related to other black texts primarily in terms of substance or content, whereas they seem to be related to Western texts in terms of form" (122). He wants to emphasize that black writers do revise and respond to antecedent texts in African-American literature given critical denials of these relationships.

Chapter One: Written By Himself, and a Few Others: William Wells Brown's Anti-Copyright Abolitionism

¹ This definition is quoted in Robert Levine's introduction to *Clotel* (6) and in Marilynn Randall's study of plagiarism (61). The *Oxford English Dictionary* has revised this definition to "kidnapping, abduction," although an example from Edward Browne's *A brief account of some travels in Hungaria* (1973) preserves the definition's application to slave-knapping: "Captives and Slaves ... fell into that condition..by treachery..[or] chace of war; others by Plagiarism, and man-stealing Tartars."

² Edward Davis, 1, quoting from George Stroud's *Sketch of the Laws Relating to Slavery* (1826). Stroud defends his observation that slave law renders persons as things in his second edition of *Sketch* (1856), 296. This quotation appears, uncited, in Brown's 1848 appendix to his fugitive slave narrative, 129. Like Best, Samara Kawash argues that "nineteenth-century American slave narratives reveal the limits of the liberal ideology of property and person by creating a third figure outside this order: the fugitive" and she analyzes the expectation that a fugitive like Frederick Douglass would behave as a "symbol" rather than an actor in the modern property system (277, 278).

³ Sanborn *Plagiarama* 14. Although I disagree with Sanborn's readings of Brown's compositions, I am grateful for his index of reprinted material in Brown's publications.

⁴ Randall 14-20. See also Tilar Mazzeo's first chapter in *Plagiarism and Literary Property in the Romantic Period*, as well as Françoise Meltzer's *Hot Property* and Robert Macfarlane's *Original Copy*.

⁵ See Sanborn, Bryan Sinche, and Charles Baraw. I discuss trends in the criticism on Brown in more detail in section one.

⁶ See Ezra Greenspan's third chapter in *William Wells Brown: A Reader* and *William Wells Brown: An African American Life*. See also Brown's 1848 appendix to his fugitive slave narrative in which he lists quotations from slave laws.

⁷ *Fabrication* 16. Here Cohen is revising Walter Benjamin's argument that authenticity is a casualty of modernity, instead proposing that authenticity is the (indirect) production of modernity. Cohen mentions plagiarism as fitting within what she calls fraudulence but she does not discuss it in any detail (2).

⁸ See Ronald Zboray 55-82 on the relationship between railroad shipping, American publishing, and reading publics.

⁹ Rothschild notes that while critics often use the terms "New Democrats" and "Young America Democrats" interchangeably, political Democrats like John O'Sullivan and literary nationalists like Evert Duyckinck disagreed on the question of international copyright (320). The former group feared that extending copyright protections to foreign authors would extend the United States' cultural dependence on Europe, the latter group believed that only strong authorial protections for American and foreign authors could promote a unique national literature (336). See also McGill, chapter 2, on these debates. For differing perspectives on the factions of the Young America movement, see Eyal and Widmer.

¹⁰ On the connections between pro-slavery discourse and anti-copyright advocacy, see Meredith McGill's second chapter "International Copyright and the Political Economy of Print." For this history I draw on criticism by Grantland Rice, Melissa Homestead, and especially Meredith McGill, whose work I discuss in more detail later. Although McGill claims in her introduction that we cannot understand the 1830s and 1840s through the "optics of national literary study," I interpret her work as imagining the contours of American literature in new, transnational and decentralized ways" (1).

¹¹ See James Rawley and Meredith McGill 87-92.

¹² Longfellow 70. Michael Warner shows that advertisements for American literature in particular started in the late nineteenth-century, but that these notifications were part of an "economic rather than aesthetic argument for its purchase," in contrast to Longfellow's assertion (120).

¹³ On Wiley and Putnam's *Library of American Books* series, see Greenspan, "Evert." In that article, Greenspan argues that by 1845, the "cheap publication war of the early 1840s was clearly

over,” yet I contend that the delayed enactment of the International Copyright Law and the enduring popularity of unoriginal literature, like Brown’s suggests that this “war” persisted, if in a more subtle manner (682). For the history of reprint culture and anti-copyright activism, see Rice, Homestead, and especially McGill. On literary nationalism, see Cohen, Eyal, Frederick, McCloskey, Street, Verheul, and Widmer. Part of the reason that it took so long to pass the International Copyright Act was because the publishers’ informal courtesy system allowed them to fix prices. As a result they were relatively happy with the reprint system and, in general, did not advocate for change along with authors. See Siva Vaidhyanathan in *Copyrights and Copywrongs*, 52.

¹⁴ Quoted in Cohen, *Fabriciation*, 105. Theodore Parker, *The American Scholar*, 37.

¹⁵ “Notes” 162. Cohen specifically critiques Robert B. Stepto’s and William L. Andrews’s influentially studies of abolitionist discourse and authorship.

¹⁶ Although it is difficult to tell where in this reprint circuit the irony starts (is the *Emancipator and Republican* mocking the *Cincinnati Herald*? Or is the *Herald* itself being facetious?), the overall effect is undercut the value of original ownership.

¹⁷ Lara Langer Cohen is one of few critics to note this scene’s appearance in Brown’s panoramic lectures (“Notes” 164). William Farrison, one of Brown’s biographers, identifies the anti-slavery newspapers through which Brown probably encountered this narrative (176).

¹⁸ See Greenspan’s *Life*. Brown’s English friends purchased his freedom in 1854. Josephine Brown’s biography of her father reprints his deed of emancipation and bill of sale (96-98). Josephine notes: “The foregoing, reader, is a true copy of the bill of sale by which a democratic, Christian American sells his fellow-countryman for *British gold*” (99, emphasis original).

¹⁹ See Sanborn *Plagiariama!* 14 and appendix.

²⁰ *Plagiarama!* 17. Other critics in this category include Bryan Sinche and Christophe Stampone.

²¹ John Ernest uses the phrase “cultural editor” after discussing nineteenth-century historians compositional strategies (23), and Robert Levine endorses this description, even though he also argues that Brown anticipated post-modernist use of pastiche and bricolage (6-7). Lara Langer Cohen argues that once when traces the lives fragments that appear within Brown’s corpus – most notably, the scene of a woman jumping over the ice that latter appears in *Uncle Tom’s Cabin* - then “*Clotel* starts to look less anomalous and more representative” (164).

²² See Ann duCille’s first chapter in *The Coupling Convention*.

²³ Channing 5. On the feminization of male slaves and black abolitionists’ projection of male virility and paternity, see Vincent Woodard’s *The Delectable Negro*, especially his fourth chapter “Domestic Rituals of Consumption.” On gender and slavery more generally, see Hortense Spiller’s ‘The Permanent Obliquity of an In(pha)llibly Straight’: In the Time of the Daughters

and the Fathers” and “Mama’s Baby, Papa’s Maybe: An American Grammar Book” as well as Angela Davis’s “Reflections on the Black Woman’s Role in the Community of Slaves.”

²⁴ On the conventions of the fugitive slave narrative, see William Andrews, Lindon Barrett, Robert Stepto, James Olney, and Dwight McBride.

²⁵ See William Loren Katz’s introduction to 1968 reprinting for background on Weld and the publication of *American Slavery As It Is*.

²⁶ Likewise, in an 1853 letter, Stowe asserts that *Key* “contains, in an undeniable form, the facts which *corroborate* all that I have said [in the novel] ... If they call the fiction dreadful, what will they say of the fact, where I cannot deny, suppress, or color?” William Loren Katz quotes from Stowe’s January 6, 1853 letter to the Earl of Shaftsbury in his introduction to the 1987 reprinting of *Key*.

²⁷ On the afterlives of the Eliza scene, see Lauren Berlant’s first chapter in *Female Complaint*, chapter 1 and Eric Lott’s eighth chapter in *Love and Theft*.

Chapter Two: Making Performance Property in Jim Crow Law and Fiction

¹ As Megan Pugh explains, although the well-respected black dancer Tom Fletcher trained Vanderbilt, Walker and William were generally considered to exhibit superior talent and “everyone knew who would have come out ahead” in the dance off (21).

² I draw this history from Brooke Baldwin’s “The Cakewalk: A Study in Stereotype and Reality,” Eric Sundquist’s fourth chapter “Charles Chesnutt’s Cakewalk” in *To Wake the Nations*, especially 271-294, Megan Pugh’s first chapter in *America Dancing*, and Stephen Best’s *Fugitive Properties* 140-9.

³ Baldwin argues that “When Williams and Walker accused Vanderbilt of ‘having posed as an expert’ on the cakewalk, thereby ‘distracting attention from them,’ they were challenging much more than one white dilettante’s right to cut into their livelihood” (215). Levin makes a related argument when she writes that “Though Williams and Walker proposed a low ‘stake’ of fifty dollars for the competition, the figurative stakes were much higher. ... the ‘stakes’ were nothing less than the ability to represent an increasingly globalized “American” popular culture both nationally and internationally” (333).

⁴ See my first section in this chapter, “Intellectual Property and the Problem of Performance,” for examples of these complaints.

⁵ The 1856 Copyright Amendment added protections for dramatic compositions and established performance rights. The 1865 Copyright Amendment added photographs and photographic negatives to the list of protectable works. On Brady’s popularity, the legislative buildup to this

act, and its legacy, see Christine Farley, especially n.64 on 404. The 1884 Supreme Court case *Burrow-Giles Lithographic Co. v. Sarony* upheld the constitutionality of the 1865 amendment. In 1891, the long-debated U.S. International Copyright Act passed. The 1903 case *Bleistein v. Donaldson Lithographic Co.* established that commercial art is protected under copyright law. In 1909, the first major overhaul of copyright law since its foundation in 1790 extended copyright durations, among other changes. In 1912, the Townsend Amendment added protections for motion pictures.

⁶ On the fixedness requirement, see section 1.03 in *Cases and Materials on Copyright* by Nimmer, et.al.

⁷ Peggy Phelan in *Unmarked: The Politics of Performance* cites this “nonreproductive” characteristic of performance to argue that performance thwarts a cultural economy based in repetition and the law that regulates repetition and circulation (27). Philip Auslander disagrees, and in his study of the interaction between performance and “mediatized” forms like television amends this idea to show how live performance in the form of witness testimony is essential to the law (112-157). Auslander also argues, citing the 1976 U.S. Copyright Act, that even fixedness cannot make a performance protectable. He concludes, “Whether live or recorded, performance *qua* performance cannot be copyrighted” and he includes notable and convoluted legal decisions to support this point (139). However, Auslander downplays the role of performance rights in authenticating (but not copyrighting) performance.

⁸ See, for example, Mario Biagioli’s “Genius Against Copyright” and Paul Saint Amour’s introduction to *The Copywrights*.

⁹ Mark Rose suggests the confusion in identifying the author/owner in a performance when he asserts that “in mass culture the authorial function is often filled by the star – [who] becomes a kind of brand name,” although that star often is not the copyright holder (1). Although he is reviewing a twenty-first century comedy act and not late-nineteenth-century performances, Hilton Als’s eloquent description of the individual transformation that an actor undergoes is useful here: “she merges with the environment, the atmosphere, as she travels through it, becoming and unbecoming herself” (n.p.).

¹⁰ The quotation on Walker and Williams’s popularity is from James Weldon Johnson’s *Black Manhattan* 102. Dolen Perkins compares Chesnutt’s novel to newspaper articles about the Wilmington, N.C. massacre. While critics most often write about *The Marrow of Tradition* as a fictional representation of the Wilmington, N.C. massacre, Gordon Fraser studies Chesnutt’s depiction of the New Orleans riot in his analysis of white supremacist responses to the circulation of black bodies and black print.

¹¹ On the composition of *Pudd’nhead Wilson*, see Ron Powers’s introduction to the novel and Hershel Parker’s *Flawed Texts and Verbal Icons* 115-146. While Parker’s assertion that *Pudd’nhead Wilson* is “unreadable” is overstated, the biographical and bibliographical research is useful (115).

¹² See Sandra Gunning's second chapter "Mark Twain, Charles Chesnutt, and the Politics of Literary Antiracism" in *Race, Rape, and Lynching*, Myra Jehlen's "The Ties that Bind: Race and Sex in *Pudd'nhead Wilson*," Michael Rogin's "Francis Galton and Mark Twain: The Natal Autograph in *Pudd'nhead Wilson*," and Emahunn Campbell's "*Pudd'nhead Wilson* and the Discourse of Black Criminality."

¹³ More broadly, Saidiya Hartman studies the limits of using representations of black humanity towards anti-racist ends in her book *Scenes of Subjection*. She is interested in the "ways that the recognition of humanity and individuality acted to tether, bind, and oppress" African Americans and she shows how during the Reconstruction era contracts simultaneously recognized former slaves' humanity and perpetuated oppressions (5).

¹⁴ The writing on race in *Pudd'nhead Wilson* is extensive. Key early works include the edited collection *Mark Twain's Pudd'nhead Wilson: Race, Conflict, and Culture* and Eric Sundquist's *To Wake the Nation*. On property and speculation, see John Rowe's "Fatal Speculations: Murder, Money, and Manners in *Pudd'nhead Wilson*," George Spangler's "A Parable of Property," and Mary Esteve's "Shadow Economies: The Distribution of Wealth in and Around *Pudd'nhead Wilson*."

¹⁵ See Victor Doyno 188-189 on Twain's attempt to copyright his pen name. In brief, in 1883 Judge Henry William Blodgett ruled against Twain, declaring that a trademark could not replace a copyright and furthermore that an author cannot trademark an assumed name. Twain later named one of his more buffoonish characters in *Huckleberry Finn* after Blodgett.

¹⁶ For additional examples of Twain's copyright activism, see his 1881 "Dinner Speech" in Montreal, in which he wishes literature were as well protected as whiskey, his "Petition Concerning Copyright," which facetiously proposes that titles to all property, including real estate, expire after forty-two years, his open letter "Concerning Copyright," and "Copyright," his 1906 speech before Congress. For much of the biographical research that informs this paragraph and the previous one, I am indebted to Victor Doyno.

¹⁷ With this somewhat abstract claim, Vaidhyanathan is responding against what he sees as the critical overuse of the twin metaphor, with Mark Twain as the uninhibited creator and Samuel Clemens as the shrewd business man, to explain Twain's writings in the context of his biography (57).

¹⁸ For more examples of the author as slave metaphor, see Melissa Homestead's *American Women Authors and Literary Property*. Some scholars adopt this rhetorical comparison of reprint culture with slavery into their critical assessments, as Victor Doyno does in his account of Twain's copyright activism. He uses that biographical context to inform close readings of *Huckleberry Finn*, and he concludes by writing, "Jim's liberation from the bonds of slavery can be paralleled with Twain's struggle to free the formation of Americans' imaginations from European bookish expectations" (198). This notion resonates with William Ellery Channing's 1823 assertion, quoted in my first chapter, that reading primarily foreign-authored literature will force American readers "under the worst bondage" ("Need," n.p.) While I follow Doyno in using

copyright debates as a context for understanding Twain's fiction, I hope to show how notions of property in slave law and in intellectual property discourse are related and interactive but not parallel.

¹⁹ See also Ian Haney Lopez's *White By Law: The Legal Construction of Race*.

²⁰ Lee Clark Mitchell and George Spangler survey these debates about nature and training. Spangler proposes that the source of Tom's outsized depravity is neither, but rather his "obsession with property to the exclusion of all other human concerns," a passion that finally concludes in Tom's eventual "reduction" to property himself (30). This reading mostly neglects the representation of race in *Pudd'nhead Wilson*, but Spangler's recognition that the novel distinguishes between Tom and other slaveholders is helpful.

²¹ Woodard's *The Delectable Negro* is a study of homoeroticism and cannibalism in U.S. slave culture that reorients Orlando Patterson's theories in *Slavery and Social Death* towards themes of consumption.

²² Ralph Ellison interprets blackface as demonstrative of white anxieties, arguing that in minstrelsy and white American folklore "the Negro is reduced to a negative sign that usually appears in a comedy of the grotesque and the unacceptable. ... [In] the American social drama ... the Negro was too real for easy fantasy, too serious to be dealt with in anything less than a national art" ("Change the Joke" 103). In his study of Jim Crow music, Karl Hagstrom Miller also considers the white experience of minstrelsy, describing blackface as "a prop that performed racial distance under the auspice or racial passing," a mask that signaled difference and authenticity simultaneously (5).

²³ John Mac Kilgore focuses on the Northern audiences' investment in the cakewalk and white Southern businesses to propose that this scene discloses "Chesnutt's conviction that anti-African American violence has more to do with progressive and impersonal U.S. industry than with regressive and barbaric Southern or U.S. white culture" and that the violence related in *The Marrow of Tradition* is distinctly modern (64). Although Kilgore downplays the importance of family histories and inheritances in the novel, his points that the violences are intertwined with post-Reconstruction businesses and trends and that Chesnutt depicts Jim Crow violence as national rather than regional are important.

²⁴ On the limitations of Ellis's perceptions throughout the novel, see Rachel Wise's analysis of his middle class prejudices, "Reading Rivalry, Race, and the Rise of the Middle Class in Charles Chesnutt's *The Marrow of Tradition*."

²⁵ Grace Hale outlines the different steps to the "well-choreographed spectacle" of lynching: "a chase or a jail attack, followed rapidly by the public identification of the captured African American by the alleged white victim or the victim's relatives, an announcement of the upcoming event to draw the crowd, and selection and preparation of the site. The main event began with a period of mutilation – often including emasculation – and torture to extract confessions and entertain the crowd, and built to a climax of slow burning, hanging, and/or

shooting to complete the killing. The finale consisted of frenzied souvenir gathering and display of the body and the collected parts” (204). I argue that a faux detective sequence is a part of this spectacle that precedes these other steps.

²⁶ The criticism on law as represented in *The Marrow of Tradition* is extensive, though, to my knowledge, no scholar interprets this novel in light of the development of intellectual property. See Nancy Bentley’s “The Strange Career of Love and Slavery: Chesnutt, Engels, Masoch”; Ryan Jay Friedman’s “Between Absorption and Extinction: Charles Chesnutt and Biopolitical Racism”; Andrew Hebard’s “Romance and Riot: Charles Chesnutt, the Romantic South, and the Conventions of Extralegal Violence”; Trinyan Mariano’s “Law of Torts and the Logic of Lynching in Charles Chesnutt’s *The Marrow of Tradition*”; William Modellmog’s “Lawful Entitlements: Chesnutt’s Fictions of Ownership”; Angelo Robinson’s “Race, Place, and Space: Remaking Whiteness in the Post-Reconstruction South”; and Brook Thomas’s “The Legal Argument of Charles W. Chesnutt’s Novels.” Much of this scholarship focuses on Chesnutt’s representation of contract law and on legal responses to extralegal violence.

²⁷ Copyright protects minimally original creations (i.e., not exactly copied) and only protects individual creations, not widely shared concepts or supposedly racially authentic styles. More technically, it only protects particular expressions of ideas, not the ideas themselves, a distinction that the Supreme Court upheld in *Selden v. Baker* in 1879. A landmark case that clarified the difference between copyright law and patent law and delimited the protections that copyright did not confer, *Selden v. Baker* imposed restrictions on the recent expansion of copyright law. As legal scholar Oren Bracha explains, these restrictions were, somewhat paradoxically, “an integral part of the general expansion of the scope and strength of copyright protection during this period In the face of attempts to expand copyright in novel directions judges worked to develop rules that would place some limit on copyright’s expansion potential” (n.p.) That is, the need to impose limitations on copyright like the idea/expression distinction was evidence of intellectual property’s profitable and worrisome expansion.

²⁸ On progressivist professionalism in *The Marrow of Tradition*, see Susan Danielson’s “Charles Chesnutt’s Dilemma: Professional Ethics, Social Justice, and Domestic Feminism in *The Marrow of Tradition*” (75). For a reading of *The Marrow of Tradition* in light of Chesnutt’s controversial essays on “future Americans,” see Stephen Knadler’s “Untragic Mulatto: Charles Chesnutt and the Discourse of Whiteness” (438).

²⁹ Stewart 115, emphasis added. R. Austin Freeman claims in his essay “The Art of the Detective Story” to have invented the inverted detective story sub-genre (13).

³⁰ In “The World and the Jug,” Ellison distinguishes between literary relatives, who influence the new author but are unchosen, and literary ancestors, a new author’s chosen inspirers.

Chapter Three: Intellectual Property Utopias of the Early Twentieth Century

¹ See “About,” *Demos*, demos.co.uk/about, Web 29 Jan. 2016, and “About,” *Creative Commons*, creativecommons.org/about, Web 29 Jan. 2016. See also Douglas Rushkoff’s “Open Source Democracy: How Online Communication is Changing Offline Politics.”

² For examples of these important trends in American studies, see Robert Levine’s *Dislocating Race & Nation*, the edited collection *Cultures of United States Imperialism*, and the edited collection *Imagining Our Americas*.

³ On intertextual Romantic practices, see Robert MacFarlane’s *Original Copy*. On the history of the discourse of genius, its various applications, and its use for reorganizing the expectations of liberal democracy, see Victoria Olwell’s *The Genius of Democracy*. On the inability of Romantic authorship to explain all aspects of copyright like, especially corporate authorship, see Mario Biagioli’s “Genius Against Copyright” and Mark Lemley’s “Romantic Authorship and the Rhetoric of Property.”

⁴ Oren Bracha also studies the endurance of the individual author-owner in U.S. intellectual property law, writing that even corporate and collaborative authorship became more common, the “Cheshire cat smile” of individual authorship “kept hovering over” the law (3).

⁵ Biagioli 1854. See Mario Biagioli’s “Genius Against Copyright” for examples of eighteenth-century uses and “International Copyright: Plain Speech from American Authors” for examples of later American uses.

⁶ Ahmed also theorizes heterosexuality as the “gift” of family membership that stipulates the perpetuation of the family line. See 85-91.

⁷ In addition to Hudak, Carter-Sanborn, and Bederman, see also Kristen Egan’s “Conversation and Cleanliness” and Dana Seidler’s “Unnatural Selection.”

⁸ Gilman scholarship dates to 1972, when, at Elaine Hedges’s suggestion, the New Feminist Press reprinted Gilman’s 1892 short story “The Yellow Wallpaper,” spawning a surge in criticism on this story and Gilman’s other writings. On the history of that republication, see Florence Howe, Susan Lanser, and Julie Bates Dock’s edition of “The Yellow Wallpaper.” Lanser in 1989 and Alys Eve Weinbaum in 2001 review the extant criticism on Gilman to identify the continuities and weaknesses in this scholarship. While most 1970s and 1980s criticism tended to ignore Gilman’s white supremacy, or frame her racism as distinct from or at odds with her feminism, more recently scholars have identified the intersection of her gender and race politics. Both critics note how studies of Gilman rehearse some of the themes of her writing. For example, Weinbaum links the rhetoric of “discovery” around Gilman’s republication to the author’s imperialist theories (291). The most influential, and most critiqued, argument about women’s authorship in terms of Gilman’s writing is Sandra Gilbert and Susan Gubar’s discussion of “The Yellow Wallpaper” in *Madwoman in the Attic*. Against their universalist

figuration of women's authorship – their argument that Gilman's story "seems to tell *the* story that all literary women would if they could speak their 'speechless woe'" (89, emphasis original) – Lanser calls for the deconstruction of feminist reading practices that too readily assume absolute difference between men's and women's writing practices and continuity among women's writing practices.

⁹ For the bylines, see *The Forerunner* 1.1 (Nov. 1909) 1 and *The Forerunner* 3.4 (April 1912) 1.

¹⁰ On the word count and Gilman's life during the "*Forerunner* Years," see Gary Scharnhorst's fourth chapter in his biography of Gilman. For an example of her advertisements for her previously published works, see *The Forerunner* 1.13 (November 1910) : 33-4.

¹¹ See Minna Duskow introduction to the utopian novels (12) and Madeline Stern's introduction to *The Forerunner*.

¹² On her finances during the *Forerunner* era, see Johanne Karpinski's "The Economic Conundrum in the Lifewriting of Charlotte Perkins Gilman" (39) and Larry Ceplair's *Charlotte Perkins Gilman* (190). In the magazine's tenth issue in August 1910, she appealed to readers to purchase and promote subscriptions. In an address titled "The Editor's Problem," Gilman explains that the magazine needs 3000 subscribers to support its production, but only presently had between 1100 and 1200 subscribers.

¹³ *Herland* was never published as a stand alone novel until Ann J. Lane's Pantheon edition in 1979. See Beth Sutton-Ramspeck's article on the novel's publication history and editorial problems in the novel's most popular editions.

¹⁴ Gilman suffered from what we now call post-partum depression but was then diagnosed as neurasthenia. Gilman's child rearing theories and her relationship with her daughter Katharine Beecher Stetson (who was raised by her father and Gilman's first husband Charles Walter Stetson and his wife Grace Channing) have been much discussed. See Larry Ceplair, Gary Scharnhorst, Graehme Hall, Minna Duskow, Dorothy Berkson and Lynne Evans.

¹⁵ Marguerite Corporall compares *Looking Backward* and *Herland* to track Gilman's revision of Bellamy's politics. *Looking Backward* incited a utopian political movement in the United States called Nationalism. Nationalist Party members advocated for nationalized industry, the distribution of wealth, and the reduction of class differences. In addition to these aims, Gilman advocated for white women's work and a less hierarchal government.

¹⁶ *Herland* 82. Gilman uses the term "perfect" eight times to describe the Herlanders' shared disposition or one character's behavior. For example, in his attempt at a sociological account of the Herland citizens, Vandyke explains that they "had the evenest tempers, the most perfect patience and good nature" (46).

¹⁷ For example, Gilman's twin propositions that human progress necessitates endogamy and that national borders could be used to manage racial uniformity also appear in her first utopian novel

Moving the Mountain (1911). In this “short distance Utopia” set in the 1940s United States, the final chapter’s marriage of two cousins serves both to consecrate sexual egalitarianism and to distinguish progressive white America from less civilized nations and races (37).

¹⁸ Michaels 48. Michaels mentions Gilman in an aside once in *Our America* but does discuss any of her writings (18). Gilman denounced non-reproductive sex as indulgent and excessive. See her article “Birth Control.”

¹⁹ Peyser 5. Here Peyser is responding to the common reading of *Herland* as an outlandish and even whimsical tale, a reading that ignores Gilman’s didacticism in this novel and her other works. For instance, Donaldson reads the representation of virgin birth in *Herland* as an example of the author’s “carnavalesque” approach to social hierarchy (375), and Gubar reads parthenogenesis as a symbol for women’s creative power and the importance of fantasy to feminist thought (195, 192). Though Laura Donaldson and Sandra Gilbert and Susan Gubar correctly point out that Gilman imagines changes to the contemporary United States in this utopia, they do not account for the influence of her biological theories on the Herlanders’ mode of reproduction.

²⁰ Frederick Winslow Taylor 25. See Nancy Ordovery’s introduction on the importance of pseudo-science and supposedly objective truth to the eugenics movement. Frederick Winslow Taylor’s belief in the possibility of measuring all human movements and consequently rationally planning all labors was very popular at the turn of the twentieth century, and especially influential on the home economics movement to which Gilman contributed.

²¹ See Gaines 58-65 and Becker 356.

²² See also Cather’s 1922 essay “The Novel D  meubl  ” and John Hilgart’s “Death Comes for the Aesthete.”

²³ See Corynne McSherry’s *Who Owns Academic Work?* for a survey of more recent manifestations of these issues.

²⁴ Cather wrote most of “Tom Outland’s Story” in 1916, then titled “The Blue Mesa,” and began writing the frame sections in 1923 (Link 389).

²⁵ Cather 199. For an analysis of the pilgrimage to Washington, D.C. trope in U.S. culture, see Berlant, “The Theory of Infantile Citizenship.”

²⁶ Cather 219. For an analysis of the Dreyfus reference, see Wilson 574.

²⁷ It is possible to argue, as Prenatt does, that St. Peter’s exuberance stems from yet another version of originality. Of *The Song of the Lark*, Prenatt holds that through “The physical survival of the abandoned cliff dwellings [which] allows Thea rare access to an ancient culture in which art was not removed from its origins” Cather extols art objects that remain affiliated with their original ceremonial uses (215). When combined with my reading, Prenatt’s interpretation suggests that intellectual property by desire and ritual originality may be compatible, particularly

given their shared recognition of enchantment at the intersection of art and sociality. See Clere on the disparities in the reception histories of *The Song of the Lark* and *The Professor's House*.

²⁸ On the “Vanishing Indian” trope in Cather’s fiction, see Michaels and Woidat. The Native American Graves Protection and Repatriation Act (NAGPRA), a U.S. federal law enacted in 1990, attempts to navigate the claims of “cultural affiliation,” to much dispute. See Chari and Lavallee. Intellectual property legal theorists debate the possibility of using U.S. intellectual property law to protect indigenous cultural property. Issues including duration terms, fixedness, and communal authorship stymie this possibility, though some tribes have, with mixed success, sought to use intellectual property protections to defend against cultural appropriation. See Greer, Kelley, Kremers, and Brown.

²⁹ See Cott, chapter 1, on the symbolic value of consent to marriage as a model for republican government.

³⁰ See Harrell and Rosowski and Slote on Cather’s visit to Mesa Verde and its influence on her novel. While Reynolds reads “Tom Outland’s Story” as a Darwinian utopia and Wilson reads the novel as Cather’s reflection on historical methodology, *The Professor's House* is most often read in terms of nostalgia or primitivism. For example, Haytock interprets the novel in terms of WWI and survivor’s guilt and Woidat studies the “Story” in relation to Southwestern tourism to argue that Cather’s writings and travels demonstrated her “willingness to ‘go native’ by vicariously living as both cowboy and Indian” (23). Lucenti diverges slightly from this line of criticism, arguing that because *The Professor's House* centers on St. Peter’s wish to “sleep with the dead,” it demonstrates his yearning to “conquer ... time itself” rather than any tangible possession (237). But as I will show, when read in terms of intellectual property, necrophillia turns out to be both surprisingly reproductive and integral to the imperialist property law that “Tom Outland’s Story” envisions.

³¹ In other words, white Americans found in Cliff Dweller culture what Phillip Deloria names “a sign of something unchanging: a first principle” that they used to legitimate their ideals for a prospective U.S. culture and produce non-linear national time (167). As Deloria explains, white Americans have “played Indian” as a means for establishing U.S. national identity since the American Revolution. See Moore on the different meanings of “Cliff Dweller” to turn-of-the-century Americans and Clere on Cather’s representation of Southwestern anti-modernism in *The Song of the Lark*.

³² Anachronism was central to turn of the century anthropological and popular thought about civilization and progress, especially to the idea that all societies developed or could develop through the same stages from primitivism to civilization, but that at any one time different groups were occupying different stages. See Fabian, Chakrabarty, and Bederman.

³³ See Bederman’s second chapter on G. Stanley Hall and his pedagogical theories.

³⁴ See Reynolds, Introduction and chapter 6, and Haytock.

Conclusion: Literary Kinship

¹ On the battle between “fathers” and “sons” vying for poetic strength, see Harold Bloom’s *The Anxiety of Influence*. Ralph Ellison uses less gendered language to describe his relationship with black and white literary predecessors in “The World and the Jug.”

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