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What is personal writing?

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Admittedly, asking this sort of question betrays a certain naiveté. But then is it not naiveté itself – in other words, a pure and simple character without artifice – precisely the one indispensable prerequisite for any reflection concerning the possibility of authentic writing, writing that does not seek to create an effect, stylistic effects, textual effects? The naive person – from the Latin *nativus*, “who is born, who is received in birth, innate, given by Nature, natural” – ardently aspires to achieve an expression which represents, in and of itself, a pure translation of the truth of a “me” which, for its own part, is not biased or borrowed, controlled by someone else, by models, by what has already been written.

Alas, for sensitive souls, when it comes to writing, the naive person is a fool, a failure as a writer. Any attempt to hold so close to the origin – to a me, who, by its very nature, escapes me – personal writing runs the risk of becoming mere babble, a formless rudiment of no value to anyone beyond the person who formulates it. The draft is often nothing more than a mediocre translation of our being. What better way to touch one's own unutterable truth, at the core, at its beginning? André Gide testifies to this fact in his short story, *The Return of the Prodigal Son*:

Of the chaos from which man emerged, you shall learn if you don't already know. He barely escaped and will fall back there again with the full weight of his *naïveté* as soon as the Spirit ceases to raise him above it.¹

The prodigal son never quite manages to escape from the chaos, from the obscure babble, failing to express his “me,” unfettered and free from all influence. Having abandoned his own, having renounced his ancestors, drunk on his dream of finally becoming himself, he then returns to the fold in rags, chastened. So what then is this “Spirit” which raises man up and which the older brother evokes? What is the creative breath of which he speaks, this one who stayed behind among his kin watching over their accrued inheritance? Let’s listen once more to the lesson he gives to his prodigal brother:

But what you will never know, is how long it took for man to form man. Now that the model has been established, let’s adhere to it.

Adhere to the model? Reproduce exactly what’s been given to us? A lacklustre programme, indeed, which condemns us to rote repetition. Fortunately, Gide proposes another path to the free expression of a victorious “me” with the introduction of a third brother, the youngest. His short story offers an originality all its own, refusing merely to retell the biblical parable of the prodigal son. Rather, Gide innovates and, to the reproductive eldest son and his impotent younger brother, he adds the youngest brother: like the second son, he too leaves home, but rather than squander the family fortune, he sets off like Rimbaud’s bohemian with his fists stuffed into his torn pockets, his coat suddenly becoming ideal.... Personal writing is so difficult! So the youngest brother leaves with nothing, empty handed, ignoring his inheritance. That’s because he’s no longer enslaved to the models. Of the three brothers, he’s the one who will write his own story, whilst the middle brother has failed by renouncing their father, their mother, and their models in the name of his vain quest for liberty, and whilst the

¹ Published in *Vers et proses* of March to May 1905.

eldest brother is nothing more than a pale reiteration of their father, their mother and their models as a result of his servile attachment to his forebears.

In writing, as in life, we have to set out on an adventure, travelling light, yet possessed of mind and senses pulsating with everything that has been given to us, by what we've read and by those who've breached the barrier for our unlikely innovations. And today I confess to you, Molière, that I've imitated you in my own search for personal writing, because not all of the pleasure of writing subsists in change²; I copied you, Jean-Jacques, oh Rousseau, because I always felt that the position of an author is not and cannot be distinguished or respectable, except in so far as it is only duplication³; I admire you, Marcel Proust, because for a long time you went to press and were cut-and-pasted early. And finally, since we only love what we do not wholly possess⁴, I love you, you who have a jaunty "you"⁵ for those who'll listen, in revision, mimicry and recreations of all kinds.

As I have just clumsily illustrated, the only way we can learn to write is through models. But how can we claim to master a personal writing which reflects the genuine personality of the author? The relationship to predecessors oscillates between awestruck dependence on the masters and a desire for

² *Don Juan* : "Tout le plaisir de l'amour est dans le changement" (all the pleasure of love subsists in change), act I, scene 2.

³ Confessions : "J'ai toujours senti que l'état d'auteur n'était, ne pouvait être illustre et respectable qu'autant qu'il n'était pas un métier." (I always felt that the position of an author is not and cannot be distinguished or respectable, except in so far as it is *not a profession*.)

⁴ "On n'aime que ce qu'on ne possède pas tout entier" (We only love what do not wholly possess): Marcel Proust, *The Captive*.

⁵ Jean-François Jeandillou, author of several works, including: *Effets de textes*, Limoges, Lambert-Lucas, 2008; *Supercherries littéraires, la vie et l'œuvre des auteurs supposés*, Droz, 2001; *Esthétique de la mystification*, Éditions de Minuit, 1994.

autonomy which can only be achieved through rejection, derision or sublimation of the very texts we admire.

The conquest of writing, as we well know, is an eminently personal adventure; but it must also conform with statutory regulations designed to maintain an equilibrium between what the author takes from society to produce his work and what he give backs to it in return in a novel, original form. This constitutes the essence of the copyright dilemma which has emerged over the course of lively debates since the 18th century. As a consequence, literary paternity is not self-evident, even though an author might well imagine that he owns his work. The writer, the journalist, the researcher and the student often face the delicate question of their creative contribution: what differentiates textual elements from the public domain, raw material, or informative information available for unrestricted use, and what lends legitimacy to the author's signature?

Ultimately the question of personal writing is rather complex, so we will consider it first from the point of view of the creator (I- part one), ranging from the initial stage of learning (I-A-) to the conquest of a personal style, whether it be in the context of literary creation (I- B-) or academic research (I-C). In a second phase we will offer a legal clarification (II- part two) in order to better understand how the concept of intellectual property has gradually formed (II-A-) and how regulations relative to copyrights qualify originality (II-B-). We will then examine the jurisprudence on a case by case basis (II-C-) to determine which limits the courts impose on this notion of originality in order not to encroach on the creative liberty of those who, in the wake of their elders, continue to enrich the literary heritage. The legislator who crafts the law and the judge who applies it in his judgments and rulings have, in effect, a duty to maintain a fair balance between the author's right of ownership to his work and

opportunity for others to create in turn without being shackled by their predecessors.

I- The quest for the personal, original work

Our conception of literary creation is not a creation *ex nihilo*, even if the romantic myth of inspired genius has exercised a strong influence since the 19th century. It was in that context that Pierre Louÿs, in 1887, in his *Journal*⁶, referred to the great Victor Hugo as a creative god:

What are his methods? Methods which he invented. From whom does he draw his inspiration? From HIMSELF.

So this is a man who *invents*. No one ever did anything like this before. He doesn't refine, he INVENTS!

Make no mistake: even Hugo, as ingenious as he was, had his masters too. In his foreword to *Cromwell*, in 1827, he proclaims the unrivalled superiority of “Shakespeare, that God of the theatre” and for his theatre he even borrows the two concepts of the grotesque and the sublime which serve as the foundation of romantic drama.

A- Writing is learned through imitation

To each writer his own model, his own models. Anyone who would claim to draw his inspiration from himself alone would soon be confronted with his own vanity. An author – from the Latin *auctor* – is, by definition, someone who augments, enriches a literary heritage which already exists. He feeds it in an attempt, for his own part, to surpass it. Many writers have testified to this phase of learning through the imitation of models.

From the beginning of the Renaissance, for example, in the 16th century, in his *Adagia* the humanist Erasmus recommended to students to copy citations

⁶ *Mon Journal*, 24 June 1887 - 16 May 1888, Paris, Ed. du Seuil, l'école des lettres, 1994, p. 266.

and words and to compile them in notebooks for use in their own speech. It's true that this was an era in which the ancient world represented authority. But budding writers have always copied beautiful works for training purposes. And we have unequivocal testimony to that fact. Sartre, for example, in his autobiography *Words* compares his first steps on the path to creation to “aping”:

At times I stopped my hand, pretending to hesitate in order to feel, with creased brow and visionary gaze, as if I were *a writer*. I loved to plagiarise, by the way, out of snobbery, and I deliberately pushed it to the extreme (...).

I poured everything I read, the good texts and the bad ones, pell-mell into those catch-alls. The narratives suffered for it; and yet it was an asset all the same: I had to invent the touch-ups, and, as a result, I became a little less of a plagiarist. (*Words*, Gallimard, 1964, p. 121)

The young Sartre, plagiarist at first, learned his role as a writer while starting to become one at the same time...

In *Childhood*⁷ Nathalie Sarraute also speaks of a fairly similar experience; for her it was the scholastic exercise of composition which gave her a taste for new words and well-crafted sentences. When she penned an essay entitled “My first heartache” for her teacher, she avoided her own words – “leaden” ones – and drew instead from René Boylesve, André Theuriet and Pierre Loti. That said, imitation cannot be condemned as plagiarism. Malraux recalls in *The Voices of Silence*⁸, the role of pastiche in an artist's training, whether he be writer or painter:

Every artist starts with pastiche. That pastiche through which genius creeps, a stowaway. (p. 310)

And how could we fail to mention here the Proustian experience, “the purgative, exorcising virtue of pastiche?” In 1919 in a letter to Ramon

⁷ Paris, Gallimard, coll. “Folio”, 1983, p. 210-211.

⁸ III “La création artistique”, Paris, La Galerie de la Pléiade, NRF, 1951.

Fernandez the author of *Pastiches and Mixtures*⁹ explained how he managed to rid himself of influences which were too invasive by miming their writing. Through that mimetic virtuosity, Proust developed a personal writing genuinely his own:

For me it was above all a question of hygiene; one must purge oneself of idolatry and imitation, such natural vices. And rather than slyly using something from Michelet or Goncourt while signing (here the names of such and such from among our most likeable contemporaries), it was a matter of making overt use of them in the form of pastiches in order to go back to being nothing more than Marcel Proust when I write my novels.¹⁰

The declared use of the pastiche protects against the more or less conscious temptation of usurpation. Unquestionably the task of rewriting is one path to one's own style, a path to an original work.

B- The originality of the literary work

But how can one create an original work when the language and the words belong to everyone? Is writing not, irremediably, rewriting? Literature certainly resembles a palimpsest, according to Gérard Genette¹¹: a parchment on which copyists of the Middle Ages wrote, then erased, in order to rewrite a new text which always retained a slight trace of the previous ones. The new, the original draws from the past, assimilates it, digests it, and sublimates it. Giraudoux, for example, rose to the challenge of writing a thirty-eighth version of the Latin play of Plautus in 1929, which he somewhat mockingly entitled *Amphitryon 38*. What he borrows from its predecessors is transcended by a resolutely original context. *Amphitryon 38* is a half-serious parody of his models, whether it be the

⁹ Paris, Gallimard, 1919. This collection of texts had been previously published in *le Figaro* and *la Gazette des Beaux-arts* between 1900 and 1908.

¹⁰ Proust, Marcel, *Correspondance*, ed. Philip Kolb, vol. 18, Plon, 1990, August 1919, À Ramon Fernandez, p. 380.

¹¹ Palimpsestes, *La littérature au second degré*, Paris, Éditions du Seuil, 1982.

play by Plautus, or the one by Giraudoux, or the one by Molière; and that rewriting is not merely a game or a verbal exercise; quite the contrary, in his play Giraudoux proceeds to invert hypotextual values; he makes his personal imprint on a new work which becomes a hymn to human nature in jubilant self-mockery. For example, all three playwrights have the character of Jupiter accomplish essentially the same acts, except that his psychology is radically different in Giraudoux's play; the Giralducian Jupiter does not engage in a mere game of seduction, he wants to be loved *for himself*. Sign of the times! In the 20th century, the individual has moved to the forefront and the world of mortals has prevailed over divine grandeur. How far we've come since Plautus and Molière! At the end of the day, for Giraudoux the previous texts "constitute moulds into which he can freely pour his thought and his own literary essence, manoeuvring as he sees fit."¹² In *Amphitryon 38*, the liberty of inspiration is secure and the renewal of the legend is indisputable. Here's an illustration of the process of literary creation as a reiteration, successive generations of the same material transcended by an author's vision and style.

C- What about originality in the field of academic research?

No one would ever dream of challenging the idea that originality is at the very heart of literary and artistic creation. But what about the scientific texts we produce, inasmuch as they must explicitly rely on the work of predecessors to demonstrate progress in the field of knowledge? Can we imagine a biography of a famous person or an historical essay or a sociological thesis which bypasses prior discoveries and analyses? We would return endlessly to the same point of departure, to a sort of *tabula rasa*, and the different strata within the edifice of human knowledge would condemn themselves to ignorance. In reality, the

¹² Hasan Anamur, "Electre: hypertexte et hypotexte", *Jean Giraudoux, l'écriture palimpseste*, records of the colloquium of the International Society of Giralducian Studies, compiled by Lise Gauvin, Montreal, 1995, p. 202.

creativity and innovation expected of the researcher, no less than that of the writer, prosper in fertile ground already sown. And it is in the interest of the academic community, and of civil society, to put scientific heritage to good use by indicating the sources and the nature of that which is borrowed. The personal dimension of a work, a thesis, or a memoir, can be assessed precisely by its capacity to assimilate, from past works, that which makes it possible to develop, in future works, original analyses which might clarify earlier data in a new light.

II- The copyright challenge: how to protect original works without hindering the creativity of those that follow

Given the high intellectual, economic and symbolic stakes associated with the creation of works of the mind, why did copyrights appear only recently?

A- A difficult challenge to overcome

Why did the author have no legal status before the 18th century? 1709 in England, with the *Statute of Anne*, 1741 for Norway and Denmark, 1762 for Spain, 1790 for the United States with the *Copyright Act* and 1791 for France, thanks to Beaumarchais who combated the abuses of the Comédie Française which failed to remunerate the authors. Because we don't write to live, but rather we live to write, and at any cost? Because art is not a profession but a noble mission which would suffer from any form of remuneration? The reasons actually have rather more to do with institutions and economics¹³: up until the 18th century, as long as the writer lived through patronage, as long as his activity was not a profession, as long as the work was not a commercial product, the law did not interfere. Their pride has always made authors touchy, but scores were generally settled by means of pamphlet attacks and through intermediary works.

¹³ The history of the copyright is explained in greater detail in our work *Du plagiat*, Paris, Gallimard, Folio Essais, 2011, in the chapter entitled "La loi protège et régleme le travail créateur" (The law protects and regulates creative work), p. 196-232.

In Rome, the law *Fabia de plagiariis* was established not to condemn writers who plagiarised but rather to condemn thieves who stole slaves. No regulation with the slightest resemblance to an author's right to his works existed, neither in the ancient world, nor in the Middle Ages. And with the dawn of the Renaissance, even when printing consecrated the transformation of the manuscript into a work more widely distributed in a fixed form, signed by the name of its author, the system of privileges was not established to protect the creator, but rather to protect the bookseller/printer who had accepted the considerable financial risk of investing in a press and in the material required for this new reproduction technique. The king accorded his privilege – namely, his authorisation to print – to a printer in order to guarantee the monopoly on the printing of a book, thereby protecting him from competition. Even before it became a tool of control and censure, the system of royal privilege was justified essentially for economic reasons. The author himself could also, on occasion, obtain a privilege for his own work and resell it to a printer, but the author's interests were ignored *a priori* in a system which considered only the assumption of risk by an investor in a costly and innovative economic enterprise.

The author as a legal entity did not really see the light of day until the 18th century with the emergence of the notions of the individual and of property in a society where the writer actually began to write independently, outside of any patronage system or institutional structure such as the Academies. Honour and notoriety were no longer enough to justify the creative endeavour. So it became necessary to establish the right of the author to claim his work as his personal property meriting fair and just remuneration.

B- The advent of the copyright

But how to give a ruling on an intangible asset which, once sold in the materialised form of a book, still remains the property of the author as a work of the mind? How to create a legal conception of an *intellectual* property? The

author needed to be able to cede to an editor his right to reproduce a work in as many copies as desired, all the while remaining the recognised father of the work with an inalienable and imprescriptible right of paternity – a right with respect to his text, its integrity and its nature. A work of literature is not a house: I sell the right to reproduce it, yet I retain it. Thus it was a dualist copyright which, in 1957, enabled the definition of the dual prerogative of the author and his work: on one hand, the moral right – inalienable and imprescriptible – which permits the author, and then his eligible parties, to exercise control over the exploitation of his work; it comprises the rights of paternity, disclosure, revocation and reworking, and the right with respect to the work for the purpose of avoiding any form of denaturation; and on the other hand, the patrimonial or pecuniary right – limited in time and transferable to a third party – which permits the author to receive remuneration in exchange for the exploitation of his work.

Here at last the author takes his rightful place at the heart of the legal system governing the exploitation of his work. Subject to *one* condition: that his work is original and that it bears the mark of his personality. In other words, that the work is a personal one.

C- What constitutes a personal work from the legislator's perspective?

In law, ideas are public domain, no matter how ingenious they may be, and events, whether historic or arising from the author's experience, do not, in and of themselves, constitute any originality whatsoever. The work of the mind, whether literary or artistic, can draw its originality only, on one hand, from its form of expression and, on the other, from its composition, namely from the layout and from the choice of the arrangement of those intrinsic elements. Consequently the holder – the very basis of the work – does not benefit from any copyright protection independently from its materialisation in a personal form, the only expression of an author's personality. According to intellectual

property law, the personal character of a work depends not on what is said, no matter how personal it may be, but rather on the way in which it is said. Your confessions and your personal diary are not personal works in and of themselves. They will be recognised as such, and protected accordingly by copyright, only if they demonstrate an own style which translates an original vision of your own experience.

So when, from his prison cell, the murderer of a jogger wrote the story of the crime for which he was convicted in 2008, the judges of the court of first instance and of the appellate court¹⁴ found that the magazine *Le Point* could freely reproduce the article “*Comment j’ai tué Nelly Crémel*” (“How I killed Nelly Crémel”) without his authorisation. On two separate occasions the court refused to grant the criminal’s request for recognition of the statute of author concerning the narrative of his own crime. His suit against the magazine for infringement having been dismissed on two occasions, Serge M. had to hear that his own confession did not belong to him in the sense of an original work: “How I killed Nelly Crémel”, assassinated in 2005, “presents the sequence of events in a descriptive manner, strictly adhering to the chronological order, with ordinary sentence structure and using common everyday vocabulary” – that was the argumentation the judges employed. The criminal does express his feelings, of course, but “in the most superficial manner, whereby the overall effect does not exhibit the slightest trace aesthetic refinement, whether it be in the style of writing or in the choice of words.”

So let there be no mistake: sincerity does not make a work. And you do not write a masterpiece with feelings. Unless you craft them with a certain air of originality which gives the “Me” an aesthetic dimension capable of consecrating the work as something inalienable and personal.

¹⁴ Court of first instance (TGI) of Paris, 25 June 2009, and appellate court of Paris, 17 April 2013.