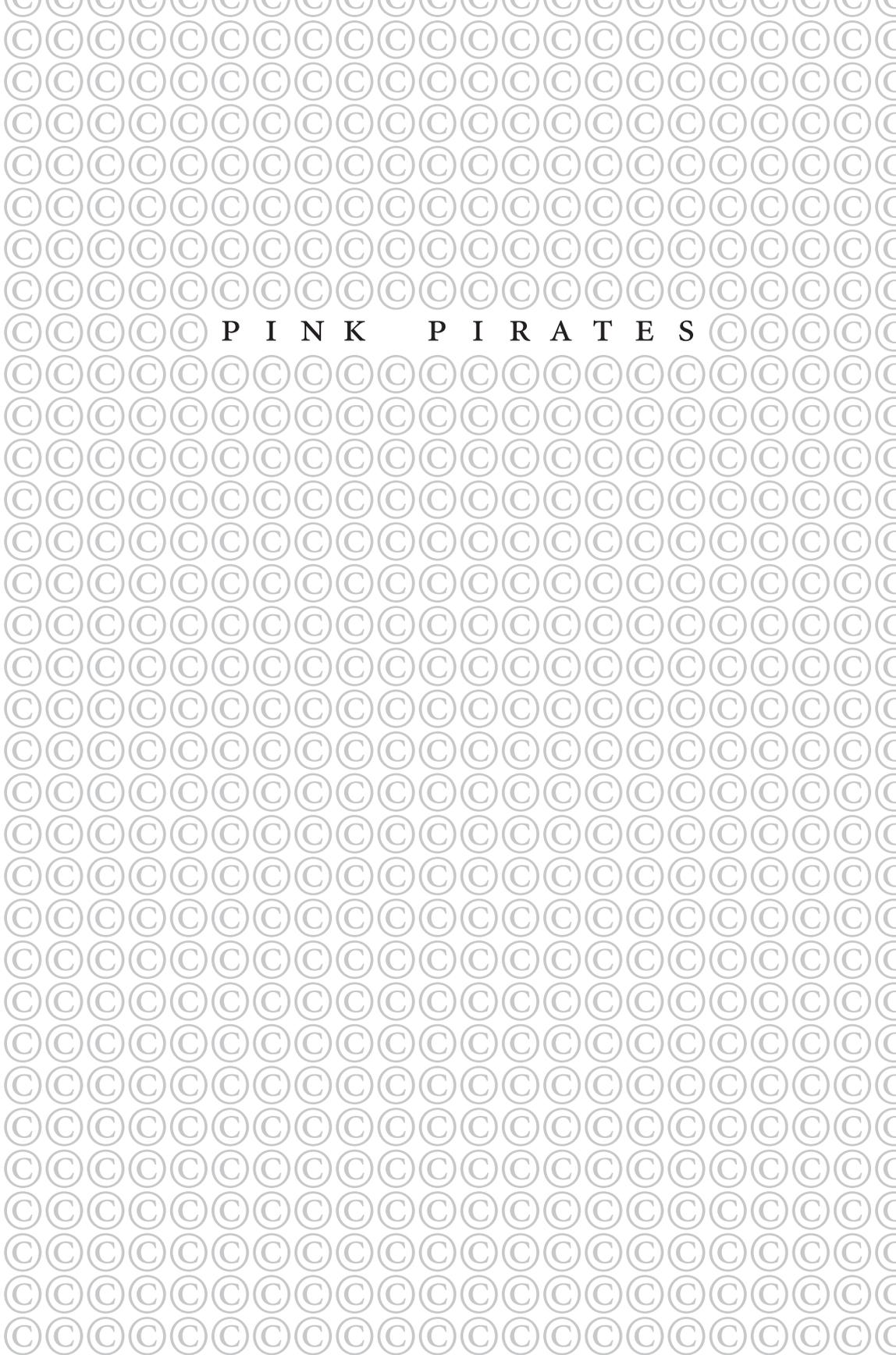


PINK PIRATES

Contemporary American
Women Writers and Copyright

CAREN IRR



P I N K P I R A T E S



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P I R A T E S

Contemporary American
Women Writers and Copyright

CAREN IRR · UNIVERSITY OF

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He fell accidentally into Discourse with Mary Read, whom he taking for a young man, ask'd her, what Pleasure she could have in being concerned in such Enterprizes, where Life was continually in Danger by Fire or Sword; and not only so, but she must be sure of dying an ignominious Death, if she should be

taken alive? —DANIEL DEFOE, *A General*

History of the Pyrates

They speak together of the threat they have constituted toward authority, they tell how they were burned on pyres to prevent them from assembling in future. They were able to command tempests, to sink fleets, to destroy armies. They have been mistresses of poisons, of winds, of the will. They were able to exercise their powers at will and to transform all kinds of persons into mere animals, geese pigs birds turtles. They have ruled over life and death. Their conjoint power has menaced hierarchies systems of government authorities. Their knowledge has competed successfully with the official knowledge to which they had no access, it has challenged it, found it wanting, threatened it, made it appear inefficacious. No police were powerful enough to track them down, no paid informer so opportunist, no torture so brutal, no army so overwhelming as to attack them one by one and destroy them. Then they chant the famous song that begins, Despite all the evils they wished to crush me with / I remain as steady as the three-legged

cauldron. —MONIQUE WITTIG,

Les Guérillères

A hundred times every day, I tell myself that my inner and outer life are based on the labors of other men, living and dead, and that I must exert myself in order to give in the same measure as I have received and am still receiving—ALBERT EINSTEIN, “The World As I See It”

CONTENTS

Acknowledgments	ix
Introduction:	
The Problem of Copyright	1
① A Feminist History of Copyright:	
1710 to 2010	17
② The Maternal Commons:	
Reyher, Kroeber, and Le Guin	55
③ Appropriating Inuit Fashions:	
From Donna Karan to the Scientific Fictions of Andrea Barrett	77
④ Obscenity versus Freedom of Speech:	
The Outside of Ownership in Kathy Acker's <i>Pussy, King of the Pirates</i>	105
⑤ Transracial Parody: 2 Live Crew Meets Leslie Marmon Silko	133
Conclusion:	
Toward a Pink Commons	159
Notes	167
Bibliography	195
Index	215

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“It is difficult to begin without borrowing,” Thoreau wrote in the first chapter of *Walden*, “but perhaps it is the most generous course thus to permit your fellow-men to have an interest in your enterprise.” If Thoreau is right, quite a few people will be interested in this book. In the pages that follow, I have borrowed and learned from many friends, students, and colleagues—although not, I hope, more than any of them would be comfortable allowing.

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Finally, I dedicate this book to my special girl, Lonso.

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INTRODUCTION

The Problem of Copyright

During the last decades of the twentieth century, a feminist critique of Anglo-American copyright began to emerge. Continuing the project of revisionist metafiction such as Jean Rhys's *Wide Sargasso Sea*, a number of post-1970s feminist writers have questioned the content of received literary narratives and also tested the terms by which those narratives circulated in the first place. Contemporary feminist novelists have wrestled with the concepts of the author, expression, and reading implicit in U.S. copyright discourse and built new creative work around their revisions of those core concepts.

The resulting fiction resuscitates the figure of the literary pirate. Pirates are sometimes plagiarizers, testing the ethics of authorship by passing off under their own names partial or entire works they did not create. Other times, they are copyright infringers, directly violating the laws regulating ownership of intellectual property—for example, by commercially distributing works without permission. Most often, however, literary pirates are simply those authors, publishers, or printers who exploit a grey area in the literary marketplace. Working in murky waters, pirates raid more settled and clearly regulated areas of literary culture, sometimes producing a new proto-democratic commons in the process. Nineteenth-century American publishers were pirates in this sense when they routinely duplicated English publications without permission in the years preceding international copyright agreements. By twenty-first-century standards, even originally authored works that relied heavily on other writers' published and unpublished material, such as Harriet Beecher Stowe's *Uncle Tom's Cabin* or *Lady Byron Vindicated*, can be considered piratical.¹ For Stowe and other writers of her generation, ensuring originality and protecting copyright could be less vital than defending a friend's honor or working for emancipation. As Ellen Weinaur argues, Americans had "a proliferating

concern with plagiarism in the mid-nineteenth century” in part because the plagiarist (or, in my broader term, the pirate) “acts as a kind of cultural agitator, questioning—and casting doubt upon—conventional relations,” such as the ownership of slaves or the disenfranchisement of women (700).

Looking back to these nineteenth-century predecessors, a number of contemporary women writers have chosen to explore the perhaps counterintuitive association of feminism with literary piracy. Most are not primarily inspired by the clichés of maritime piracy (the violent, rum-swilling peg-leg with a parrot), even though their experiments with the limits of authorship often do embrace the pirate’s status as a disruptive figure, darting back and forth across the lines drawn by the law. Some individual writers focus directly on the fact that female authors historically had unclear title to their own writings, and a number of contemporary feminist fictions rely on analogies between a purportedly female creativity and the literary pirate’s extralegality. For writers working in this vein, the pirate acquires a specifically feminine or “pink” aura. This pink pirate represents the endurance of creativity outside the bounds of the law.

Roaming far beyond the restrictive incentive theory underlying U.S. copyright statutes, the figure of the pink pirate frequently triggers visions of the commons rooted in precapitalist or noncapitalist cultures—especially the indigenous cultures of the Americas. Rather than making strong claims about race or the identity of woman per se, however, feminist narratives of the pink pirate use utopian images of female and indigenous creativity to advance a critique of property and provide a glimpse of an actually existing commons.

At least, this is one way to read the pink pirate productively: not in terms of the truth-value of the often confused claims about femininity or indigenous culture on which she might rely, but rather in terms of her critical relation to literary property. The appeal and power of the pink pirate, this book argues, lies in the vibrant face she gives to the commons, a terrain too often imagined in purely negative and abstract terms. In all her contradictory, illogical, and sometimes scandalously simple glory, the pink pirate is a heroine for a period characterized by the massive expansion of protectionist copyright regimes. Authors patch this heroine together, appropriately enough, from bits and pieces of literary and legal history, popular ethnography, science fiction, literary romances, political theory, and other sources, and this medley of materials often makes the pink pirate formally interesting in her own right. The chapters that follow explore the composition of the pink pirate in contemporary feminist fiction, drawing on the insights of legal theorists and literary historians. Each reading investigates the work of the pink pirate and links this figure’s effects to a specific debate in the recent history of copyright law.

To best appreciate the critical work of the pink pirate, however, we need a working knowledge of the norms of U.S. copyright in the twenty-first century. Some implications of these norms are teased out in more detail in chapter 1, but in a nutshell, these are the main points as stated in Title 17 of the U.S. Code, “Copyright Law of the United States”:²

- Copyright applies to works of authorship, such as literary, musical, or dramatic works; painting, sculpture, or choreography; motion pictures, sound recordings, or architecture.
- Protected works must be fixed in a tangible medium of expression. Copyright does not apply to underlying ideas.
- Copyright requires originality. Portions of works derived or compiled from other authors are not protected.
- Copyright is a territorial right that varies according to the site of publication, nationality of the author, or both.
- Copyright vests initially in the author of the work, but it may be transferred to another party, such as a publisher.
- Copyright allows the owner to decide how or whether a work may be reproduced, distributed, performed, or adapted for derivative works.
- Even if copyright is transferred to another party, authors retain some rights to integrity—for example, to protect the use of their names.
- Copyright is not absolute. Fair use exceptions to the provisions of copyright exist—such as the right to quote short passages of a literary work for the purposes of review or the right to perform works in an educational or religious setting.
- Fair use exceptions are themselves not absolute but must meet certain criteria.
- Ownership of a copyright is distinct from ownership of the material object in which the copyrighted work is reproduced.
- Copyright is not perpetual; it endures for a limited time. For works created on or after January 1, 1978, the duration is usually the life of the author plus seventy years. After this point, the work passes into the public domain.

This summary highlights the centrality of authorship, originality, tangibility, integrity, fairness, and the biological life cycle for U.S. copyright. Together, these key concepts outline a creative process in which an inspired individual gives an original idea a concrete form before cautiously bringing it to the marketplace for sale. In the market, the work begins to split and multiply, as do the author’s associated rights. Even after alienating the work through con-

tract and sale, the author retains some identification with the work, but this association is, like the work as a whole, vulnerable to misappropriation. Only those citizen-subjects assumed to possess moral purpose (that is, educators and clerics) or to refrain from market competition are normally trusted to handle the work freely; others must pay for the privilege. That imperative, however, endures only for the life-span of the author's presumed grandchildren. Once the responsibility of providing for two generations of heirs has subsided, so does the exclusivity of copyright.

No matter how idealized this portrait of the isolated, endangered, and implicitly paternal author-provider might seem, and no matter how distant its underlying vision of creativity might be from the hip-hop sampling, prequels, sequels, spin-offs, mash-ups, and appropriation arts of the late twentieth and early twenty-first centuries, the norms presumed by copyright permeate U.S. law. The terms are firmly installed and defined, and powerful copyright holders, such as the Business Software Alliance, the Recording Industry Association of America (RIAA), the Motion Picture Association of America, and even the Authors Guild, argue aggressively for their reinforcement. Representing a coordinated swathe of major property owners in the culture industries, these organizations have successfully lobbied for the expansion and extension of copyright in the digital environment, the prioritization of intellectual property issues in international trade negotiations, and the conversion of infringement—which they prefer to call piracy—into a felony.³ As a result of this group effort, the penalties for even small-scale copying under ambiguous circumstances have risen to extreme levels. In June 2009, in the nation's first digital music piracy conviction, a U.S. court required Jammie Thomas-Rasset to pay \$1.92 million to six corporate copyright owners to compensate for damages resulting from this Ojibwe single mother's downloading of twenty-four songs over the online file-sharing service Kazaa.⁴

Litigious antipiracy initiatives of this sort have led several expert observers to conclude that compensation to copyright holders now far outweighs the risks they face in the marketplace. Copyright scholar Lawrence Lessig describes the United States in the early twenty-first century as a “permissions culture,” arguing that the climate for creativity has been chilled down to Ice Age temperatures (*Free Culture*, 8). Focusing on digital innovation, Harvard law professor William Fisher agrees, as do Oxford's Jonathan Zittrain and Berkeley's Pamela Samuelson, both of whom have been involved in attempts to draft new legal and policy remedies. Self-described copyright prankster Kembrew McLeod (who trademarked the phrase “freedom of expression”) describes the effects of overzealous prosecution on the music industry, and

Peter Jaszi has made similar influential arguments about the constraints copyright imposes on visual artists. James Boyle, in *The Public Domain*, describes industry activities in aggregate as “a second enclosure movement” (xv) and asserts that the “current intellectual property policy [in the United States] is overwhelmingly and tragically *bad*” (xii).

In addition to questioning the benefits of aggressive protection of copyright in the present, much recent scholarship traces the genealogy of related legal concepts, showing how the fairly limited set of authors’ and publishers’ rights articulated in the eighteenth century expanded so dramatically. Long- and short-range critical histories by legal scholars such as L. Ray Patterson, Brad Sherman and Lionel Bently, Lessig, Boyle, Neal Netanel, and Rosemary Coombe have traced the rise of contemporary interpretations of concepts such as the author, the registry, permissions, the public domain, limited rights to freedom of expression, and traditional knowledge. Their work is complemented by studies that assess the political and economic consequences of installing copyright (and intellectual property more generally) at the heart of global trade agreements. For Peter Drahos, Susan Sell, Christopher May, Vandana Shiva, Michael Perelman, and others, Anglo-American copyright is a major weapon in the global battle between visions of development that are based on property in the First World and the commons in the Third World.

These illuminating social scientific studies understandably focus on the political context and the questions of power involved in the formulation of copyright norms. Cultural critics, however, have described the ways that copyright law has both constrained and relied on aesthetic practice at different moments in history. Literary historians and historians of the book such as Martha Woodmansee, Mark Rose, Adrian Johns, and John Feather have explored copyright’s relationship to early modern and eighteenth-century ideals of originality. Students of the nineteenth century such as Meredith McGill, Siva Vaidhyanathan, and Melissa Homestead have examined the influence of national romances, while Jane Gaines, Paul Saint-Amour, and Eva Wirten, among others, have treated the intersection of copyright and early-twentieth-century modern and anti-modern visions of mechanical reproduction. Together, these contributions to an interdisciplinary literature on copyright have built up a persuasive account of the reciprocity between intellectual property law and Anglo-American literature since the eighteenth century. This work also raises important questions about the suitability of eighteenth- and nineteenth-century legal models for the vastly different circumstances of twenty-first-century American culture. Finally, this body of work, when combined with the social scientific and legal studies approaches, points to-

ward the interdependence of literature, intellectual property regimes, and contemporary capitalist globalization.

Although many of these academic studies on copyright criticize the aesthetic, political, and cultural effects of current interpretations of intellectual property, they also often share a few basic assumptions with a more influential and less critical stance taken by some politicians in the United States. For decades, a number of American legislators have identified strong property rights, including strong intellectual property rights, with the national interest. George W. Bush aptly summarized this political consensus in his 2004 State of the Union address with the catchphrase “ownership society.” In Bush’s vision, the goal of government is to ensure that all citizens share the privileges and benefits of owning property of some sort—from tangibles such as homes to intangibles such as stocks and bonds. Often, academic critics of copyright reject this elevation of the legal form of property above the concrete benefits (housing, adequate food, health care, retirement, and so on) it allegedly guarantees while agreeing with Bush that private ownership per se must not be criticized. For Lessig, for example, in an American political lexicon, any critical approach to the concept of property reads as support for Soviet-style communism.⁵ Boyle, too, takes pains to distinguish his criticism of intellectual property policy from those of “dot-communists,” asserting that he is a “fan” of both property and the market (*Public Domain*, xii). This timidity in copyright critiques is only one example, although still a telling one, of the ways that, decades after the end of the Cold War, a dated ideological rigidity continues to constrain sectors of American intellectual life.

One result of this arguably obsolete rhetorical caution is that some of the key aspects of copyright law have remained underinterrogated. By treating the property concept itself as self-evident and asserting that only the historical and cultural distortions involved in certain contemporary interpretations of property law should be understood as worrying, the reigning liberal consensus fetishizes the law. History and culture influence the law, according to this account, but the law remains the determining factor, the first cause.⁶ Law sets the stage for culture, and culture responds to the law—only on occasion influencing a few details of its infrastructure. A more skeptical materialist approach does have some advocates among law school professors and might suggest other conclusions,⁷ but this position has yet to substantially alter the most widely accepted versions of American copyright discourse.

While drawing much needed attention to the dramatic expansion of copyright in the late twentieth century and diagnosing symptoms very well, the consensus position does not identify long-term remedies any more fully than

it explains causes. By accepting a “legal determinist” position comparable to the “economic determinism” so often attributed to the socialist left, the main contributors to the current academic consensus on copyright reveal the proximity of their assumptions to the liberal premises of American law itself.⁸ The legal determinist position treats intellectual property law as a historical actor and prematurely limits itself to assessing the law’s effects. This approach leaves unasked some fundamental questions about the ideas and practices underlying copyright in particular, and property in general. Furthermore, it leaves the vital project of asserting a positive alternative to copyright largely unaddressed, since little or nothing outside of the universe of the law is imagined. While rightly reviving the language of the commons, the consensus position offers only a weak justification for the cultural commons—a concept that many nonetheless recognize is essential for any effort to recalibrate the balance between public and private rights in culture. Out of a fear that the category of “the commons” slides too easily into ideologically repugnant calls for the abolition of property, some proponents of the consensus account have stopped short of engaging seriously with the full roster of forms of common ownership active in the world today—even within the aggressively proprietary culture of the United States.

Dissatisfaction with the liberal legal determinist position is not limited to neocommunist analysis, however. A new generation of feminist legal scholars has also joined this discussion. Addressing the foundations of property concepts and the particulars of the contemporary American intellectual property regime, scholars such as Malla Pollack, Debora Halbert, Sonia Katyal, Madhavi Sunder, and Rebecca Tushnet have sketched a coherent feminist critique of the concept of authorship, the work, and the community of readers implied in copyright law.⁹ By revealing the uneven effects of copyright law on creative women (who as authors have been uniquely situated in relation to the public domain) and on spheres in which women are highly represented (for example, fan fiction), this group of scholars has moved beyond asserting that copyright is metaphorically gendered male. They demonstrate instead the concrete effects of a history of gender exclusion on creative women in the present and suggest ways of examining a pink commons developing alongside blue copyright. As the more detailed discussions of the work of these scholars in the chapters that follow demonstrate, their assessments of effects and remedies differ considerably from one another. Nonetheless, these feminist legal scholars are united in showing that copyright has, like other forms of property law, historically been organized with masculine self-ownership in mind; they also share the common project of illustrating the concrete effects that this masculine orientation has had for women’s creative labor.

In this book, I take up the arguments of these skeptical feminist critics of copyright and redirect some of their conclusions toward literary criticism and an account of the commons. I argue, first, that the history of gender inequality these critics identify also inflects recent American copyright cases directly relevant to contemporary fiction. I show how in these cases “woman” continues to signify a pirate’s unstable relation to legitimate ownership. Second, this book illustrates some of the ways that engagement with copyright has inspired contemporary feminist fiction. Third, I examine some of the ways that contemporary feminist novelists have imagined alternatives to copyright, paying special attention to their treatment of the commons. And finally, I suggest how these novelistic visions of creativity without property may be of interest to critics of copyright working in other spheres. Throughout, I follow the legal experts in pointing out that many forms of creativity commonly associated with women in Western culture—cooking, home decoration, and street-level fashion and hair design, for example—have long gone unsigned.¹⁰ Although often highly individualized in style, the products of these largely noncapitalist forms of creativity are often not owned as individual private property; they can be and often are freely exchanged or imitated in transactions that range from the gift to barter to grey market economies. In these areas and in many other zones of “feminized” cultural production, the commons lives. These familiar examples reveal that in everyday life even hyperproprietary Americans routinely engage in and rely on forms of the commons. This book attempts to demonstrate how contemporary feminist fiction can and does reflect consciously on the same quotidian practices of the commons, thereby contributing to a small-c communist and feminist assault on the concept of property itself.

In short, this book introduces a specifically feminist and utopian line of argument regarding copyright. Without idealizing the social conditions of domination that underwrite the feminization of the commons, I conclude that contemporary visions of the pink commons—like other frequently noted and socially constructed “feminine” behaviors, such as collaborative negotiating styles or a preference for domestic harmony over professional success—recall a legacy of affirmative communalism. The pink commons is both a historical residue of and a site for an emerging culture. While keeping the coercive aspects of contemporary property systems in mind, this book takes ordinary expectations of resource sharing seriously as a form of social knowledge. Rather than dismissing popular desires for access to cultural goods as a misapprehension of the law, we can begin with that desire and locate in it forms of the commons symbolically colored pink. The proving ground of pink pirates is not the tragic commons so well known to economists.¹¹ Nor is it a purely Romantic and

nostalgic zone of lost innocence, as some legal scholars have feared.¹² Instead, the commons discussed in this book has elements of everyday, pragmatic household management, as well as a reciprocal ethic familiar to those who have few material goods of their own and thus have great incentive to share.¹³ Entering the pink commons, I attempt to show, is a quotidian, yet still utopian, event made legible through fiction.

Pink Pirates does not argue that a utopian pink piracy is universal among contemporary writers—or is even, in all cases, explicit or intentional. Clearly, not all novelists endorse the vision of the commons sketched here. No doubt few are card-carrying members of the U.S. branch of the Pirate Party, the single-issue anti-copyright party whose Swedish members won a seat in the European Parliament in 2009.¹⁴ Some—perhaps even most—published novelists embrace protectionist interpretations of copyright. The one-time queen of popular vampire tales, Anne Rice, for instance, is famous in fan fiction circles for comparing unauthorized adaptations of her narratives to rape.¹⁵ Fantasy author Anne McCaffrey also objects to the same practice, as does J. K. Rowling, author of the Harry Potter series (itself something of a pastiche). In a controversial 2007 *New York Times* op-ed piece, Mark Helprin, the author of several well-regarded historical novels, triggered a firestorm of commentary when he argued that existing copyright standards for literary works were not protective enough and should be made perpetual.¹⁶ These views are well represented by the Authors Guild, an organization claiming a membership of more than eight thousand published authors and asserting that it defends the interests of all authors. In 2008, the guild reached a settlement with Google Books after arguing that Google's library digitization project violated the copyright of innumerable authors of copyrighted works. The Google settlement included the establishment of a rights management registry, similar to the system used by composers, to organize authors' claims to compensation, distribute royalty payments, and resolve disputes.¹⁷ The Authors Guild has also been involved in negotiations with Amazon.com over digital editions of authors' works and has, in general, represented authors eager to assert strong interpretations of copyright.

Nonetheless, the Authors Guild's claim to speak for all published writers merits some investigation. Berkeley law professor Pamela Samuelson argues that most academic authors, whose works are heavily represented in the university library collections that Google digitizes, probably do not wish to restrict access to their works through the registry system. Similarly, younger, more experimental, and as yet little-published authors still in search of an audience are not always strongly committed to controlling access to their work. The

science fiction author Cory Doctorow has become an important spokesman for Creative Commons, the alternative licensing agreement that James Boyle and other law professors helped draft in order to allow authors to voluntarily downsize the bundle of rights attached to copyright (Doctorow, 71–76). Doctorow has repeatedly asserted that allowing readers to download his works in their entirety improves his reputation and expands his audience. Authors of innumerable mash-ups, micro-fictions, fan fictions, and blogs freely distributed online clearly agree.¹⁸ If we extend our concept of publishing to include digital transmission of creative uses of the written word, then it is difficult not to conclude that a sizable number of published authors reject pro-copyright extremism. The Authors Guild does not speak for all artists of the word any more than the Pirate Party does.

If a pro-copyright stance cannot be automatically attributed to authors, then how should we interpret the implications of “orphan” works—those publications for which no copyright holder can be found to request permission to reprint, adapt, or derive new works? After all, experts estimate that the majority of books in library collections are orphan works.¹⁹ If their authors are unavailable because of death, uninterest, lack of an executor, or some other reason, should a desire for maximum or minimum adherence to copyright be assumed? The views of individual authors about the proper treatment of their work and the compensation they hope to receive vary so significantly that the representativeness of any particular position on copyright remains an open question.

Lacking solid evidence of the views of authors in general, we can turn to the texts themselves to decide whether literary piracy constitutes a scandalous infringement that endangers the author’s livelihood or, in Doctorow’s words, a business model in itself. This investigation quickly reveals that a large number of authors remain interested in the figure of the maritime pirate as a subject for contemporary fiction. The WorldCat database lists more than eight hundred works of English-language fiction on pirate themes published for an adult audience between 1975 and 2009, and of these a significant number treat female pirates. Historical fiction based on the lives of the early female pirates Grania O’Malley (sixteenth century), Anne Bonny, and Mary Read (both eighteenth century) is particularly common.²⁰ In tune with the recovery of the image of the pirate in literary critical analysis,²¹ many of these narratives take the figure of the female pirate as a symbol of liberation from restrictive norms of gender, matrimony, and property.

At the same time, some pirate narratives involve adaptations of earlier pirate fictions. Edward Chupack’s *Silver: My Own Tale as Written by Me with*

a *Goodly Amount of Murder* and John Drake's *Flint and Silver: A Prequel to Treasure Island* offer clear examples, since, like Kathy Acker's *Pussy*, *King of the Pirates* (see chapter 4), they borrow central characters from Robert Louis Stevenson's classic. For at least a few writers, the subject of maritime piracy leads directly to engagement with literary piracy as a model and/or a subject and sometimes to a vision of gender liberation as well.

Similarly, the piracy of intellectual property has provided important plot elements for a number of celebrated late-twentieth-century authors—often those working in a postmodern mood. For William Gaddis in *A Frolic of His Own*, for example, copyright infringement is a central subject, as it is for Michael Chabon in *The Adventures of Kavalier & Clay*. Other authors include intellectual property violations as plot elements in passing; William T. Vollmann, Richard Powers, Jonathan Franzen, and David Levitt come to mind.²² Stylistic play that tests the boundaries among texts and queries originality also abounds. Thomas Pynchon, the foremost practitioner of postmodern play, defends literary borrowing as an elementary “form of primate behavior.”²³ In *Postmodernism, or the Cultural Logic of Late Capitalism*, Fredric Jameson has famously argued that such pastiches or “blank” parodies distinguish contemporary writing from the experiments of preceding generations. The ubiquity of pastiche, for Jameson, encodes the reified, static, media-saturated, and pre-owned environment with which contemporary authors struggle (18). While contemporary pastiches may offer little by way of an explicit politics, we can nonetheless—following Jameson—learn to read pastiche politically by linking its stylistic play to the institutional history of copyright and tying the practice of pastiche to copyright plots and the utopian narrative of the pink pirate.

This, at least, is the nexus at which each of the authors discussed at greatest length in this book sits. The writings of Ursula K. Le Guin, Kathy Acker, Andrea Barrett, and Leslie Marmon Silko all navigate between the language of the commons and vigorously individualist versions of property rights in culture, reading the latter through a critical, feminist lens. The novels of Le Guin and Barrett take copyright as a theme; they explore the romance of property, counterbalancing narratives of individuation through ownership with collectivist and/or piratical versions of self-fashioning. In her final novel, Acker tried an avant-garde experiment with literary form, testing the boundaries of what can be owned and openly celebrating the outsider status of the girl as literary pirate. Complementing these challenges to copyright's concept of the author and the text, a third type of writing, here represented by Silko, challenges the concept of the reader as passive consumer assumed by copyright law. Silko replaces the passive consumer with an active reader/writer who regenerates

a cultural commons by means of impure parody. Her pirates are rooted in a specific culture and ecosystem.

Taken as a set, I argue, these novels challenge the dominant forms of literary property in late-twentieth-century America. This challenge is repeatedly figured as pink piracy. In contrast to the solo machismo of swashbucklers and privateers, the piracy imagined in this writing is social and collaborative. It is concerned with gifts and gardening more than with rapier fights. This specifically feminist or pink piracy also appears within the safe parameters of the copyrighted work. It makes a symbolic, rather than a direct, assault on private property in culture, but that does not mean it lacks effect. This literary challenge, articulated in terms of the pink pirate, amplifies the voices of lawyers, activists, social scientists, and artists in other media, voices that criticize the stranglehold that property rights has on creativity. Even eccentric experimental fiction makes a special contribution to this interdisciplinary conversation because it directly involves readers in practices of the commons that survive in the present despite the highly developed proprietary aspects of the media-saturated environment. Fiction, as I see it, can put an excitingly attractive, human, and pirate face to the territory outside of property, especially fiction that describes this exterior world in the familiar (if not universally popular) political vocabulary of 1970s feminism.²⁴ If recycling and reusing are crucial tropes of our era, then attaching a specialized technical subject such as the expansion of copyright to the, for many, faded glory of 1970s-era feminism allows the writers considered in this book to arrive at a new synthesis. Renewing the idea of the feminist commons and lashing it to the rebel energy of the pirate, these writers bring the commons into view in a new guise. They demonstrate that the commons need not be imagined as a purely negative space as scarcity logic would have us believe. Instead, in the literature of the pink pirate, readers experience forms of connectedness, synthesis, and worldliness that trigger new narratives of abundance—from the excesses of Le Guin's maternal love and Acker's orgasmic pleasure to the open vistas of Barrett's teeming seas and the vitality of Silko's flora. These abundant worlds provide a strong utopian alternative to the reified, macho individualism underlying property concepts.

Pink Pirates contributes three new elements to a rising tide of literary and critical interest in copyright and the commons. First, it describes an emerging position in specialist legal literature; it synthesizes feminist criticism of the gender norms underpinning copyright and explores the long-standing association of femininity with propertylessness and the commons. In particular, this book argues that a focus on the commons provides an affirmative

counternarrative to the dominant liberal notion that women and men can become individuals only by agreeing to alienated self-ownership.

Second, by examining some contemporary literary responses to monopolistic tendencies in copyright, *Pink Pirates* extends into the present existing scholarship on literary protests during the period of copyright's invention and consolidation. This contemporary focus underscores the often-overlooked fact that even within the intensely proprietary culture of the United States, the ideology of property rights remains leaky and inconsistent. My readings demonstrate that in contemporary feminist fiction in particular, property has an uneasy status.

Third, by concentrating on a small set of individual court cases explored in some detail, this book aims to make the famously technical and complex subject of intellectual property law relevant for nonspecialists without overwhelming the necessary analysis of literary texts. I hope to demystify a few aspects of a discipline in which the policing of contributions made by "outsiders" and amateurs is notoriously vigilant.²⁵ In so doing, my aim is not to interpret the law, but rather to begin a more energetic conversation among the fields of law, literature, and political theory.

Toward these ends, chapter 1 recounts the feminist critique of copyright history, reinterpreting two major turning points in conventional versions of that history and offering illustrations of the effects of copyright on Anglo-American women's literary history. The aim of this chapter is to establish a framework against and within which the following readings of specific copyright disputes involving gender issues arise. I also document some of the history on which contemporary women writers have reflected.

The first of the complementary case studies, chapter 2 provides a reading of Ursula K. Le Guin's classic 1974 utopian novel *The Dispossessed*. This interpretation discusses Le Guin's avowed interest in refiguring maternity during the 1970s in terms provided by her reactions to the writings of her own mother, Theodora Kroeber, and a classically formulated copyright case involving Rebecca Reyher, a suffragist turned children's author. The reading demonstrates how the concerns of American feminists of the 1970s differed from those of preceding generations regarding property questions. As the title of *The Dispossessed* suggests, a profound skepticism about the utility of claiming property rights animates Le Guin's thinking in her celebrated novel, and I argue that this investigative spirit can be traced to her desire to recover a form of the commons that she strongly associates with the, for her, not necessarily biological experience of maternity. Ultimately, the gift of maternity becomes for Le Guin a logical alternative to the proprietary language of copyright. My

reading of Le Guin's novel illustrates, however, a few of the complications that result when a maternal commons is recovered in opposition to the positions and desires of actually existing mothers. The chapter concludes with a brief discussion of the potential contributions Le Guin's narrative might make to a more utopian account of literary property.

Chapter 3 moves into the 1980s and 1990s, examining the writings of science novelist Andrea Barrett. In her 1998 National Book Award-winning *The Voyage of the Narwhal*, as well as in other of her works, Barrett consistently takes up questions of intellectual property. Her writing repeatedly positions conflicts over property rights as part of a gendered struggle between partners engaged in a process of scientific research and discovery. To introduce this, to date, infrequently discussed novelist, the chapter traces the emergence of a parallel that Barrett establishes between the disenfranchisement of women and indigenous people relative to property law. It also tests Barrett's vision, asking how well that analogy survives an analysis informed by discussion of a recent dispute between fashion designer Donna Karan and Inuit women over traditional garment designs.

Chapter 4 tackles the multivalent language of piracy most directly through an exploration of the willfully scandalous writing of punk novelist and performer Kathy Acker. Concentrating on the last of Acker's novels published during her lifetime, *Pussy, King of the Pirates* (1996), I investigate Acker's move into a zone that she described as an outlaw or pirate territory—a zone where expression is not regulated either for its proprietary status or for its visceral content. Acker's efforts to develop a utopian space beyond what she sees as the unholy fusion of censorship and property interests led her ultimately to a deeply literary exploration of the female body. Many of her late writings, *Pussy* included, attempt to directly convey the texture and character of this utopian space by means of appropriated texts and potentially obscene sexual content. I read this project of Acker's as a significant contribution not only to an understanding of her own long-standing relationship to literary piracy, but also to ongoing specialist debates about the relevance of free-speech arguments to copyright disputes, in this case involving the Dallas Cowboys Cheerleaders corporation. I argue that Acker's writing joins forces with that of contemporary legal scholars who defend the previously discredited idea that copyright serves as an inappropriate brake on free speech.

Bringing the secondary motif of indigenous cultures as utopian space to the foreground, chapter 5 tackles Leslie Marmon Silko's quasi-mythic invocation of a Native American women's commons in *Gardens in the Dunes* (1999). A former law student, Silko addresses head-on one of the most contentious ques-

tions in Native American legal studies—ownership of traditional knowledge. Contrary to a number of experts who assert the necessity of a collectively held copyright in tradition in order for indigenous people to retain some measure of control over the commercialization of distinctive cultural practices, Silko builds on ideals articulated in the Supreme Court’s ruling on a 2 Live Crew song and makes a strong case in the content and form of her most recent novel for a nonexclusive and transracial right to parody. While building her novel around a pointed rejection of biopiracy (the theft and unapproved commercialization of biological specimens known to indigenous stewards of an ecosystem), Silko distinguishes sharply between botanical theft and the cross-fertilization of both cultures and plants necessary for the reproduction of a garden world. In Silko’s novel, the latter form of borrowing is explicitly associated with women in a matriarchal culture, and she paints it as beneficial because it allows transracial affiliations to flourish. In this complex historical novel, women of all races are dispossessed to the extent that they no longer inhabit the commons that Silko depicts as thriving before the European conquest of the Americas. A new pink/green world is not something that can simply be restored by fiat; it is instead the seed of a utopian alternative waiting to emerge through political struggle.

Each of these four readings of a significant contemporary novel sets a literary work in relation to a recent dispute in copyright history, as well as providing a stepping-stone in a brief chronology that takes the argument from the 1970s to the verge of the twenty-first century. While developing this book, I found that each of these novelists, to some degree, relies on the figure of indigenous cultures of the Americas to deepen her portrait of the pink commons. This practice has a long history—stretching back to the use by Marx and Engels of Henry Lewis Morgan’s research into Iroquois social structures in *The Origin of the Family, Private Property, and the State* (1884) as well as Locke’s appeals to an “American” (meaning “Indian”) form of common ownership in his treatises on government. Although each of the authors I consider has a different degree of investment in deep and specific knowledge of actually existing indigenous cultures, all make this appeal at some point. Each author tries to situate femininity in a known—or, better, supposed—exterior to capitalist modernity.²⁶ In an effort to reorient her relationship to an increasingly proprietary present, each novelist uses the language of an indigenous commons, more or less expertly, to recall the long and indeed necessary existence of less proprietary modes of social life. As the conclusion to this book briefly explains, the pink pirate’s utopian commons is not novel and futuristic so much as it is a special sort of neo-traditionalism—one that detaches readers from the dominant

institutions of the present and redirects them toward actually existing alternatives that survive and innovate under the banner of “tradition.” When the pirate goes native, as it were, no matter how questionable the resulting ethnocentric details or gendered pronouns might be, this analogy asserts the relevance not only of contemporary fiction, but of a long history of creative work for discussions of intellectual property and the commons today. Past and present literary versions of the pink pirate make a special contribution to a utopian political tradition by gendering the commons and affirming its extant character in the recycled American present.

A FEMINIST HISTORY OF COPYRIGHT

1710 to 2010

Fundamental for feminist literary history is the question of periodization. How can and should the history of women's writing be divided into periods? Is the emergence of public, commercially circulated writing in the eighteenth and nineteenth centuries the most significant ancestor for contemporary women's creativity? Or, following Margaret J. M. Ezell, should we be skeptical of any "evolutionary pattern that leads up to and explains the contemporary situation" (*Writing Women's Literary History*, 22)? If, as Ezell and others have suggested, we expand our concepts of authorship, writing, and reading to include private, collaborative, and/or pirated creativity, how might these forms of a provisionally separate sphere of female creativity be reconnected to those of a masculine public sphere? In short, what literary history might we write if we understand women of the past and present as active creators, while still recognizing the official limitations and contradictions they have struggled to overcome?

This chapter sketches a few answers to these questions through an overview of copyright as it is beginning to be understood by feminist legal and literary historians. My method involves, first, the reinterpretation of two crucial turning points in copyright history—the Statute of Anne and the copyright clause of the U.S. Constitution—and second, an account of the actions that selected women writers took when their access to copyright was limited. To reunite the story of women writers with the overview of copyright generally, I then characterize the new forms that women's creative labor took in the United States when it was absorbed into the twentieth-century publishing industry. Along the way, readings of a few representative copyright cases reveal how the law encoded this legitimate but subordinate creative work.

A recurring figure in this sequence of snapshots is the pink pirate. This trope initially described female authors' uncertain access to copyright ownership and then shifted, with the slow acquisition of authors' rights, to a social norm expressing women's supposed vulnerability within the marketplace. In its twentieth-century incarnation, the pirate has become a far more metaphorical (and thus recuperable) emblem of the legally unstable materiality of texts. The conclusion to this chapter describes some contemporary appearances of the pirate, pointing to the paradoxical gendering of the copyright infringer. Rather than reading the present as an evolutionary climax, then, this narrative treats contemporary literary invocations of the pink pirate as traces of creative women's recurring position at the periphery of ownership. A dialectical return to the scene of creative women's dispossession in earlier moments allows contemporary writers attuned to this issue not only to recognize the limits of the past, but also to affirm the continuing existence and vitality of forms of authorship outside ownership.

THE GENDERED ORIGINS OF COPYRIGHT

Conventional wisdom places the eighteenth-century British Statute of Anne (named after Queen Anne) at the origin of copyright history. "Not until the Statute of Anne in 1710 did the law formally recognize authors," asserts Laurie Stearns, a former editor turned law student. Quoting Philip Wittenberg's 1978 *The Protection of Literary Property*, a classic handbook for students of copyright law, she continues:

Until that time writing had been seen as either the occupation of gentlemen of leisure, who had independent sources of income and who felt that acceptance of money for their writing would be beneath them, or of men of less noble birth who sought support from wealthy patrons. Having little bargaining power, writers had to accept whatever printers and booksellers were willing to pay them for selling copies of their works. The Statute of Anne, drafted in part by Jonathan Swift, gave authors the exclusive right to print new works for fourteen years, renewable for fourteen more years, and the exclusive right to publish existing works for twenty-one years. With this development, for the first time, "[t]he notion that the author had always had a common-law right in his property found legal recognition." The subsequent development of copyright law in England and the United States has built upon this notion that the relationship between authors and their writings is that of owners to their property. (535)

In this account, the Statute of Anne signals the emergence of modern proprietary authorship. Newly middle-class authors redefined themselves as owners to gain advantages in the literary marketplace. The statute codified their replacement of the social status of patronage with the market value of ownership, initiating a social contract among authors, publishers, and the reading public. In the Statute of Anne, in short, mainstream copyright historians have found not only the origin of modern authors' rights, but also the roots of an incentive theory of creativity.

Providing monetary incentive to creators is generally understood, whether affirmatively or negatively, as the dominant rationale for copyright in the Anglo-American tradition. Advocates celebrate the merits of copyright's limited monopoly, positing that authors require exclusive property rights to their writing as a reward for creativity and a stimulus for further work.¹ A number of critics, however, express skepticism of this cost-benefit analysis of copyright and doubt the seminal status of the Statute of Anne.

Some legal historians, for example, question the chain of causality that supposedly links the statute to contemporary copyright standards,² while others test the assumption that it codified an existing authorial common-law right to literary property.³ In the humanities, though, the most common reconsiderations of the Statute of Anne disperse its significance as a turning point document into its circumstances. In his landmark study *Copyright in Historical Perspective*, L. Ray Patterson argues that the articulation of authors' rights in the Statute of Anne was an unintended democratic side effect of eighteenth-century booksellers' efforts to retain monopolistic control over the literary marketplace. For Patterson, "the radical change in the statute... was not that it gave authors the right to acquire a copyright... but that it gave that right to all persons" (145).⁴ Patterson tweaks standard interpretations of the Statute of Anne by reading the legislation ironically, rather than literally. In his account, the significance of the statute is the emergence of a radical concept of egalitarian authorship out of and against strictly economic interpretations of copyright, not the affinity of authorship with property rights.

In a later but similarly influential contribution to copyright history, Mark Rose also reframes the Statute of Anne. Arguing in *Authors and Owners* that authors emerged as owners in the eighteenth century only once the claims of booksellers to perpetual copyright were defeated in *Donaldson v. Becket* (1774), Rose attributes the new model of authorship not to a single legislative stroke of the pen, but to a broader intellectual and aesthetic shift toward Lockean self-ownership.⁵ Positioning the 1774 decision as the culmination of a nearly century-long struggle over commercial values, Rose identifies consequential

analogies between fingerprints, faces, semen, and writing, demonstrating that authorship came to be understood as a physical reproduction of the author's body during this period.⁶ Like the body, then, writing is rightly owned by the author. For Rose, modern economic authorship reflects a new conception of the material embodiment of the self. Its success as a legal and literary philosophy involved a string of philosophical problems that were resolved only later with the rise of Romantic theories of originality.

Patterson and Rose removed the Statute of Anne from its central spot in copyright history, reading it as a historical effect rather than a legislative cause, and literary historians have extended this point of view. Martha Woodmansee (*The Author, Art, and the Market*) has revealed the debt that early copyright legislation owes to German literary and philosophical Romanticism, and Carla Hesse (*The Other Enlightenment*) has demonstrated the way that French copyright norms relied on Enlightenment ideals of republican citizenship. Meanwhile, moving backward in English history, rather than forward and outward as evolutionary narratives tend to do, Annabel Patterson and other scholars of censorship suggest a more ominous account of the origins of copyright. Arguing in *Censorship and Interpretation* that early modern restrictions on political expression shaped emerging practices of literary authorship, Patterson describes the responsibilities that booksellers' guilds had for censorship during the sixteenth and seventeenth centuries. This account undermines an easy opposition between censorship and modern proprietary and self-owning authorship, suggesting that the monopolistic exclusivity allowed by copyright continued political censorship by other means.

Patterson's shift of focus from the Statute of Anne to the Stationers' Company (the booksellers and publishers' guild) is carried farther in Adrian Johns's prodigiously researched study *The Nature of the Book*. Directly confronting Rose's assertion of the centrality of copyright law to the period as well as Elizabeth Eisenstein's influential thesis about the significance of the printing press for the formation of modern authorship, Johns argues that both pale in significance when compared with the institutions of the stationers. He describes the stationers as deeply entangled in political struggles to secure their own political authority during the decades preceding the Statute of Anne as well as the authority of print against the threat of textual proliferation made possible by widespread publishing piracy and political turmoil. Vital to the stationers, according to Johns, was the protection of an image of their guild as a "stable and secure community of patriarchal households" (156). Suspicions of sexual impropriety or an excess of female authority in the printers' domestic workshops could threaten that reputation, while simultaneously

the “conventional invisibility amid patriarchal domains” afforded to women allowed them to serve the necessary safety-valve function of distributing grey-market publications, such as pornographic or seditious literature (155). Although women were excluded from membership in “all but the lowest ranks” of the Stationers’ Company (202) and were eligible to own copyrights only if they inherited them from their dead husbands and did not remarry outside the company (L. Ray Patterson 48, 112), they could help to shore up distinctions between legitimate publication and piracy, for example by shouldering the blame for their husband’s illicit works (Johns 134). In short, for Johns, it is not the public legislative work of the Statute of Anne that launches modern proprietary authorship; it is instead the domestic, quasi-legal and potentially piratical workshops of the stationers that served as the crucible from which the Romantic author emerged.

Johns’s revisionist approach to early modern print culture builds on feminist reconsiderations of English literary history, especially those that address the question of the relationship of women writers to the marketplace. In addition to documenting the custom of coverture, under which a wife’s rights were “covered” by and subsumed under her husband’s, feminist literary historians have underscored the surprising proliferation of women writers during the eighteenth century—that is, a period when their rights to property ownership as individuals were far from secure.⁷ Some attribute the boom in women’s writing during this period to the particularly successful strategies individual authors used to negotiate their uneasy relationships to the marketplace. Catherine Gallagher, for instance, argues in *Nobody’s Story* that successful authors such as Charlotte Lennox took advantage of their legally subordinate role by pulling strings with more influential male contemporaries; she argues that women writers paradoxically helped to define the modern gender-neutral authorship so important to marketplace fantasies by asserting their status as “nobodies.” According to Gallagher, eighteenth-century novelists asserted their power in the literary marketplace that denied them, among other things, the right to own copyrights in their own work by using a tactic developed to an even greater extent in the nineteenth century by writers associated with women’s so-called separate sphere: they made a spectacle of their dependence by exploiting the contradictions of the subject position of the second-class citizen. Whether or not this contradictory self-assertion characterizes all women writers of the period,⁸ the influential point made by feminist literary historians studying the eighteenth century is that modern proprietary relationships to the literary text did not define the careers of some of the authors taken to be most definitive of the period—from Lennox to Maria Edgeworth, Aphra Behn, Frances Burney,

and even Jane Austen. A host of less well-known authors also circulated their manuscripts privately, using original narratives, gallimaufries, commonplace books, and inspired meditations to establish the system of alternative practices that Margaret Ezell calls “social authorship.”⁹ In the view of feminist literary historians, women writers of the eighteenth century inhabited a grey zone at the borders of outright, Lockean self-ownership. Their standing resembled that of the “mercury-women” Johns describes as traveling a legal grey zone at the borders of legitimate distribution of texts (153–55). Their complicated relationships to a market that partially dispossessed them put them in the position of the figure that I will call, after Daniel Defoe, the pirate.

In *A General History of the Pyrates* (1724), Defoe describes a pirate village reputedly established on the island of Madagascar. In this imagined settlement, “all the Houses were neatly framed and jointed, not built from any Foundation, but so made that half a dozen Men could lift and transport them from Place to Place; and sometimes a whole Village shall be in Motion, which would be an odd Sight in *Europe*, and surprizing to see Houses moving” (419–20). These portable and foundationless houses share the “surprizing” and utopian cleverness Defoe attributes elsewhere to Robinson Crusoe, the island McGyver. But in the pirate village, it is not shipwreck, but rather the legal uncertainty of the pirates’ claim to property, that becomes the mother of invention. The pirates are ready to pick up and go precisely because they live on the periphery of settled and legitimate European practices.

In this sense, we can understand women writers in the eighteenth century and afterward as pirates. Because literary women were uncertain, unstable owners, lacking clear title to their textual homes, their works became figuratively mobile with respect to property. Rather than displaying the full-bodied commitment to self-owning and original authorship assumed by copyright doctrine, women writers worked in a territory already understood as piratical. Whether or not they were literally pirates copying the work of others or circulating illicit content, creative women stood in the shadowy antechamber of the law. In addition to documenting the constraints of this marginal position, I suggest that we might follow Defoe in recovering some of its utopian connotations as well.

In so doing, we can learn from feminist legal scholarship. Squaring the circle to a certain extent, a number of legal scholars have drawn on feminist literary history and theory to bring insights into women writers’ historical relationships to the market to bear on their understandings of the origins and meaning of copyright. These scholars have investigated the major principles of modern copyright as they are expressed (or are thought to be expressed) in the Statute

of Anne, and they have moved toward a more affirmative counternarrative (what I am calling a “pirate” story) of authorship.

To rethink the Statute of Anne’s version of authorship, a number of feminists have dissected its proto-Romantic vision of writing as a solitary, autonomous, and economically motivated act. For Shelley Wright, Kim Treiger-Bar-Am, Linda Lacey, and especially Carys Craig, “the modern concept of the author as the sole independent creator of an original work is profoundly ideological and historical” (Craig, “Reconstructing the Author-Self” 210).¹⁰ They understand the modern concept of the author as deriving from a strongly gendered vision of the autonomous self. This line of thinking develops the logical consequences of Carole Pateman’s critique of the masculinist underpinnings of the Lockean presumption of self-ownership as presented in *The Sexual Contract*. Pateman argues that for Locke, “women are excluded from the status of ‘individual’ in the natural condition” because he saw “the order of nature...reflected in conjugal relations” wherein a woman does not control access to her own body (52). In this view, rather than introducing a radically democratic universality into the literary marketplace, the Lockean labor theory of copyright introduced in the eighteenth century shores up a patriarchal concept of the author as representative individual.¹¹ In place of the Lockean state of nature and its vision of solitary and metaphorically agricultural labor, many feminist legal scholars depict creativity as culturally embedded, a transformative use of existing materials. They understand writing to be based on play rather than labor.¹² They also emphasize the importance of relatively disinterested social goods as motives for authorship, displacing exclusively pecuniary motives.

In addition to detaching authorship from ownership, feminist legal scholars also revise the vision of the market that standard narratives associate with the Statute of Anne, attack the coherence of the property concept, reconsider the nature of the literary text, assert the gender-specific effects of copyright protection, and treat the origin story underlying copyright as a myth. The presumed market equality of all authors has received particular attention from feminist scholars concerned with development issues. For example, building on positions developed by Martha Nussbaum, Margaret Chon argues in “Intellectual Property and the Development Divide” that equitable development requires a vision of intellectual property based on substantive, rather than merely formal, equality. For Chon, substantive equality means linking copyright rules to the goals of basic education and recognizing the vital role that educated women play in the improvement of family health and welfare. A substantive equality approach to copyright would use the law to combat existing inequality. This sociological mission differs entirely from the formalist assumptions that the

Statute of Anne has already made authorship available to “all persons,” as L. Ray Patterson put it.

Other feminist legal scholars use tactics derived from critical legal studies to unravel the property concept itself. For example, Jeanne Schroeder has argued in a number of articles and in her book *The Vestal and the Fasces* that “property serves a function in law parallel to the function of The Woman in the psyche. They are both types of the ‘Phallus’ in the sense of the psychoanalytic term for the object of desire” (“Law and the Postmodern Mind” 816). Schroeder disassembles the bundle of ideas collected together under the Anglo-American concept of property and reveals this bundle to be a tautology rather than a foundation. From a less poststructuralist perspective, Linda Lacey makes a similar argument in “Of Bread and Roses and Copyright.” Asserting that property is an incoherent concept generally and that copyright in particular reveals that incoherence because of its inclusion of social limits to the owner’s rights, Lacey builds on radical feminist methods to offer her critique of the economic incentive theory widely associated with the Statute of Anne. She understands feminist methodology as involving not the exploration of foundational metaphors (as Schroeder does), but rather the exposure of specific gender interests that have taken the guise of universals, such as property.

Another tactic taken by feminist legal scholars is to attack the fixed nature of the text presumed in orthodox interpretations of the Statute of Anne.¹³ Paying special attention to women’s activities as transformative authors in the digital environment, Ann Bartow, Dan Burk, and Sonia Katyal have all asserted that the fixed, tangible text imagined in U.S. copyright law is too limited, since it describes the aesthetics and labor practices of masculine print culture alone—a small portion of a culture’s creative output.¹⁴ Similarly, Rebecca Tushnet and Bartow have argued that aggressive copyright protection reinforces, however unintentionally, gender discrimination.¹⁵

These feminist assaults on the concepts of the author, property, and the text have culminated in a rethinking of copyright’s underlying origin story. Jessica Silbey argues in “The Mythical Beginnings of Intellectual Property” that the narrative structure of origin stories informs the account of creativity offered in intellectual property law. Based on concepts of authenticity and integrity circularly derived from the imagined origin they also found, intellectual property narratives reveal themselves to be mythic rather than historical. According to Silbey, narrative, not economic, logic provides the basis for the law.

Despite their differing methodologies—which range from the Lacanian deconstruction of Schroeder to the more empiricist leanings of Tushnet—feminist scholars, when taken together, have produced a new, demystified

portrait of the Statute of Anne. Instead of representing the origin of modern economic authors' rights formally available to "all persons," the statute appears in the light of feminist analysis as a document that reproduces gender ideologies of the early modern period. These include the obsolete assumption of the dependent status of women as subjects of coverture and extend to still pertinent questions about the nature of authorship and the market, the fixity and tangibility of the text, and the effects of copyright protection on social inequality. Beneath all of these analyses lies a desire—expressed quite explicitly by Craig, Lacey, Bartow, and Katyal—to reimagine copyright in terms more suitable to the current practices of creative women.

Most often, feminist critics describe creativity as a socially embedded, transformative use of a repertoire of texts available to a network of contributors. While disassembling Anglo-American copyright, in other words, feminist legal scholars have reanimated the commons that is the precondition of intellectual property. Practices of the commons are partially (if negatively) recognized by the law when they are described as piracy, but they are treated much more positively by feminist legal scholarship. This point of view encourages a rereading of the Statute of Anne as a special sort of pirate flag. Even while codifying copyright, it raises an alarm that points to the existence of a concomitant pink piracy. In a pattern that we will come to recognize as typical of pink pirate discourse, the proper name of an exceptional queenly authority (Anne) has been folded into a myth that keeps the dominant gendered ideology of writing alive. At the same time, in its defensive insistence on a single form of authorship, the Statute of Anne indirectly gestures toward the back channels of a nonproprietary pirate practice.

CONSTITUTIONAL COPYRIGHT

A similar feminist rereading could illuminate the copyright clause of the U.S. Constitution; however, a new strategy may be more fully warranted because many of the issues raised by the constitutional clause closely resemble those associated with the Statute of Anne. Despite revolutionary upheavals in executive authority, many specifics of the legal system of the American colonies and the early American republic directly replicated English patterns. It is true that variation on property questions occurred in the colonies, and major legal thinkers of the period did hold different philosophies of property.¹⁶ The authors of the Constitution also indisputably sought to transform the laws of primogeniture so crucial to the functioning of an aristocratic ruling class in England.¹⁷ From the point of view of feminist literary his-

tory, however, the differences between U.S. and English copyright are less striking than one might suppose.¹⁸ The continued restriction of property ownership to free men on both sides of the Atlantic suggests we might do well to turn our attention to the effects of this system on individual women who negotiated it—after a brief demonstration of the major elements of constitutional copyright.

The copyright clause of the U.S. Constitution states that Congress shall have 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 Writings and Discoveries.”¹⁹ Even though other property questions—such as slavery and the enfranchisement of free men who were not landowners—dominated during the main sessions of the Constitutional Convention, each phrase of this clause underwent some minimal revision in committee. The language James Madison initially brought to the convention on August 18, 1788, treated copyright and patent separately and specifically identified authorship with “literary authors.”²⁰ After bouncing back to the Committee of Eleven (which included a representative from every state participating in the convention) for minor revisions, including the crucial introduction of the progress ideal, the final clause was returned to the full convention on September 5 and appeared in the final draft of the Constitution on September 12, with no dispute on the floor recorded.²¹

By asserting that authors’ and inventors’ rights were both “exclusive” and “limited,” the authors of the constitutional copyright clause clearly indicated their adherence to the standards outlined only a few years earlier in *Donaldson v. Becket*. U.S. copyright would be comprehensive but not perpetual. The clause is less clear about the motives of copyright, however. Appealing to both the social good of progress and authors’ and inventors’ presumably natural rights to “their” writings and inventions, the clause expressed some philosophical incoherence. Grantland S. Rice, for one, reads the copyright clause and its elaboration in the 1790 Copyright Act as a refusal to work through conflicts between utilitarian and Lockean principles; he underscores the copyright clause’s “incomplete rationalization of literary activity in the realm of commercial law” (7). Nonetheless, by combining copyright and patent (or “Writings” and “Discoveries”) into a single clause, the constitutional language reflects a tendency toward systematizing areas of the law that previously had been considered distinct, a tendency that legal historians have identified as central to English law of the period as well.²² In short, despite the revolutionary project evident in other sections of the Constitution, the copyright clause displays considerable continuity with English precedents, philosophies, and institutions.

Continuity with English standards also extended to the treatment of women. Describing the English situation, Tilar Mazzeo asserts that “the implications for women’s rights to intellectual property were unambiguous: a married woman could not be said to own the texts that she wrote” (52). Like its English predecessors, the U.S. copyright clause resisted powerful contemporary sentimental rhetoric about the status of widows and abandoned wives, women who arguably required intellectual property rights to earn a livelihood.²³ The constitutional copyright clause does not attempt to resolve this or any other ambivalence arising from women’s limited access to property rights, intellectual or otherwise. Despite Abigail Adams’s often quoted appeal to her husband to “remember the ladies,” the status of women as authors, citizens, and rights-bearing subjects was far from central to the political establishment in the early years of the American republic. Indeed, the only reference to women or wives recorded as being made on the floor of the Constitutional Convention is Gouverneur Morris’s effort to derail immigrant rights by making a rather off-color joke comparing hospitality toward immigrants with wife-swapping.²⁴ Instead, issues concerning the role of market logic dominated early American copyright acts and discussions.²⁵ Literary historians have long been interested in the anxious responses of male authors, especially the American Romantics, to these issues during the first half of the nineteenth century.²⁶ Fearful of the market, many of the major Romantic authors supported versions of copyright that they imagined as endorsing their natural right to their original work, even though paradoxically this version of copyright tended to reinforce a more instrumental and less Romantic approach to literature.

However, to understand how American women writers negotiated a marketplace that did not guarantee their rights as owners, even for the limited terms provided by constitutional copyright, we must turn elsewhere. After all, although officially excluded from copyright ownership as individuals, women writers were still active in the market. In the early American republic, some even became notorious and exposed themselves to public attack by flaunting conventions that urged anonymous publication as the most genteel strategy for entering the public sphere. Susanna Rowson, for instance, not only published a popular novel under her own name, but she also took to the stage and opened her own school for women—activities all the more notable for her undertaking them in a situation in which she was unable to exercise a full complement of economic rights because of her status as a married woman. As Cathy Davidson documents in her introduction to a recent edition of *Charlotte Temple*, Rowson was not only “paid less for her labors than were her male counterparts,” but was also dependent on contracts with publishers

signed by “the notably irresponsible William,” her husband (xxiv).²⁷ In short, the principles of coverture when applied to women writers meant that Rowson had no legal standing as an individual and as a consequence did not own the copyright to her works. Dependent on male publishers and relatives who did not necessarily make her financial needs a priority, despite her celebrity, Rowson was in an unstable professional position similar to that of her female English peers.²⁸

Other women writers of the early American period also struggled with their limited ability to exercise the economic rights following from secure copyright ownership. However, the actions of Lydia Maria Child, for one, reveal that creative professional action within the constraints of coverture was possible, even as the U.S. copyright regime began to expand and become more complex. An active abolitionist and prolific author, Child published her first novel, *Hobomok*, in 1824, four years before her financially troubled marriage began, but her professional practice seems remarkably consistent across the several phases of her career. Child wrote numerous books, often for financial reasons rather than those of Romantic self-expression. Like Rowson, she became a minor literary celebrity in the United States and contributed to a growing public debate about women’s rights. According to literary historian William S. Osborne, Child’s book *The History of the Condition of Women in Various Ages and Nations* (1835) appeared “at an auspicious time, when women were voicing their protest against laws that prohibited them from administering property and entering the business world” (26). Child also exhibited considerable awareness of contractual subtleties and social limits to different subjects’ claims to legitimate ownership of copyright. In 1867, she donated her own royalties for *A Romance of the Republic* to the Freedmen’s Association and she offered to sign and negotiate a contract on behalf of Harriet Jacobs, since Jacobs’s standing as a fugitive slave apparently put her status as a legitimate holder of copyright in question (Osborne 37).²⁹

Other women writing during the first generation of the American republic likely had different experiences, especially those who were less financially dependent on their royalties and wedded more conventionally than Child. What matters for our argument, however, is the fact that despite occasional exceptions, the systematization of diverse colonial practices into federal principles that echoed English law during the early republican period did not make women’s access to property rights in general—and intellectual property more specifically—equivalent to men’s. Although the practice of coverture began to be openly questioned in the early nineteenth century, it continued to set the terms for American women’s participation in publishing and differentiated the

situation of women writers from that of their male contemporaries.³⁰ It was less than certain during the early nineteenth century that women could legitimately claim the rights of authors, and this uncertainty intensified as authorship began to shift from an avocation to a profession. At the same time, the exclusion of women writers from legitimate ownership of copyright neither prevented their entrance into the literary marketplace nor interfered with their support of one another at individual and institutional levels. To the contrary, women writers operating without the benefit of individual ownership of legitimate copyright could and did assert a distinctive professional identity and solidarity, arguably because of their position as violators of professional norms—that is, as a certain type of symbolic pirate. This strategy became more visible and notable when public disputes over copyright intensified during the heyday of nineteenth-century American women's writing in the 1840s and 1850s.

COPYRIGHT AND THE BEGINNING OF THE END OF COVERTURE

During the mid-nineteenth century, American women writers became a major part of the book industry. Harriet Beecher Stowe's *Uncle Tom's Cabin* was the best-selling American novel of the century, and several of Stowe's peers followed closely behind with popular didactic and sentimental novels that established enduring norms for middlebrow fiction. Concurrent with the first phase of the American women's rights movement, this generation of writers carved a new place for women in the market, even when their personal views were largely opposed to gender equality. Actively engaged in the public sphere as writers and sometimes as advocates for women's rights or the abolition of slavery, mid-nineteenth-century women writers made crucial changes to the practice of authorship in the United States.

As regards copyright, the most significant change was the shift to women's individualized ownership. Between 1800 and 1860, some forms of explicit coverture persisted with respect to intellectual property, but they were fewer, less frequent, and less formal by the end of the period.³¹ In the antebellum years, women writers found creative and diverse ways to function in the literary marketplace. By the end of the 1850s, the tide had turned on women's practical dispossession from copyright, and a new set of issues for women authors began to emerge.

As it happens, one of the most conventional arrangements of the period is also one of the most thoroughly documented—the case of *Uncle Tom's Cabin*.³² As a number of scholars have recognized, Harriet Beecher Stowe maintained

a conventionally feminine (that is, indirect) relationship to the business side of authorship for much of her career, and this included the most valuable author-publisher contract of the century. Stowe's contract for *Uncle Tom's Cabin* was negotiated and signed by her husband, Calvin, apparently in her absence. Stowe was reportedly not even aware of the terms that her famously naive husband made for the book until a week or more afterward.³³ Those terms, negotiated by the original publisher, John P. Jewett, in March 1852, were less than advantageous to the Stowes. Jewett apparently talked Calvin down to the comparatively low royalty rate of 10 percent rather than arranging for him to take half of the profits for a book that had already proved its popularity in a serial newspaper run. Stowe herself wrote to Jewett criticizing him for trying to deceive Calvin, and her sister Catharine Beecher was also incensed and eager to make a public issue out of the situation.

Twenty years later, a different copyright issue arose for Stowe. After the copyright to *Uncle Tom's Cabin* was renewed in Stowe's name alone in the 1870s, the editors of the magazine that had initially serialized the novel complained. In response, the publishers took charge of the situation, hiring a private detective to investigate the copyright's deposit in the Library of Congress and allay anxiety about their vulnerability to literary piracy.³⁴

Stowe's own assertion of authorial rights in the landmark international copyright case *Stowe v. Thomas* (1853) is significant but not decisive. Even while claiming authorial rights, Stowe maintained a complex relationship to the business of authorship throughout her career—sometimes invoking her privilege as a literary celebrity and successful author and other times closely following the advice of men, including her husband and publisher, whose interests were not entirely aligned with her own.³⁵ Well after the contract debacle over *Uncle Tom's Cabin*, Stowe still claimed in correspondence to be ignorant of business practices and described herself as contesting terms she received from publishers only after consultation with important men in her life.³⁶ Despite her enormous professional success, Stowe disowned her authority in the marketplace, and the tenor of her approach reveals some of the ways that acquiescence to coverture could complicate a female author's financial interests.

Stowe's story also underscores some of the ways that individual women, for their own reasons, reproduced aspects of coverture. Although sometimes economically disadvantageous for women as individual agents in the marketplace, the practice of feminine subservience continued, presumably because the commitment to familial and gender ideologies outweighed a purely commercial evaluation of interests. In Stowe's eyes, for instance, the problem with

the *Uncle Tom's Cabin* contract did not lie with Calvin but with Jewett. In her letters on the subject, she criticized her publisher's character, not her husband's; nor did she contest her husband's authority in the matter. She did not question the paternalist logic of coverture in her correspondence. In fact, even after changing publishers, Stowe made the same sort of arrangement in July 1859 for the publication of *The Minister's Wooing*. The handwritten contract with Phillips Sampson & Company recognizes "Mrs. H B Stowe" as "the author" and Mrs. Stowe "with the said Calvin E. Stowe" as owners of the copyright to the novel. Stowe signed contracts for subsequent editions and new works in her own name, but through the end of the 1850s she shared ownership of copyrights with her husband, regardless of her sole authorship.³⁷ Despite the fact that married women implicitly shared their property with their husbands, the contract specified the Stowes' joint ownership of the product of Harriet Beecher Stowe's individual intellectual labor. Her unusually well-documented career demonstrates that at least one major woman writer compensated for the symbolic self-assertion of authorship by actively maintaining a gendered division of property ownership within her family.

Dramatically opposed to the Stowes' perpetuation of coverture were the practices of Sara Willis Parton, well known in her own day as Fanny Fern. She achieved fame as a newspaper columnist and repeatedly underscored her ownership of her texts and her authorial persona. When a contemporary used her name for the unauthorized publication of a cookbook, Fern took him to court, and she frequently parodied the style of other newspaper columnists and advocated the ownership of literary style.³⁸ Fern aggressively asserted a right to own literary property as an individual, even in categories not commonly in use at the time. Although familiar today, a property right in a public figure's reputation was not firmly established until late in the nineteenth century when the mass media helped create new forms of celebrity. Fern, however, was extremely interested in this possibility, and even made this topic central to her most popular novel, *Ruth Hall* (1855).³⁹

Explanations for Fern's unusually assertive stance often refer to her difficult financial situation as a widow and divorcée.⁴⁰ However, her reasoning may have had causes other than simple exigency. As Melissa Homestead has shown, when Fern married for a third time, her husband, James Parton, signed a prenuptial agreement that explicitly stated she would retain copyright in her publications. The irony, however, is that her assertion could go only so far. When she wished to sue the publishers of the cookbook published under her pseudonym, Parton had to file the suit because his wife had no separate standing under the law. She could launch the suit only with his consent and cooperation ("Every

Body Sees the Theft” 235).⁴¹ Despite an apparently happy marriage that lasted the rest of her life and the legal uncertainty of her claims, Fern continued to assert and protect the strongly individualist claims to copyright that she had made earlier in her career.

The cases of Stowe and Fern represent unusual extremes during the antebellum period. Dozens of American women authors signed contracts with publishers for themselves during these decades, and only a few made a public issue of their ownership.⁴² More typical is the case of Susan Warner and her sister Anna, who seem to have owned the copyright to their writings outright—including the best-selling *The Wide, Wide World*. As the unmarried daughters of a bankrupt father, they were in dire financial straits for most of their lives. This apparently led them to sell their interest in their books for a lump sum, rather than risk the uncertainty of royalties.⁴³ Similarly, another best-selling author, Elizabeth Stuart Phelps, supported herself with her writing before marrying for the first time at age forty-four. Before the publication of her most popular novel, *The Gates Ajar*, Phelps consulted her friend Annie Fields, the wife of prominent Boston publisher James Fields and the hostess of an important Boston literary salon, so she did not lack for informed advice.⁴⁴ Even less well-connected authors such as Maria Cummins, author of the religious best seller *The Lamplighter* (1854), signed her own contract before formal coverture began to unravel in the 1860s, as did much less well-known writers such as Harriet Wilson, author of *Our Nig*, in 1859. In short, no matter how uncertain the legal norms were with respect to women writers' ownership of copyright, in practice, before the widespread reform of married women's property laws, female authors could and did sign contracts for themselves in a variety of circumstances, even when they were married and technically subject to the rule of coverture.

While claiming the financial benefits of copyright, however, women authors often tempered their assertions rhetorically. For instance, like Stowe, Phelps claimed angelic inspiration for her writing (Kessler 31), minimizing her association with a creative and sui generis creativity in the Romantic mold. Also, Phelps's reliance on the advice of her friend Annie Fields remained common practice for women authors well into the twentieth century. Rather than seeking professional advice from a lawyer specializing in contracts or asserting their own claims directly, in their correspondence with publishers women writers tended to appeal to a network of other respectable lady authors who agreed with them when they wished to make a claim or strengthen their negotiating position with publishers. In her persuasive study of American women writers' development of a professional identity, *Modern Women, Modern Work*,

Francesca Sawaya argues that domestic ideologies remained an important tool for qualifying women's investment in the marketplace well into the twentieth century.⁴⁵ Friendship networks, like book clubs and readings groups, continued early modern semiprivate circulation of texts and advice among women and eased the transition between the supposedly separate spheres that organized women's lives.

Other antebellum authors, such as the Warners, counterbalanced their claims to copyright with literary content that stressed the need for feminine submission to husbands. Finally, as in famous cases such as Emily Dickinson's so-called "master letters" to her male muse, some *feme sole* writers rhetorically positioned themselves as socially dependent even when their legal rights to ownership were undisputed.⁴⁶ During this transitional period in American women's relation to copyright, many practices were possible, but a number of women still ensured stability by adhering to an ideology of social dependence and anti-individualism that obscured their exercise of limited forms of authors' rights. They clung to a form of behavior that Homestead describes as feminine self-effacement. That assessment, however, assumes that individual self-assertion is the necessary ideal that women were institutionally prevented from reaching. More neutrally or even affirmatively, we might understand women writers of this moment as gaining some benefits by continuing some premodern practices of nonindividual authorship and networking—practices that in other moments were more dramatically identified as piratical.⁴⁷ In the mid-nineteenth century, a significant number of female authors wore the mark of the pirate. They lurked in the margins of the Romantic genius concept ideologically while beginning to benefit from its effects at the practical and financial levels.

This opportunity for women writers did not arise without debate, though. The cultural effects of women's professional authorship were widely disputed. The law's long-standing association between authorship and paternity (the law's metaphor for recognized authorship) did not simply open itself voluntarily to the language of maternity. Instead, as Judith Roof has argued in "The Ideology of Fair Use," the language of maternal involvement in reproduction (which arose with special urgency during mid-nineteenth-century discussions of fair use) generally positions the mother as a copier (often an illegitimate one) rather than an author. During the 1840s, when the fair use standards that Roof examines originated, women's rights as both mothers and owners were expanding in the United States, but parity with men was certainly not the immediate result. In practice, the erosion of coverture was gradual. An array of local factors contributed to this change in the context of

an overall transformation of the U.S. publishing industry in the antebellum period.

After all, in the mid-nineteenth century, publishers redesigned the contractual arrangements they made with all of their authors, male and female. For publishers, contracts were essentially tools for managing financial risk. As Susan Geary helpfully explains, author-publisher contracts of the period came in three basic forms: (1) the author could sell the rights to his or her work to the publisher outright (as the Warners did) and arrange to receive a royalty (say, 10 percent) of the sales price or a fixed amount (say, 10 cents per copy); in this case the publisher took on the greater risk. Or, (2) the author could pay the publisher to create the printing plates and make other practical arrangements while retaining ownership of all the material components of the text as well as the copyright and paying his or her expenses out of the profits. This essentially amounted to the publisher working on commission and placed the bulk of risk on the author. Or, (3) the author and publisher could share risk in a “half-profits” scheme of the sort that Stowe wished to make with John Jewett. In this case, authors sold the copyright and received a portion of profits above a minimal royalty per copy.

At the beginning of the antebellum period, most contracts involved a commission; by the middle of the century, half-profits arrangements predominated; and at the end of the century, royalties were the norm.⁴⁸ Regardless of gender, then, authors lost some ground to publishers over the course of the nineteenth century. The burden of risk shifted toward the publisher, and in turn, publishers asserted their claims to ownership more vigorously. Once the publishing industry pulled out of a serious financial crisis in the 1830s and expanded into western and rural markets, the publishers’ outright ownership of copyright became increasingly valuable, and the average male or female author became increasingly dependent on the publishers, financially speaking.⁴⁹ In short, women writers began to gain individual contractual rights during a period when these rights were being more routinely reassigned to publishers.

The actions regulated by individual authors’ rights were also not as numerous in this period as they later became. During the 1840s and 1850s, American publishing was a largely piratical industry. As Meredith McGill and others have documented, a substantial portion of the books published in the United States were unauthorized editions of British publications. Oftentimes, little or no profit from these publications returned to their authors, and American publishers actively resisted a move toward international copyright agreements until the end of the century. Instead, they established cartels, promising to respect

each other's pirated editions, and they routinized relations with publishers in England and Germany to ensure that technically piratical publication would continue. Although successful individual authors, such as Edgar Allan Poe and Stowe, advocated international copyright, on the whole American publishers rejected these initiatives until they had a strong hold on the market and could expect to gain more than they would lose from respecting international copyright, especially in translation.⁵⁰ Only when American-authored publications became important for an emerging mass culture in the last decades of the century did the agenda and practices of the U.S. publishing industry change significantly.

Perhaps the vital role that women played in the emerging culture industry had something to do with their indeterminate legal status. After all, whether as consumers and arbiters of taste in middle-class homes or as factory girls working in textile mills and other new sites of commodity production, women contributed enormously to a burgeoning mass culture quickly defined as feminine relative to elite aesthetics.⁵¹ At the same time, an increasingly vigorous market in images of women (especially for advertising purposes) began to develop. By the end of the century, this association was in full flower, and individual female entrepreneurs successfully used images of women to sell products to women. The first modern advertising campaign in the United States sold Lydia Pinkham's vegetable compound, a treatment for "female complaints" marketed to women by means of genteel images of Pinkham herself, and it might serve as a touchstone here for the transition from issues of ownership to management of textual icons in copyright disputes.⁵² Launching a line of icons of femininity that extends to the twentieth century's Betty Crocker, Barbie, and Aunt Jemima, Pinkham's campaign positioned women at the crux of new forms of intellectual property (brands and trademarks) in the mass market.

As the publishing industry began to adopt the mass production model in the later nineteenth century, the effective authority of the individual genius author diminished. Although firmly installed in literary ideology and the principles of the law, the individual, original, and paternal author became a less self-determining entity in practice. Women writers acquired the legal right to claim the benefits of individual authorship, albeit from behind the screen of socially sanctioned feminine modesty, just as the power was slipping away from that position in the industry at large. Consequently, the core issues of the next period involved the extent and benefits of ownership, as well as the meaning of reproduction itself. The uneasy status of women writers as professionals became increasingly significant once formal coverture began to disappear.

COPYRIGHT AND THE PROFESSIONAL
WOMAN WRITER, 1860–1920

Although certainly a crisis year for the nation at large, 1860 was also an important turning point for free American women, since this was the year the New York Married Women's Property Act (originally passed in 1848) was revised and significantly expanded. After years of advocacy and renegotiation, the terms of this act soon became standard in other states as well. Acts on the New York model stated that married women had the right to retain control of property they brought to a marriage—including intellectual property—and also ensured their right to control income they earned while married.⁵³ With the gradual adoption and implementation of these acts, many of the remaining traces of formal coverture began to disappear (although some, such as the absence of voting rights, would persist for another sixty years). Beginning in the 1860s, individual women's property rights could plausibly be understood as deriving from their status as citizens rather than from their status as married women.

Coverture did not disappear in a single stroke, however. Even though new property laws were adopted, many women had difficulty earning an income in the first place, whether through writing or other means. Married women in particular faced workplace discrimination throughout the twentieth century. Labor reform in the late nineteenth and early twentieth centuries emphasized women's maternal vulnerability, and reformers and many women workers themselves continued to frame women's economic rights through reference to their familial roles. In the ideology, practice, and policy of labor, women were routinely distinguished from men—receiving fewer positions, lower wages, less job security or pension coverage (if any), and little unemployment insurance.⁵⁴ Despite the fact that millions of American women participated in wage labor in 1900, including many married women, the ideal of a married mother supported by her husband's wage shaped the workplace well into the twentieth century.⁵⁵ The achievement of voting rights at the end of this period did not ensure women's economic rights either. Although formal political coverture gradually weakened and women gained the right to make contracts and participate in the political process, in practice, something like economic coverture continued.⁵⁶

In this gender-stratified labor force, women writers were unusual. They typically worked alone and received royalties rather than wages. Their income was decided by sales in addition to their own efforts. While this style of compensation somewhat resembles the piecemeal work of seamstresses or domestic

laborers (a sentimental cliché some were eager to repeat), writers also claimed a special sort of cultural capital. For this reason, once the fact of their authorship was recognized and they acquired clearer legal right to own the fruits of their authorial efforts, as well as the right to negotiate and sign their own contracts, women writers might appear to be operating under conditions equivalent to those of their male peers. Yet this was not quite the case. Between 1860 and 1920, American women writers, like women in other sectors of the marketplace, also operated under conditions of continued economic coverture.

Although some aspects of women writers' situation were probably elective, as we explore below, others resulted from changes in the structure of the publishing industry as a whole. During the late nineteenth and early twentieth centuries, U.S. publishing became increasingly industrialized. New production techniques made mass publication possible on a new scale; an increasingly efficient postal system and transportation network eased distribution problems; and rapid rises in literacy rates helped to create a mass readership. So-called fiction factories began to pour out popular works in a number of genres, and mass circulation magazines—many of which published serialized novels—expanded the market.⁵⁷ As publishing shifted from the more familial and mercantile models of the antebellum period to the mass production model developed by Henry Ford, the role and rights of the author shifted as well. Authorship remained valuable, but publication without the alienation of the author's rights through contracts became quite unusual. Furthermore, as Loren Glass argues in *Authors Inc.*, authorship became increasingly entangled with commercial sponsorship of literary celebrity, a joint product of writers and their publishing houses. The author's persona became crucial to high sales figures in the late nineteenth century, as the memorable career of Mark Twain attests. Twain cultivated celebrity and then attempted to acquire intellectual property rights in his persona, as well as other rights deriving from copyright in his writings.⁵⁸ The efforts of Twain and other celebrity authors (Henry Adams, Oscar Wilde, and Charles Dickens, for example) to secure posthumous rights to literary property also underscore the importance during the period of a range of increasingly lucrative derivative rights.⁵⁹ Rights to the authorial persona, reproduction in other media, and works produced as a condition of employment became at least as, and sometimes more, valuable than the initial assertion of a right to ownership. As Peter Jaszi has argued in "Toward a Theory of Copyright," the category of authorship became detached from creativity during this time, and Romantic notions of authorship as originality more frequently conflicted with industrial conditions requiring the alienation of the author from the work by means of the commodity. Many of these con-

flicts were discussed during the debates over U.S. adoption of international copyright in the 1890s.⁶⁰

Domestically, however, the industrialization of publishing faced some limits, and it is telling that some of these limits were defined in gendered terms. For example, in their landmark article “The Right to Privacy” (1890), Justices Samuel Warren and Louis Brandeis argued that “the law must afford some remedy for the unauthorized circulation of portraits of private persons” (195), since persons presumably have a right to property in their own image. For Warren and Brandeis, the right to privacy was a natural extension of the right to maintain an “inviolate personality” (205), a right that they positioned at the foundation of copyright law as well. In this influential view, one’s intangible and tangible person is by definition private property and should remain untainted, untouched, and unblemished. Warren and Brandeis’s advocacy on behalf of a chaste, unsullied private life was their response, in part, to the crashing of a family wedding party by nineteenth-century paparazzi. Mirroring to some extent the complicated logic of Brandeis’s similarly influential and gendered arguments as counsel in *Muller v. Oregon* (1908), which established protectionist rules for women in the workplace on the grounds of their special physical vulnerability as potential mothers, the Warren and Brandeis position on privacy advanced new rights to authors and other private individuals by appealing to socially conservative notions of femininity as a physical and specifically sexual vulnerability.⁶¹ In a period when the suffrage movement was advocating a more vigorous public role for women, copyright norms continued to rely on ideologies that firmly planted women in the private sphere. These concerns about the techniques of and motives for the reproduction of images of women would persist throughout the twentieth century.

Within this social context, accompanied by the industrialization of publishing, women authors nonetheless began to implement an enlarging set of rights. For example, it became standard practice in the late nineteenth century for women to sign contracts in their own names, regardless of marital status, and preprinted “boilerplate” contracts largely replaced handwritten agreements between parties.⁶² The standard contract forms for authors who signed with Houghton Mifflin, the leading literary publisher of the nineteenth century, left a blank for gendered pronouns and possessive adjectives. Female signers entered “she” and “her” in these blanks. During this period, copyright was assigned to a person other than the author only in very unusual circumstances.⁶³ In fact, standard contracts included the proviso that the author was the sole owner of the copyright in order to shift liability for any scandalous or libelous content from the publisher to the author. The author’s signature on the contract, in

other words, involved the assertion of his or her legal responsibility for the content of the text as well as an agreement about royalties in compensation for the reassignment of rights of reproduction to the publisher. At Houghton Mifflin, at least, between 1860 and 1920, single and married women signed the same contract forms, and so did men and women. Female authors commonly assigned copyrights to executors or heirs they designated themselves, and hundreds of contract files of the period include printed cards from the Copyright Office of the Library of Congress recognizing both the deposit of books and the assignment of federal copyright to the author. No standardized differences between male and female authors appear on these preprinted cards. From an administrative point of view, women writers' ownership of copyright became routine before the turn of the twentieth century.

While women writers habitually claimed copyright by the 1870s and 1880s, they nonetheless continued to manage these rights in a distinctive fashion. For example, they typically negotiated few if any changes to the standard contract. By contrast, a successful and prolific male author also published by Houghton Mifflin, William Dean Howells, kept a close eye on the details of his publication agreements; he regularly modified his contracts to protect his interests in subsidiary rights, such as rights to dramatic representation, translation, and various mechanisms for sales.⁶⁴ Also, although this was unusual for the period, Howells retained ownership of the plates from which his texts were printed, renting them back to the publisher so that he and his heirs received income from the printing of subsequent editions in addition to earning royalties on the sales. His estate also apparently set terms limiting the reductions of royalties for books with fading popularity. During this period, Houghton Mifflin normally kept an author's less popular books in print only if the author accepted a reduced royalty, and Howells's correspondence reveals not only his awareness of this practice, but also his ability to prevent it. Although the royalty rates that Howells received were not substantially different from those of other successful authors at the publishing house, Howells and his heirs ultimately benefited from his ongoing and specific negotiation over the full range of terms of the contracts.

While Howells's attention to the details of his financial arrangements may well have been exceptional for any author of the period, prolific women authors rarely negotiated *any* of the terms of their contracts. Even a best-selling and well-established author such as Elizabeth Stuart Phelps, who published approximately forty novels and collections of stories with Houghton Mifflin between 1869 and 1905, quite late in her career signed contracts that were revised only minimally, if at all. Despite the fact that Phelps's books were sold

internationally and widely translated, her contracts do not indicate any effort on her part to protect her rights in these areas or to establish control over derivative works. In her correspondence, she explicitly downplays her authority on business matters and denies any conflict of interests between author and publisher. Phelps declined participation in women's network practices, which she called "influence," urging even novice authors to "respect the market laws" and "trust the common sense of an experienced publisher.... Editors do not care a drop of ink for influence," she proclaimed (86). As a widely published author, who supported herself by writing for most of her adult life before marrying in her forties, Phelps continued to understand the business side of authorship in terms provided by coverture. Placing trust in the publisher, she rhetorically subordinated her own interests and urged others to do the same. In so doing, she adopted a more passive and compliant attitude toward the financial arrangements of publishing than did at least some of her male contemporaries.

Phelps was not alone in taking this minimalist approach to contracts; other prolific and financially successful female authors also underexercised their rights. For example, the author of popular religious fiction Clara Louise Burnham used a similar rhetoric of trust in her early correspondence with her publisher, even while negotiating quite favorable royalties. Over time, this changed, though. Compared with the letters concerning her first publications in the 1880s and 1890s, Burnham's letters of the 1910s and 1920s were more specific and professional in tone. In particular, after being approached by Universal Studios in 1915, she began to reserve motion picture rights in her subsequent books. Nonetheless, Burnham still dressed her increasingly shrewd business negotiations in homespun "feminine" language, jokingly comparing her negotiations to an old lady's tactics for selling pies for less than she had paid for ingredients.⁶⁵ Rhetorically positioning herself as financially illiterate remained a part of Burnham's professional identity, even though she was one of the better-selling authors in the Houghton Mifflin catalogue. Numerous other instances of women writers appealing to norms of femininity to counterbalance their assertion of professional rights or responsibilities appear in the Houghton Mifflin contract files. Describing their books as children, deferentially making requests only on the basis of a friend's recommendation or personal circumstances, only minimally altering boilerplate contracts or other agreements to their own circumstances, and treating correspondence with the publisher as a personal rather than professional exchange—all of these habits crop up repeatedly in the many letters between Houghton Mifflin and the more than five hundred turn-of-the-century women writers from this period whose contract files have been preserved.

Against this background, the occasional exception is all the more notable. These exceptions reveal that the social norms to which nearly all women writers adhered when voluntarily constraining their own assertions of authors' rights were not absolute. Nor were they dependent solely on the celebrity status of unusually successful women writers. Consider an active regional writer such as Mary Noailles Murfree, author of at least twenty historical novels set in the South, many of which appeared under the pseudonym Charles Egbert Craddock. Murfree regularly contested the terms of her arrangements with Houghton Mifflin, arguing for larger advances and different arrangements regarding the fee for changes to proofs, sometimes in heated tones.⁶⁶ Murfree's correspondence bears some similarity to the forthright assertion of rights that characterizes the letters of more celebrated twentieth-century authors such as Willa Cather. Some of Cather's correspondence with Houghton's Mr. Greenslet explains her criticism of the proofreading of her manuscripts and reveals her knowledge of the production process as well as the business side of publishing.⁶⁷

Even in the 1930s, though, Cather's self-assertion relative to the publishing house was unusual for a woman writer. Copyright agreements became more technical and complex in the early twentieth century, with the addition of clauses concerning motion picture, translation, republication, and other derivative rights, and the financial stakes were sometimes quite high. Even though professional literary agents were available for consultation, turn-of-the-century American women writers, major and minor, continued to rely on private networks of counsel. In so doing, they perpetuated a convention of feminine reticence regarding business practice. Even well-educated and often socially privileged women writers experienced (and to some extent reinforced) limitations on the exercise of their own property rights, including their intellectual property rights.⁶⁸ The social habits of coverture outlasted its formal and legal existence. The ideal of the covered woman remained entangled with the exercise of copyright well into the twentieth century, and at its periphery lingered the ideal of a friendship network of women operating on standards other than those of the market. This domestic and sentimental covered woman reappears at the end of the twentieth century in the more self-consciously scandalous costume of the pirate.

TWENTIETH-CENTURY ICONS

Even in the middle of the twentieth century, as the second wave of feminism rose, copyright remained a problem for women in the United States. Although

formally enjoying property rights equal to those of men, many mid-twentieth-century women still found it difficult to attain full access to the most valuable aspects of copyright. This practical inequality resulted in part from the fact that, during this period, the most significant components of copyright shifted from authors' rights to a range of issues I will call icon issues, since they have to do with the nature of the text as icon (as the source of famous characters, for example). In the mid-twentieth century, as copyright expanded to new media and applied to smaller units of a text, the text became valuable not necessarily because it replicated an individual author's complete and original vision, but rather because it reproduced copyrighted icons in part or whole. With the rapid expansion over the twentieth century of a sexualized mass culture, the economic stakes represented by particular copyrighted texts were sometimes quite high, and feminine icons such as *Playboy* centerfolds or Barbie dolls could be enormously profitable. At the same time that valuable icons of femininity stimulated major changes in the copyright industries, however, the female labor force was divided. Exceptional individual female authors/owners benefited from changes in intellectual property law, while the considerably larger portion of women who worked in other sectors of the culture industry continued to have more limited access to the benefits of copyright.

Consider Barbie, for example. Frequently described as a psychologically damaging icon of femininity for the more than 90 percent of American girls who own one or more of the dolls, Barbie is also a copyrighted property, scrupulously protected by litigation.⁶⁹ While benefiting Ruth Handler as an individual author/inventor and Mattel as the corporate author to whom rights have been reassigned, aggressive copyright protection of Barbie has also prohibited reuse of this American icon by later entrants—a group that ranges from major corporate bodies to less advantaged creative women. For instance, in 1991, Mattel was involved in a legal wrangle with another institution of iconic femininity, the Miss America pageant. When the Miss America organization sought to import twelve-inch fashion dolls made abroad to sell as fund-raisers for their scholarship program, Mattel brought suit, charging that the dolls' design infringed on Superstar Barbie.⁷⁰ Miss America argued that the designs did not infringe because they merely employed generic signs of femininity, such as “pert noses, eyes that are made-up and exaggerated in terms of both size and distance from each other . . . smiling, full lips, painted-on eyebrows and similarly sized heads.”⁷¹ Although unsuccessful in the courts, Miss America's argument suggests the increasingly strong grip that copyright came to have on the reproduction of feminine ideals during the twentieth century when iconic femininity itself often came to be defined by means of intensely litigated and

protected private property.⁷² The defining features of the purportedly perfect female face, in this case, were privately owned.

Iconic properties such as Barbie also relied heavily on gendered ideals of sexual purity. Some of Mattel's other targets have included the producers of a Barbie fan magazine (for depicting the icon with alcohol and cigarettes), the Japanese car company Nissan (for using a Barbie-like doll in advertisements without permission), the Danish pop group Aqua (for their satirical song "Barbie Girl"), and the San Francisco artist Paul Hansen (for his pieces "Hooker Barbie," "Carrie Barbie," and "Big Dyke Barbie"). In celebration of Barbie's fortieth birthday, however, Mattel did provide California-based bead artist Liza Lou with life-sized figures (Business Barbie and Bridal Barbie) to use in a suitably celebratory commissioned piece titled *American Glamorama*.⁷³ Protecting Barbie from presumably damaging and defamatory ideas of femininity (represented by lesbians, motorcyclists, smokers, and musicians), while exercising its own right to reproduce sanctioned Barbie art, amounted to Mattel's corporate regulation of transformative uses of this commercial icon. The company actively restricts the legitimate meaning of Barbie's femininity. Intellectual property standards, as exercised in these situations, allow and perhaps even require a conservationist approach to the meaning of femininity. Furthermore, in these Barbie cases, as in many others concerning feminine icons, copyright relies on strongly gendered notions of feminine purity. Mattel's insistence that Barbie's meaning must remain faithful to the first commercial incarnation treats any copy as a threat to the icon's paternity rights. Any secondary use—but especially one that might eroticize the icon—is then positioned as piratical, as both feminine and seductively unchaste. To remain valuable and feminine, the icon must, according to this logic, remain faithful to its author-father.

In publishing, this reciprocal relationship between copyright and iconic femininity has been reinforced by the commercialization of the industry as a whole.⁷⁴ From a nineteenth-century gentleman's endeavor characterized by personal relationships between publisher and author, publishing had become by the last quarter of the twentieth century a multilayered managerial process that generally took place within multinational communications conglomerates. Some of this industrial reorganization relied directly on the expansion and extension of copyright. Under the terms of the 1909 Copyright Act, a copyright lasted twenty-eight years and was renewable once for the same number of years; it covered published texts, recorded music, maps and images, and a few other media. At this point, informal agreements among publishers kept prices high, and derivative works were usually limited to translations or adaptations for stage or screen. Revisions to the copyright act in 1976, however, extended the

duration of copyright from twenty-eight to forty-seven years, and the range of texts covered expanded dramatically, as did the bundle of rights included in copyright. One of the most notable changes was that, as of 1976, deposit of a text with the U.S. Copyright Office was no longer required to attain or renew copyright.⁷⁵ A commercially inspired desire to claim copyright was automatically assumed on publication.

In short, by the last quarter of the twentieth century, copyright legislation defined the means for permissibly reproducing and disseminating a text through various commercial incarnations. Its executors often placed as high a priority on this task as on protecting the original author's investment of labor. Maintaining a clear line of ownership of the text (that is, securing the text's paternity) as it passed through dangerous transformations allowed by its material form became a central task of copyright statutes.

In addition to managing social and legal anxiety about a text's materiality, expansions of so-called subsidiary rights also made the integration of publishing with a range of other media and communications industry functions more profitable. The expansion of copyright thus contributed to the "merger mania" that hit the publishing industry in several waves from the 1960s to the 1980s. Business analysts described protectionist versions of intellectual property rights as a benefit and later as a necessity during a period characterized by conglomeration and highly concentrated ownership of the media.⁷⁶ Reprints, reissues, adaptations, serialization, book club selection, excerpts, anthologies, and later even T-shirts and other spin-off products made the exercise of subsidiary rights one of the most active and important areas of publishing in the latter part of the twentieth century.⁷⁷ By this time, writers and publishers alike could profit more from subsidiary rights to a book than from its initial publication and sales.

With this large-scale structural change in the industry, at least two new job descriptions emerged. Since the 1880s, literary agents had been representing authors, helping them handle international copyright issues in particular. With the industrialization and commercialization of publishing, however, agents increasingly began to act as business managers. They handled contract negotiations and the details of the production process, as well as subsidiary rights. They also could act as editors, helping authors adapt their writing to different markets. As intermediaries, twentieth-century literary agents served as proto-authors, taking on the business or financial side of writing while reserving the aura of invention and originality for the author. The earthly organizational talents of the agent protected the figuratively male author's profound but delicate spark of genius.

Keeping this last point in mind, we will perhaps be less surprised that, despite the financial/managerial knowledge apparently required, working as a literary agent was apparently “one of the earliest and best ways for a woman to enter publishing” (West 88). Since female literary agents were not endowed with the social status of inventive authorship, they could act as the liaisons and facilitators linking authors to reproduction through publication. Like secretarial labor, which became the province of educated women workers during the late nineteenth and early twentieth centuries,⁷⁸ the tasks of a literary agent involved handling and shaping the text—often quite substantially—without the recognition given to the author or publisher. The increasingly industrial character of publishing, therefore, as well as the greater density of rights and technical details associated with publishing, made this feminine mediation crucial during this period. A gendered hierarchy of labor allowed the publishing industry to implement an expanding copyright regime by making pink-collar women workers into midwives during the most tangible moments of the text’s transformation.

At the same time, positions analogous to the literary agent appeared within publishing houses, and these, too, were frequently the territory of women. According to surveys of people working in publishing, as late as 1979, in many of these positions “on the lower rungs of the editorial hierarchy—the detail work—there are few men. The majority of manuscript and book editors are women. Copy editors, one step below manuscript editors, are almost exclusively women” (Coser et al. 157). The authors of this survey concluded that, “if men tend to be in positions where they control relations with important figures outside the firm, . . . women smooth and ease these relations with both outsiders and insiders” (158). Concentrated in low-paying, high-turnover clerical and entry-level positions in publicity, children’s literature, women’s books, and a few other areas, women working in publishing throughout the middle of the twentieth century looked up at a glass ceiling. The more responsible and upwardly mobile editorial positions tended to be associated with “an implicitly male managerial ethic” (165). During the aggressive and multinational conglomeration process of the 1960s, 1970s, and 1980s, this trend continued, and a type of financial and legal expertise not commonly associated with female liberal arts majors became a prerequisite for upper-level positions.

Although the situation differed somewhat at small presses, by the end of the twentieth century women working in the major publishing houses (which are responsible for roughly 90 percent of books published in the United States) were concentrated in lower and midlevel positions. Most interesting for our purposes, the last of the mediating positions that women came to occupy was

the area of subsidiary rights.⁷⁹ The publisher's complements to literary agents, women in subsidiary rights divisions coordinated the details of ownership related to copyright, separating those tasks from the more prestigious and content-related tasks of editing. In this respect, the expansion of copyright created new opportunities for women while at the same time replicating a gendered hierarchy of labor and status. The large-scale entry of women into publishing in the mid-twentieth century was accompanied by concrete disparities in the pay, advancement, and job security afforded to men and women, as well as gendered associations of illicit reproduction with violations of sexual propriety.

A structural contradiction resulted: in the second half of the twentieth century, a strongly gender-stratified industry distributed images of women's liberation or, at least, self-actualization to a new generation of women readers by means of institutions, such as copyright, that were segregated by gender both metaphorically and concretely. This process was celebrated in some contemporaneous women's fiction. In Sylvia Plath's *The Bell Jar* (1963), Mary McCarthy's *The Group* (1963), and Grace Metalious's *Peyton Place* (1956), for example, working in publishing—not being an author oneself—serves as the sign of liberation, maturation, and recognition for central female characters. This is a notable shift from nineteenth-century novels, such as those of Fanny Fern or Louisa May Alcott, that celebrate the act of writing as self-assertion. We could interpret this shift as a self-effacement or “loss of voice” in a period undoubtedly characterized by silencing gender ideologies, but it is also just as likely that this shift recognizes the centrality of white-collar management in general during mid-century. That is, when women's novels celebrate the aspiration of women to copyedit other people's writing rather than to produce their own, we can read this dream as a tragic backsliding, in that women do not seem to be seizing the still potent privileges of Romantic individualism; or we can understand them as registering the expansion of the managerial structure and seeking a place, however compromised, within that expanding sector of the economy. After all, new figures for liberation surely become necessary with changing conditions, and they do not always resemble the old heroes. Having achieved legal access to the status of the author, by the middle of the twentieth century women writers perhaps sought access as well to the management of ownership itself. Recognizing the formative influence of industrial conditions on twentieth-century writing, these authors offered their readers a window into this process and, along the way, contributed a piece of what would later become an explicitly pirate ideal.

Although best sellers sometimes celebrated the solidarity of professional women's networks, in reality the new roles of mid-century women in the

second tier of publishing sometimes set women in different sectors against one another. After all, the production of a network of subsidiary rights created spaces inhabited and inflected by women who could act to defend their own interests—interests not necessarily united with those of individual female authors. As in Barbie litigation and other cases described in subsequent chapters, courts often resolved the resulting conflicts with an eye toward the reinforcement of a gendered hierarchy of power.

For example, a legally conventional but for our purposes thematically interesting 1965 copyright case, *Smith v. Little, Brown & Co.*,⁸⁰ provides an illustration of new intragender conflicts in the publishing industry, as well as an example of the recasting of the pirate as a feminine ideal. In this case, Carol Crosswell Smith, a retired lawyer, sued the Boston publisher for allegedly appropriating her novelization of the story of the sixteenth-century female maritime pirate Grania O'Malley. Claiming that her unpublished manuscript was the source of a children's book on the same topic coauthored by two female Little, Brown employees, one of whom read Smith's book proposal before allegedly sharing it with her friend and conspiring to copy it on a joint vacation, Smith sought an injunction against the infringing work, as well as an account of profits and punitive damages. The result of her suit and the three subsequent appeals was that plagiarism was documented, an injunction granted, and profits awarded, though no punitive damages were ever disbursed.

Although turning on prosaic issues of access to the contested manuscript, *Smith* has more significance as an illustration of some of the central themes of a feminist history of copyright. First, it is interesting that, as far as Smith is concerned, the story of O'Malley's heroic transgression of English property relations is her own private property. This self-contradictory relationship to a heroic past is typical of mid-century liberal feminism before the reclamation of piratical practice took on feminist connotations for American women writers.

At another level, though, *Smith* serves as a parable about professionalization. After all, both the disgruntled lawyer-turned-author and the female publishing staff that feature in this case were historically novel figures. As women with ideas and the income, independence, and connections to realize them, all the figures involved in the suit are twentieth-century icons of the liberated woman as antipirate. They have all realized Fanny Fern's aspirations, to some extent. Their status as economically self-sufficient citizens, however, places them in conflict with one another because that status is framed by the hierarchies of a publishing industry that remains in conflict with what I am calling the quasi-piratical social networking among genteel lady authors that we saw in the late

nineteenth and early twentieth centuries. The habit of consulting one's friends, maintaining an intimacy network that extends beyond and to some extent determines one's business contacts, and making professional decisions on the basis of these friendship networks, as the Little, Brown employees charged with plagiarism had done—all of these genteel holdovers conflict in this case in an actionable sense with the version of propriety and privacy upheld by the industry in which these women worked. The story of the pirate queen relies on the continuation of informal industry piracy. In *Smith v. Little, Brown*, we find three women inventing different styles of piracy-inflected authorship out of their only recently legitimated positions within the publishing industry's apparatus of reproduction of property relations.

This contradiction between the individualist ideal of property contained in the story of piracy and the institutional practice of recirculating texts in sometimes quasi-legal, premodern networks creates the condition of possibility for late-twentieth-century forms of literary piracy. The pink pirate encapsulates this contradiction and its provisional resolution, drawing our attention to shifts back and forth across the borders separating form from the content and practice of women's writing during the period.

As Barbie reminds us, though, these contradictions do not and did not arise solely around minor authors and little-known publications. Icons of femininity are sometimes exceptionally valuable in American society, especially in the visual culture of advertising. Some of the most profitable and widely circulated intellectual properties produced in the United States have relied on iconic representations of women's bodies and depended for their profitability on the alienation of the women whose bodies are represented from the claims of authorship. As discussed in chapter 4, this is most obviously the case in pornography marketed to heterosexual men, and it is perhaps not accidental that one of the textbook copyright cases from the late 1970s, *Dallas Cowboys Cheerleaders v. Pussycat Cinema*,⁸¹ concerns pornographic appropriation. This case involved female performers (cheerleaders and actresses) substantiating copyrighted text owned by others; at issue were the benefits, if any, that followed from their embodiment of an idealized femininity. Similarly, gendered issues of embodiment arise in recent copyright cases concerning wrestlers, makeup designs, and puppets. Legal uncertainty about what, if any, contribution mediators make to the material production of the icon is often at stake.⁸² In the mid- and late twentieth century, when women were clearly established as legitimate authors/owners, the tangibility of the iconic text made it metaphorically subject to violations of purity—that is, to forms of piracy coded both as feminine and as violations of feminine chastity. The icons themselves

did not need to be female characters for this logic to come into play, though they often were. A gendered conception of the text's proper use defined the issues of this period. In particular, the treatment of the icon as guarantee of the author's authentic relationship to the text feminized the rhetoric. Once materialized, the textual icon is always vulnerable to being tainted or seduced by others. As a legal tool for managing that erotic risk, copyright positions those who handle the icon—those responsible for managing its tangible aspects—as potentially pink pirates.

CONTEMPORARY COPYRIGHT DISCOURSE AND THE PINK PIRATE

Since the revision of U.S. copyright statutes in 1976, American intellectual property law has become increasingly central to public discussions about the so-called information economy, and commentators agree that copyright is crucial to the global accumulation of capital as well.⁸³ A number of scholarly critics have questioned the ethics of the intellectual property economy—asking, for example, about the human costs of enforcing patents on expensive life-saving pharmaceuticals. However, copyright and piracy have also featured prominently in several initiatives designed to raise public awareness of ownership issues. In high-stakes arguments over music downloading and software sharing, for instance, the solitary, Romantic artist/inventor is commonly depicted as the innocent victim of rapacious public piracy. Although the scope of financial losses directly attributable to piracy is debatable,⁸⁴ the rhetoric of the pirate as the enemy of art is ubiquitous, and the pirate's plot is routinely gendered.

In 2002, for example, the RIAA launched a multimillion-dollar advertising campaign targeting pirates. In an industry famously dominated by male performers, the campaign rather oddly uses some of popular music's most successful women—Britney Spears, Madonna, and Missy Elliott—as emblems of the artist.⁸⁵ Statistically, women are far more highly represented among consumers of commercial popular music than they are among its producers,⁸⁶ but the recording industry rhetoric of antipiracy reverses these terms and depicts illicit downloading of music as an assault on women. Vulnerable to violation precisely because they are so desirable, female artists embody the music industry's efforts to make piracy a moral crime.

In the campaign and related documents, underscoring “the toll that music theft takes on the many artists, songwriters, musicians, record label employees and others whose hard work and great talent make music possible,”⁸⁷ the RIAA positions itself—in alliance with the police—as a heroic defender of vulnerable

artists. Along with familiar proponents of free speech, such as Thomas Jefferson, Franklin Delano Roosevelt, and Voltaire,⁸⁸ the RIAA claims to embody the kind of heroic masculinity that will save women mistaken for witches (their example), while pirates are described as “corrupt . . . clandestine . . . savvy multi-state criminal operations.”⁸⁹ None too subtly and more than a touch ironically, the RIAA presents pirates as sophisticated seducers occupying a questionable middle ground between the imperiled maiden and her upright saviors. In this contest, the pirate’s collective and underground pinkness then signals an unforgivable gendered immorality within an industry that supposedly sells rebellion. This rhetoric also conveniently displaces any anxieties associated with the highly coordinated effort of the antipiracy campaign to the targets, obscuring the industry’s own monopolistic policing under the cover of outrage at a gender violation.⁹⁰

A similarly conflicted association between gender roles and property also characterizes some nonindustry narratives about intellectual property, although some of the terms are reversed. Copyright experts such as Judge Richard Posner have made much of plagiarism and/or piracy cases involving female participants—such as Harvard undergraduate Kaavya Viswanathan’s plagiarism in her contemporary chick-lit best seller *How Opal Mehta Got Kissed, Got Wild, and Got a Life*, and historian Doris Kearns Goodwin’s copying from professional peers. In the same essay in which he retools Samuel Johnson’s quip about women’s writing (“the wonder is not that it is done well, but that it is done at all”), Judge Posner repeatedly returns to these examples of women as pirates (44). While chastising feminist scholars of intellectual property for drawing attention to the same logical errors that his own book is dedicated to outlining (mainly, a politically motivated refusal to distinguish between illegitimate piracy and informal plagiarism), Posner asserts quite baldly that copyright standards are political.

Unlike the scholars he ridicules, though, Posner characterizes these politics as part of a left-liberal program of apologizing for social subordinates. For Posner, women are disproportionately plagiarists and sometimes also copyright pirates because the double standards of liberals allow them this leeway. His *Little Book of Plagiarism* argues that institutionalized plagiarism (like that of law professors and judges, he argues) ought to be recognized as a norm while the pink piracy of the Viswanathan and Goodwin variety is removed from what Posner sees as politically motivated protection. That is, Posner’s argument that liberal double standards permeate and confuse discussions of literary property requires him to produce the figure of the illicit pink pirate who represents both the improper use of copyrighted text and the improper

politicization of the discussion. Rather than opposing the pink pirate to heroic rebels, however, Posner opposes her to his own, shall we say, grey professional plagiarisms.

Without sharing Posner's political stance, other legal experts also use the narrative logic of the pink pirate to offer a critique of existing copyright norms. For example, prominent advocates of copyright reform Lawrence Lessig and William Fisher both address the same memorable example of a twelve-year-old girl sued by the RIAA for downloading music; her mother was then held liable.⁹¹ Decrying the industry "espionage" used to identify downloaders, Lessig and Fisher argue that millions of individuals are in effect criminalized by the recording industry's interpretation of piracy. Their emphasis on the single mother as a prototype for an unfairly criminalized population makes women of us all and positions the RIAA as the faceless predator. Despite this reversal of terms, we recognize the RIAA's narrative of damsels in distress. In Lessig and Fisher's account, though, as in Posner's, the failure to achieve heroic rescue is political. The industry's figurative piracy threatens to damage the democratic process itself, Lessig and Fisher conclude, and the industry's successes suggest that damage is already widespread. In short, while Posner fears that special interests might interfere with the commercial logic of copyright, Lessig and Fisher treat copyright as a civil rights issue. Their parable of the pink pirate has a different moral than the others, but in all three instances the story of piracy reveals its motive in its most gendered moments.

In these copyright discussions, the proximity of gender to piracy lends drama to some technical legal and economic questions. Whether piracy represents corporate malfeasance (Lessig and Fisher), the modus operandi of the culture industry (Posner), or the modus operandi of consumers (RIAA), the story is told in gendered terms that make the pirate a covert, dangerous, radically gendered figure. Although as Ann Bartow argues in "Fair Use and the Fairer Sex," "the ways in which male-constructed and male-enforced copyright laws disadvantage women have not been discussed very much in intellectual property legal scholarship" (583), the effects of this masculinist rhetoric are readily apparent. When women appear in conventional contemporary copyright discourse, they commonly represent the victims of pirates or show the potential to become pirates themselves. They are never the police, the law, or the industry owners. In copyright talk, pirates are disproportionately pink, and women are disproportionately pirates. This recurring treatment of women as symbols of an uneasy relationship to property distills the long and sometimes twisted history of women's exclusion from and subjection to property law in the Anglo-American tradition.

Many additional examples of the mobile rhetoric of the pirate could further substantiate this thesis, but I will limit myself to only one more development. In its “Declaration of Principles 3.2,” Sweden’s Pirate Party asserts its desire to liberate works being “held hostage” in the vaults of big media corporations that use abusive surveillance and “small armies” of lawyers to retain their monopolies. Stating outright its desire “to create a cultural commons,” the Pirate Party sets its own communal antiproperty ethic against excessive, melodramatic, and macho militarism. In various places in this document, the injustices of copyright are associated with the U.S. war on terror, early-twentieth-century totalitarianism, feudal serfdom, and administrative logic itself. The connotations of copyright shift, in other words, but the heroic and ideally postgendered commons of the pirate remains figuratively consistent.⁹²

Thanks to a rising generation of feminist legal scholars, many of these and other descriptions of copyright piracy have already begun to seem transparently gendered, at least to some specialists in intellectual property law.⁹³ The remainder of this book builds on the foundation they have established, exploring literary treatments of the pink pirate. If anxiety about piracy and the persistence of the commons, as Mark Rose argues in “Nine-Tenths of the Law,” arose the same moment as copyright law itself, and if that anxiety has been repeatedly gendered female—even long after the slow erosion of any material substratum that might justify such an association—then what creative possibilities does that association produce for contemporary writers? When and how does the pink pirate appear? What territory does she inhabit? Who are her companions? What conflicts does the pink pirate generate or resolve? How do pink pirate narratives adapt elements of other neighboring tales of property, culture, gender, and crime? Understanding the answers to these questions requires, I believe, some appreciation of the extraliterary factors that have led to the invention of the pink pirate. Even though the pink pirate is a literary device operating in a fictional world and as such remains open to many permutations, this figure also recalls to an informed reader specific moments in the history of women and property outlined in this chapter.

All of the writers examined in detail in the following chapters use the pink pirate to criticize some aspect of the contemporary U.S. copyright regime. A more extended treatment of the topic might consider appearances of the pink pirate in works by vigorously pro-property authors, such as Anne Rice; or, one might test the pink pirate’s affiliation with feminism by studying the writing of skeptics such as Katherine Dunn, Margaret Atwood, or Rikki Ducornet. Another alternative might be to pull the argument into other media through readings of feminist appropriation in music and the visual arts. For

the purposes of this foray, however, a narrower scope is adequate. After all, even among literary critics of copyright, a range of positions appears. Some writers seek to enhance their own status as exceptional individuals, hoping that opportunity for creativity will also be eventually extended to other women positioned differently in the global economy of cultural production. Other authors more directly concern themselves with the owned and preowned status of icons of femininity, while still others focus their attention on the formation of a commons for readers and users of texts. That is, the politics of the works examined in the following chapters range from visions of liberal reform to anarchist rejections of property per se and small-c communisms.

Considered together, though, these novels by contemporary American women writers exaggerate and expose contradictions surrounding an extremely valuable form of property. The basic categories of copyright receive thorough scrutiny in contemporary feminist fiction because imaginative writers by necessity test and redefine the parameters of their own labor. In the gendered legacy of copyright, in particular, a number of contemporary American women writers have discovered lively opportunities for creativity as well as some new powerful and attractive ways of understanding the constraints experienced by creative women of the past.

THE MATERNAL COMMONS

Reyher, Kroeber, and Le Guin

In June 2009, Ursula Le Guin laughed off the vision of a foreshortened and androgynous maternity she had offered in *The Left Hand of Darkness* (1969). “Wow,” she exclaimed to a blogger at the *New Yorker*, “did I only give them six to eight months to nurse? How stupid! A clear reflection of the strange and universal American ethnic practices concerning childbirth and early maternity, to which I was fully subjected as a three-time mother.”¹ Attributing to ethnic blinders her 1960s-era desire to detach the mother from the child, Le Guin revives a debate about maternity, much as she has recently reentered a discussion of authors’ rights.²

To recover the motives behind that perhaps prematurely discredited vision of maternity without possession and to find out how it might be related to Le Guin’s concept of feminist authorship during the 1970s, we need to reconstruct some of the reigning ideas on mothers and property in the mid-twentieth century. A few brief reminders of the substance of second-wave feminist debates over maternity will prepare us to appreciate the consequences of this debate for copyright disputes, such as the complaint Rebecca Reyher filed against *Sesame Street* over ownership of the children’s story *My Mother Is the Most Beautiful Woman in the World*. Reyher’s case reveals some of the consequences of a possessive interpretation of maternity for writing. With this discussion in mind, we can better understand the reasons why Le Guin developed a vision of alternatives to possession in her essays and early novels, and we are in a position to better appreciate some of the differences between pre- and postfeminist discourses of the mother as author.

POSSESSIVE MATERNITY AND BEYOND

During the 1970s, when copyright law and the American women’s movement were simultaneously up for discussion, one of the issues foremost in the minds

of many feminist writers was maternity.³ Whether in the context of workplace leave policies, childbirth practices, reproductive rights, or a critique of popular culture, the 1970s revival of the U.S. women's movement involved efforts to loop back to and continue the project advanced by figurative foremothers during the 1910s and 1920s. At the same time, many feminists of the 1970s repudiated the ideology of motherhood with which they had grown up during the 1950s. "Women who became feminist icons and leaders tended to define themselves in opposition to their mothers," writes Elaine Showalter in her memoir of the period, *Inventing Herself* (18).⁴ Imagining themselves as the daughters of the suffragists, while rejecting the image of maternity dominant during the generation of their biological mothers, placed 1970s feminists at a crossroads. Especially for those who elected to become mothers themselves during the 1960s and 1970s, generating a new image of feminist motherhood became an especially urgent task.

Liberal feminists involved in the pro-choice movement defended the ideal of voluntary motherhood. They focused on demonstrating the compatibility and perhaps even subordination of maternity to women's free and equal participation in public life as individuals.⁵ Maternity, in this view, needed to be reorganized around the principles of possessive individualism, the cornerstone of modern liberalism. The possessive individual is a legitimate participant in civil society to the extent that she owns herself and is not owned or dominated by her social role.⁶ Understanding maternity through the lens of possessive individualism thus involved an effort to describe conception, childbirth, and sometimes the child itself as alienable properties of the owning mother in order to ensure her equality with a father already understood in comparable terms. The popular handbook *Our Bodies, Ourselves*, first published in 1973, exemplifies aspects of this position; the polemic of its title, after all, lies in the possessive pronouns. Rather than restricting women's access to the public sphere, possessive maternity sought to secure women's self-ownership and thereby legitimate feminist mothers.

Other schools of feminist thought, however, took exception to the liberal fusion of possessive individualism with maternity, arguing that a quest for equality too readily compromised with other forms of injustice. Rather than accommodating motherhood to the socially dominant rhetoric of property in the United States, some activists began to describe maternity as the basis of an alternative sphere of feminine/feminist values and the root cause of a need to redistribute resources. A project with many faces during the 1970s, this so-called difference feminism emphasized and systematized women's distinctions from men and frequently opposed a purportedly maternal ethic of extralegal sharing

to masculine and proprietary law.⁷ The resulting celebration of motherhood as the core of an essentially female ethic overturned not only the 1950s-era view of maternity as a service occupation, but also liberal feminists' emphasis on elective participation in child rearing. All women were to be celebrated as potential mothers in this view.

A post-1970s academic preoccupation with exposing the problems with essentialist tendencies in both liberal and difference feminisms, however, has obscured the important contributions of a third position—one less fully developed in the American context than in the European. Around the same time, some feminists in the socialist tradition were also rethinking maternity. Especially those in the Italian *autonomia* movement understood maternity as a form of unwaged and affective labor crucial to the reproduction of labor power under capitalism. Stressing both the utopian value of maternity as a so-called labor of love and the exploitative effects of not financially compensating this labor, these unorthodox socialist feminists sketched an account of maternity and the household more generally as a potentially revolutionary space.⁸ One of their polemical slogans was “wages for the home,” since they advocated paying a wage for domestic labor, especially that associated with housework and child rearing.

The “wages for housework” movement shared with other 1970s feminists a strong desire to reimagine the mother's relationship to property. During the 1970s, regardless of their disagreements, liberal feminists, difference feminists, and socialist feminists all understood the mother as dispossessed compared with the individual owner/citizen. With the numbers of female parents entering the labor market rising dramatically during the 1970s and 1980s, concern over the relationship between women's maternity and their public lives as waged and property-owning individuals became widespread.⁹ Disagreements over the causes and remedies for maternal dispossession made the formulation of a new agenda difficult, though. The question of maternity and property remained both pressing and open in the late-twentieth-century United States.

OWNING THE MOTHER'S STORY:
REYHER V. CHILDREN'S TELEVISION WORKSHOP

The debate over feminist maternity permeated American culture during this period, influencing everything from the fight for reproductive rights, to the development and regulation of day-care facilities, to education policy and labor law. As legal historians have demonstrated, unresolved contradictions produced by the debate over maternity even appear in copyright law. After all,

for centuries, copyright law has involved analogies to parenting. In the Anglo-American tradition, the right to have one's authorship of a work acknowledged is called a "right to paternity"; illicit copying is often coded as maternal, and the copyrighted work is routinely figured as a child.¹⁰ Noting that American understandings of paternity and maternity have shifted dramatically in the past few decades, however, copyright expert Mark Rose argues in "Copyright and Its Metaphors" that the use of these metaphors in copyright discourse should be updated as well. Rose demonstrates that U.S. copyright law recalls an Aristotelian and Renaissance-era view of parentage as masculine parthenogenesis. He locates this idea in influential metaphors such as the "spark" of originality that became a test for future works' suitability for protection in the standard-setting Supreme Court case *Feist Publications, Inc. v. Rural Telephone Service Co.* (1991).¹¹ Rose concludes that this "paternity metaphor is patriarchal and obsolete" (14–15), and he urges a reconsideration of copyright law in light of a contemporary genetic definition of parentage.

In slightly different terms, legal professionals such as Malla Pollack agree. Pollack suggests that lawyers stop imagining the public domain as a "birthing, lactating mother" (621) who gives infinitely of herself and begin to envision instead a "feminist-friendly public domain [that] can be theorized as an owned public domain where the 'ownership' interest each community member holds is the right not to be excluded" (625). These and other calls to reimagine key terms in the copyright lexicon in relation to maternity have gone largely unheeded, however, in the courts. Although, as this chapter demonstrates, noted American science fiction author Ursula K. Le Guin did rise to this challenge, copyright case law exhibits an array of dated and contradictory views of maternity. Rather than blazing a trail out of thorny contemporary debates, copyright cases more often reflect continuing conflicts over maternity.

An instructive case in point is *Reyher v. Children's Television Workshop* (1976). A suffragist active in the left-wing National Women's Party (later renamed the League of Women Voters), the plaintiff Rebecca Reyher was also a prolific journalist and author. She contributed numerous articles on family, marriage, and women's issues to the liberal periodical *The Nation* and wrote two volumes of popular anthropology based on her travels in Africa, in addition to several children's books.¹² Both of her anthropological works, *Zulu Woman* (1948) and *The Fon and His Hundred Wives* (1952), offered a liberal feminist critique of African polygamy, and professional anthropologists criticized both works for their ethnocentrism. Several reviewers described her writing as offering a Western folktale about African women, rather than scientific analysis.¹³ In short, in several facets of her complicated career, Reyher advanced a universalizing

version of feminism. She saw equality in the public sphere as the necessary precondition for women's liberation, regardless of cultural difference. This strong, lifelong commitment to equality in the public sphere also makes Reyher a prototypical feminist foremother of the sort many liberal feminists sought to reclaim during the 1970s. For this reason, Reyher's interpretations of her rights as an author/owner are interesting to examine. They definitely conflicted with other views of maternity and property emerging during the period.

Appropriately enough, the copyright suit Reyher brought to the courts in the 1970s turned on ownership of stories by and about mothers. The disputed text was the children's book *My Mother Is the Most Beautiful Woman in the World*, which Reyher published in 1945. She testified that the story "had its genesis in a story told to her as a child in Russian by her Russian mother" (3). The story Reyher learned from her mother concerns a lost Ukrainian girl who tells villagers that her mother is unusually beautiful. They bring a series of attractive women to her, but the story's conclusion reverses the conventional social logic. It is not physical beauty that identifies the mother; instead, her appeal derives, in the child's eyes, from her status as the mother. The story distinguishes sharply between aesthetic and maternal value. The content of Reyher's story, adapted from what she imagines to be a specifically Russian folktale transmitted directly and personally to her by her own mother, thus concerns the particular, local character of a mother-child bond.

After publishing the story, however, Reyher asserted a much broader and more impersonally universalist claim to ownership of her copyright than the content of the story might suggest. *Reyher v. Children's Television Workshop* asserted Reyher's claim that Jon Stone and Tibor Gergely had infringed her copyright by publishing a story titled "The Most Beautiful Woman in the World" in a *Sesame Street* magazine and then taping and televising a skit based on the story for the *Sesame Street* television program. Stone and Gergely's version of the story took a generic African village as its setting, featured a small boy rather than a girl, and (after a similar parade of beautiful women) concluded with a slightly different moral about the relativistic nature of physical beauty. Asserting that they had never seen Reyher's book, the defendants offered their own memories of childhood stories as alternative sources. That is, Stone and Gergely denied having accessed Reyher's copyrighted work. Treating the story as a part of an international cultural commons, the *Sesame Street* men denied Reyher's ownership of the narrative and thus their infringement of the maternal story.

Accepting the defendants' reasoning, in the lower court Judge John M. Cannella decided that Reyher's work itself was derivative to the extent that it copied from a folktale in the public domain. Because the *Sesame Street* ver-

sion differed from the original in setting, characterization, and vocabulary, elements of expression original to Reyher were not at issue. Relying on the textbook distinction between uncopyrightable ideas and copyrightable specifics of expression, the lower court decided that the major element shared by both works in this case was the uncopyrightable plot idea of a lost child reunited with the mother, and so it dismissed the case. The fact that the plot itself was not original but rather was derived from the public domain (here signified by the mother as the voice of the commons) further weakened Reyher's case.

In the subsequent appeal, however, the terms shifted. Although affirming the lower court's dismissal, the judges of the Second Circuit made an important and frequently cited clarification to the distinction between idea and expression. Without straying into a finding of fact (properly the task of the lower court), they disagreed with the rationale that the district court had used to decide that Reyher's work was unoriginal. They asserted that copyright does not exclude from protection any work derived from the public domain but only the "*scenes a faire*, sequences of events which necessarily follow from a common theme" (533 F.2d 87). The aspects of a plot that "necessarily follow" from a premise are thus defined as generic ideas and do not count as original expressions. It is on this ground, rather than the uncopyrightability of any work derived from the public domain, that Reyher's complaint ought to have been dismissed, the appeals court ruled. The elements evident in both Reyher's book and the Sesame Street works are *scènes à faire* because "where a lost child is the protagonist, there is likely to be a reunion with parents" (533 F.2d 87). That is, not the maternal origin, but rather the ideology of maternity the story expresses makes Reyher's work unprotected in this case. Because it "necessarily follows" that a lost child will be reunited with parents, no matter what the setting or medium, the works in question were judged to be similar, although in a noninfringing fashion. The *scènes à faire* doctrine, in short, universalizes the maternal plot (here absorbed into the parental reunion more generally) while moving away from the voice of the mother as a privileged link to the public domain. The maternal plot itself represents generic, ordinary, and unownable writing in this decision.

The *Reyher* ruling thus resulted in an interesting paradox. Reyher asserted a universal right to ownership of a maternally transmitted story of particular aesthetic standards, irrespective of the culture used for the setting, while Sesame Street asserted a common cultural origin for an unownable, generic story that nonetheless became a new work after a change in setting. The two arguments for ownership of stories of maternity both rely on a mixture of universal and particular arguments, although in different arrangements. Consistent

with her work as a suffragist seeking to ensure women's access to the public sphere, Reyher asserted universal property rights; meanwhile, consistent with a post-Civil Rights-era attention to cultural difference, the Sesame Street authors emphasized the fundamental differences installed by particularities of expression. The story of maternity is thus a universal property and plot as well as being a particular, familial folktale and a unifying *scène à faire* in this case. Several of the contradictory ideas relevant to 1970s-era discussions of maternity thus circulate through *Reyher v. Children's Television Workshop* and complicate the case. Although the courts' rulings resolved the specific dispute over Reyher's copyright, they did not ultimately shift the terms of the underlying debate about maternity and its relation to the commons.

Although the issue of maternity does not dominate law review discussions of *Reyher*, some related contradictions do inform the legal commentary. Law review authors have studied *Reyher* in several contexts, often for opposing purposes. A number of authors cite this case as a clear-cut example of the distinction between idea and expression,¹⁴ while others use it to illustrate the difficulty, if not impossibility, of distinguishing clearly between the two categories. For some, the *scènes à faire* doctrine sharpens the distinction between idea and expression in copyright decisions because it provides a standard for distinguishing between particularities of expression and generic elements of an idea.¹⁵ For others, however, the fact that the courts allowed discussion of the "total concept and feel" of a work complicates the matter. Excessive similarity in the "total concept and feel" of two works is a ground for finding infringement, and for several commentators this ambiguous phrase muddies the distinction between idea and expression because it introduces an element not located in concrete textual details and verges on the global qualities of the idea, as commonly understood. Making "total concept and feel" a factor in infringement cases, some commentators have argued, confuses the distinction between idea and expression to such an extent that public and common material is treated as private property, and the character of specific content unreasonably becomes a factor in making decisions about property protections.¹⁶ Others have been concerned about the expertise used to establish "total concept and feel."¹⁷ In short, discussion of *Reyher* has led several commentators to conclude that the distinction between idea and expression, although fundamental to U.S. copyright law in principle, may be untenable in practice.

Reyher also suggests difficulties with another common distinction in copyright infringement cases—that between extrinsic factors (such as access to the original) and intrinsic ones (such as substantial similarity between works). When, as Jessica Litman argues in "The Public Domain," new technologies

make access to published writing nearly universal, at least within the United States, it is not the possibility that protected works could be copied that needs to be established, but rather the parameters of the public domain to which all have access and from which all may freely copy. For Litman, *Reyher* is a public domain case. She sees it as defining the positive content of the public domain, rather than assuming that the public or the commons is simply the inverse of private property.¹⁸

For these legal experts, in short, *Reyher* raises questions of the commons and access to nonproperty. It allows us to imagine nonproperty as either an open reservoir, strengthened by the *scènes à faire* doctrine, or a closed territory fenced in by the “total concept and feel” argument. Symbolized by a maternal alternative to “paternal” private property, the rhetoric of the commons used here suggests a need to rethink the basic categories of copyright. Lawyers have proposed innumerable local revisions to existing American intellectual property statutes, but for a fully fledged utopian account that integrates critiques of property with contemporaneous debates about feminist maternity, we need to turn to a different register—to Ursula K. Le Guin’s 1974 science fiction classic *The Dispossessed: An Ambiguous Utopia*.

DISOWNING THE MOTHER IN *THE DISPOSSESSED*

Although literary critics usually describe Le Guin as influenced by both feminism and anarchism, criticism of her work rarely explains how those two political philosophies relate to one another in her writing. Those discussing her interest in anarchism typically sketch underlying political principles, concentrating on the questions of property and the centralization of power. They frequently show how Le Guin fuses Peter Kropotkin’s concept of mutual aid to a Taoist balance of opposing forces within an open system.¹⁹ This interest in reconciling her several overlapping systems has rarely extended, however, to her feminism.

Meanwhile, those concerned with Le Guin’s feminism have either criticized her for not sufficiently revamping the heterosexual and masculine quest narrative so common in science fiction, discovered traces of French feminist self-revision in her writing, or found a concern for gender an unwelcome and unnecessary element of her worldview.²⁰ One notable exception to this tendency to separate the gender themes from other facets of Le Guin’s politics is Fredric Jameson’s 1975 essay “World Reduction in Le Guin.”²¹ Jameson interprets the “world reduction” evident in the desertified climate of *The Dispossessed* and

the wintry tone of its predecessor, *The Left Hand of Darkness*, as an expression of the logic of scarcity. For Jameson, something homologous also happens in the sex roles in these novels. For example, *The Left Hand of Darkness* reduces sexuality to a brief period of estrus, thereby revealing “the dream of some scarcely imaginable freedom from sex... a very ancient human fantasy, almost as powerful in its own way as the outright sexual wish-fulfillments themselves” (226). For Jameson, sexual asceticism somewhat surprisingly represents a utopian and perverse refusal of consumerist excess in Le Guin’s fiction. Sexual nonconformity rejects any socially compulsory self-definition through ownership and consumption.

Such efforts to read Le Guin’s sexual and property themes together are validated by the author’s pointed emphasis in her nonfiction on the close fit between the two politics. “To me the ‘female principle’ is, or at least historically has been, basically anarchic,” she wrote in 1976. “It values order without constraint, rule by custom not by force. It has been the male who enforces order, who constructs power structures, who makes, enforces, and breaks laws” (*Dancing at the Edge of the World* 11). In 1987, Le Guin returned to this statement, revising it somewhat to read, “anarchy has historically been identified as female. The domain allotted to women—‘the family,’ for example—is the area of order without coercion, rule by custom not by force” (12). Although updated to a more social constructivist vocabulary, Le Guin’s main point remains the same. Masculine control and domination are exercised through the law for Le Guin, and zones outside of the law or beneath its notice, such as the family, have a utopian and anarchic quality that she associates with women. Le Guin does not isolate women and property from one another, as do difference feminists, nor does she see one dominating the other. Instead, they are strong antitheses. Women are the pirate inhabitants of an anarchic commons at the margins of property for Le Guin—at least during the period when she wrote *The Dispossessed*.²²

These are also the terms that Le Guin uses in “The Princess” to describe her own illegal abortion; to celebrate the use of a women’s “vulgar tongue, common, common speech, colloquial, low, ordinary, plebeian” (149); and to advise women graduating from college to avoid working for possessions because “you’ll... find they possess you” (116). In many of Le Guin’s essays, a quotidian, propertyless, common anarchy characterizes the domestic lives of women. Using Kropotkin’s phrase, Le Guin also praises her own husband for bringing “to marriage an assumption of mutual aid as its daily basis” (233). This affirmatively anarchic household is vital for her writing, and she celebrates other female authors (for example, Harriet Beecher Stowe and Louisa May Alcott)

who wrote amid the mess and chaos of the kitchen table, rather than in the isolated quiet of a Woolfian room of their own (233). For Le Guin, domestic space exemplifies anarchist utopia, functioning according to female principles of ordinary lawlessness and communalism. Propertyless anarchy is female and vice versa in Le Guin's essays.

By joining these political rhetorics, Le Guin set herself squarely in the center of public debates of the 1970s. She directly addressed the limitations of liberal feminism and distinguished her vision of the anarchist mother from difference feminist discourses on maternity.²³ As a pro-choice activist, she actively opposed the myth of "motherhood as woman's sole function" and destiny (78). She also detached her vision of maternity from biological reproduction in her long and crucial essay "The Fisherwoman's Daughter," answering Virginia Woolf's call for more support for women's solitary writing. A meditation on writing while mothering, this essay closes with an assertion of the necessity of women's intellectual freedom and the titular child asking, "Auntie... can I go fishing with you now?" (236). In this essay, maternity is not a requirement for a good life, nor is it necessarily a biological relationship. Instead, Le Guin stretches a liberal feminist version of elective maternity to its logical limits by attributing maternity to a range of caretakers and aunts of various sorts.

Le Guin also defines standards for good maternity through writing in her essays. Mothers can and should avoid training their daughters to be unnecessarily subservient, in part by refusing to be contained within an entirely private world themselves. A key means for avoiding confinement, for Le Guin, is writing. In her essays, she specifically contests the idea that women must choose between writing books and raising babies, an idea she attributes to both feminists and anti-feminists. She scours literary history for scenes of mothers writing and celebrates her own literary mother in the context of her vision of anarchist maternity.

Many critics agree that Le Guin's political vision relates to her upbringing. Because she is the daughter of Alfred L. Kroeber, the famous Berkeley anthropologist and a specialist in cultures of the indigenous peoples of California, scholars have been quick to identify the anthropological themes that permeate her writing and attribute them to her father's influence. Similarly, many have noted that Shevek, the central character of *The Dispossessed*, was based in part on family friend Robert Oppenheimer. And many, including Le Guin herself, have pointed out that the summers the Kroeber family spent in the Napa Valley were a source for her most affirmative utopian text, *Always Coming Home* (1985). What critics have recognized less often, however, despite Le Guin's repeated mention of it, is the fact that her mother, Theodora Kroeber,

became a best-selling author in the early 1960s, the same years that Le Guin bore her own children and wrote her first novel.

As the author of several children's books, a volume of Native American myths focused on women, and the popular anthropological narrative *Ishi in Two Worlds*, Theodora Kroeber was an important model of a writing woman for Le Guin. Using telling parallelisms, she describes Theodora as "my mother, the writer" and as "a demanding, approving, nurturing, good-natured, loving, lively mother—a first-rate mother...[and] a first-rate writer" (231, 232). In "Theodora," the introduction she contributed to a reissue of her mother's collection of folktales, *The Inland Whale*, Le Guin also credited her mother with a proto-feminist consciousness at odds, to some degree, with her mother's resistance to second-wave feminism: "Theodora kept telling me to write about women, not men, years before I (the 'women's libber') was able to do so. She did so herself from the start, not only because the feminists of her mother's generation had freed us both, but also because she was true to her being, her perceptions, her female humanity. In all her different lives she was entirely woman" (140). For Le Guin, her mother offered a model of the woman writer, as well as specific advice ("to write about women") and a prototype for popular narrative. These influences matter more to Le Guin than the public rhetoric of her mother's stated politics. By emphasizing this positive vision of the self-governing mother, Le Guin affirms in practice her own principle of finding feminist anarchy at home.

This task was aided, no doubt, by the fact that the subject of Theodora's most successful writing was ideal for Le Guin. A popular account of the life of Ishi, a man who was possibly the "last" member of the Yahi group of native Californians,²⁴ Theodora Kroeber's *Ishi in Two Worlds* (later supplemented by *Ishi the Last Yahi: A Documentary History*) narrates Ishi's youth, hiding out with several other Yahi in the California hills. Following Ishi's life story from a teleological and third-person point of view, the narrative then describes the deaths of his companions, his years of solitude, and his dramatic decision to enter white society. After contact with Berkeley anthropologists trying to identify his language group, Ishi came to live in the university's ethnographic museum as a caretaker and human exhibit, performing traditional skills for curious visitors. Theodora's narrative describes his friendships, aptitudes, and adaptations to urban life. To a lesser extent, it also speculates about Ishi's inner life, including his desire for female companionship. Closing with an apparently incomplete account of Ishi's death and burial,²⁵ *Ishi in Two Worlds* strikes a sentimental note. Kroeber reads Ishi's life as a melancholy story of solitude and a lost world, accessible to readers and anthropologists

alike only indirectly, through the fragments of a language that is no longer spoken.

Ishi died in 1916, well before Le Guin's birth in 1929, so she did not know him personally. She did, however, know her mother's writing on Ishi, and in my view her frequent use of the figure of the solo traveler from a primitive commons, disoriented on his entry into a complex new world whose rules he is only beginning to comprehend, provides a tribute not only to her grasp of the quest myth that dominates science fiction and, more specifically, the utopian subgenre, but also to the influence of her mother's written version of this real-life story of just such a traveler.²⁶ Although some have questioned Le Guin's investment in this hero, especially in *The Left Hand of Darkness*, Le Guin has sensibly defended herself by arguing that it is the evolving consciousness of the transparently prejudiced male guide to the new world that educates her readers on gender and other questions.²⁷ Formally, for Le Guin, the questing narrator/guide is a register of the incomplete and partial perspective provided by contemporary gender norms, not an objective observer confirming the fiction of the masculine point of view as the position from which objectivity is attained. Furthermore, the hero/guide Le Guin uses in *The Left Hand* and, more importantly for our purposes, again in *The Dispossessed* is also an adaptation of her mother's Ishi. In this respect, the masculine hero can also provide a means for Le Guin "to write about women," as her mother urged her to do. The Ishi protagonist and his journey of discovery is not purely a *scène à faire*, common to the genre, for Le Guin. This figure is thrown into dramatic relief by the mother—in the form of both his own lost female relatives and the writing mother who brought his story to the public. By using the Ishi figure, Le Guin honors her own mother's influence on her writing, at the same time that she introduces into the form of her writing a crucial aspect of the literary commons and a feminist/anarchist point of view on the questions of property, literary and otherwise.

To summarize: for Le Guin, feminism and anarchism are the same politics, and both involve a retooling of the public rhetoric of maternity. Maternity and domestic space more generally can provide, in her view, an immediate experience of mutual aid. Both instantiate a nonproprietary commons that includes an embrace of writing. In Le Guin's own maternal commons, a circulation of literary practice occurs—from the idea of the mother as writer to the central figure of the hero emerging out of the commons and into an alien and alienating world of property. Le Guin's hero is thus not only important as a spokesman for the commons, but also for his ontological status as an effect of a maternal commons.

In *The Dispossessed* in particular, the explicit subject of the novel, anarchism, is shadowed by feminism and maternity. Le Guin often uses a subject/shadow relationship in her work, and this novel is no exception. In some of her earlier writings (especially the Earthsea trilogy), the “shadow” has Jungian connotations of death and negation. Her later works, however, tend to use the shadow in a more Taoist sense, balancing light and darkness.²⁸ The latter version of the shadow is most relevant for *The Dispossessed*. In this novel, the shadow of maternity is not the negative inversion of positive qualities associated with heroic masculine anarchism; instead, it provides a counterweight to the homelessness and potential for inhuman asceticism latent in her hero’s public political philosophy. The shadow of maternity brings Ishi/Shevek back from the ideological cliff of an either/or choice.

As its title indicates, *The Dispossessed* is centrally concerned with ideologies of property. It asks whether property should be abolished or embraced, and this is the binary that maternity shadows. Because Le Guin’s Ishi figure is a scientist, the form of property of greatest concern is intellectual property; although few have noted this fact, *The Dispossessed* is centrally concerned with an anarchist’s scandalous desire for copyright. The intellectual who desires named credit and some degree of ownership over his writing in much the same fashion that he desires control over his female partner and daughter appears as a sympathetic traitor. Copyright and, from another direction, maternity disrupt the anarchist utopia in *The Dispossessed*, leading readers to question how fully the anarchists populating this ambiguous utopia have overcome their proprietary origins.

INTELLECTUAL PROPERTY IN *THE DISPOSSESSED*

The Dispossessed describes two opposing worlds: the first a green, abundant planet resembling Earth and organized into capitalist, communist, and third world blocs, and the second an arid anarchist colony. The ideologies dividing the original world, Urras (or Ur-res, the original place), ensure that its politics are dominated by property questions. In all of the Urrasti blocs, however, property emanates from the state and is an effect of the law, not a natural condition. The anarchist world of *The Dispossessed*, appropriately called Anarres (or lawless place), in principle has no state and thus no property relations. Revolutionaries relocated from Urras settled Anarres two hundred years before the action of the novel begins. In the intervening period, the two worlds became almost entirely isolated from one another.

The isolation is, however, incomplete. Each world includes traces of the other. Despite the deep commitment to property relations evident in the capitalist areas of Urras (the only territories that the novel's protagonists visit), forms of the commons also exist. For example, the universities of Urras are described as circumscribed zones of free exchange, comparable to the anarchist communities formed according to the teachings of the philosopher Odo: "with its dormitories, refectories, theaters, meeting rooms, and so on, it was not very different from an Odonian community, except that it was very old, was exclusively male, and was not organized federatively but hierarchically, from the top down. All the same, Shevek thought, it *felt* like a community. He had to remind himself of the differences" (81, emphasis in original). The traces of monastic communalism apparent in this version of university life contribute to the appeal of Urras for the anarchist Shevek. In fact, the promise of collegiality and intellectual camaraderie pulls him from Anarres to this home world, even though, on arrival, he frequently notes as a serious problem the exclusion of women from all but the most mechanical tasks of intellectual labor.

In this context, Shevek's discovery of another sort of commons on Urras is significant: his university colleague and host "Oiiie was a changed man at home," he reflects. "His family treated him with respect, but there was mutuality in the respect. Shevek had heard a good deal of Oiiie's views on women, and was surprised to see that he treated his wife with courtesy, even delicacy... Oiiie was fond of his wife and trusted her. He behaved to her and to his children very much as an Anarresti might. In fact, at home, he suddenly appeared as a simple, brotherly kind of man, a freeman" (147). Although this relatively egalitarian and anarchist domestic utopia is also circumscribed by space and custom, it does not exclude women entirely like the university. Instead, it excludes work, especially intellectual labor. The dinner table conversation that follows the passage quoted above concerns the division of labor and the necessity of enjoyable labor, although it does not depict such labor. This discussion links the two spaces of anarchistic community available on Urras; both offer portions of a utopian life, but their isolation from one another is a problem, as Le Guin takes pains to emphasize.

To reinforce the point, Le Guin also introduces the same elements as problems on Anarres, although in reverse. The odd-numbered chapters of *The Dispossessed* describe life on Urras after Shevek's journey to the home planet, and the even-numbered chapters portray conditions on Anarres before his departure. From the outset, neither story is sufficient; oscillation between the two is necessary to complete the logic of the book. On Anarres, as a complement

to the restrictions of Urras, Le Guin imagines a society strongly committed to the elimination of property relations and the state. As anarchists, the free individuals of Anarres must struggle against proprietary impulses. As many critics have noted, the scenes of Shevek's babyhood describe him reaching for the sun and calling out "'Mine' . . . 'Mine sun'" and then screaming with rage when he is pushed into the shadow (27). This passage marks Shevek as an outsider in the anarchist utopia from the outset. Less commonly noted, however, is this passage's relationship to the loss of the mother.

When Shevek's mother takes work in a distant location, the boy loses access to her and knowledge of her. Le Guin explicitly ties Shevek's subsequent fascination with numbers that reveal "the balance, the pattern . . . the foundations of the world" to the patience he developed when "waiting for his mother Rulag to come back" (31). When Shevek dreams of a perfect number, "the primal number, that was both unity and plurality," he "had an idea his mother Rulag was there, too, though he did not see her"; a familiar voice reveals this number to him: "there was no wall in the shadows, and he knew that he had come back, that he was home" (33–34). This association between the light of intellectual discovery and the shadowy mother is repeated in a climactic moment later in the novel when Shevek at last discovers the solution to the physics problem he has been wrestling with:

The vision was both clear and whole. What he saw was simple, simpler than anything else. It was simplicity: and it contained in it all complexity, all promise. It was revelation. It was the way clear, the way home, the light.

The spark in him was like a child running out into the sunlight . . .

The moment was gone; he saw it going. He did not try to hold on to it. He knew he was part of it, not it of him. He was in its keeping. (280–81)

Intellectual revelation again recalls the lost mother. When happily at home, Shevek dwells inside the idea; he is "in its keeping," rather than it being his to hold and own. Utopian domesticity fosters intellectual achievement.

Similarly, Shevek imagines his sexual partner, Takver, as one of those souls "whose umbilicus has never been cut. They never got weaned from the universe. They do not understand death as an enemy; they look forward to rotting and turning into humus. It was strange to see Takver take a leaf into her hand, or even a rock. She became an extension of it, it of her" (185). This utopian holism—the holism of the commons—joins Takver to a maternal natural world, just as intellectual discovery allows Shevek to dwell in the light. When either connection to this maternal commons breaks, the absence is filled by

a grasping possessiveness in *The Dispossessed*. Shevek's own heroic creativity is a symptom of the fundamental loss of utopian maternity, although his is certainly not the most perverse one.

The most twisted version of proprietary desire on Anarres is represented by Shevek's supervisor, Sabul. Publishing Shevek's work under his own name, as he does the work of physicists from Urras, Sabul presents a threat to both intellectual solidarity and anarchist freedom. He wanted "to own [intellectual work], as a property, a source of power over his colleagues" (109). Sabul is an expropriator, not a creator, and this "exploitative relationship" creates an "ethically intolerable situation" for Shevek because "Shevek's career, like the existence of his society, depended on the continuance of a fundamental, unadmitted profit contract" (117). That is, Sabul's appropriations allow Shevek the free reign he requires, and that bargain recalls the "profit contract" on which Anarres as a whole is based. At the beginning of the chapter describing Sabul's plagiarism, Le Guin inserts a lengthy description of a mining operation that allowed Anarres to buy its freedom from Urras. Trading ships "took back to Urras a full load of mercury, copper, aluminum, uranium, tin, and gold.... In fact, the Free World of Anarres was a mining colony of Urras," she reveals (92). This crucial backstory links Shevek's personal struggle with intellectual property to the form and logic of the novel as a whole. Just as the university commons drops a seed of anarchist utopia on Urras, the power politics among intellectuals plants a seed of proprietary dystopia on Anarres.²⁹

To complete the parallel, Le Guin also complicates the gender roles on Anarres. Domestic partnerships have a utopian character for the anarchists, as they do on Urras, and Le Guin goes to some pains to coordinate domesticity with an anarchist ethic of freedom. In so doing, she does not deny her anarchists emotions associated with sexual possessiveness. They are discussed early in *The Dispossessed*—although attributed primarily to men: "I think men mostly have to learn to be anarchists. Women don't have to learn," one character reflects (54). Women appear in the novel, as in Le Guin's essays, to be natural anarchists when it comes to love, and they school their male partners. In the humus passage quoted above, for example, Takver's organic holism symbolizes for Shevek a logic not premised on a life/death, mine/yours binary. Similarly, domestic partnerships on Anarres do not preclude other intimate relationships and sexual activities. Instead, the novel imagines an erotic life characterized by intense sharing between partners and a supersession of the cold celibacy described as necessary for intellectual labor. Partnership involves the creation of a womanly erotic commons. It also, however, continuously revives proprietary temptations.

At a crisis point in the conflict with Sabul, for instance, Shevek and Takver discuss Shevek's options. When Sabul wants to publish Shevek's work under his own name, Shevek bitterly asserts, "I'd as soon share you with him as that book." Shifting the analogy from possessiveness between lovers to a maternal metaphor, Takver argues that it is better to keep the book alive, no matter what name it bears—better to give life and renounce parentage than to keep a stillborn to oneself (240). In this complicated passage, both the man and woman use a gendered proprietary logic to try to solve the problem of intellectual expropriation, and both are, in the terms of the novel, mistaken. Shevek's sexual possessiveness clearly violates anarchist principles, and Takver later attributes her reasoning to an irrationality caused by pregnancy.³⁰ "Pregnant women have no ethics," she asserts. "It's a racial preservation drive, but it can work right against community; it's biological, not social" (331). Against ethically contentious biological or erotic drives, the gendered correlatives to Sabul's greedy efforts to expropriate Shevek's book, both Takver and Shevek ultimately set the utopian logic of the gift.

Before dissolving the novel's fundamental opposition between property and nonproperty, however, Le Guin introduces an element of development and revelation into what could otherwise have been a static antinomy. *The Dispossessed* not only describes two opposed worlds, each containing a seed of the other; it also is organized around a journey and return. The figure of Ishi/Shevek joins these worlds, and his evolving perceptions shape the argument of the novel with respect to both gender and property. Especially in the domestic scenes on Urras, Shevek resembles an Ishi figure, a heroic and somewhat childish arrival from another world. The metaphor of the journey organizes the Urras half of the novel, complementing the *bildungsroman* presented in the even-numbered Anarresti chapters. The logic of the novel is thus double, and the inward exile and outward voyage parallel one another. The linking element, or the "hinge," in the vocabulary of Le Guin's later novel *Always Coming Home*, is Shevek's evolving self-perception. He does not take the objective scientific stance of deluded masculinity, but rather adopts a perhaps surprisingly "feminized" point of view colored by mystic revelations, dreams, and psychological insight. Only when these "shadows" of irrationality are integrated with his supposedly masculine scientific consciousness is a new balance achieved. Shevek must create an integrated and bi-gendered self in order to make himself the proper vehicle for the revolutionary gift.

After all, in this novel, only the acknowledgment of illicit desires, such as the desire for property and state control, allows maturation. As boys on Anarres, Shevek and his friends experiment with imprisonment after being introduced

to this alien concept by a propaganda film. They are sexually titillated by the idea of women as property and aroused in particular by the “image of iridescent jewels in the smooth hollow of women’s oiled, brown bellies,” the emblem the novel provides for the status of elite women as erotic playthings on Urras (41). The propagandistic juxtaposition of this erotic excess with famine and dead children does not quash the boys’ desire. Instead, the production of a taboo stimulates their lust and a further exploration of a rebellious self. After viewing the film, each goes off separately to masturbate, because it is only through contact with and exploration of the forbidden shadow that Shevek and other anarchists can produce something new—in this case their libidos.

Recognizing the centrality of this anarchist psychology to the novel allows us to understand that the novel’s turning point is not Shevek’s realization that his ideas are treated as property during his sojourn on Urras. He arrives on Urras full of anarchist ethics and prepared to use an explicitly ideological language to describe and evaluate the property relations he discovers. Le Guin even gives her Ishi-like hero the useful strategy of silence and intangibility. In an effort to thwart the dominant society’s property relations, he refuses to write down his discoveries. He “must be silent; he must keep his property to himself; he must keep his bargaining power,” Shevek reflects, fully aware of the source of his value to his hosts (204). The Urrastis spy on Shevek and attempt to manipulate him and steal his ideas, but this kind of heroic adventure is not the crux of the novel’s drama.

Instead, the turning point for Shevek occurs when he realizes that not only his ideas, but also his person has become property. After an aborted effort to escape his confinement in the cloistered commons of the university, an effort leading to his making a drunken speech at an erotically charged party, Shevek awakens to deep shame. This “shame—the sense of vileness and of self-estrangement—was a revelation”; he experiences himself anew as an object, as something owned (272). At this turning point, Shevek becomes an Urrasti woman much like the erotic temptress he had failed to seduce the previous evening. Overestimating his abilities, he had imagined himself able to bargain with the state; it is only when he can recognize his confinement and identify the alluring self-deception that led him to Urras that he can initiate the actions that will set him free more meaningfully. Seeing himself as owned—that is, in the terms of the novel, seeing himself as an oiled and bejeweled woman—allows Shevek to make the intellectual breakthrough that ultimately reunites him with the lost memory of the mother and reaffiliates him with the “womanish” philosophy of Odo, the female anarchist philosopher on whose ideals Anarres was founded (287).

Embracing the shame of his shadow femininity propels Shevek into a second revelation, the necessary counterpart to the first. When he finally makes contact with the syndicalist underground on Urras, they tell him that he is “an idea. A dangerous one. The idea of anarchism, made flesh”; he completes and manifests Odo’s thesis (295). Released from the illusion of his total and masculine independence from property relations, Shevek becomes not only property, but also its opposite—the unowned idea of anarchy. This second revelation releases a flood of creativity, in which he writes a speech that closes with the same idea: “You cannot buy the Revolution. You cannot make the Revolution. You can only be the Revolution. It is in your spirit, or it is nowhere” (301). For an intellectual to become a genuine revolutionary, in Le Guin’s novel, he needs to recognize the deforming effects that intellectual property has on both the writing process and the person, so that he can move beyond these deformities and embrace a new ideal.

That third option is figured in *The Dispossessed* by the gift.³¹ Shevek seeks asylum with ambassadors from another planet and offers his idea to all the worlds, “but only for the common good” (345). He presents his science, his body, and ultimately access to Anarresti society as gifts to the universe on the condition that they be shared without profit to himself or others. This public action develops the implications of an emotionally charged memory in which his daughter Sadik freely offers him the use of a handkerchief when he rejoins his family after a prolonged absence. The gift freely shared among literal and figurative family members points to the ethical climax of the novel. That climax resolves the shame that preceded it, but its significance is not strictly emotional or personal. The family gift, for Le Guin, can be extended into the public sphere via information—here, Shevek’s theory of time travel.

In *The Dispossessed*, gift-giving can also be physically risky and socially conflicted. Shevek’s proposal to communicate freely, outside the property relationship and outside the prohibitions of ideological purity, triggers resistance from within anarchist society—most notably from his biological mother, Rulag. As a consequence, Shevek’s own children are endangered. The risk involved in giving the gift of his intellectual nonproperty is justified then not by any guarantee of biological continuity, but rather by a broader imperative. Fidelity to the ideals of Odo, the Anarrestis’ intellectual mother, takes priority. During a climactic discussion toward the end of the novel, we hear a speech in which Odo urges her followers to free their minds and admit of no self-concept involving property. Like liberal feminists of the 1970s, Shevek must bypass his biological mother to recover the political ideals of a previous generation—inventing the mother who authors his generosity in the present.

From this point of view, at least, we can interpret the final image of the novel. Returning home, Shevek wants to bring a gift from Urras for his child, but his hands are empty. With Odo's philosophy in mind (as well as Le Guin's rules for the good mother), we see that it is the gift of the liberated self rather than the tangible souvenir that Shevek brings to his daughter. In its final image, *The Dispossessed* ultimately affirms the gift of the idea as a necessary component of utopian maternity for both male and female mothers. Finally, becoming the writing mother and engaging in the economy of freedom is Shevek's best gift to his children and the strongest guarantee that he will reproduce the maternal and revolutionary spirit. Becoming a shamed male mother makes Shevek both good and free in *The Dispossessed*.

THE MATERNAL COMMONS TODAY

Through the maternal gift, Le Guin reimagines intellectual property. She envisions a maternal creativity open to men and distinct from the biological experience of pregnancy.³² Male and female mothers give ideas, and maternity itself is an intangible gift in *The Dispossessed*.

Early in the novel, Le Guin stresses her rejection of biological kinship quite directly. In a scene describing a preanarchist mining song, her characters discuss earth mother mythology. Wondering about the identity of the unnamed woman who "brings the green leaf from the stone," Shevek asks, "Who does? Who's 'she'?" but his interlocutor replies only that she learned this song from her *tadde*, a person who may have been "her father, an uncle, or an unrelated adult who showed her parental or grandparental responsibility or affection" (47). Le Guin complicates the novel's Ur-story of mining as the betrayal of anarchist ethics one more layer. She distinguishes between the effects of the contract and the miners' autonomous, open-ended affection for one another and the maternal earth. This is the most unambiguous moment of Le Guin's utopia. All people can become anarchist mothers and antiproprietarians, sharing in the circulation of the mythology of the green mother. Biological gender is subordinate to responsibility and affection. Anarchist maternity is a gift, not a property.

That Le Guin's 1970s-era vision of a maternal gift economy has not redirected public discourse on intellectual property in the years since its publication is not surprising, since state institutions regulating property have been moving concertedly in the opposite direction. Children's literature, for example, has become an especially profitable area of the U.S. publishing industry since the 1970s, in part because of the value of rights to derivative works—from toys to

clothing, television programming, food, and more.³³ From folktales told freely by the mother, many children's stories have mutated into corporate-owned properties whose characters may be used only with permission and payment. In this respect, copyright has played a significant role in the commercialization of childhood and maternity.³⁴ When toys, foods, clothing, school supplies, and even diapers all recirculate the same copyrighted characters to a captive market of underage consumers, then the dilemmas evident in *Reyher v. Children's Television Workshop* have clearly started to become fundamental to maternal consumption in American society at large. At times, copyright standards even make pirates of mothers who buy unauthorized Mickey Mouse cakes or restaurant workers who sing "Happy Birthday" to a child without a license. This process accelerated over the last decades of the twentieth century despite the quite real possibility of developing, as Le Guin did in 1976, an alternative vision of motherhood and feminist antiproperty.

Le Guin's alternative has not vanished entirely, though. Traces of a pirate maternity of the gift do survive, although not necessarily in the anarchist form imagined in *The Dispossessed*. For example, mother's groups across the political spectrum have undertaken important media critiques, reinterpreting the content of copyrighted mass media and advocating for social and technological filters that allow some copyright-free zones to persist. Arguably continuing a "distinctively 'American' maternal home teaching role closely linked to conceptions of republican motherhood" (Robbins 160), such groups advance a project of copyright resistance toward a potentially more open-ended future commons. An element of Le Guin's feminist utopianism persists in such activities authorized by sometimes very conventional interpretations of mothers' roles in social uplift. The logic of property has not blanketed children's culture entirely. Zones of dialectical friction continue to arise, even if in 2009 Le Guin herself has become more skeptical about their merits.

APPROPRIATING INUIT FASHIONS

From Donna Karan to the Scientific Fictions of Andrea Barrett

The outright utopianism of Ursula K. Le Guin's approach to questions of property in *The Dispossessed* reappears in a more temperate mood in the writings of Andrea Barrett. Although mainly focused on the troubled psychic lives of intellectual women, most of the fiction Barrett has published to date also offers glimpses of attractive alternative spaces—from Cape Cod hideaways and erotic expatriation to beloved monasteries. Imaginatively bridging the gap between these utopian enclaves and women's relative propertylessness in the narrative present is a crucial task in Barrett's fictional worlds. Some of her most recent work builds this bridge by means of an analogy between creative women's struggle for property rights in the First World and the concerns of Third World indigenous peoples culturally dispossessed by colonialism. The relationship of white middle- and upper-class American women to copyright becomes comprehensible in these works within a global distribution of intellectual and cultural labor.

This analogy between elite U.S. women and indigenous people in other nations is not unique to Barrett's fiction. Some recent copyright disputes have also tested this pairing. For example, in 1999, a dispute arose between the fashion designer Donna Karan and a group of Inuit seamstresses after a visit by representatives of Karan's company, Donna Karan International (DKI), to the Canadian Arctic. During this visit, the DKI employees paid ten thousand to fifteen thousand dollars for a batch of handmade Inuit clothing. Items they purchased later appeared, with a Donna Karan label added, in the designer's Madison Avenue store. At this point, Pauktuutit, an Inuit women's organization, became concerned that DKI was trying to appropriate traditional Inuit clothing designs.

The Inuit group's responses were influenced by a history of dispossession and poverty. As recently as 1994, sale of Inuit arts and crafts—including the

traditionally female practice of garment production—provided more than 10 percent of all income in some regions of the Arctic, and the Inuit women (among whom unemployment is very high) clearly felt vulnerable to the multi-billion-dollar international fashion industry.¹ For these reasons, Pauktuutit sent a letter expressing its concern to DKI and publicly asserted that fashion designs—in particular, the traditional women’s parka the *amauti*—were the intellectual property of the Inuit people. Veronica Dewar, the president of the Pauktuutit association, summarized the group’s concerns to Hadani Ditmars of the *Ottawa Citizen*:

It would really be best if designers consulted with us instead of just stealing our designs and pattern. We want recognition that these are our designs and we want to know what they are doing with our designs... When (New York designer) Donna Karan’s people came up we felt exploited by the way we were treated because they took advantage of some of the less educated people here who did not know their rights. They went to the bar up in Yellowknife and demanded to buy the clothes they were wearing, and people just sold them their clothes.²

DKI reportedly did not respond to Pauktuutit’s letter, although it sold no Inuit-inspired garments, beyond the labeled originals, that season. Although the designer did not explicitly recognize the desire to claim design copyright asserted by the Inuit women’s group, DKI extracted itself from a situation in which some perceived the company as exploiting impoverished female artisans.

Perhaps the company gave implicit recognition of the Inuit claim to copyright of the garments’ design because it was also receiving other negative publicity that season. In 1999–2000, Donna Karan was one of three Manhattan designers named in a class action sweatshop suit. Asian American employees of a Chinatown contractor hired by DKI to produce garments alleged that they were required to work seventy to eighty hours a week without overtime pay, regular bathroom breaks, or adequate safety measures. In the course of the dispute, the company issued this statement, apparently in hopes of boosting its feminist credentials: “As a company founded by a woman and an employer of a great many women at all levels, we are always working toward the advancement and further empowerment of women—both inside and outside our organization.” The dispute was settled in 2003 when DKI paid the seamstresses five hundred thousand dollars without admitting wrongdoing.³ (This less confrontational strategy differed from the tactics DKI had adopted during another antisweatshop campaign only a few years before, when it reportedly

attempted to intimidate immigrant workers.⁴) These labor disputes between ultra-empowered and extremely disempowered women working in an industry marketing to women may have set some of the terms for the copyright controversy.

In its broadest terms, the *amauti* dispute dramatizes the moral force that claims to copyright—especially copyright in traditional knowledge—can acquire in the global marketplace, even when the courts do not affirm the rights being claimed. An international corporation, such as DKI, that appeals to professionally successful women in highly developed industrial nations presumably does not want to be associated with possible piracy of intellectual property—even of works with uncertain legal standing like the *amauti*. DKI's promotion of women's "advancement and further empowerment" entailed an at least strategic exercise of restraint with respect to the collective creative labor of Inuit seamstresses. In this case, a claim to copyright, reinforced by notions of advancement through the acquisition of property, slightly restricted the sphere of action for the internationally recognized designer. That is, we could interpret this episode as a case study for the victory of possessive individualism. Doing so, however, requires that we ignore the role of the sweatshop workers and emphasize the formal equality of DKI and the Inuit seamstresses in the world of commercially viable copyrights.

By contrast, a second interpretation might see the Inuit seamstresses as more closely akin to the Asian American sweatshop workers, since both groups operate "below the line" of full ownership, as Andrew Ross puts it.⁵ Both groups of workers are relatively stationary, when compared with DKI's globally mobile quest for design inspiration and cheap labor, and both have petitioned for economic justice in a situation characterized by an enormously uneven distribution of wealth. Both groups have also received very limited benefits from a legal system that finds no wrongdoing in DKI's practices, and both take refuge in an alternate moral language of cultural survival and interethnic conflict. That is, both groups have shifted DKI's emphasis on the universal advancement of women to a particular terrain where immigrant groups and indigenous peoples support one another. Viewed from this perspective, the specificity of the Inuit copyright claims fades, along with the liberal vision of universal progress through the acquisition of property rights. From this angle, the *amauti* dispute might be read as a case study for the ethnic or racial divisions among women in the global distribution of labor.⁶

A third alternative would integrate the emphasis on intellectual property rights from the first interpretation with the concern for the global divisions among women in the second. This alternative recalls an important paradox

about the fashion industry: the so-called piracy paradox. According to Kal Raustiala and Christopher Sprigman, the piracy paradox means that “copying may actually promote innovation and benefit originators” (1691) in the American fashion industry; they argue that routine piracy of apparel design (as opposed to counterfeit trademarks or knock-offs) constitutes a “regime of free appropriation” that operates as “a stable equilibrium” even in nations where fashion designs are protected (as they are not in the United States) (1718).⁷ The fashion industry, in other words, resembles food preparation, furniture design, hairstyling, perfume production, the invention of magic tricks or firework displays, and many other endeavors in which creativity is both plentiful and profitable despite the absence of copyright protections. Although some parties do advocate intellectual property protection for fashion designs,⁸ and others argue that the exclusion of fashion and cookery from copyright protection perpetuates a gendered double standard within the law,⁹ we might understand the uncopyrightability of fashion design slightly differently. The uncopyrighted status of Donna Karan’s fashion designs could be understood as the foundation of the career of the professional businesswoman. Not private property rights but a gendered commons may have allowed this atypical individual woman to achieve international celebrity in the fashion world.

In this respect, then, if only in this respect, Donna Karan has something important in common with both the Inuit seamstresses and the Asian American sweatshop workers her company has employed: they all share a fundamentally unstable relationship to copyright law and to one another because they all inhabit different corners of the pink and piratical commons. They all use their own strategies to attack gendered elements of the law. DKI asserts and markets the status of the exceptional female professional from its position in an unprotected industry. The Inuit women’s collective asserts its communal identity as a possible owner in an international context in which property rights to traditional knowledge are gaining recognition—at least by signatories to the two new wide-ranging UNESCO conventions on cultural diversity and the protection of intangible heritage.¹⁰ The sweatshop workers whose productive labor contributes so vitally to the circulation of images of women, no matter who designs the garments, are subject to increasingly intense supervision, on the grounds that this will somehow protect their labor rights without damaging the credibility—such a crucial element of value—of the status goods they sew.¹¹ Although these women occupy different places in the global division of labor, they all share a fraught relationship to intellectual property law (especially copyright) that they identify as both gendered and economically significant.¹²

From this angle, the key issue becomes how to relate the different sorts of conflicts and moments of solidarity that arise when separate groups of women pursue their economic interests in ways that set them at odds with one another and with the regulatory framework of the law. Achieving this holistic point of view can be difficult, so it is particularly impressive to see it undertaken by a nonexpert using a literary form. This is the project of Andrea Barrett's quietly gruesome 1998 tale of a nineteenth-century Arctic exploration, *The Voyage of the Narwhal*, a novel that importantly transforms a set of interlocking themes—women, writing, and property—that have dominated Barrett's writing to date.

WOMEN AND PROPERTY IN BARRETT'S EARLY FICTION

Since winning the National Book Award in 1996 for *Ship Fever* and again in 1998 for *The Voyage of the Narwhal*, Andrea Barrett has started to receive more critical attention. She is usually described as a science writer and sometimes as an explorer of women's relationships. To date, however, no one has made more than passing mention of Barrett's preoccupation with property—both real and intellectual.¹³ This neglect is somewhat surprising, as Barrett's recent prize-winning historical fictions, as well as several preceding works, all employ the same root narrative. Her fiction consistently portrays ethical and familial dilemmas created by property, contrasting these to a nonproprietary commons. In particular, her writing explores disputes over the ownership of scientific knowledge. These intellectual property disputes have strongly gendered implications in Barrett's writing and ultimately unfold to display a map of the global division of women's labor. Like the *amauti* dispute, Barrett's fiction explores conflicts that link the elite of the American East Coast to dispossessed populations of the Arctic and beyond.

One of the primal scenes of Barrett's novels involves the discovery and communication of a scientific idea by an individual who takes sole credit for the work of a research team, sidestepping the conventional means that practicing scientists use to share recognition.¹⁴ Barrett also explores the dependence of important laboratory discoveries on folk wisdom and pseudoscientific insights of preceding generations. In her fiction, scientific authorship rests on the vitality of an intellectual commons, a commons disproportionately populated and maintained by women.

In Barrett's most explicitly utopian writing, the narrative arc often moves from the loss to the rediscovery of this pink commons. Her stories are usually

set on the unofficial sidelines of science, a space often inhabited by frustrated wives, sisters, or daughters in solidarity with cultural others or outcasts. Writing from that margin, Barrett describes appropriations of traditional knowledge occurring on a global scale. Scientific borrowing from women and natives complicates the still attractive ideal of disinterested inquiry in her writing. These borrowings ultimately trigger an intense self-consciousness about the textuality of scientific narratives.¹⁵ This plot develops over Barrett's career, as her writing moves from a 1970s utopianism about women's supposedly non-proprietary sorority to a more conflicted account of women's relationships provided in a text that embodies its own commons-oriented ideals.

All of these elements appear in Barrett's first four novels. For example, her semiautobiographical debut, *Lucid Stars* (1988), is organized around a conventionally female world and its concerns. A multigenerational family narrative adopting a different female protagonist's point of view in each of its four major sections, the novel explores the turning points of middle-class private life (marriage, birth, home renovation) until the character at the vacant center (the husband/father) emerges. In a feminist inversion of William Faulkner's treatment of the mother in *As I Lay Dying*, Barrett's father figure unites the womenfolk by his absence. In the final scene, the contented family shares a quiet celebration. While the remaining men doze on the sidelines, "happy where they are," the more alert women reflect on their new community (318). "As soon as we start to show [our pregnancies] he knows he's got us, got a home," one ex-wife muses to another. "Too bad we didn't figure that out sooner," the other responds. "But then look what we would have missed." She nods at their daughters, one looking up at the sky and the other sketching with soft, swift strokes. They might almost be mother and child" (322). The novel, in other words, reaches its resolution in a vision of matriarchal harmony and intergenerational continuity. The excessive patriarchal control described in the rising action gives way to female affiliation created in part by women's relations to men. "We learn the world from women," the first ex-wife reflects, "but we learn ourselves and other women in part from men and from how we react to them" (321).

While the low-grade resentment and displacement of energy from the heterosexual family to female friendships seen in *Lucid Stars* appear in many contemporary women's fictions,¹⁶ the novel also joins these motifs with other, somewhat less conventional elements. The title metaphor, for instance, employs an astronomer's term for the stars one can see with the naked eye—as opposed to those visible only by means of a telescope. The "vast clusters of stars, each one resolving into thousands of points" on closer examination,

signal the novel's interest in depth psychology (327). It also anticipates the importance of astrology as the common female folk knowledge underlying the official story.

In *Lucid Stars*, astronomy offers an escape route to the patriarch's first wife; she leaves the stifling family environment to pursue her interests independently, becoming a textbook New England eccentric. The grungy, chaotic, sexualized, and disreputable world of astrology also offers female characters a second center of gravity. The mother of the patriarch's second wife is a soothsayer. Wearing a "housedress [in] some pale mushroom color, sleeveless and shapeless" and covered with "a soft roll of flesh that starts under her arms and flows into the pillow-like mass of her breasts, a roll beneath that circles her back and her belly, and another that blooms over her kidneys and then hangs low in front," the mother's mother dispenses pseudoscientific analyses: "star charts/Individual charts & analysis/mini-readings/compatibilities/business astrology" (118–19). This astrologer is a capacious and grossly sensual earth mother, and her presence provides a counterpoint to the spare taciturnity of the astronomer. However, by the novel's close, both women team up against the professionally and erotically possessive father, a real estate developer. The rational female scientist guides but does not dominate her double. Instead, the utopian maternal community created in the novel requires a recuperation of the force, if not the literal content, of prescientific or nonscientific thinking. This synthesis of scientific depth with the vitality of folk wisdom occurs within a matriarchal community.

That cozy women's community provides stark contrast to alienating and proprietary paternal spaces in Barrett's novel. Most of the action of *Lucid Stars* takes place in an inconveniently organized house owned by the father's family and used to control him. The house "looks like a castle," but "inside, it feels like a boat [with] . . . portholes gone wild; everything else spreads like a disease" (40). The house manifests the sick family relationships it contains. Its literary equivalent is the obsessive writing the distraught second wife scribbles "on napkins, place mats, cereal boxes; on matchbooks, envelopes, Jordan's drawings, Ben's business mail" (219). This hysterical writing could not be more different from the father's bland, commercial speechifying. It also gives way to the lucid codes of women's astronomy and astrology. Providing a middle ground between prepackaged linguistic commodities and incomprehensible private speech, women's amateur science becomes a model of salvific as well as nonproprietary authorship in *Lucid Stars*.

Barrett's second novel, *Secret Harmonies* (1989), replaces scientific and pseudoscientific inquiry with the study of music. However, all of the other

themes introduced in *Lucid Stars* reappear, and once again, some characters find personal salvation through their involvement with nature. The main character's lonesome brother becomes a paid assistant to an ornithologist, and her father disappears into the wilds of the Caribbean. Some of the natural settings introduced—most notably the Quabbin Reservoir—also resurface in Barrett's later writing. The major continuity between this novel and Barrett's other work, however, is its concern with the frustration of creative women within a proprietary marriage.

In *Secret Harmonies*, musical, conflicted Reba is surrounded again by female eccentrics. Her mother has a quasi-scientific concern with car repair, and her grandmother lives alone in an isolated cottage with many cats, essentially splitting the astronomer of *Lucid Stars* in two. The prophetic, ungainly character of the astrologer is recast as Reba's mentally disabled sister. Exhibiting a special bond with animals, the sister also writes densely coded folkloric verse. Her private paeans differ pointedly from the writing of male author-figures in the novel. Dysfunctional female isolation remains a real option in Barrett's second novel, and her characters continue to face what Rachel Blau Duplessis calls the "choice for the woman: be appropriated...or be isolated" (27).

In *Secret Harmonies*, however, a utopian women's community does not even momentarily resolve the conflict. The protagonist struggles through a series of projects, both romantic and intellectual, before ultimately duplicating her father's disappearance in the final pages of the novel. This affinity between musical father and daughter exceeds any two-gender relationship in *Lucid Stars*. Reba's intellectual aspirations originate with the father although they are frustrated by her marriage to a proprietary husband and her affairs with several foolish men. In short, rather than lining all the "good" elements of the novel up against the corrupt patriarch, in this book Barrett crosses the lines, pulling the heroine into a Gordian knot that no traditional women's wisdom allows her to untie. Emulation of a chaste female piano teacher does not appeal to the heroine any more than the reckless promiscuity of her own adolescence. The novel just restages the heroine's dilemma, asking how she might maintain the free space and energy required for intellectual projects in the context of demanding erotic relationships. This problem is ultimately displaced, not resolved, though, by the *Huckleberry Finn*-like final events.

Although sidestepping a quasi-feminist wish fulfillment scenario in *Secret Harmonies*, Barrett retains some of the connotations of that language. Masculinity, erotic betrayal, and appropriation are still aligned figuratively. For example, after a memorable scene in which Reba's impotent poet-lover begs her for stories from her childhood, she discovers that he has published

her tales in verse form under his own name and using the title of her favorite book. In a subsequent confrontation, the poet's insistence that his taking was merely sexual is refuted by the heroine's strong sense of violation. Readers are to understand that the poet unfairly enclosed signed intellectual property from the raw materials of the heroine's life and the erotic commons of their bed. This scene compares unfavorably to other modes of writing and communication figured in the text—most notably, the disabled sister's epic poem. The poem uses Reba's name repeatedly, much as her brother's printed scroll uses a recognizable image of Reba's hands. Yet neither of these forms of communication is figured as a violation because neither is signed and circulated as private and exclusive property of the author. Magnified by erotic betrayal, the poet-lover's signature becomes an emblem of masculine domination.

The counterpoint to masculine appropriation is not a community of women, however, but religious utopianism. The poet's thefts contrast with the protagonist's sister's borrowing from a chain letter originally written by a monk. In quasi-liturgical language also used in the title of the novel, the chain letter urges an appreciation for the invisible and secret music unifying natural phenomena; against the zero-sum logic of theft, it sets a spiritualized commons. The sister unintentionally duplicates this letter and uses it to comfort lonesome veterans. Her cryptomnesic copying enhances common life. The selfless labor of the monastic author receives tribute through her copying, and the monastery itself becomes a symbol of an alternative, nonproprietary community organized around writing. The monastic retreat replaces the marital couple and individual authorship as the novel's distant ideal. In *Secret Harmonies*, however, individual women are spatially excluded and isolated. Their local enclosures are not yet connected by a mapped system of global relations, as in Barrett's later works.

Barrett's third novel, *The Middle Kingdom* (1992), adds this international dimension. Beginning in Tiananmen Square in 1989, this novel initially seems to be a topical work contrasting Barrett's conception of the commons with statist Communism.¹⁷ This misleading first impression is soon dispelled. Despite a few passages describing tourist excursions to the Forbidden Palace and some plot points that turn on restrictions on foreign travelers, this novel, too, is mainly concerned with American women and property. The Chinese setting simply throws the concerns of the American scientist and his wife, Grace, into sharper relief. Within the frame of an international academic conference, most of the novel is comprised of an illness-induced flashback to the heroine's American childhood and first marriage to a painter, as well as her courtship and disillusionment with the second, scientific husband. These passages establish the

basis for the novel's closing comparison of the incongruent experiences of women of different nationalities.

Barrett's recurring figure of the arrogant husband is here a scientist who recruits the heroine as a research assistant at Quabbin Reservoir in central Massachusetts. His courtship consists of reading her his sixty-three-page article on "the effects of changing water pH on the reproductive success of various fish" while his students celebrate Independence Day outside. Grace listens attentively, preparing questions and "wanting to ask those questions—the work was good, it was interesting, and part of it was [hers]" (118). The courtship promises, in Grace's eyes, joint authorship and a marital micro-commons, although this promise is not ultimately realized. In the end, the husband insists upon, receives, and glories in his personal celebrity at the Chinese conference and elsewhere. He sits on a raised dais, honored by toasts and throngs of admirers, "prophesying" (32). He makes no mention of his assistants and students, and by the end of the novel he has acquired a new worshipful female companion who replaces Grace in the marriage bed.

The husband's monopolistic seizure of work described as also belonging partly to Grace makes her depressed and dependent, but she tries to find creative work within her circumscribed sphere, first as a home renovator and later as a visitor in China. Grace's focus on the homes of others introduces her to houses and locations that do not simply serve as projections of her own desires but represent actually existing alternative worlds. This potentially utopian prospect is endangered, however, when she becomes nearly as proprietary as a housing developer. Her marriage suffers from her effort to compete with her husband, and it finally cracks altogether when she tries to seduce one of her husband's favorite students away from him: "I wanted to wreck this project, wreck him and Walter, tear apart this life I found myself floundering in" (191). Degraded by her subordinate status as a barren, intellectually unproductive faculty wife with a proprietary interest in housing, rather than a communal home, Grace lashes out, using the husband's desire to control access to his wife against him. As is conventional in sentimental marriage plots, excessive attention to the home as property destroys the home as a space of psychic refuge. Less conventionally, though, Barrett presents women tempted to imagine themselves as imitations of men and unfairly dependent on the caretaking of other women with lower degrees of mobility and access to power. Sorority becomes an increasingly international and conflicted site of resolution to property conflicts in *The Middle Kingdom*.

Although more skeptical about liberal feminist universalism in this novel, Barrett continues to employ the related trope of the secret language. For the

English-speaking American characters, that language is Mandarin. Grace's appreciation for the languages and decorative arts of China is also attributed to the underground influence of a gay uncle. Against the proprietary sexual double standard of the scientist husband, Barrett sets a kind of queer cosmopolitanism. A figure of an alternative patrimony and extrafamilial communalism, the uncle engages in the most generous, open-ended relationships in the novel—save, perhaps, for another pair of gay men who reunite across national and racial lines during the China trip. Replacing religious utopianism, then, gay male couples figure affirmatively (even if also stereotypically) for Barrett as outside the imperialist attitudes and relationships of the patriarchal husband. The more fully Grace explores the uncle's legacy, the more options she discovers.

While affirming aspects of queer exteriority to communities based on familial property relations, however, Barrett also insists on a reproductive future for her heroine.¹⁸ The major sign of Grace's crossover into cosmopolitan communalism is her biracial child, the same child she rescues during the Tiananmen crackdown in the novel's opening scene.¹⁹ Here, as in the closing scene of *Lucid Stars* and later stories, then, Barrett seeks an alternative communalism that does not abandon the privileges and pleasures of heterosexual maternity.

A preoccupation with maternity and communal property also features in Barrett's fourth novel, *The Forms of Water* (1993). This centripetally organized road novel brings a fractured modern family together at the site of the family homestead, the "east Pomeroy Common" (112). The nearest the various family members can come to the lost homestead, however, is floating over it in a boat because their collective point of origin lies under the Quabbin Reservoir. Barrett's Pomeroy is based on one of the four towns claimed by the state of Massachusetts in the 1920s before being razed and flooded to provide drinking water for the urban seacoast.²⁰ Borrowing extensively from local history, Barrett renames the affected Massachusetts towns and rearranges details at will while retaining the basic outlines of a well-documented social controversy surrounding property in land.

Unlike many contemporary American accounts of property rights in general and eminent domain in particular, however, Barrett's narrative does not assume an inalienable right to ownership on the part of either the state or the homesteaders. The loss of family land to the state is certainly described as disruptive, since it disperses the family and separates another positive uncle figure (this time a Benedictine monk) from his community. However, this loss is also paralleled by disappointments and errors that result directly from the exercise of private property rights. Once again taking a real estate developer as a central character, *The Forms of Water* makes the developer an embarrassing

failure in his business and personal lives, rather than the arrogant success we saw in *Lucid Stars*. Henry has lost nearly everything after trying to turn family land into a new housing development. The only people that inhabit his half-built tract, though, are a family of squatters. The strong assertion of Henry's patriarchal property rights has only abject consequences in this novel, and his humiliation recalls the deeper social abjection of the dispossessed.

If the father's world crumbles in *The Forms of Water*, the world of the mother presents no vision of fulfillment either. The awesome power of the astrological earth mother in *Lucid Stars* has here shriveled into the dietary hypotheses of a macrobiotic Christian Scientist. Providing another unofficial language comparable to the astrology, naïf poetry, and home decoration of earlier novels, the mother's belief system combines elements of folk medicine with a quasi-Victorian language of flowers; she asserts a directly causal relationship between a vegetable diet and biological and spiritual health. This religious eccentricity recalls some of the nineteenth-century American dietary reformers and hints at the interest in the history of science (especially botany) that will prove so productive for Barrett in her next phase as a writer.

In *The Forms of Water*, however, the mother's beliefs attract ridicule. Although connecting her to a nonfamilial community of believers, the mother's oddball ideas compare unfavorably with the legitimacy and world-traveling seriousness of her uncle, a former monk. While enjoying the enforced camaraderie of a nursing home, the former monk longs for "Paradise Valley," the place where he discovered his vocation. His flashbacks also associate the drowned townships with "St. Brendan's land," a mythical Irish utopia described as "the country of the young" (155). On the return journey to this lost idyll, the uncle involuntarily uses the monastic sign language of his silent brothers and reflects on years he spent in China and Manitoba after the monastery was submerged under the reservoir. His signs are barely visible, let alone comprehensible, to his American relatives, so it is no surprise that at the novel's climax, the still chaste uncle falls from his rowboat and drowns in the reservoir. After all, the explicitly mythical character of the lost commons is affirmed; this narrated and signed desire, more than the enforced ritual practice of the mother's pseudomedicine, provides the positive content to the contemporary vision of the commons.

By turning to a religious communalism of the past, Barrett recovers a symbolic alternative to the equally unsatisfying public and private forms of property. Most commonly represented as books or houses, property appears in Barrett's early novels as the source of interpersonal strife. Property conflicts are not resolved by nonreproductive religious communalism in her writing,

but they are reframed. Like the Transcendentalists to whom characters such as *The Forms of Water's* Henry and family member Waldo clearly allude, Barrett ultimately discovers a code for spirit in nature, instead. The next phase of her career is largely devoted to an exploration of the resources fiction offers for nature writing. Barrett probes the domestic novel, seeking a new means for housing insight into nature in texts without replicating property disputes.

THE NATURAL HISTORY OF PROPERTY

In the late 1990s, Barrett published the first of two well-received collections of short stories, the National Book Award–winning *Ship Fever* (1996) and *Servants of the Map* (2002).²¹ Both collections intersperse stories set in the past and present and probe the psychic lives of scientists. As in Barrett's earlier novels, systems of communication other than individual authorship often appear. Utopian, folk, feminist, and communal, these alternative styles of communication build toward the strong statement on intellectual property offered in *The Voyage of the Narwhal*. Both collections also develop characters that appear in the later novel. Together, they reveal a family tree of interconnections and hint at an ambitious genealogy underlying this group of writings.

Internally as well, *Ship Fever* interweaves characters and themes. In an interview, Barrett has described the way she imagines her stories joining Eastern Europe and upstate New York: "It's like watching a little clump of DNA split and recombine. It's not entirely accidental that some of these people's traits are related but with variation to people in their past.... How do women separated by such a wide stretch of time and maybe bearing some resemblance to each other but in a very different culture, how do those traits lay out?" (Birnbaum). The figure of DNA here entwines the language of inheritance and culture with reproduction, gender, and science—uniting all of Barrett's central themes. Genetics, not faith, becomes the source code for imagination in this phase of her career.

Ship Fever opens with this genetic theme, linking it to questions of intellectual property. "The Behavior of the Hawkweeds" draws parallels between a frustrated twentieth-century wife of a biology professor and Gregor Mendel, the monk whose experiments with peas lie at the root of modern genetics. Both experience a betrayal hinging on information flows. A correspondent withholds vital data about the parthenogenetic reproduction of hawkweeds from Mendel, and Mendel's story is later appropriated from the wife by her husband. This correspondence between appropriation and masculine domination is reinforced by an embedded rape narrative. Sexualized violence

governs the transmission of knowledge in the tone-setting opening story of *Ship Fever*.

The only escapes from proprietary and gendered systems of control that “The Behavior of Hawkweeds” provides are the “secret words” the wife shares with her Czech grandfather (32). One of the Czech words the heroine recalls is *Německy*, which means “German”—or, more literally, “dumb or inarticulate,” one who does not speak Czech. Arguably, this common adjective recalls the resentment toward the German-speaking Hapsburgs felt by some of their Slavic subjects. In this story, at least, the sexualized violence involved in the seizure of intellectual property recalls imperial relations as well. Barrett’s imaginative world here moves well beyond the national borders of the United States.

Interpersonal pair bonds keep subordinated cultures alive for Barrett, because they point toward the commons that precedes and underlies the seizure of property. These bonds may arise between man and woman, but they are just as often sororal in Barrett’s stories. In “The Marburg Sisters,” for example, sisters and mothers share a tradition of storytelling and scientific curiosity, and in “Rare Bird,” a story set in 1762, two scientifically minded women join forces to disprove a hypothesis about the migration of swallows attributed to Linnaeus. The women’s experiment, and, indeed, their right to make scientific hypotheses at all, is mocked by the male peers whose own scientific credibility derives from friendship with the famous author; but the women perform their experiment and record their verification of a new hypothesis in a private journal before vanishing into the ether and becoming migratory themselves. Their alliance thus points to a mode of knowledge production that is distinct from the author-worship of official science.

Another story, “Soroche,” has a similar climax. Its heroine abandons the upper-middle-class family into which she had married and relinquishes the responsibility of administering its wealth. She gives money to a deceptive investor, donates her inheritance to a museum, and finally disappears into the tightly knit working-class community of her youth. In the context of this story, the loss of property is liberating, while attachment to property creates aesthetic errors and psychological burdens. The heroine’s crass stepson, for instance, is described as hiding “his TV and VCR in a nineteenth-century French armoire that had passed to him through more generations of family than she could bear to remember” (99). In contrast, the title recalls her recovery from altitude sickness, a recovery associated with social and spatial descent.

Other stories in *Ship Fever* also link scientific cures to an aesthetic of the commons, but none so thoroughly as the final novella. A third-person historical metafiction told primarily from the point of view of a lovelorn

Montreal physician during the late 1840s, “Ship Fever” describes conditions on Grosse Isle, an island in the St. Lawrence River where transatlantic ships bearing Irish immigrants were quarantined.²² At the height of the potato famine, the impoverished immigrants were highly susceptible to typhus, a disease exacerbated by gruesome conditions on the ships. While acknowledging in some detail her debt to several published histories and collections of documents focused on the victims, Barrett elects, in this piece, to focus on the doctor’s evolving understanding of himself and the politics of medicine. Initially propelled to the island by romantic disappointment rather than altruism, the doctor rapidly becomes immersed in the human tragedy of the epidemic. The story then details his investment in epidemiological views of the day (especially the miasma theory, a predecessor to germ theories of contagion). Several passages reproduce quotations from period texts, such as “Wood’s *Practice of Medicine*” (198), and contemporaneous newspaper articles. Although medical discoveries play a role in the novella, the doctor’s consciousness changes most when he concludes that “the famine in Ireland is political, not agricultural, and so by extension our situation here has at least as much to do with government policy as with fever” (199). The didactic point of the novella, as Corinne Dale has argued, is that social conditions shape the science; the “epidemic is a socio-political dis-ease” (101). The doctor, like the reader, develops a metafictional reading practice. Both learn to read against the grain of any account of disease and recovery that unduly makes a hero of the isolated medical practitioner.

The logic of Barrett’s metafiction is not entirely negative, however. She also expands her imaginative map to the European periphery and incorporates critical voices, such as the story of the immigrant Nora Kynd. A recurring character in Barrett’s fiction, Nora was separated from her brothers by the Canadian quarantine; nonetheless, she remains a figure for the commons. Her knowledge of traditional remedies makes her a crucial source of life-saving innovation once she recovers from typhus and begins to serve as the doctor’s assistant. Nora brings with her “a bending, weaving, cunning way” of nursing the sick, as well as a pragmatic, housewifely hygiene and facility with herbal remedies (226). She even nurses the doctor when the fever strikes him. At that point, Nora also becomes the bearer of the doctor’s private journal, which contains his meditations on medicine and politics, as well as his longing for his now-married beloved. Nora delivers the journal to the beloved after the doctor’s death, and on this mission, she wonders whether the doctor’s rival “was the sort of man who’d consider his wife’s belongings private. Or the sort who’d think his wife’s possessions were his, as his wife was his possession” (247).

Illiterate herself, Nora does not read or possess the journal, but as a nurse, a courier, and a woman she manifests the commons underlying private writing. By the time her quest for family and literacy brings her to Detroit at the end of the novella, Nora has passed from the traditional village commons of Ireland through the degraded form of pseudocommunal camaraderie caused by crisis into the explicitly utopian prospect of a new community of readers.

Metafictional attention to the need for new stories, as well as new readers, also characterizes *Servants of the Map*. However, this second series of interlinked stories culminating in a novella expands Barrett's geographical range even farther. The first, and title, story concerns a nineteenth-century cartographer traveling through Kashmir. Along the way, he becomes deeply disenchanted with the mode of writing involved in mapmaking and renews a childhood interest in botany. The maps, he reflects, "would be printed, distributed to governments, passed on to armies and merchants and travelers. Someone, someday, would study them as they planned an invasion, or planned to stop one" (57). The hero fears the military applications of his work and recognizes that his own labors "will be nameless: small contributions to the great Atlas of India" (57). The singularity of his journey will vanish; he is merely an anonymous servant to the imperial might mobilized by the map. Here, as in so many of Barrett's works, the anonymous labor of the assistant precedes a seizure of writing by those in power and troubles a liberal, egalitarian claim for the benefits of ownership.

The cartographer's amateur botany project is more utopian. The hero collects plant samples and sends them to a famous expert. At this level, the story suggests a positive role for the ownership of intellectual property, since the famous author launches the cartographer into a more fulfilling and conservationist career. Passages from Joseph Dalton Hooker's writing reverberate in the cartographer's mind and inspire him while he collects specimens, as do lines from Charles Darwin's *Origin of Species*. Yet, in the midst of this imagined community of minds, the cartographer also meets the most transparently fantastic character in the tale: an educated Indian woman whose multicultural string of nomadic lovers stimulated her own interest in botany. A conventional "dark-haired, dark-eyed" temptress, she offers erotic and intellectual fulfillment, relief from the cartographer's isolation among his peers, and access to a "secret band of wanderers" who explore the subcontinent without imperial or proprietary designs (63, 64). This self-consciously exotic fantasy keeps the cartographer mobile, and his disengagement from domestic cares triggers a chain of wanderings extending throughout the collection. Although Barrett's volume concludes with a celebration of house and home as the site of women's

curative power, it begins with this antidomestic Kali figure, and the stories in the collection are pulled in both directions. Still employing the female doubles that characterized her first novel, Barrett complicates her themes by offering two versions of the pink commons.

The double character of that commons is underscored again in “The Cure,” the concluding novella of *Servants of the Map*. This piece is set in an Adirondack rest home for tuberculosis patients. In this haven of domestic order and comfort, traditional remedies accompany new science, and Nora Kynd reappears. “I know a bit about medicinal herbs and roots and I’ve treated our neighbors for years,” she tells the cartographer’s wife before beginning to treat her daughter (241–42). Nora’s cures (eating the powdered lungs of a fox, for example) take on significance equal to the scientific theories of contagion in the novella. Their exoticism is counterbalanced by the racism of officials who blame tuberculosis on inherited characteristics of the urban poor. However, only Nora’s hygienic nursing facilitates a young doctor’s discovery of the bacilli that spread the disease. Nora’s housewifely cleanliness acquires scientific credibility in the story, and this intellectual alliance (as well as a partnership between Nora and the cartographer’s daughter) enables a new sort of domestic utopia. The cure the women provide not only saves the lives of refugees from the cities, it also restores health to family members who become the new face of the Adirondacks.²³ “What difference does it make that she will always be an outsider here,” the daughter reflects in the novella’s final pages; “so was Nora, so are half the residents” (268). In the Adirondack wilderness, the nomadic wandering of the title story finally comes to rest. Barrett’s migrants find a common project that emerges from but is not limited to the porous space of the family economy.

The remaining four stories in *Servants of the Map* also reinforce this more affirmative and multilayered approach to Barrett’s basic themes. In “The Forest,” nature mysticism reinvigorates an elderly Polish scientist and links his resistance to tedious rituals of academic celebrity to the sisterly intimacy of characters that reappear in “The Mysteries of Ubiquitin,” a story of discovery. Another pair of stories with historical settings, “Theories of Rain” and “Two Rivers,” underscores the utopianism of the volume as a whole. In the former, a young woman escapes from the chastity enforced by her presumably lesbian aunts and begins a sensually stimulating relationship with a young man familiar with the work of the naturalist William Bartram. In the latter, another couple bonds through paleontology, sign language, and a visit to the Owenite commune New Harmony. Heterosexual coupling consistently triggers non-proprietary information sharing in this collection of stories, while celebrated

authors/owners, from the lesbian aunts to the Polish scientist and the fatherly fossil collector, are thwarted.

Although this form of straight erotic utopianism has a long and familiar history in American women's fiction,²⁴ a newer and somewhat more surprising element is its deep entanglement in these stories and, in *The Voyage of the Narwhal*, with the texts of natural history. In addition to incorporating a number of figures from the history of science into her stories, Barrett plays lightly with postmodernist textual self-consciousness by introducing recurring characters and repeatedly breaking the frame of her imagined world with discussions of the limitations of authorship and the need to attend to the silence that surrounds the text. Her continuing interest in secret languages and unspoken passions is reiterated in the choice of epigraphs from Santayana and Rilke, epigraphs that treat the figure of the journey as an existential metaphor. These two passages, along with Barrett's concluding note on her sources, anchor *Servants of the Map* quite clearly in a masculine intellectual and literary tradition that she always insists must be approached with skepticism as well as gratitude. Her writing provides metafictional reflection on conventional narratives of discovery and intellectual ownership, making the attribution of ownership and debts to traditional, feminine knowledge central themes. Precisely because they are not as highly stylized as, say, the writings of better known male metafictionists such as William T. Vollmann or David Foster Wallace, Barrett's insistently lucid writerly self-consciousness engages her readers, encouraging them to read authorship, ownership, and the politics of gender with a critical eye.

TRAVELING WOMEN IN *THE VOYAGE OF THE NARWHAL*

Published in 1998, *The Voyage of the Narwhal* is Andrea Barrett's most accomplished and complex novel to date. This narrative of nineteenth-century polar exploration adds significantly to her network of characters, broadens her geographical range, continues her concern with mapping and other methods of scientific recording, foregrounds the intertextuality of nature writing, investigates the stories of socially subordinated populations (especially women), and most importantly for our purposes stitches all of these elements together with a critique of proprietary claims to authorship. The execution of this ambitious plan falters only with the occasional introduction of some overly contemporary voices and ideals. Despite slight anachronisms in the treatment of racial problems, though, Barrett's *Voyage* successfully experiments with a textual practice. The novel borrows from historical and literary antecedents

to create a multivoiced composite that joins the gendered and proprietary features of U.S. scientific imperialism.

The Voyage of the Narwhal is composed of eleven chapters organized into three parts, each dated between May 1855 and August 1858. As in her short stories with historical settings, Barrett carefully delimits time and space in the book. Although occasional moments of magical or psychedelic drift do occur, realist fidelity to the particular characterizes the style, and the novel makes similarly specific use of sources, especially the narratives of the polar explorers Elisha Kent Kane and Sir John Franklin.²⁵ Both adventurers, along with a number of less celebrated contemporaries, appear as minor characters, and discussions of the work of Darwin, Louis Agassiz, and other naturalists of the period are featured as well. These sources complement Barrett's use of newspaper accounts of the disappearance of Franklin's vessel and the death of Kane, as well as several contemporary histories of Arctic exploration. Like "Ship Fever," *The Voyage of the Narwhal* is built from pieces of earlier works, adapting and inverting them to tell another side of the story and reflect on the conditions that allowed the authoritative version to circulate in the first place.²⁶ The didactic purpose of the novel is metafictional—especially with respect to ownership.

Barrett introduces the theme of self-conscious and ambiguously owned texts on the first page of her novel with a lengthy epigraph from Claude Lévi-Strauss's *Tristes Tropiques*. While Lévi-Strauss's memoir as a whole depicts a special sadness accompanying the rapid conversion of noble primitives into the *Lumpenproletariat* of modernity, Barrett's selection focuses on the questionable originality of travel writing. Travelogues contribute to the utterly fantastic image of the tropics, Lévi-Strauss asserts; they pass off "platitudes and commonplaces" as "revelations" because "their author, instead of doing his plagiarizing at home, has supposedly sanctified it by covering some twenty thousand miles" (11). In this beautifully abusive passage, Lévi-Strauss points out the derivative character of writing that claims to offer the most immediate and authentic observations; the passage documents as well the immiserating consequences of this self-deluded claim to authenticity. From this perspective, the traveler's claim to originality is based on the erasure of his own plagiarisms, a move that nonetheless leaves contaminating detritus trailing behind him. This reflection on the consequences of the global population flows for authorship sets the tone for *The Voyage of the Narwhal*, although Barrett usually strikes a more melancholic posture than Lévi-Strauss.

The central explorer and plagiarizer in Barrett's narrative is Zechariah Voorhees, the captain of the *Narwhal*, a fictional vessel that heads from Phila-

delphia to the Canadian Arctic in search of traces of the lost Franklin expedition. Voorhees requires his crew to sign a contract in which they pledge to assist him faithfully and accept his command. His Ahab-like insistence on the crew's obedience is enhanced by "a more disturbing paragraph...stating that all members of the crew...promised to turn in their journals and logs over to Zeke at the conclusion of the expedition, and further promised to refrain from lecturing or writing about their observations for a period of one year after the journey's end" (130). The monomaniacal captain insists that he be treated as the sole author of any account of the crew's collective actions. The captain as author even seizes his crew's journals and claims the right to edit their accounts in his own favor.²⁷ This seizure from above is described as exaggerated but not unique. Another captain's book is also notable for its "pastiche of styles—the outright plagiarism of his subordinates' diaries and logbooks. Wilkes [the captain] made those volumes with scissors and paste, and an utter lack of honor. He stole the book, then had the copyright assigned to him and reprinted it privately. It made him rich" (72). Following this model, Zeke asserts, "It's a part of the expedition records now," and "Hence mine" (206). Coercive contracts as well as ex post facto plagiarism are the tools of the captain's authorship. Copyrighted writing rests on force in *The Voyage of the Narwhal*.

The character of the plagiarizing captain is a composite of Kane and several other Arctic explorers. Barrett deemphasizes her own Romantic invention with this character and detaches her own writing from coercive claims to original authorship. The captain of the *Narwhal* becomes the prototype of an author who appropriates because he does not write. After receiving a special bound journal from his fiancée, Zeke sets it aside and is not observed adding to it for the duration of the voyage. He leaves it behind when setting off on an independent journey. Yet, when he reappears in Philadelphia, after being separated from his ship and rescued by Inuit hunters, he brings the same journal, now filled with dramatic stories. Barrett highlights this suspect text in several passages on Zeke's life with the Inuit.²⁸

Skepticism about the credibility of Zeke's authorship also characterizes the novel's narration. The captain's older brother-in-law and the *Narwhal*'s naturalist, the narrator Erasmus, observes his surroundings closely, and his perspective filters the reader's view of Zeke. Erasmus's point of view requires the reader to carefully assess Zeke's claims to authorship: "the pages were clean, no more tattered than when Erasmus had last seen the notebook in the box. No grease stains, watermarks, drops of blood or food or filth" (315). The narrative centered on a single hero and the clean page both bespeak falsification. As an

aspiring writer himself and a scientist relying on the conversation and technical assistance of friends, Erasmus provides a collaborative author's skepticism on solo authorship. This arrangement is crucial to Barrett's metafiction.

In several scenes, Barrett describes escalating confrontations between the two author figures. In the last of these, Erasmus asks, "Why would you write an account that pretends all the rest of us weren't there?" "You're all in it," Zeke responds. "But no more than you deserve to be. Minor, minor characters" (362). This passage marks the captain's villainous assertion of sole authorship as an act of revenge, an explicit effort to reduce the other crew members to "nothing" in compensation for their self-preserving abandonment of him. If Zeke's narratorial narcissism represents a moral failing in this passage, then one expects multiple, decentered narration to be a virtue. This expectation is upheld.

Although the bulk of *The Voyage of the Narwhal* consists of free indirect discourse from the point of view of gloomy, loveless Erasmus, the focus shifts occasionally to Ned Kynd, brother of Nora from Barrett's earlier stories, as well as to other characters onboard the *Narwhal* and some noncrew members, such as Alexandra, an educated abolitionist working in Philadelphia. Alexandra's narrative in particular brings the issue of women's education and exclusion from scientific inquiry to the foreground. In *The Voyage of the Narwhal*, however, this exclusion is only partial. While the *Narwhal* sails to the Arctic, Alexandra secretly agrees to illustrate Kane's record of his expedition. Working from the earlier explorer's notes and sketches, Alexandra produces images that are "much more than copying; more like re-making, recreating" (146). Her engravings allow Alexandra to enter the pictured scene and "a larger life" of work and intellect (146). Engraving is joyous, useful labor but also a clandestine project taking place at night and under the auspices of a male professional who takes credit for Alexandra's images. This inscription of an anonymous woman's presence within the well-known explorer's text recalls Barrett's own palimpsest of historical sources. Her composite text describes and continues some practices required of creative women in the nineteenth century, although the genders are, in this instance, reversed. Barrett's text bears a woman's signature but encodes the labors of the lost sailors.

Barrett's novel also includes illustrations similar to those its prose has taught us to decode. The 1999 Norton edition features reproductions of fine engravings from nineteenth-century taxidermy handbooks and exploration narratives, several of which bear the signature "Lossing-Barritt." This compound signature suggests the presence of an Alexandra-like figure in the historical record. "Lossing" is presumably Benjamin Lossing, the popular nineteenth-

century historian and engraver; Lossing married Alice Barritt, the daughter of his partner George. Whether or not the “Barritt” signature represents an actual trace of a female hand, the similarity of the two women’s names certainly makes an analogy to nineteenth-century Alice and the Andrea Barrett of the present day.²⁹ After all, naming is often allegorical in this novel. Recalling the Egyptian library lost to fire, the Alexandra character signifies lost books and authors, while Erasmus Darwin Wells, of course, recalls a tradition of humanistic inquiry endangered by greed, and Zechariah invokes the imperious priest of the Old Testament.

This allegorical register broadens the novel’s concerns—moving it past a strictly liberal feminist project of recognizing women’s authorship and toward the suggestion that individual authorship (whether masculine or feminine) is ethnocentric and imperialist.³⁰ Pulling the explicitly communal world of the Inuit into contact with the explorers’ jockeying, Barrett qualifies any one-dimensionally positive claim for a white-only commons and maps the contradictory relationships among different sorts of female authorship along nearly the same lines as the *amauti* dispute.

The link Barrett establishes between race and authorship is especially clear when Zeke begins to exhibit the Inuit mother and child who accompany him on his journey south. Living evidence of Zeke’s invented and self-glorifying narrative, Annie and Tom (as he calls them) appear in a sequence of ethnographic displays in theaters and museums before Annie falls ill and dies in Zeke’s home. Their story is built out of several pieces of the historical record: the tragic experiences of Minik, an Inuit boy brought to New York City’s Museum of Natural History in 1897; the complex entanglement of the Smithsonian with the pseudoscientific investigations of racial difference; and nineteenth-century techniques of spectacle.³¹ Presented as appalling and exploitative, the display of Tom and Annie follows directly from Zeke’s claim to own his crew’s writing. They are his, it is repeatedly hinted, through some form of sexual conquest that mirrors his domineering practices as a captain.

Zeke’s possessive logic is undercut, however, by depictions of Annie through the eyes of Erasmus and Alexandra and by passages from Annie’s perspective. Here, Barrett uses polycentric narrative to disturb Agassiz’s polygenetic account of racial difference. The Annie passages share with European and American perspectives explored in many of Barrett’s earlier stories a fascination with magical and extrarational perception. They affiliate Annie with the organic commons that we ultimately learn all the characters other than Zeke inhabit: “Her tribe was one great person, each of them a limb, an organ, a bone. Onto the hand her family formed, Zeke had come like an extra finger.

They'd welcomed him, but he'd had no understanding of the way they were joined together. He saw himself as a singular being, a delusion they'd found laughable and terrifying all at once. When he strutted around, it was as if one of the fingers of that hand had torn itself loose, risen up, and tottered over the snow" (319).

Based in part on ethnological accounts of the Inuit, as well as interviews with named local informants credited in the author's note, Barrett's experiments with a purportedly traditional Inuit point of view describe the commons at the moment of contact with outsiders. Like Levi-Strauss's "sad" tropics, Annie's passage presents the reputedly traditional Inuit view that only a laughably deluded person thinks he is "a singular being" through an individualized literary and literate point of view. However paradoxical and sad, though, the Inuit commons has not been entirely lost or destroyed in this novel. The integrity of a shattered ethnic commons remains figuratively possible, if one reattaches the severed finger, as in the novel's final passages.

Shadowed by illness, Annie does not become the site of restorative vision in *The Voyage of the Narwhal*. Instead, after her death, Erasmus, his brother, and Alexandra rescue her son and take him to Ned Kynd's Adirondack home—the site of "the cure" described in *Servants of the Map*. Self-consciously utopian, the kidnappers create a transnational and restorative community that they call "a miniature New Harmony" (377). They recover in the woods before returning Tom to the Arctic. To preface this transition from one version of the commons to another—from the intentional community of artists and intellectuals to indigenous people living on the margin of modernity—Barrett's novel turns to a hybrid textual practice. While recovering in the woods, Tom begins "making his own words and pictures," collecting the objects necessary for "a *tupilaq*, a nightmare skeleton built from bones of all kinds of creatures, wrapped in a skin" (379, 371). Tom's symbols then reappear in the reunion scene in the Arctic, adding distinctive elements to one of several paragraphs that fuse his perspective with Erasmus's: "Against the hill beyond Anootok were two-legged dots, four-legged dots, which Tom was the first to spot. . . . As he approached the dots turned into figures, and faces appeared. Among that small crowd moving toward him were Tom's father—which one was he?—and men who'd hunted and talked with [Erasmus's dead friend] Dr. Boerhaave. A tall man in a worn fur jacket stumbled forward, stretched out a hand, pressed Tom to his chest and then lifted him into the air" (392).

In this climactic scene (described by more than one reviewer as a "Hollywood ending"), the writing/drawing of people in the landscape is at least as important as emotional family dynamic. The scene is presented simultaneously

from several participants' points of view: "The dots turned into figures, and faces appeared" first from the blankness of the landscape and later from Tom's hybrid pictographs.

This affirmative return to a living commons is anticipated as early as the opening paragraph of Barrett's novel. In the first scene, Erasmus stands on the wharf, preparing the *Narwhal* for departure. He watches the reflections in the water—noting the "way the planks wavered, the railing bent, the boom appeared then disappeared. The way the image filled the surface without concealing the complicated life below. He saw, beneath the transparent shadow, what his father had taught him to see: the schools of minnows, the eels and algae, the mussels burrowing into the silt; the diatoms and desmids and insect larvae sweeping past hydrzoans and infant snails" (16). From a distorted reflection, his vision sinks deeper below the surface. Life-forms become "complicated," various, and increasingly unfamiliar as we proceed from minnows to desmids and hydrzoans. These lesser-known creatures recall one of many passages quoted from Pliny: "*The oyster, his father once said, is impregnated by the dew; the pregnant shells give birth to pearls conceived from the sky*" (16). As a naturalist, Erasmus slides from observation to literary representation and back again.

This fundamentally literary perception of zoological abundance also appears in the title passage: "thousands of narwhals accompanied the brig up the ice-speckled strait, filling the air with their heavy, spooky exhalations—as if, Erasmus thought, the sea itself were breathing" (89). This passage depicts the mysterious narwhals in terms provided by "Dr. Kane's first voyage," both continuing and refining the celebratory tone of the preceding text.³² Barrett's characters encounter nature through a sea of texts, and multiplying the representational strategies of the texts available to them opens their perceptual lenses while also bringing them closer to a receding commons. From start to finish, Barrett's novel suggests that as long as that point of access remains open, something other than the autocratic captain-as-author is available as well, and relations among women as well as between women and men need not be purely oppositional either.

This strong emphasis on a utopian commons certainly takes liberties with historical Minik's thwarted return to the Arctic as an adult. Historical accuracy takes a back seat to Barrett's interest in the creative potential of the commons, much as the Arctic voyage reanimates the sublime paintings that Erasmus's brother assembled from the naturalist's sketches and the natural history he has been writing in the Adirondack cabin.³³ All of these modes of creativity fuse together into a single multimedia project. The most efficacious artwork created in Barrett's creative commons, however, is described in the novel's final image.

The Voyage of the Narwhal closes with a second invocation of the *tupilaq*, the taxidermic pastiche that Tom releases into the world. This shamanic creature swims up the Rappahannock River to attack Zeke during a bloody battle of the American Civil War. Clearly analogous to Barrett's own assemblage of epigraphs, illustrations, historical events, old manuscripts, and invented characters, the *tupilaq* exacts its own vengeance on the authoritarian author. Erasmus and Alexandra witness its launch, "peering down at the water as the boy who had led them here knelt and slipped the bundle in," and they are implicated in its effects (394). They risk devolving into mere spectators if they remain fixated on acquiring the perquisites of individual authorship for themselves at the expense of those from whom stories are stolen. They also finally share in the bloodshed required to unseat the race-based imperialism that enabled their own travel to the common space of the Arctic.

THE MIDDLEBROW COMMONS

By tracing the emergence of Andrea Barrett's skepticism about imperial authorship and her turn toward a communal creativity akin to the sort asserted by the Inuit women in the *amauti* dispute, this chapter has attempted to expand the political and formal range associated with pink piracy. After all, Barrett's fiction to date does not explore ideologically charged alternatives to intellectual property as Ursula Le Guin did in *The Dispossessed*. Nor do Barrett's metafictional tendencies match the wild stylistic excesses of Kathy Acker's more experimental fiction or reach the parodic force of Leslie Marmon Silko's (chapters 4 and 5). Instead, Barrett's writing takes a middlebrow approach—in the best sense of the word. As Janice Radway and Joan Shelly Rubin have persuasively argued, prize-winning American fiction such as Barrett's very often has a pedagogical quality that ensures its middlebrow status. It opens the reader's field of vision by coating instruction with the familiar hallmarks of late sentimental uplift narratives. Although some reviewers have objected to this didactic quality in Barrett's writing, it is prized by institutions such as the National Book Award and, Radway's example, the Book-of-the-Month Club. This didactic note is also crucial to Barrett's feminist critique of copyright. In *The Voyage of the Narwhal*, Barrett undercuts the machismo of the author/explorer with a middle-class white woman's narrative of professional development and an Inuit mother's sacrifice and mythologization. She uses a familiar contemporary language of race and gender domination to illuminate the more counterintuitive critique of intellectual property.

The distinctly feminist quality of this revisionist account of copyright becomes especially apparent if we briefly compare Barrett's narrative with another work devoted to the Franklin expedition—*The Rifles* (1994) by William T. Vollmann. Published only a few years before *The Voyage of the Narwhal*, Vollmann's novel includes many of the same elements and also takes a hard look at the effects of white explorers on the Inuit. Taking the rifle as his central metaphor, Vollmann examines its influence on the hunting, housing, and entertainments of the Inuit, paying special attention to the loss of irreplaceable traditional knowledge that occurs when machine technologies increase the Inuit's economic and political dependence on the Canadian state. Vollmann's narrative also undermines the heroism of explorers. His largely autobiographical narrator is extremely vulnerable to the elements and reliant on disappointing equipment. He also has deleterious effects on the children he meets and one young woman in particular. After this mistress shoots herself with a rifle, sacrificed like the imagined Inuit mistress of Sir John Franklin, the Vollmann character balloons out to incorporate not only Franklin, but also a figure from Inuit mythology—the fulmar who has led Sedna, the spirit of the seals, to sacrifice herself to feed the people.³⁴

Throughout Vollmann's narrative, in fact, the figure of the author is inescapable and endlessly mutable. He is a self-parodying comic book character (Captain SubZero), a heroic explorer channeling Franklin, a sexual adventurer, a cosmopolitan in New York City, an extreme sportsman, a mythological being, a dogged journalist, and a friend of children. Vollmann's brilliant composite text brings these intensely imagined characters to life with his own drawings and maps and historical researches. However, in all of these modes, Vollmann the author always remains the necessary reference point.

Furthermore, one of the only characters to whom Vollmann extends little or no sympathy is the sole character left at a distance from the author: Lady Jane Franklin. Historically, Sir John's wife was the prototype of the faithful spouse, raising funds to search for him after his disappearance, energetically keeping his name in the press, and grieving profoundly when the conclusion that he had died became inevitable. In Vollmann's novel, however, she primarily represents sexual repression, puritanically abusing Franklin/Vollmann for his involvement with Inuit women. Vollmann's Lady Franklin chastises and misunderstands her man, standing firmly in opposition to the ethical debt and erotic vitality triggered by the Inuit woman.

Vollmann's demonization of the lady on the home front in order to exalt a guilty bond between a native woman and a white explorer with whom the author is strongly identified differs significantly from Barrett's approach. In

The Voyage of the Narwhal, the persona of the white explorer splits into the authoritarian author/captain and the observant naturalist, while the white woman discovers herself through empathy with the dead or dying Inuit woman. Relative to Vollmann's heroic postmodernism and left libertarianism, Barrett's work is both more modest and more temperate, but it is not less political.

Barrett's writing arguably approaches the ethicopolitical questions of contact, ownership, and exploration with less aesthetic intensity and force than does Vollmann's, while displaying a much stronger commitment to investigating the role of the female half of the population. *The Voyage of the Narwhal*, like Barrett's preceding works, invests in a vision of a commons that some might see as overly romantic.³⁵ Replacing the Romantic individual author/genius with a Romantic (even Rousseau-like) depiction of an indigenous idyll, Barrett's work does not involve the anguished ironies of Vollmann's, but neither does it seamlessly identify metropolitan women with imperialism. Without ignoring the contributions of domesticity to empire,³⁶ Barrett's writing explores the interdependence of women very differently situated in the global division of labor and imagines a perhaps overly harmonious empathetic union bringing them to the commons together. This commitment to a middlebrow liberalism in conflict with itself links Barrett's writing to the problem of the global division of labor but does not solve it. For a stronger assertion of both aesthetic liberation and postethnic community as alternatives to the form of copyright that all writers treated in this book understand as masculine, we will need to turn elsewhere—toward the wilder and more experimental work of Kathy Acker.

OBSCENITY VERSUS FREEDOM OF SPEECH

The Outside of Ownership in Kathy
Acker's *Pussy*, *King of the Pirates*

During the late 1970s and early 1980s, in an imaginative use of the law, some feminists began to politicize the pornographic representation of women's bodies, charging that the circulation of these images violated women's collective civil rights.¹ Countering with free-speech arguments and assertions of economic rights, owners of copyrighted pornographic works rejected the claim that women's political rights might limit owners' actions in the marketplace. This powerful economic interpretation of copyright was bolstered by the 1976 congressional revision of copyright statutes when new formulations made ownership easier to acquire and arguably more profitable.² While anti-porn feminists opposed political and economic rights to one another, copyright holders sought to contain their challenge by fusing a more libertarian interpretation of expression to their property rights as owners. Owning and circulating pornography is free speech in this view, and feminist critics are antimarket censors.

An opposition between political and economic rights in pornographic representations of women can be reconciled another way, though. In what she calls a "swerve away from the concerns of feminist film theory," Jane Gaines argues in *Contested Culture* that the interest of intellectual property law in stabilizing ownership of images corresponds, however oddly, to some feminists' celebration of the performative power of gender, since both positions foster a new economy of privately controlled images and ideas (93). From this point of view, although some feminist critics of pornography seek a strong role for the state in the regulation of images, they too indirectly advance a postmodern and privatized economy of images.³ Strong copyright and an

activist focus on the politics of representation (rather than, say, labor issues in the sex industry) reinforce the centrality of representation to the postmodern economy.

Before moving too rapidly to Gaines's macroeconomic context, however, I want to recognize the novelty of the feminists' confrontation between political and economic rights to sexual speech in the late 1970s. After all, historically, First Amendment principles and other political rights have usually been understood as irrelevant to copyright cases.⁴ Furthermore, potentially obscene works have sometimes been denied both copyright and First Amendment rights.⁵ Until roughly the 1970s, the conventional wisdom in U.S. courts had been that economic rights are the foundation of political rights, and where they conflicted, the financial interests of owners have typically been found to outweigh those of parties with a political interest in a work's content. Since the 1970s, however, the tide has begun to turn somewhat. Whether this change has been due to feminist intervention or not, during recent decades, the self-evidence of a union between the economic and political aspects of copyright has come into question. Legal experts also increasingly recognize conflicts between freedom of speech and copyright. In fact, on occasion, freedom of sexually explicit speech even supersedes the economic rights of owners.⁶ With this changing climate in response to representations of women's sexual bodies, some feminists have switched sides—joining forces with copyright owners to strengthen women's economic rights, rather than opposing them. Instead of criticizing copyright for inhibiting women's civil rights and freedom of self-expression, some feminists now turn to copyright to protect women's civil rights and, in the process, oppose freedom of sexual speech.

To understand how this reorganization of the issues came about—a reorganization that was anticipated and imaginatively exaggerated by Kathy Acker in both her critical and fictional writing—it is helpful to turn first to two frequently cited 1979 intellectual property cases that brought this thorny nest of issues to the courts. Both, as it happens, involved those 1970s icons of boisterous and athletic femininity, the Dallas Cowboys Cheerleaders. These cases clearly demonstrate how copyright has played a role on both sides of the debate about regulating sexual expression. That is, the cheerleader cases show how copyright owners have used their economic muscle to restrict pornographic expression as well as to circulate it. These cases also reveal how a set of unsuccessful but still interesting arguments made by representatives of former cheerleaders set into place key elements of an alternative language of free and visceral sexuality, a language developed to its logical extreme in Acker's writing and also, rather oddly, revived in mainstream legal interpretation in recent

years. It is this language of tangible, pirate sexuality that has divided feminists concerned with the intersection of copyright and freedom of speech.

THE SEX OF COPYRIGHT

The first of the two representative intellectual property disputes considered here, *Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema, Ltd.* (1979), is a trademark case. The cheerleader corporation sought to enjoin distribution of the adult film *Debbie Does Dallas* (1978) on the grounds that the film infringed the corporation's trademark in the distinctive Dallas Cowboys Cheerleaders uniform and thereby tarnished the cheerleaders' image. The case was initially argued in the Second District of New York, and that court's ruling was affirmed during an appeal. The case hinged in part on the fact that advertisements for the film misleadingly implied that its star, Bambi Woods, was a former cheerleader; the case also involved the use of the cheerleaders' uniform in the film. Although the cheerleader corporation had not registered a trademark in the uniform, the courts ruled that it had a common-law trademark and that the use of similar uniforms in a "gross and revolting," "sexually depraved film" (604 F.2d 200) was likely to confuse consumers as to the sponsorship of the film. Because a trademark owner has the right to protect the reputation of a trademark (a right akin to the right to integrity asserted under European moral rights interpretations of copyright), the courts ruled that the cheerleader corporation could seek injunctions against Pussycat Cinema to prevent the distribution of *Debbie Does Dallas*.

This trademark case is relevant to our discussion of copyright for several reasons—one of which is that the defendants themselves fused the two areas of intellectual property law. Arguing unsuccessfully that the fair use standards more clearly defined in copyright law ought to apply to *Debbie Does Dallas*, they asserted that the film was a parody and thus a noninfringing exemption to trademark.⁷ Seeking a common ground for trademark and copyright, they also attempted to argue that a First Amendment right to freedom of expression outweighed protections offered by intellectual property rights. The court rejected both arguments, upholding the conventional wisdom that distinguished between "government censorship" and "a private plaintiff's attempt to protect its property rights" (604 F.2d 200); it also refused arguments that the injunction against the film constituted unconstitutional prior restraint of speech. In short, defending their right to produce pornographic work and hoping to legitimate the pseudocheerleader instead of the cheerleader corporation, defendants in the *Pussycat* trademark case appealed, albeit unsuccessfully, to

standards more clearly delineated by copyright and asserted an opposition that pits both trademark and copyright (that is, property rights) against civil liberties. Confusion about the categories of copyright and trademark, as well as their relationship to political rights, thus characterizes not only the responses of the general public but also, presumably, the legal professionals involved in this case.⁸ Although unsuccessful in this suit, this commonsense intuition that economic rights of both copyright and trademark owners can conflict with the civil liberties of new creators and consumers has, in years since 1979, been reconsidered more affirmatively in serious legal scholarship, as discussed below, in part because the “Debbie” figure no longer registers solely as an image, but also as a laboring and potentially rights-possessing female subject.

Before turning to the more recent discussion, however, I want to outline the second Dallas Cowboys Cheerleaders dispute, which was a copyright case, in order to demonstrate how the confusion between copyright and trademark works from the other direction. In *Dallas Cowboys Cheerleaders, Inc. v. Scoreboard Posters, Inc.* (1979) the cheerleader corporation, as the owner of a copyrighted poster featuring uniformed cheerleaders, launched a successful infringement suit against five former cheerleaders who posed for a second poster that mimicked the original. They also sued the parties that had produced and distributed the derivative work. On the second poster, many elements of the original were faithfully reproduced, with one significant exception: “the halter tops of the cheerleading uniforms are unbuttoned, leaving the women in the poster with exposed breasts” (600 F.2d 1184). The district court judge who heard the *Scoreboard* case agreed with the plaintiffs that this exposure caused them “irreparable harm” due to the supposed likelihood of consumer confusion about the origin of the poster. In this fashion, although qualitative aesthetic and moral evaluations of the content of a work are, in principle, irrelevant to copyright decisions, something very similar to the trademark standard of “tarnishment” seems to have entered this case through the back door.⁹ Affirming the district court’s injunction, even the scrupulously neutral appeals court considered relevant the fact that “orders [for the Cowgirls poster] had been placed and a magazine featuring photographs of naked women had published a picture of the poster” (600 F.2d 1184). The possible competition of the derivative work with its predecessor was not the only issue; the court also considered the context relevant, specifically noting that this parasitism occurred in “a magazine featuring photographs of naked women.” This logically extrinsic detail arguably corrupted the neutrality of the decision by introducing moral factors more appropriate to trademark than to copyright under the cover of an ideology of the market.

A second major issue in *Scoreboard* was, again, the question of First Amendment rights. During the appeal, the defendants claimed that their First Amendment right to publish without prior restraint had been violated and that, furthermore, the sexual content of their poster made it a parody deserving of a fair use exemption to infringement charges. On the latter issue, without judging the merits or relevance of the parody defense, the appeals court pointed out that this argument was underdeveloped: “it may well be that if the parties had developed their proof [that their work was a parody] instead of rushing from this most preliminary hearing to appeal the defendants’ fair use defense might prevail” (600 F.2d 1184). This conclusion left the door open to legitimating sexually explicit parody. What the ruling in the appeal did not contest, however, was the lower court’s sharp distinction between property rights and First Amendment rights. Its language was very definite: the First Amendment was subordinate to property rights. In an unusual turn of phrase, the appeals court asserted that “the first amendment is not a license to trammel on legally recognized rights in intellectual property rights” (600 F.2d 1184).¹⁰ Citing and following the influential views of copyright expert Melville Nimmer, the decision describes assertions of First Amendment rights as opportunistic excuses for piracy and affirmed the priority of economic over political rights.

In short, in both of the cheerleader cases, the terms of dispute are quite similar, despite one taking trademark and the other copyright as the frame of reference. The purportedly “gross” sexual content of the secondary work was rhetorically significant, although not directly relevant to the logic of the decision; and the question of whether First Amendment rights to freedom of expression apply to such works and whether they might ever trump economic interpretations of intellectual property rights was introduced both times. As a result, a shadow of uncertainty regarding the rights of producers of sexually explicit content hung over decisions that ultimately affirm and prioritize concerns of property owners. These property owners consistently sought to prevent association of the iconic cheerleaders with the “wrong” sort of sex—that is, visible, nonprocreative, and bare-breasted. The rights to ownership of the uniform (as a trademarked sign of the cheerleaders) and to images of the uniform (in mass-produced, copyrighted posters) superseded those of secondary users, including the women whose bodies filled out the uniforms in the first place. In this respect, the effect if not necessarily the intent of these cases is to use property rights to regulate sexual expression. In both cases, “speech” that directly revealed the sexualized female body was treated as a threat to the economic interests of owners of supposedly wholesome images of clothed cheerleaders.

The antisex effect of these two rulings is not unprecedented. After all, American courts do routinely regulate sexual expression, as obscenity cases remind us. The First Amendment right to freedom of expression is not absolute and does not preclude all moral and aesthetic judgment. Historically, though, First Amendment rights in sexual expression have been weighed against questions of the “value” of the work, and refining the concept of “value” had been a major and difficult task in obscenity rulings in the twenty-odd years preceding the cheerleader cases. In *Roth v. United States* (1957), the Supreme Court ruled that an obscene work is by definition “utterly without redeeming social value.”¹¹ In *A Book Named “John Cleland’s Memoirs of a Woman of Pleasure” v. Attorney General of Massachusetts* (1966) (the *Fanny Hill* case), it applied a stricter standard—arguing that those seeking to establish a work’s obscenity must prove that it utterly lacks redeeming social value.¹² Finally, *Miller v. California* (1973) established the still applicable Miller test in which “community standards” regarding prurience, particularities of state law, and “serious literary, artistic, political, or scientific value” are all taken into consideration before a ruling on obscenity can be made.¹³ In this trio of landmark cases, U.S. courts were directly involved in making qualitative judgments about “value,” judgments in which expert testimony of literary scholars has been instrumental (especially in the *Fanny Hill* case of 1966 in which numerous English professors testified). In such decisions, the *form* of expression is understood to influence the *value* even when the content is explicitly sexual.¹⁴ In short, although courts frequently affirm a general desire to avoid qualitative judgment of disputed literary and artistic works, obscenity rulings demonstrate that U.S. courts do on occasion exceed their self-defined areas of expertise and entwine their decision making with evaluative judgments of literary and social value, especially when sexual expression is involved.

If First Amendment rights in sexual expression are not absolute and are legitimately value-laden in both aesthetic and moral senses, then one might seriously question whether the regulation of sexual expression that has occurred in copyright cases is in fact at odds with First Amendment rights. Certainly some legislators, notably Senator Orrin Hatch, a longtime chair of the Senate committee that oversees intellectual property legislation, sees the two areas of the law as working in concert. An influential proponent of tightening restrictions on potentially obscene material and a vigorous defendant of the economic rights of intellectual property owners, Hatch introduced the 2005 Family Entertainment and Copyright Act, a proposal that combined support for censorship of sexual content with anti–file sharing measures.¹⁵ Hatch’s bill revived positions taken in the later overturned Communications

Decency Act of 1996. In a provision later ruled excessively restrictive, this act used copyright to limit users' access to pornographic content on the Internet.¹⁶ Significantly, some feminist analysts agree with Hatch, arguing that rulings in favor of parodic fair use have tended to allow too much liberty to sexual expression that is degrading to women (for example, in *Campbell v. Acuff-Rose Music*, discussed in chapter 5); in this argument, a strong defense of copyright would encourage more equitable gender relations by limiting erotic parodies and thereby controlling sexual expression that demeans women.¹⁷ Whether or not property rights trump the First Amendment absolutely, proponents of the Hatch view assert that copyright can and should limit First Amendment rights to freedom of expression, at least when sexually explicit content is involved. Private copyright owners are good protectors of women's civil rights in this view, because concentrating control over the tangible expression of images of the sexual body prevents free circulation of potentially harmful images in a market that is not supervised by the secular state. Proponents of this position conclude that the property rights of private parties can and should be made dependent on their agreeing to regulate potentially obscene images of women. Reminiscent of Gaines's description in *Contested Culture* of a privatized economy of images, proponents of the Hatch position urge the outsourcing of censorship to private parties and the use of their economic rights as leverage for value-laden ends.

Others disagree with the fundamental premises of the Hatch proposal, however. A number of legal scholars have recently reinterpreted the cheerleader cases, arguing that the opposition between copyright and freedom of speech they assume needs particular reconsideration.¹⁸ Most notably, Jed Rubenfeld has contended that the "property intuition" expressed in the *Scoreboard* ruling is misplaced. Maintaining that property rights in intangibles differ from those in real property in that their violation makes people liable for the mere act of speaking (and thus directly conflicts with freedom of speech), while a violation of rights to tangible property that occurs in the process of the exercise of freedom of speech simply makes one liable for actions incidental to speech (trespassing during a political rally, for example), Rubenfeld asserts that copyright makes unreasonable degrees of private control over public speech possible because it interferes with access to the preconditions for speech. He concludes that the reach of copyright now exceeds its initial purpose (the prohibition of piracy), writing, "It is time to put copyright on trial" for its excessive restrictions on derivative works (4). While not centrally treating the question of sexual content, Rubenfeld's analysis aligns with those of Sonia Katyal and others who argue that copyright has the effect of

“silenc[ing] transgressive depictions of sexuality, sexual identity, and gender expression” (“Performance” 461).¹⁹ Exceeding its constitutional mandate to promote progress in the arts and sciences, Katyal argues, copyright has a chilling effect on sexual expression in particular because it has become entwined with moralizing approaches to content and gives responsibility for the regulation of content to private parties. For Rubinfeld, Katyal, and others, the alignment of copyright with obscenity rulings as limits to First Amendment freedom of speech is the problem, not a desirable outcome. They see copyright’s control of the tangible aspects of speech as wrongly limiting speech about the sexual body.

Whichever side one takes in this dispute (a dispute that largely mirrors feminist debates about pornography), certain fundamentals are evident. Both sides identify a recent elevation of economic rights relative to political rights; both recognize the clear role that judgments of value (both literary and moral) play in copyright cases; and both thus see a correspondence with obscenity judgments as typical, not exceptional, of copyright. Authoritative mainstream legal experts on both sides of the question thus in essence agree with Kathy Acker’s more rhetorically dramatic assertion that “in our society, nonprocreative sexuality, viewed as the road between the cities of the bodies and total chaos, is to be banished by the law” (*Bodies of Work* 36). For all parties considered here, sexual content—understood as embodied, feminine, pornographic, and commercially confusing—stands at the periphery of legitimate expression; it is controlled and dominated by the law because its “value” is in question while its subordination to property rights, especially copyright, is not.

Although it is not especially surprising that an intentionally scandalous post-punk writer such as Acker would advocate First Amendment freedoms in opposition to proprietary control over sexual expression (albeit in the special feminist sense explored below), it is perhaps somewhat more startling to see law professors adopting the same logic. How did this agreement come about? Do Acker and the law professors also share, one wonders, a vision of the consequences of delinking sex and copyright? How does each imagine a world lacking such provisions for control? The visions of law professors tend to emphasize administrative or bureaucratic solutions to current dilemmas, but what might we derive from Acker’s more visionary writing on the topic of uncopyrighted sex that would expand that set? These are the questions I take up now as I explore Acker’s own philosophy of literary property and her accompanying analysis of efforts to imagine an exterior to this relationship in *Pussy, King of the Pirates*.

ACKER'S PHILOSOPHY OF PROPERTY

In her numerous critical writings, Kathy Acker developed a consistent philosophy of property. Her criticism describes property as the social sign of sex, assesses its effects on women, and imagines worlds ungoverned by ownership. In the growing body of literary criticism on Acker's oeuvre, this philosophy of property is often treated allegorically (that is, as "really" being about patriarchy, psychology, or power in general). Acker's repeated discussions of property are rarely considered on their own terms or in relation to her well-documented practice of plagiarizing or appropriating from other writers. To fill this gap, I pull together the philosophy expressed piecemeal in Acker's critical writings. This philosophy establishes a framework within which one can interpret the ecstatically erotic practice of the last of Acker's novels published before her death in 1997—*Pussy, King of the Pirates* (1996). In that work, Acker's intense and long-standing concern with female embodiment becomes directly pertinent to her critique of intellectual property.

Acker consistently described literary property as the terrain of death, silence, and asexuality. A characteristically dense passage in her 1989 essay "A Few Notes on Two of My Books" introduces these themes: "Today a writer earns money or a living by selling copyright, ownership to words. We all do it, we writers, this scam, because we need to earn money, only most don't admit it's a scam. Nobody *really* owns nothing. Dead men don't fuck" (*Bodies of Work* 9–10; emphasis in original). Here, copyright is understood as a form of ownership deriving from economic necessity, not as a solution to an economic problem. Contrary to the incentive theory of authorship offered by market-based copyright scholars,²⁰ Acker does not describe copyright as a motive but rather as an unfortunate aftereffect of having written in a capitalist society. Writing comes first, and ownership second for Acker. Ownership is also, in this passage, "a scam"; it is the realm of double negatives and unreality. It lacks an authentic subject and an authentic object. It is an unreal relationship of "nobody" to "nothing." Property's scam involves pretending that ownership relies on figures that are actually invented by owning. The scam of ownership makes something out of "nothing." Writers as owners "don't admit" that this scam has occurred. This kind of scam, Acker elaborates, is a phallic scam—a scam that makes the "I/eye" a subject associated with a stable point of view, necessary for true writing. In Acker's logic, that phallic pun or scam misses the point. The point is that "if there is a self, it's probably the world. All is real" (10). "The world" here seems to mean a decentered physicality that does not require ownership or money and disallows distinctions between true and false.

This more primary, premarket, unowned, and “real” world is where Acker’s writing takes place. “The world” and “nothing” are both the space of Acker’s real writing, the space of what she calls “making.”

This contradictory world is also a sexual world, as the slogan “dead men don’t fuck” reminds us. Acker reiterates the tone of this somewhat startling non sequitur a few paragraphs later, asserting: “When I copy, I don’t ‘appropriate,’ I just do what gives me most pleasure: write. As the Gnostics put it, when two people fuck, the whole world fucks” (10). These passages both associate writing in the context of copyright with fucking. Death is nonfucking and therefore nonwriting, a denial of the magical reality of “the world.” Pleasure is what links fucking, the world, and writing together, making them all prior and exterior to ownership—here understood as copyright or “ownership to words.”

The compressed, syllogistic character of these passages, as well as the bluntness of these three- or four-word declarative statements (“all is real,” “dead men don’t fuck”), underscore their foundational status. Because these ideas about the exteriority of sex, writing, the world, and a nonphallic “nothingness” to property relationships are so crucial, Acker returns to them in many other pieces. She repeatedly asserts the exteriority of sexualized physicality to the law, describing it as a chaotic, prohibited zone. For instance, in a review of Nayland Blake’s work, she asserts that “in the society of law, dream, sexuality, fantasy, imagination, and art live outside the Logos.... In our society, nonprocreative sexuality, viewed as the road between the cities of the body and those of chaos, is to be banished by the law” (35–36). To be “banished” in this sense is not only to exist “outside,” but also to be pushed outside by the law, and in this respect this passage is as illuminating for Acker’s views of the force of the law as it is for her views of sexuality (the ally of dream, fantasy, imagination, and art). Acker imagines the law as having its own map of roads and cities, a map that artists disassemble as they magically transform the real.

On the maps used by Nayland Blake and Richard Prince, according to Acker, “society...is governed by the Law” and “women are only chattel” or horrifying baby-makers (57, 58). Acker pointedly reveals the repetition and abstraction of sex in the works of other artists. She pays special attention to moments when “sex has turned into signs of sex and these signs, then, have separated from meaning; they just repeat,” and she links the empty sexual sign to a world in which women are nothing (57). She reads works that inhabit and exaggerate that world, that expose its contradictions, as part of the “struggle against patriarchy,” a struggle to demonstrate the deadly effects of domination (60). In Richard Prince’s work, in particular, she identifies an opposition to

the treatment of women as chattel; a world that owns women is one that kills off the vitality of the living artwork for Acker. Vital sex occurs only outside a world in which women are owned. By implication, then, a world of free women's sexual expression is doubly alien to property.

Acker returns to this theme in her reading of the Marquis de Sade's *Philosophy of the Bedroom*; "the Law is not patriarchal because it denies the existence, even the power, of women: after all every King has His Queen. The Law is patriarchal because it denies the bodies, the sexualities of women," she asserts (78–79). Law (including the law of property) banishes or exteriorizes "the sexualities of women," and this is the source of its dominating and deadening character for Acker. Like Prince and Blake, Acker's Sade rages against patriarchy. These male experimentalists are heroes of her feminist philosophy precisely because they make the map of domination unavoidably vivid and political.

Acker understands experimental art as a companion to a feminist politics of sex. Because "men have used women's sexualities and sexual needs and desires in order to control women," "feminism cannot be about the denial of any female sexuality" (130). To fight sexism while denying a sexuality that desires men is a contradictory, frustrating situation for heterosexual women, in Acker's account. At the same time, if a feminist project of meeting one's sexual needs and desires places one in the control of men, then the result is surely paradoxical. This "sexual bind" is one of the major characteristics of the sexual politics of the present. There is no position fully outside of these contradictions because the desires of men and women for each other and for themselves are shaped by the Law. Because "the Law does not recognize anything other than itself"—including the desires that it controls and shapes—"the fight against the patriarchal sexist society is the fight against the refusal to allow contradiction, difference, otherness" (59). To fight sexism—surely the feminist project—is to allow and even revel in this kind of contradiction, including the sexual double bind. For men and women, as Acker imagines them, sexuality is *really* exterior to law, but this exteriority is expressed only in its contradictory negation or banishment from the scam-produced subjects we experience as if they were real. The unowned sexuality of women is evident only if one travels toward it by way of the terrain of patriarchal ownership of signs and words.

In other words, Acker sees writing as having a crucial role to play in the fight against a patriarchal and proprietary society; it helps to make this contradictory world visible. Writing becomes the zone of possibility where these unmanageable negative conditions can flicker into view. Writing is freedom and "making"—an act, not a neutral expression of content.²¹ Writing does

something; it takes sides; it is political. Writing is “the only possible chance for change, for mobility, for political, economic, and moral flow,” and in a situation “in which ownership is becoming more and more set,” it can be a crime (5). This crime is often a sex crime: “if acts of the anus, when sexual, are crimes, so are acts of the mouth, expressions, that refer to sex and sexuality” (83). Embodied writing—associated with the freedom, worldliness, and unowned nothingness of the physical, sexual, and feminine—is Acker’s weapon in her version of guerilla warfare against the patriarchal law.

On the horizon of Acker’s battle, the figure of “Eurydice, whose name means ‘wide justice,’” sometimes appears (64). She is “doubly unable-to-be-seen” in Acker’s account of the writing of Samuel Delany, a double negation that figures a utopian sexuality (64). With Eurydice, dreams, the language of orgasm, and the figure of a mother understood as separate from the self—all of these become versions of the “interior space” or “free space” she requires to write; they are all versions of another justice.²² Writing emerges from that free, interior, female space, a space that is both “wide” and “unable-to-be-seen.” As an act of making and a guerrilla action against the known world of patriarchy, writing involves the production of that impossible space. A contradictory space, organized by double binds, includes the contradictory project of conjuring the living form into existence from within the dead zone of property and the law. This project is possible only because the space of writing is not itself dead, even though it can be difficult to access. A sexualized interior space of writing is for Acker the necessarily paradoxical exterior to the law.

A number of critics have followed Acker’s lead in describing her approach to the writing of interior space in her fiction as heading toward the recovery of an affirmative female myth; that is, they have divided her career into phases. First comes an early period of methodological exploration, characterized by agonistic accounts of patriarchal domination.²³ This is followed by a middle period characterized by more selective appropriations and a more clearly critical and theoretical project of retooling avant-garde practices for feminist ends, as well as a preoccupation with sadomasochism.²⁴ This, for some critics, inherently self-destructive practice leads to later and relatively more utopian work committed to a more conventional representation of feminine/lesbian/postgender sexuality as exterior space. In her late writings, they find a more specific, embodied language of the body in figures of intensity, excrement, orgasm, and headlessness.²⁵ This ecstatic phase is followed by the mostly posthumously published works that meditate on Acker’s own illness (breast cancer), medical treatment, and process of dying—works that soberly evaluate the expressive potential of the body in general.²⁶

This narrative arc both illuminates and obscures the shape of Acker's career. On one hand, it draws attention to some of the shifts in her literary techniques—her movement away from a quasi-realist exposé and Irigarayan mimicry of male texts and toward a more celebratory, if still “disgusting” and “shocking,” language of the body derived from immediate, personal, and purportedly unvoiced experience.²⁷ This narrative also is very helpful in tracing the shifts in Acker's theoretical preoccupations—especially the move from an early engagement with French surrealism to a later and deeper investment in post-Freudian feminists, as well as Gilles Deleuze, Georges Bataille, and their American interpreters. As Christopher Kocela and a few others point out, Acker's study of contemporary French theory was significant.

On the other hand, the established critical narrative, with its individualist focus, obscures the fact that Acker's career was also colored by debates and trends within the American academy (for example, the rise to stardom of Judith Butler) and by Acker's position in history. Read more symptomatically, Acker's writing turns from a Marcusean/hippie-ish vision of liberation in the 1970s to Reagan-era despair and then prophecies of the post-Cold War politics of terror. More specifically, Acker can be understood during the 1980s as exposing the dead zones of the market, while glorying temporarily during the post-Cold War 1990s in a kind of left-wing exhilaration at the prospects released by the end of ideology.²⁸ When the world system closed down around the conflict between the West and Islam and the politics of terror, however, as Acker predicted many years earlier, the more clearly tangible question of woman and social control over her sexual identity and expression became central, and Acker's career closes on an anguished note as she reflects on fundamentalist backlash.²⁹ Acker's career builds, in this second critical narrative, from a preoccupation with the figure of the dominated girl out to the less gender-specific and more rebelliously coalitional and transnational pirate. In so doing, her writing participates in an important contemporary conversation about identity and ideology in literature.³⁰

My view is that we can best approach Acker's writing by reading together her preoccupation with the body and her wrestling with ideologies of the law and the state. To do so, we must unite an account of her own literary piracies with her investment in the myth of the pirate. My reading will attempt to join the act and its meaning by exploring the relationship between Acker's two most common figures: the girl dominated and reduced to nothing by patriarchy and the pirate pillaging and exploding the text. In so doing, I follow the logic of Acker's philosophy of property—a logic that stresses the double bind, the contradictions, and the mobility of the female subject at the edges of literary

property. I find inspiration for this reading in “Dead Doll Humility,” Acker’s brilliant 1990 description of the “method by which political power is transformed into social or personal relationships.”

“Dead Doll Humility” begins with Harold Robbins’s publisher threatening to sue Acker for appropriating approximately four pages of his 1974 best seller *The Pirate* in her early work *The Adult Life of Toulouse Lautrec* by *Henri Toulouse Lautrec* (1975). Acker’s double-voiced essay provides a relatively direct and linear account of negotiations with her publisher and lawyer, stressing the humiliation resulting from their efforts to force her to apologize for her writing. This episode is embedded, however, within a framing story about a mythic creator of dolls—“a writer doll,” a “feminist publisher doll,” “a doll who was a journalist,” and so on. The “real” story of “Dead Doll Humility” is the imaginary one—the story of how “an artist who makes dolls...makes, damages, transforms, smashes.” The artist is imagined in this piece as a kind of frustrated puppet master dealing with ritualistically tangible materials—“horse mane hair, rat fur, dirty human hair, pussy,” “chewing gum, half-dried flecks of nail polish, and bits of her own body,” and “because she had just gotten her period...her blood.” When the dolls act up and produce a “dead life,” the artist who “was a romantic” and whose “dolls were romantics too” affirms the importance of the spirit. “They can’t kill the spirit” is the final line of the piece, a line offering an essential affirmation of creativity as an antidote to the humiliating, deadly confrontation with Robbins’s lawyers. The artist’s Romanticism, in other words, stands opposed to the empty death-in-life of the copyright logic that protects a genre author’s formulaic prior novel about piracy from a highly eccentric and original avant-garde writer’s literary piracy/appropriation. In “Dead Doll Humility,” a Romantic spirit stages the confrontations of these dead dolls with each other and with the law. Only a dead Romanticism follows the logic of the law.

In both the Harold Robbins episode of the more linear narrative and the quotation from Jesse Helms’s attempt to prohibit “obscene or indecent materials” invoked in the frame narrative, creative work using the hair and blood of female physicality sets the artist outside the law. The two registers of the law (prohibitions of obscenity and infringement) fuse together as the uber-antagonist, much as the two phases of Acker’s career merge. The act of explaining her 1970s project during the early 1990s synchronically unites Acker’s career, mirroring the silly atemporality of a lawsuit asserting retroactive damage to Robbins some twenty years after Acker’s piracy of *The Pirate*.

In short, in “Dead Doll Humility,” we see Acker in the process of narrating the creation of a linear narrative about the girl who pirates stories of pirates,

a creation story that itself adopts the point of view of a mythic/Romantic/voodoo goddess (named or misnamed CAPITOL). This mythic standpoint is crucial to Acker's sexual philosophy of literary property because it is from this perspective that we see most clearly the interdependence of the humiliated girl and the disruptive pirate. They converge in the "writer doll," who herself is both an effect and instrument of capitol/capital. Each aspect of "Dead Doll Humility" explores this Moebian mobility, beginning with "the personal interiorization of the practice of humiliation [that] is called humility." Acker turns that inner space, the supposedly personal quality of humility, inside out to become the "political reality" of "any society based on class." This process of perpetually traveling the road between girl and pirate, myth and narrative, interior and exterior, is also fundamental to Acker's most explicitly utopian novel, *Pussy, King of the Pirates*.

THE OBSCENE, UNOWNED BODY IN
PUSSY, KING OF THE PIRATES

Pussy, King of the Pirates makes power, pirates, and female anatomy central concerns. The novel's organization and narrative line reveal Acker's radically obscene logic of girl piracy and mark a territory at the periphery of ownership. Throughout this mobile and unpredictable text, Acker modulates the relationship of girl to pirate while continuing to invest in tangibility.

Pussy uses several overlapping systems of organization. The contents lists three sections—a preface and two sections with titles that suggest a temporal transition: "In the Days of Dreaming" and "In the Days of the Pirates." However, the move from "Dreaming" (the activity of girls/whores in the novel) to "Pirates" is really a shift from an activity to a subject, both of which have days. That coalescing of a subject makes up the actual movement of the novel. The internal organization of each section provides a counterpoint to this major theme. "In the Days of Dreaming," for example, has two subsections; the first of these—"O and Ange"—has two sub-subsections, the first of which is broken down twice more, and the first of those sub-sub-subsections contains three "whore-songs." The exaggerated logical hierarchy of this outline creates an interesting dissonance with the strong emphasis on lateral flow and continuity of voices, as it were, in Acker's writing. The confusing, even hysterical hyperspatial transformations characteristic of her writing make orientation difficult because figure and ground so often morph into one another, but this groundlessness contrasts completely with the highly patterned logical structure of the book. Readers bearing both registers in mind will not find their way so much as

remain attuned to the simultaneity of logical and temporal transitions. Close readers discover that Acker's novelistic world in *Pussy* is organized around a dialectic of time and logic, rather than time and space. Space—especially the interior/exterior space of female bodies—is the unstable ground on/in which this book takes place. To chart that space, the book moves both horizontally, as it were, from girl to pirate as well as vertically through layers of narrative self-consciousness.

To get a more specific sense of this double movement, we can begin with the preface, a particularly concentrated twenty-three-page passage. Located by its subtitle, "Once Upon a Time, Not Long Ago, O . . .," in a narrative time outside history, the preface brings its two central figures, O and Artaud, out of a situation of entrapment and constraint to "the edge of a new world" (23). Its sources include André Malraux's 1933 novel of the nationalist revolution in Shanghai, *Man's Fate*, and the biographies of Antonin Artaud, Gerard de Nerval, and other French avant-garde poets and artists. These launch a convoluted heterosexual love story that expresses Acker's views on the entanglement of love and possession. The impoverished Artaud wants to become an owner and is certain that the object of his affection, the whore O, "would belong to" him (13). O, however, is infatuated with W, who in turn worships a rich and beautiful girlfriend; according to O, "she [W's beloved] was one of those owners. She was somebody" while O was "nobody," a zombie, a criminal who "worships her cunt" (14, 9, 23). For his part, fascinated with death and revolution, Artaud declares that "*I, Antonin Artaud, am now an owner, for I own the language of suicide*" (emphasis in original) and uses his ownership to purchase O's freedom before being killed by W. For O, this death leads to the conclusion that "there were no more men left in the world" (23). In a sense, this negation liberates O from her own nothingness and begins her journey.

At the thematic level, then, several styles of ownership, love, and embodiment are invoked in the opening of Acker's novel. Ownership of wealth and language come into conversation with each other, at the same time that a story of love as the loss (through sale) of oneself is welded to a story of love as liberation (through purchase) of the beloved. Each statement meets its inverse. The revolutionary death of Nerval (who "*made all that was interior in him exterior . . . this is what I call revolution*" [20, emphasis in original]) is set against the nullifying death of Artaud, and so on. In the preface, Acker builds up a series of unstable oppositions in this double couple structure, rotating the terms among the players and intentionally conflating different kinds of ownership, love, and death. Finally, a desire to find a more solid embodied

ground propels O out of this narrative of entrapment and into the “new world” of the rest of the book.

The logic of entrapment and release, opposition and transposition, also occurs at the level of the form. The preface is narrated, like much of the novel, by a series of paired voices. In his sections, Artaud speaks, writes, or revises letters; while in hers, O “speaks” but does not write. Significantly, Artaud speaks of O’s inner life, attributing her with a desire for “a man to take care of her” (3), while O speaks more routinely in an ideological language that identifies “*the male regime*, in the territory named *women’s bodies*” (8, emphasis in original). Their stories and voices are neither incompatible nor identical; they are not reconciled by a narrator or isolated within self-contained characters. They overlap, although they operate in different registers. For example, O’s speeches continue Artaud’s quasi-Freudian account of her desire for father figures but also delve into intense sexual imagery excluded by the Freudian version and scandalous to it. The two voices also share certain images—menstrual blood, the Hanged Man, the absent father, the insane mother, jewels and treasure—that will recur throughout the novel. For O, though, the Hanged Man is a Tarot card, a sign of prophecy and revelation of her self (“the cards showed me clearly that I hated my father” [10]), while for Artaud, the Hanged Man card represents “the slight possibility that this society in which human identity depends on possessing rather than on being possessed, that this society in which I’m living, could change” (16). With these alternating voices, Acker introduces a vital element of her work—the movement back and forth between contradictory but not contrary positions. The man and the woman speak on the same topics, using the same signs, against the same law, but they are not in the end themselves the same. Repeated travel across the terrain of that difference launches the novel.

Crossing (or, in the dated critical language of the 1980s and 1990s, “transgressing”) the threshold is also crucial for Acker’s depiction of the law. The father is the primary sign of the law for Acker, so it is particularly interesting to see how she builds up the story of O, who “never had a father” (1). Although by the end of the novel, the father has been reduced to a mere sign, the “boner” of a dead pirate whose penis points toward treasure, O is initially, according to Artaud, fixated on the dead father. She enlists a private eye to help her find the father. He tells her that her father’s name is Oli, that he killed her mother, and that he “was from Iowa and of Danish blood” (4). In this short patriarchal origin story (one replaced by more gynocentric and sexual, but equally violent, myths later in the novel), Acker links the theme of a patriarchal and vengeful law to piracy.

As Acker explained in a 1993 reading in San Francisco, the Oli passage introduces some autobiographical themes that were expressed in the first person in an earlier draft—especially the quest for a biological father who left the mother before the daughter’s birth. Rather than employing the confessional voice typical of autobiography, however, the passage conveys these themes through appropriations from the text and film adaptations of Ernest Hemingway’s story “The Killers.” In the Hemingway original, Nick Adams warns the Swede Ole that several men are lying in wait for him, but Ole goes stoically and voluntarily to face his death. Acker, however, makes Oli/Ole the killer; she inverts Hemingway’s story of heroic masculine passivity by adding Oli to the novel’s long series of associations with the letter O. This chain links Hemingway to Pauline Réage’s *Story of O*, ostracism, Oedipus, Jell-O, and many other accumulated connotations.³¹ Although Artaud asserts that the father’s name means nothing, in a novel whose heroine is “nobody,” that assertion is a virtual guarantee of its significance. The name of the father makes the novel’s form and content inseparable. The father, “who was equivalent to *evil*, was successfully stealing or appropriating,” and his story is itself appropriated or stolen from the story of a character (Nick Adams) with a domineering father who does not in fact appear in this story (5). The content of Acker/Artaud/O/Hemingway’s story dissolves into the means by which it is told; the story of an absence (the lost father) requires the tangibility of the text by which that absence is expressed.

The story of O’s origin as a lost girl is already owned, appropriated, and adapted; it begins in other texts. In short, Acker’s novel begins not only with the thematic movement of star-crossed lovers but also with a story told by means of a vertical movement into layers of adaptations of the story of the violent father. Her preface engages in dialectically organized literary piracy in order to reproduce and evacuate the story of the father’s theft—in order to christen O, daughter of Oli, and send her sailing into her “new world.”

This dense sedimentation of figure, theme, narrative line, voice, and source material continues in the body of *Pussy*. Indeed, the rest of the novel might be deduced from the preface. This first section contains not only the father as “owner of Death, of the cathouse,” but also the mother whose body provides her with a treasure—a prediction of O and her partner Ange’s later discovery of the key to the box containing a treasure map on the mother’s body (10). The preface also foresees O’s journey “on a pirate ship” and a “future [that] is freedom” (10). While to some extent this holographic logic is conventional, in the context of Acker’s investment in interior/exterior space and transformative geographies, it also reinforces at the level of the novel’s organization her larger

concern for continuity as opposed to a progressive and linear shift from one state to another. In Acker's preface, the girl O already contains and speaks as a pirate, and the Artaud/father/pirate already tells the story of O.

In the next section of the novel, "In the Days of Dreaming," the transition from girl to pirate begins in earnest. We learn the story of the novel's most enduring couple, O and Ange, and explore the possibility that a world without men allows for the development of another sort of girl. The section is set primarily in a whorehouse in Alexandria, the "center of all prostitution," and a literary site strongly recalling not only Acker's own earlier writings on North Africa, but also those of William S. Burroughs, Lawrence Durrell, Paul Bowles, Arthur Rimbaud, and other male avant-gardists—authors who were such important models for Acker in part for their exploration of other sexes and genders (28).³² O joins other whores, all of whom bear names affiliating them with the avant-garde: for example, Rilke's Louise Vanaen de Voringhem and Alban Berg's Lulu. The whores become deeply involved in the masturbatory exploration of their own bodies and stop servicing their male clients. Here, Acker reproduces many passages (apparently directly from her own notebooks) of writing recorded during the act of masturbation, passages that build up, among other things, a geography of sensation: "When I came, the spasms traveled all the way down the funnel, to its bottom, where there was an opening. Then or there, everything disappeared; the world or everything became more sexual" (33). This labyrinthine vaginal space is replete with sensation and is invisible, impossible, disappearing. It is inhabited by animals (weasels, cats, bears, crabs), and it generates language because of its windy emptiness:

Finally free of johns, the whores, now alone, spewed out bits of ink, words in ink, sexual or filthy words, words that were formed by the scars and wounds, especially those of sexual abuse, those out of childhood. All the women bore their wounds as childhoods. Therefore, words apocalyptic and apostrophic, punctuations only as disjunctions, disjunctions or cuts into the different parts of the body or of the world, everything priced and priced until, finally, all the numbers disappeared and were displaced by the winds:

Ventre, vente, vent. (36)

In volatile symbolic passages like this one, Acker uses the embodied language of scars and wounds that several critics have associated with French feminist *l'écriture féminine* and an effort to recover feminine pleasure from agony.³³ Acker's whores are involved here in a deep exploration and recovery from girlhood, understood as a realm of sexual abuse, and this exploration of their

cuts and scars travels through the economic pricing of their world until it disappears, evaporates into the vente (sale)/vent (wind). While the whorehouse of the preface was a space O entered and exited frequently, transgressing the boundaries of the father and the property relation, the second Alexandrine brothel is closed and allows O to revel in interior space. Rather than resulting in the death of the beloved, the Alexandria section explores an intensive masturbatory domain that begins, over time, to shift into oceanic mobility. It passes through abuse and economy into a liberatory emptiness.

In the same vein, in the second of her whore-songs, O begins to imagine “sailors, who’re pirates, [who] journey into nonexistence or *the world of the unfurling rose*” (37, emphasis in original). The world of girls calls forth from its own emptied interior space the pirates, and once they are imagined into existence, the pirates and their affiliates (the punk boys and Artaud) reappear. After the entry of these external figures, the third whore-song expresses O’s ambivalence about a world of girls alone—telling stories of sexual anxiety, fear of display of menstrual blood, the persistence of a “victim” self-concept, and desire for “this sexuality that she had known when she was a whore” (51).

These songs are crucial to Acker’s logic of girl piracy. Although a number of critics have described *Pussy* as a work that explores something like a lesbian separatist world,³⁴ in this passage, as in her many appropriations, Acker establishes her lack of interest in a difference feminism organized around closure and separation. Here, as elsewhere, the “pirate” fantasy remains attached for Acker to versions of heroic masculinity.³⁵ After all, like O at the end of the preface, the punk boys are also posed “at the edges of a new world” (41), and they, too, are critics of private property, despite their limited approach to the problems of language. O remains entangled, even in her dreams, in social definitions of girls as victims and whores. In the second half of “The Days of Dreaming,” the tales provided by pirate boys encourage O and Ange to begin their journey from Alexandria to Europe. Acker’s pirates may emerge out of a female inner space, but they bring with them a literary booty that retains some desirable masculine codes. They are not separatists; they aim instead to access a polysexual, postgendered universe.

For instance, O and Ange tell each other new origin stories that they have lifted from the punk boys. When “Ange finished the story she had gotten from the boys,” she observes, “I want to be like that” (56). O and Ange move through a landscape that “resembled sets of Dario Argento movies,” and when they arrive at the mother’s body, the site of the treasure map, they are guided past “her fair Atlantick Navell” by lines from John Donne’s “Love’s Progress” (61). Throughout this journey, O takes courage from “a North African writer’s

words" (63). Something like Le Guin's Shevek, O and Ange acquire their map and become the subjects of girl-pirate lust in a landscape mined by another tradition. Their map is even accompanied by a manuscript narrated "in our scummy pirate language"; this manuscript tells the story of a boy who "isn't into possessions" and whose love for a girl leads him to rotate "at such a speed that what limbs there are, then the other parts of her body, fall off" (71).³⁶ This headless body that is all "cunt" opens a door to a new world. It still matters, though, that the literally revolutionary story of the cunt is the boy's story and told in the language of scum (sperm). The girl's story figuratively and tangibly in its expression derives from that of the pirate boys, and this contradiction is foregrounded in the novel.

Finally, the pirate origin story, one retold in several forms throughout the remainder of the novel, replaces the paradox of the killer-father with the boy's quest for a return to a body without limbs and organs, a body that is all cunt and allows a continual, feminine coming. O transitions from girl/victim/whore to pirate but not one-directionally. Instead, she navigates between one degraded condition (of the pleasure of nothingness) and another, a "scummy" and linguistically incomplete preowned world of boys conjured into existence by whore-girls. In this respect, *Pussy* continues the logic that Acker reports herself as having discovered when, as a child, she concluded that "I could never be a pirate because I was a girl"; this statement appears in the same essay in which Acker asserts "one must be a pirate" ("Seeing Gender," in *Bodies of Work* 159). There seem to be three options available here: (1) one must stop being a girl in order to become a pirate; (2) one must make a new kind of girl, one that can also be a pirate; or (3) one can negate both categories simultaneously by becoming a girl pirate.³⁷ These permutations of the girl-pirate dilemma organize the third section of Acker's novel.

The stories of the three "pirate girls," King Pussy, Ostracism, and Antigone, make up half of Acker's novel. Their transformation from "girls" into "pirate girls" provides the climax of the novel. Like the three whore-songs of "The Days of Dreaming," the stories of their girl-to-pirate transformations overlap considerably while also suggesting a logical progression. For example, each story uses the phrase "the bottom of the world" to signal its conclusion; when each girl arrives at the bottom, she begins to enter the zone of pirates. Each girl also has similar encounters with medicine, motorcycles, sexual violence, and shopping, and for each the entry into the pirate world involves a transition from isolation to friendship or collectivity. Despite all these commonalities and their shared sources in pulp fiction, though, the three stories take different routes toward girl piracy.

Of the three, King Pussy's story is the most affirmative with respect to boys and their writing. Alternating initially between passages that use the conventions of literary realism and those retold "The Way I Say It," Pussy's story begins with an abortion and street encounters in a dangerous urban center. Preferring Maya Angelou to Angela Davis, Pussy emphasizes the importance of identifying with literary rather than ideological heroes. The story soon begins, however, to tell everything in her own only quasi-literary language; Pussy's story describes the escape from the suffocating mother's house, an unbearable space in which housebreaking (a crime against property) is identified with rape (a crime against the person). Only by identifying the thieves hysterically figured as rapists does Pussy become something other than a dominated girl. Living with a boy and discovering a world of non-Hollywood movies, paintings that "were no longer on canvas, but were comic books, books hung on the walls," allows her "entrances into wonder...geographical wonders of the world known only to sailors" (96). Pussy's escape to the bottom where she "met the punk boys" and entered the zone of pirates happens by means of identification with "the motherfucker—that's what men were in those days before the pirates again came" (90). The next phase of her development allows her to tell the story of that identification in her own language—that is, without eradicating the self in crisis and without editing out the so-called obscene language of the statement. This marks her entrance into girl piracy. For Pussy, one becomes a pirate by ceasing to be a girl, leaving behind the mother's version of the anxious maiden protecting her chastity (a self fused with the mother) from violation by the motherfucker.

For Ostracism, however, the story is different. As her name suggests, exteriority presents a different issue in Ostracism's narrative. Her story is built more obviously out of appropriated materials—from J. Sheridan Le Fanu's cult fiction about lesbian vampires, *Carmilla*, to the mashed-up story of Robert Frost and *Wuthering Heights*. Ostracism's story also adopts the classic porn cliché of the girl's boarding school. Pussy enters that world accompanied by repeated visions of pirates, pirates who "aren't always either male or female" (112), and Ostracism dreams that girls' bodies change into pirate bodies, acquiring a "pirate penis" (114).³⁸ For Ostracism, the story of Robert Frost's fatherly prohibition against girlhood lesbianism results in repeated gender mix-ups—imagining herself a boy, for example—and intense anxiety about being "bad at sex" (149). Her narrative of transformation, becoming a new kind of girl so that she can join Pussy in piracy, takes Ostracism to the witch Circe, but Circe's potions (made from a bag of beans and a pig's cheek in plastic) do not cure her. After this hippie-ish detour, Ostracism's narrative culminates in an awakening, an entry

into the space “where girls become pirates” (163). The trigger for this awakening is the recapture of conventionally pornographic images of her sexuality. In a funny set piece, after learning that her Dutch publisher will distribute copies of her books featuring eroticized images of the author, Ostracism wails, “How can I allow myself to be seen by the public as the lowest porn trash and slut currently alive?” (162). The answer is to organize a group of girlfriends to penetrate “the labyrinth of books” and “stamp in big, bold, black letters: ΔΥΚΕ” (162). That is, in Ostracism’s story, it is not King Pussy’s identification with the punk boys and escape to an exterior, underground art world that leads to piracy, but rather the transformation of an objectified “porn trash” girl into ΔΥΚΕ that opens her door to piracy. Entry into hidden space and a relabeling of the contents of that space allow “girls [to] become pirates.”

Antigone, however, does not become a boy pirate or change what it is to be a girl. She uses another logic. Addressing herself to the unduly limited consumer options represented by “autumn color,” “huge, chenille sweaters,” she asserts:

I refuse.
I will be ____ instead.
____ is something impossible.
I’ll be a girl pirate. (177)

In Antigone’s syllogism, the blank, empty space of impossibility matters. Neither Pussy’s kingship nor Ostracism’s dykedom contains quite so open-ended an option. Antigone’s narrative incorporates both—beginning as it does in a lesbian beach festival that morphs into Pussy’s downtown performance art scene. Antigone’s narrative does not synthesize the two preceding narratives of becoming-pirate. It moves rapidly through them, and after appropriating another porn cliché—the women’s prison—it moves abruptly to “Brighton... the bottom of the world,” arriving finally at the Bald Head Pub, the hangout of girl pirates. In Antigone’s narrative, at the bottom, at the “bald,” blank site, we once again meet the punk boys, and “the punk boys told us what it is to be a pirate. We joined up with them. It was only now that we were able to make up the rules of piracy” (204).

Out of Antigone’s self-negating struggle with her father Creon, then, something new is created: the child of Slut Girl and Punk Boy, elephant-headed Ganesh. In the most fully elaborated origin story of the novel, half-human half-beast Ganesh joins fat Ratski, who “lives inside the interstices of the world” (208), in the creation of “the Identity of All Those Who Undertake the Acts of Infiltrations of Piracy” (207). These animal signs bring Antigone’s inclusive,

mobile, restless story to the end of the long transition from girl to pirate. In Antigone's narrative, one does not leave the girl behind or contain her within an entirely girl world. Instead, Antigone's zone of impossibility creates space for something other than purely male or female by crossing over into the world of the inhuman. On Antigone's map (reproduced on page 191, as a visualization of a conversation with Bad Dog), the world of "bad friends" is her space, and it lies beyond the boundaries of both the visible and the market. Antigone's space is a "bad," negative, animal space that retools the erotic, masturbatory geography of the Alexandrine section. When the girls become pirate girls, their entire landscape turns pornographic. They walk out onto the stolen map and crisscross its boundaries freely as well as the boundaries between self and other, animal and human. This obscene world is as close as they come to a world without property.

In the last third of *Pussy*, the imagery conveys the texture of this eroticized, obscene, and tangible world. Abandoning the multilayered appropriations of earlier sections for an extended pastiche from Robert Louis Stevenson's *Treasure Island*, the novel describes the pirate girls' exchange of letters, a Bristol location, specific pirates (especially the treacherous Silver, Acker's version of Long John Silver), and a mutinous quest for treasure that all draw on Stevenson.³⁹ However, Acker's appropriation foregrounds gender—for example, by insistently (but not consistently) referring to the pirates from Stevenson's all-boy cast as "girls" and ecstatically expounding that "those who were the most drunk were so heavily tattooed I thought I was in a museum of girls lit, no longer by unnatural light but by the sun that, lighting up all the waters at the end of the day, reveals the roads that lead to buried treasure" (217). The pirates' "museum of girls" makes for an erotic, exciting, sunlit spectacle when the hackneyed Victorian classic is viewed through a downtown sensibility and Bristol is reached by way of the Lower East Side.⁴⁰ From this vantage point, the pirates themselves appear obscenely girlish, as does their world—a world in which piers are compared to tampon strings and classic shanties get new verses: "Two girls lost on a dead man's chest," and so on. Once *Pussy* arrives in the world of the pirates, in short, we do not leave behind the language of girls; the world itself is described with an amalgam of girl and pirate images. This amalgam necessitates the excitement about the rats, dogs, and cats that infest all pirate bodies.

The "post-human world" through which these pirate girls crawl in the final portion of the novel—a world of "continual ecstasy," a "new world" that "maybe, in the future [O] would get used to be in"—is animate, odiferous, and wild (259, 251, 250). In contrast to other sections of the novel, these portions

include multiple and intense descriptions of nature—from marshes full of bricks of soil and “fallen birds’ wings” (247) to “a bunch of nature that was rotten by nature ‘cause nature naturally rots” (253). From specific observations to more self-parodying and surrealist descriptions of “really hideous crabs who were Martians in disguise” (253), the pirate island not only brings the treasure map to life, it also brings the bodies of the pirate girls to life. They roll and revel in this erotic terrain—a land where “those two paths that had opened when the world had begun were now touching each other. Two paths each split into two. Burning. Turning around each other” (251). To the extent that the cave to which these burning, turning paths head is the cunt (the treasure to which the dead pirate’s boner points in Acker’s memorable joke), the girl pirates’ island is a female body, and exploring its vile, smelly, soggy, rolling terrain is an exploration of the pirate girl’s physical self.

On the island, the pirates relinquish treasure in order to ensure the continuation of the reign of girl piracy, but O and Ange resist full incorporation into their gender-bending pirate utopia. They run away with as much money as they can. Nonetheless, both groups awaken to their obscene, shared physicality in the cave and on the island. Although the girl pirate alliance breaks down, all parties have shared the project of walking out onto the magical places represented on the treasure map, and all have penetrated to the treasure in the cave. This entry into the cave (not departure from it, as Plato’s allegory would have it) triggers enlightenment in *Pussy*.

In this respect, Acker’s exposure of the cave/cunt space ultimately affirms obscenity as the common ground of the girl pirate of the future. Inhabiting the world of the cave means, in the final phrase of Acker’s novel, inhabiting a teetering zone of possibility/impossibility between “the two, the white and the black, stones” (276). This, then, is what the girl pirates represent—a median zone where property and its opposite (nothingness) give way to the woods. For Acker, “the woods” is the name for a process of continual motion, revolution, and navigation: “Once the treasure was found, the insides would turn and turn and never stop that. On the other hand, each set of turnings would become more violent and calmer. The woods will be the name of all this” (272). Unlike both the guarded, urban space of the Chinese whorehouse and the enclosed masturbatory intensity of the Alexandrine brothel, the woods externalizes a kind of antiproprietary commons understood and recovered in Acker’s novel as obscenely feminine. In “the woods”—that is, outside, out-of-doors—“insides would turn and turn,” producing a revolutionary, revelatory space. This contradictory cycle of violence and calm might be compared to seasonal change.

In Acker's insistently post-human, contaminated, and abused world, however, any cloying and ideologically suspect associations between woman and nature are stalled. "The woods" here equates not to the idealized trope of the Natural Woman, but rather to an intentionally cruder, stranger, more eroticized "pussy." It is pussy/the woods that is outside the law. For Acker, pussy is tangible, touchable, inhabitable—in a word, obscenely hyperevident and "real." Acker's novel closes, then, with her strongest alternative to the figure with which our consideration of her philosophy of property began—the "scam" of copyright. Instead of the double or triple negations of claiming ownership to words that, like "nothing," really belong to "nobody," Acker offers the woods where the strong contrary is true. Out of a proprietary world in which "dead men don't fuck," she builds a rolling, revolving terrain in which living women certainly do.

THE TANGIBLE COMMONS

Pussy, King of the Pirates is a complex, dense novel, full, no doubt, of more literary appropriations than those identified here. Hopefully, though, this discussion sufficiently demonstrates that this novel's exploration of the figures of the girl pirate is not merely figurative. My aim has been to show how, in *Pussy*, Acker moves from abused, victimized, anxious girls dreaming of pirates to the story of chaotic, rebellious, dirty, violent pirates dreaming of girls using both her own literary piracy and a continual externalization of inner space as tools for that transition. By planting her girl-pirate hybrids in an exposed exterior and erotic world, Acker insists on the priority and expansiveness of the unowned, mutable qualities of nature. This essentially philosophical commitment to immanence (over the fantasy of transcendence evident in patriarchal property and the law) provides, for Acker, a direct link to the tangibility of the text. Because copying is tangibly the same act as writing, she can assert the identity of the two acts. Their common ground is physical pleasure, the same kind of pleasure involved, for Acker, in sex.⁴¹ Tangibility joins writing and sex as acts of liberation, just as the text's tangibility creates the possibility of scandal for both copyright and antiobscenity laws. By glorying in the tangible—from the sensations of the body to the sound and shape of stolen words—Acker pulls those different sorts of tangibility into conversation with one another on a single ontological plane, thus disturbing their conventional and legal segregation into the incongruent categories of form and content.

In short, Kathy Acker's writing displays an enduring interest in the physical aspects of the human body and the text. This physicality begins as a gendered problem but evolves into a hypothetically postgendered embodiment that

estranges our familiarity with a world where movement is difficult without money, bodies are not universally healthy, love does not come to the lonely, and anxiety about one's age, desirability, sexual prowess, and menstrual blood is common. Acker's exterior space is not a wish-fulfillment utopia depicting pure desire; it is not that far out, so to speak. What her writing reveals instead is how much farther than many legal commentators one might go when imagining alternatives to proprietary treatments of images of women's bodies. Acker's writing exposes the timidity of legal remedies that retain or strengthen prohibitions on sexual expression in the name of feminism. For Acker, because sex and sexuality are key zones of women's oppression (and not only women's), genuine movement toward the distributive justice desired by Sonia Katyal and other legal experts cited at the beginning of this chapter would require more of Eurydice's wide justice. Justice requires a risky entry into the oceanic zone of no property.

Acker's exploration of the wild zones linking different sorts of tangibility outside what she sees as the patriarchal logic of the law suggests the potential relevance of her work for investigations of conflicts between copyright and freedom of expression. If one of the fundamental sources of conflicts between economic and political rights is the tangibility of the text, then developing a deeper and more precise vocabulary for tangibility seems essential. At present, in U.S. law, in addition to involving both an idea and an expression, representations of sexual bodies confuse legally necessary distinctions between form and content. Sexual expression is treated both as an economically valuable subject and as a source of intense anxiety over "value" or its lack. Courts sometimes rule that sexual content negates the protections due the form and vice versa; sex is categorically unstable. This instability makes the categories of copyright law more difficult to handle because copyright relies on the premise that paraphrase is always possible. For proponents of the irrelevance of copyright to First Amendment issues, copyright does not interfere with freedom of speech because other words are always available; the expression can be changed independent of the idea and irrespective of the idea. Tangible and intangible elements of the work are not linked. When, however, idea and expression are closely identified (as in literary expression), and when the "idea" in question concerns socially regulated aspects of physicality (for example, sexuality), the logical foundations of copyright arguably become shaky.⁴² Artistic works with erotic content are thus overdetermined problems, as Acker's writing demonstrates. Her work explores some of the hardest cases for copyright and intentionally brings erotic and proprietary elements into conflict. By zooming in on the disruptive character of a literary market in tangible expressions of the sexual

body, Acker exposes the different registers of physicality regulated by the law and attempts to reconnect them in her vision of a free, exterior space.

Although Acker's wild writing and literary experiments with a post-human, fully sexualized world seem unlikely to reorient expert legal discussions any more than do those of any other literary figure,⁴³ her challenging writings certainly encourage those who take the trouble to study them to bring to their discussions more vivid ways of imagining territories of writing that are neither obscene nor owned. For interested parties at the edge of copyright reform, they might suggest that a language of the commons may need spicing up, intensification—may need more Maya Angelou and less Angela Davis, in Acker's language. In the end, perhaps Acker's greatest contribution to such discussions is that, without renouncing by any means the project of ideological commitment to a postgendered equality and critique of the massive inequities perpetuated in the name of property, she in effect fuses the rational project of ideology with the more vigorous and wilder task of embodying a new pirate world.

TRANSRACIAL PARODY

2 Live Crew Meets Leslie Marmon Silko

In *Gardens in the Dunes* (1999), Leslie Marmon Silko joins other feminists investigating the meaning of nature, culture, and property for American women. Her historical novel describes women's roles in the movement of plants and stories throughout the New World. While condemning imperialist biopiracy, however, Silko employs forms of parody defined by the highest U.S. court as a legitimate form of literary piracy. Parody becomes crucial to Silko's refusal of any discourse of racial or sexual purity.

The stance on parody so crucial for Silko was codified in *Campbell v. Acuff-Rose Music* (1994), a landmark Supreme Court ruling that also hinged in part on differing interpretations of femininity.¹ The case involved a rap song authored by the Miami-based group 2 Live Crew and distributed under the title "Pretty Woman" in 1989. This song parodies lyrical and musical elements of the Roy Orbison ballad "Oh, Pretty Woman." 2 Live Crew's version uses the same first line as the Orbison song but then veers away—for example by addressing a "big hairy woman," "bald-headed woman," and "two-timing woman." While Orbison's song expresses a romantic longing for a distant feminine ideal (an ideal made ironic by its association with prostitution, as we see more clearly in the later film *Pretty Woman* starring Julia Roberts), the 2 Live Crew rap does not. Commentators have described the rap group's views of women as misogynist and/or satirical. Either way, the song's sentiments differ from the straight-laced pathos of Orbison's verses. These issues of tone and implication were vital for the parody ruling. The lower courts established the facts of the content, composition, attribution, and market for the two songs, but the Supreme Court's decision finally rested on whether or not 2 Live Crew's "Pretty Woman" offered critical commentary on Orbison's ideal of femininity.

The initial suit and appeal suggested the critical character of 2 Live Crew's version. During the composition process, the group had requested a license from Acuff-Rose Music, the assignee of rights to the Orbison song. After being denied permission to produce a new version, 2 Live Crew recorded their song anyhow, recognizing Orbison and his coauthor in their liner notes. They deposited a compulsory licensing fee and were subsequently sued for copyright infringement. The lower court ruled that the 2 Live Crew version of "Pretty Woman" indisputably copied lyrics and musical elements from the original. They accepted that it might be a parody but denied the parody a fair use exemption from infringement penalty on the ground that it was a commercial work.² They also suggested that the parody copied more from Orbison than was necessary to conjure up the original.

However, the Supreme Court decision, written by Justice David Souter, held that the lower court had mistakenly overemphasized the commercial nature of the parody. Furthermore, asserting that all parodies necessarily copy their targets, it bounced the responsibility for deciding whether this parody in particular involved excessive copying back to lower courts. The Supreme Court presented an influential definition of parody and reaffirmed its commitment to excluding questions of aesthetics or moral judgment from copyright cases.

Campbell v. Acuff-Rose Music defines parody as "the use of some elements of a prior author's composition to create a new one that, at least in part, comments on that author's works" (510 U.S. 569). As even this loose definition suggests and as Justice Anthony Kennedy's supporting opinion confirms, not all parodies are protected by fair use exemptions. Decisions as to the fairness of particular parodies must be made on a case-by-case basis, since any individual parody may shade off into satire by taking general social tendencies, rather than a particular work, as its target. The definitive element of parody, then, is not its critical or humorous edge, but rather its targeting of a specific text from which it borrows "some elements" to "comment[] on that author's works."

The *Campbell* decision also asserted that "whether, going beyond that, parody is in good taste or bad does not and should not matter to fair use" (510 U.S. 569). A parody does not have to be high art, nor does it have to be funny. A legitimate parody does not have to be aesthetically pleasing or refrain from vulgarity. According to the Supreme Court, in order to qualify as a fair parody exempt from some copyright restrictions, a work simply needs to target another specific work for commentary or criticism.

In the specific instance of the 2 Live Crew song, however, the explicitly sexual content and racialized performance style reintroduced questions of taste and the nature of the work's commentary. The Court asserted that

while we might not assign a high rank to the parodic element here, we think it fair to say that 2 Live Crew's song reasonably could be perceived as commenting on the original or criticizing it, to some degree. 2 Live Crew juxtaposes the romantic musings of a man whose fantasy comes true, with degrading taunts, a bawdy demand for sex, and a sigh of relief from paternal responsibility. The later words can be taken as a comment on the naivete of the original of an earlier day, as a rejection of its sentiment that ignores the ugliness of street life and the debasement that it signifies. (510 U.S. 569)

Here, the Court makes its distaste for the 2 Live Crew parody palpable (it is not of "a high rank") while recognizing that the song nonetheless comments on the "naivete of the original of an earlier day." The decision refers to the "ugliness of street life and the debasement that it signifies" to designate the critical content of the parody.

Ironically, this explicitly aesthetic and moral language appears in a passage asserting the irrelevance of questions of taste for legal purposes. The Court interprets the 2 Live Crew parody as offering critical commentary because it reads the rap song as reproducing an essentially middle-class suburban judgment on the supposed ugliness and "debasement" of an entire urban milieu. When the song's voice shifts from the "white bread original" to a bawdy, downtown player, the Court hears a legitimate commentary—although one that seems to have little to do with 2 Live Crew. In an affidavit submitted to the appeals court, radio personality Oscar Brand summarized the group's aesthetic this way: "this anti-establishment singing group is trying to show how bland and banal the Orbison song seems to them. It's just one of many examples of their derisive approach to 'white-centered' popular music" (quoted in 972 F.2d 1429).

Notably absent from the Supreme Court's discussion of parodic commentary as well as from the subsequent discussion of market interference is any recognition, like Brand's, of the effect of race. Although quoting the *Norton/Grove Concise Encyclopedia of Music's* definition of rap as "a 'style of black American popular music'" (510 U.S. 569), the decision does not refer anywhere else to the pronounced racial segregation of styles and audiences in U.S. popular music. It ignores the strong association of hip-hop with urban African Americans and the almost exclusively white audience for country-rock ballads like Orbison's. The Court could not have been unaware of this market division, since it played a significant role in the earlier rulings; at least one of the amicus curiae briefs makes this point as well.³ Furthermore, only three

years earlier, 2 Live Crew had been involved in a sequence of widely reported obscenity disputes that highlighted racial performance.

During these disputes, the well-known scholar of African American literature and culture Henry Louis Gates Jr. gave widely publicized expert witness testimony asserting that the group's particular style of bawdy parody represented a characteristically African American form of signifying. Gates also testified that the group's notorious "misogyny" was actually an exaggerated parody of the enduring myth of the oversexed black male. In this testimony and elsewhere, the musicians' witnesses, lyrics, and lawyers explicitly and repeatedly linked 2 Live Crew's sound to a purportedly racially specific version of parody. This effort makes the Supreme Court's interpretation surprising, since the court assumed the social degradation, not the emboldened self-assertion, of a black male narrative voice. Instead of recognizing the edge that a racialized performance style or diction might add to parodic commentary, the Court imported a language reminiscent of white patronage, decrying degradation supposedly produced by nondomestic sexual ethics in African American communities. Furthermore, it did so in a passage claiming its neutrality on questions of aesthetics and taste.

In short, in *Campbell v. Acuff-Rose Music* the Supreme Court maintained a classically liberal "race-blind" account of parody as fair use within a marketplace of ideas. In this case, race-blind logic protected an arguably race-specific aesthetic of parody. However, not infrequently, the shoe fits the opposite foot, and a right to parody or another form of fair use is claimed by the dominant group at the expense of a less economically and politically enfranchised population with a distinct culture. This has occurred in a number of disputes involving Native Americans.

Because questions of cultural survival are paramount for Native American groups, appropriations of indigenous people's symbols, stories, and artifacts have been very controversial. Following the passage of the Native American Graves Protection and Repatriation Act of 1990, an act that establishes new rights to repatriation of tangible artifacts, activists and scholars working on behalf of Native American groups have argued for a collective communal copyright. These advocates explicitly refuse the logic of free-market liberalism and the primacy of individual rights built into the dominant culture's views of property. Appealing in part to literary studies, legal scholars such as Rebecca Tsosie have articulated a need for group rights that will control cultural expression, defend against noneconomic harms resulting from appropriation, and protect Native American cultural sovereignty. "I am therefore advocating limited rights to control cultural expression in order to avoid certain tangible

group harms,” Tsosie writes (357).⁴ In an effort to contravene a history of cultural appropriation and domination, Tsosie and other Native American activists have rejiggered copyright.

Similar assertions of collective copyright appear in UNESCO conventions on intangible cultural heritage and cultural diversity. Although the United States is not at present a signatory, the energetic support of these conventions by many nations around the world suggests the international appeal of extending property rights to entire cultural traditions.⁵ In the United States, however, even moderate calls for limited special rights for group subjects have generated major opposition. While few dispute the necessity of ensuring the cultural survival of indigenous peoples, some argue that areas of law other than copyright are better suited to this purpose.⁶ Observers also question the benefits of extending an essentially commercial and proprietary logic further into indigenous societies and recommend nonlegal means of conflict resolution.⁷

Despite this lack of consensus, assertions of indigenous people’s collective copyright have found their way into U.S. courts. In *Who Owns Native Culture?*, an informative overview of intellectual property questions facing indigenous peoples in the United States and Australia, anthropologist Michael Brown discusses several interesting cases in which indigenous groups criticized works of scholarship and museum displays related to their cultures.⁸ These disputes often pit white professionals (anthropologists, museum curators, and photographers, for example) against Native Americans. The same assertion of a collective right to culture, however, also appeared in a 2003 dispute between the Me-Wuk tribe of California and Apache artist Lorenzo Baca when Baca videotaped and sold, without tribal permission, recordings of a religious ceremony.⁹ Although the Me-Wuk case, like many copyright disputes, was settled out of court, it points to the reality of a problem some scholars had anticipated—the possibility that a communitarian approach to group rights might restrict in-group creativity.¹⁰ In this line of thinking, a protectionist approach to intellectual property rights can backfire. As critics of the expedient use of culture recognize,¹¹ using existing American intellectual property law to codify practices and membership in indigenous cultures could endanger the future growth of the very cultures activists hope to nurture.

In short, both sides of existing copyright arguments are being used to defend minority cultural practices. Strong assertions of property rights in culture and assertions of the need for limits to property rights are both part of contemporary discussions of cultural appropriation. In any particular dispute, the challenge is to recognize the force of the cases for both positions and to balance their competing claims without resorting to an artificially abstract,

supposedly race-blind and a-contextual analysis. As the Supreme Court and the authors of several amicus briefs have recognized, this means that literary critics have a role to play in formulating copyright norms.¹² Our task is to evaluate the aesthetic purpose and social effect of borrowing as well to analyze the extraeconomic factors in play in assertions of a right to culture—those factors not necessarily granted place of pride in the law.

Literary critics also need to be prepared to engage in this discussion because the creative artists whose works we study reflect regularly on cultural appropriation. As preceding chapters demonstrate, other contemporary American women writers working in a variety of styles and genres display a definite interest in copyright, especially as it intersects with changing norms of maternity, community, and physicality. In the writings of the celebrated author Leslie Marmon Silko, all of these concerns come together—particularly in *Gardens in the Dunes*. This novel directly addresses theft of indigenous peoples' cultural property, traditional knowledge, children, plants, and land. It excoriates appropriation while also recognizing the syncretic absorption of foreign material into native culture and figuring a revolutionary form of theft as necessary to the restoration of justice. In its content, Silko's novel takes a middle position between those who romanticize authentic, static tradition and those who celebrate the unregulated flux and flow of appropriation. An examination of the multilayered themes and parodic texture of Silko's writing reveals her commitment in *Gardens in the Dunes* to a nonproprietary, communal, and distinctly feminine sharing of cultural resources. Her novel suggests ways of thinking about appropriation and cultural survival that do not rely on contemporary forms of Anglo-American property rights. Silko uses respectful, transracial parody to orient her novel toward a revolutionary and future-oriented commons.

THEFT AND BIOPIRACY

In Silko's novel theft initially means biopiracy (the export or commercial exploitation of native species without the permission of people who have traditionally used them). One of several father figures in a novel strongly oriented toward maternity, the biopirate Edward Palmer is not a particularly sympathetic character. He first appears in the context of a tropical storm and a disastrous loss of supplies. After several miscommunications and complicated business deals, he later arrives at the first of several sites of upper-middle-class white domesticity described in the novel—his family's home in a citrus grove in Riverside, California. In anticipation of Edward's return, the cook prepared

his favorite foods, but his new bride, Hattie, “did not care for the heavy flavor of lamb, and the odor of mincemeat pie had repelled her since the one bite she took when she was eleven” (85). Edward, in short, introduces distasteful sensations and is redolent of an unsettled natural and financial exterior.

Edward’s business, it turns out, is botanical smuggling. Before the main action begins, the novel flashes back to an orchid-collecting expedition he took on the Pará River in Brazil. This expedition is explicitly depicted as an effort to exploit botanical resources known to the native peoples of the region: Edward goes “to collect samples of local and regional agriculture” because “the natives might possess unknown medicinal plants with commercial potential or a new variety of citrus or a new source for rubber” (86). The novel does not withhold judgment on the activities described. In an ominous framing episode that takes place after “a recent uprising by half-castes and Indians who claimed to be guided by the Indian Virgin of Guadalupe against the state tax collectors,” Edward encounters a large woman with “a huge blue face...long tangled hair...[her] ample chest and arms all had been painted a bright blue that emphasized the woman’s Maya features” (86–87). Later identified as the Black Indian who controls storms in the sea, the Mayan woman refuses to sell Edward the meteorites that have temporarily attracted him, cursing him instead: “You cannot buy them,” she intones, “but you will pay” (88). The commercially motivated Edward is thus marked early in the novel as an antagonist to the syncretic, indigenous, and feminine forces of nature. Although he is no friend of tax collectors either, his scientific and capitalist wish to exploit the commercial potential of nature sets him at odds with this more impressive and far-seeing sort of rebel.

The way in which Edward “pays” on the Pará River expedition is revealed in Part Three. Reviewing his expedition notes while preparing for a lawsuit, Edward recalls the story they conceal—his “clandestine itinerary” (128). His mission was to corner the market on the *Laelia cinnabarina*, a rare orchid. Accompanied on his journey by an Englishman who had “smuggled seventy thousand rubber tree seeds past Brazilian customs offers to break Brazil’s monopoly of natural rubber” (129) and Mr. Eliot, a shady representative of his financial backers, Edward is quickly betrayed. He travels up the river where again, “Indians who did not cooperate [in the collection of wild orchids] were flogged or tortured, much as they were at the Brazilian and Colombian rubber stations,” but his own monopolistic plans are foiled when Eliot sets fire to the collection, destroying all the specimens and then abandoning a wounded Edward to the jungle (133). In the company of other smugglers and outlaws, Edward discovers a lack of honor among thieves and is rescued only by a

compassionate monkey. He nearly pays with his life and definitely loses his virility: after this episode, he nurses an unspecified Hemingwayesque wound that prohibits the consummation of his marriage. In Silko's narrative, Edward's biopiracy unmans him rather than launching an open-ended adventure filled with the wonder of discovery, as is conventional in exploration narratives from Alexander von Humboldt onward.

Silko does not permit the biopirate a learning curve, either. Having failed with orchids, Edward next decides to smuggle citrus cuttings from Corsica under the cover of a tourist trip to the region. Again, omens foretell his future humiliation and foreground the novel's extremely negative depiction of this form of theft. First, on a stopover in England, Edward, his wife, and Indigo, the Indian girl accompanying them, visit the excavation of the temple of Sulis Minerva, another syncretic goddess. At the temple, Edward buys souvenir objects he hopes to can sell at a profit in the United States: a druidical tin mask, a figure of Fortuna carved in agate, and several lead curse tablets. "Ugly and poisonous," the narrator informs us, "lead was the perfect vehicle for the curses crudely scratched on their surfaces before they were tossed in the sacred spring. The old Celts and the Romans believed sacred wells and sacred springs had the power to expose and punish thieves and cheaters. All that was necessary was to write out the person's name" (258). The specific curse that the impotent Edward finds on the tablet reads in part, "He shall be blind and childless so long as he shall live unless he returns"—the next word is illegible—"to the temple" (258). Although not reading his own name and theft in the space provided, Edward is figured as the cursed thief of cultural property even before his assault on the citrus groves of Corsica.

On the Mediterranean island, Edward's clearly ill-fated piracy again sets him at odds with the female deity. His theft occurs at precisely the same moment when Hattie, Indigo, and a host of townspeople witness the miraculous appearance of the Virgin Mary on the wall of a local building. When, on their return journey, Hattie tries to explain the significance of her experience, "Edward wisecrack[s] about 'religious hysteria'" and describes his new desire "to mine a meteor crater in Arizona" (320). He is blind to the apparition and deaf to reports of it, so it comes as no surprise when the customs officers arrest him for smuggling. Although this plot point is later explained by the historical context (elevated state security following an assassination), the more compelling narrative line suggests that Edward's downfall results from his disrespect for goddesses.

The third and final condemnation of Edward's thefts is the baldest. No longer satisfied with plants, the corrupted Edward joins a particularly unappealing Australian doctor (who, surely not coincidentally for a novel that is concerned

with the concentration of wealth, is named William Gates¹³) to invest in the Arizona mining project. Always a vile undertaking in a Silko novel, mining is here also represented as a threat to indigenous cultural integrity because the meteorite clearly has religious significance: “wrapped in the remains of a garment of feathers and cotton string was an iron meteorite. On one end of the iron were tiny stone beads once strung as a necklace, and nearby were two small pottery bowls. The doctor reached into one of the bowls and handed Edward a tiny pottery whistle in the shape of a bird.... The burial objects with the meteorite—the tiny stone bead necklace and the toy whistle—were intended for a child” (402–3). Bemused by a child-centered culture they don’t understand and dominated by their own instrumental scientific worldview, Edward and the doctor proceed with the excavation. They pay for this recklessness shortly thereafter when Edward falls ill with pneumonia and finally dies from the experimental treatments applied by Dr. Gates. In his dying vision, he looks up into the “sky blue” face of “the big Negress” who cursed him while Hattie exclaims against “that wretched Australian criminal” (427).

In short, the biopiracy plot of Silko’s novel closely shadows the themes that inform Carolyn Merchant’s influential history *The Death of Nature*, as well as the strain of the ecofeminist movement that has been inspired by it.¹⁴ *Gardens in the Dunes* opposes use-oriented, female-governed, local and syncretic precapitalist systems to a newly dominant instrumental, scientific capitalism with a global reach. The emergence of the scientific approach is figured as a crime—a rupture of existing law and a violation of a feminine natural order. Karen Waldron writes that the novel reveals a “joyous female earth energy” (198) and illustrates the superiority of a “transcendent communal and natural mind” over alienated and individualist ways of being in the world (180).¹⁵

Such purely affirmative ecofeminist readings are tempting, but they do not entirely do justice to Silko’s subtle consideration of problems concerning theft and property. The ominous downfall of unsympathetic Edward is only one of four major plot lines in the novel, and his is only the ugliest form of the widespread practice of theft. Other central characters also contemplate or undertake forms of illicit borrowing, and the novel figures their thefts far less hostilely than Edward’s financially motivated biopiracy.

Hattie, for instance, repeatedly meditates on the legitimacy of her desire to become a caretaker or even an adoptive mother to Indigo, the Indian girl. She distinguishes between her own maternal impulses and those of the “boarding school superintendent [who] was a criminal to hire out the Indian children at such a young age” (253) and continues to wonder whether “perhaps adoption would be best for Indigo” at the same time that she makes consistent efforts

to reunite the girl with her older sister (396). Hattie's desire to adopt involves a possible theft of Indigo's heritage; this association is literalized in the first section of the novel when white travelers attempt to steal baby Indigo. However well-intentioned, Hattie's desire to make the girl her own can never be entirely innocent because it occurs in a context of violent and systematic disruption of Native American families.¹⁶ Hattie's potentially self-liberating desire to adopt has as a precondition the disappearance of Indigo's birth mother during a soldier's raid. Rather than making Hattie the moral equivalent of Edward, however, the novel allows her "theft" of Indigo for the duration of the journey to Long Island, England, and Corsica to be merely temporary. Hattie ultimately becomes a force for cosmic retribution (or "modernist arson," as one critic calls it), setting fire to the town where she became the robbed rather than the robber.¹⁷ Unlike the incorrigible Edward, Hattie moves, over the course of the novel, from being a virtuous Catholic studying at the Harvard Divinity School to becoming a goddess-worshipping heretic dressed in a native woman's blue gingham. Hattie's theft is neither actual nor inevitable. In fact, thefts of her most precious possessions (the Celtic goddess images) convert Hattie from potential thief into victim and avenger.

A set of even less compromised images of appropriation coalesces around Indigo. Although she is frequently treated as property by others, in the baby theft scene at the outset and later in the boarding school, Indigo "steals" herself, running away from the school and into the lives of Hattie and Edward. At that point, Indigo reenters a gift economy, receiving bread and jam from Hattie and fruit, vegetables, and water from their pet monkey, Linnaeus. From Edward's point of view, Indigo transgresses boundaries—"the little Indian had opened the cage to take the monkey's food and water"—but from Indigo's point of view, she has followed a practice affirmed in her upbringing (105). She has shared Linnaeus's food just as she and Sister Salt and Grandma Fleet shared the eagle's kill, the pack rat's seeds, and the coyote's fresh meat. Because she is taking what is offered and what she needs to survive, while still leaving more than enough for others, Indigo is not figured as a thief in the same sense that Edward was or Hattie might be.

Silko compares forms of theft even more directly when Indigo gathers seeds. In contrast to Edward's secret clippings and monkey-assisted orchid collection, Indigo gathers seeds openly and under her own power. With gifts from her European hostesses, she also begins to keep a notebook of drawings and information about the seeds she collects. Indigo's collecting is not figured as biopiracy but rather as a continuation of traditional knowledge and a precondition for one of the most utopian images of the novel. In the final

scenes, after Indigo is reunited with Sister Salt, they plant her assorted seeds, including the specially prized corms of hybrid black gladioli.¹⁸ After a string of apocalyptic events—floodwaters rising, neighbors threatening the outlaw women, gardens being torn up by rebellious animals—the sisters return to the titular “old gardens,” a site of matriarchal tradition and relative plenitude. In celebration of their return, they make a stew from the gladiolus spud. “Those gladiolus weren’t only beautiful; they were tasty!” is one of the final revelations of the novel (476). This observation accompanies Indigo’s earlier insight, upon seeing a familiar yellow squash on her dinner plate in Italy, that “seeds must be among the greatest travelers of all!” (291). Indigo’s cultivation of a lovely new food crop comes as a fair exchange for the prior gift of squash to the Old World. In Indigo’s plot line, utility, free circulation, and gifts all make the mobility of seeds desirable. *Gardens in the Dunes* does not ultimately valorize local isolation or assert hostility to nonnative or invasive species. Botany is not a one-note allegory for colonialism in Silko’s novel, despite the clear violations of natural order figured in Edward’s plot. Instead, knowledge of nature is disorderly, feminine, and traditional but also inherently border crossing and utopian. Not all transport is theft and not all theft is criminal, because not all borders are proprietary in *Gardens in the Dunes*.

REVOLUTIONARY THEFT

In *Gardens in the Dunes*, theft can even be celebrated. In addition to using theft to represent domination and violation, Silko makes it a revolutionary means of redressing injustices, small and large. This usage ensures that her novel cannot be read simply as a condemnation of “cultural appropriation,” as Tsosie and others have defined it—that is, as a condemnation that necessarily entails support for exclusive and proprietary collective control over culture as a remedy. In interviews, Silko has repeatedly opposed cultural sovereignty arguments and asserted her belief that “the old time people were way less racist and talked way less about lines and excluding than now. . . . And if being yourself gets you into trouble, which it did, if being so inclusive and welcoming of strangers didn’t turn out well, the old prophecies tell us that it still doesn’t matter, and it’s all going to be okay. That’s the only way that it can be, including everybody” (Arnold 172). Describing “old time” tradition as inherently cosmopolitan and syncretic, Silko’s novel continues that legacy and embraces appropriation in its explicit content as well as its form.

This hospitable syncretism is especially evident in Sister Salt’s plot line.¹⁹ A member of the fictional Sand Lizard group, Sister Salt muses on the openness

of a matrilineal society: “Sand Lizard mothers gave birth to Sand Lizard babies no matter which man they lay with; the Sand Lizard mother’s body changed everything to Sand Lizard inside her” (202). Her sexual ethic is not possessive (“Why should she care if Candy had sex with other women—especially the Chemehuevi twins, because they were best friends” [219]), and her views of lineage emphasize action over heredity: after she becomes pregnant, she is confident that “the baby would become more and more like Big Candy until it was his child. That was what sex during pregnancy did” (220). Actions not origins, pleasure not puritanical restrictions, intimacy not purity of bloodlines—these are Sister Salt’s priorities, and in the course of the novel, these are attributed to “old time” traditions of the Sand Lizards and actually existing groups, such as the Chemehuevi. A rejection of property in persons and an absorptive logic of culture are affirmed in the older sister’s plot line.

Sister Salt’s passages contrast sharply with at least two less inclusive scenes of ownership—those involving the white police and churchgoing Indians. After Sister Salt and her friends in the Indian school decide to start their own laundry business, the school superintendent “ordered Sister Salt and her accomplices arrested for petty theft” because they used school soap in their enterprise (211). The same incident is mentioned again when the girls’ native neighbors threaten them: “They’d heard about the twins and their Sand Lizard pal going to jail in Yuma for stealing soap, so they better not steal anything else either” (401). Inspired by a possessive sexual ethic, the churchgoers speak in the voice of the school superintendent. Their use of property language betrays their affinity with the policing efforts of the invaders, and it recalls the racist fantasies of other Christians in the novel: “The churchgoers said don’t get near the black men or your babies will be born with monkey tails” (208–9). By this point in the novel, however, “monkey” means the life-saving, trickster Linneaus; the churchgoers’ efforts to protect an intangible racial legacy seems ridiculous. It is rejected even more resoundingly when Sister Salt becomes involved with Big Candy, a “mountainous man” and creative cook (210). Himself a descendent of African slaves and a “Baton Rouge Indian” (209), Big Candy’s name and occupation evoke the utopian Cockayne of the Wobblie favorite “Big Rock Candy Mountain.”²⁰ This association orients Sister Salt’s antiproperty impulse toward a tradition of domestic political radicalism and sharply distinguishes it from a Christian-supported, racist discourse of property in persons.

Nonetheless, Sister Salt’s theft is “petty,” and she and other sympathetic characters hoard gold, burying it in secret stashes around the camp. Although the Chemehuevi twins wisely buy land, in the matrilineal tradition, from their aunt, Sister Salt and Big Candy become the victims of the novel’s most auda-

scious and specifically described theft. This challenging act is perpetrated by a “small dark woman” with “a dark purple scar from the middle of her forehead down the bridge of her nose to her chin,” the woman who “introduced herself as Delena,” although “just the way she said the name told Sister Salt it was not her real name” (343–44).²¹ Appearing in Part Eight of the novel, immediately after one of Edward’s scandalous theft, the figure of Delena suggests an alternative path through the terrain of property, a path that ultimately heads south, by way of Tucson, into the Sonoran Desert—a path explored in detail in the border-crossing plot of Silko’s previous novel, *Almanac of the Dead* (1991).

Sister Salt first meets Delena through her pack of black dogs. These dogs recall the “Black Indian and her black dogs [who] combed the beaches after big storms to collect the gold and other valuables from shipwrecks” (89); these figures are magical scavengers exhibiting a strong and mysterious life force. Unlike the Black Indian, however, Delena wears a disguise intentionally. Her true name is withheld, and she first appears sewing costumes for herself and her dog circus. Delena is also described as being ethnically under cover, as it were. She tells fortunes with “Gypsy cards” and engages in a form of deceptive indirection associated in the novel with the Gypsies who raised her as a child. “Gypsy” becomes in this context a sign of anticommercial deception: “Sister Salt remembered . . . the Gypsies came in groups, always friendly and smiling, and tried to sell charms and trinkets to the storekeepers while their companions picked up merchandise, admired it, and asked questions all at once to confuse the store clerks while they walked out with items and food hidden in their shirts and under their skirts” (355). Delena borrows these Gypsy tactics of self-presentation as well as forms of divination that nervous observers call “witchcraft”; her appearance is itself an appropriation that facilitates theft.

In composing these passages, Silko has followed conventions that recur in many representations of Gypsy (or Romany) peoples. According to Katie Trumpener, three features typify Western European stories of encounters with the Roma: (1) containment of the episode in a set piece, (2) a pseudoethnographic conflation of literary and historical elements, and (3) a decelerated temporality that ultimately unmasks the character of Gypsy as a projection of Western imagination. These common features all appear in Silko’s account of Delena’s carefully orchestrated theft of the construction workers’ money; Silko skillfully adapts them to her own purposes, much as the Delena character uses the Gypsy disguise for revolutionary aims—namely, to purchase guns for the Yaqui resistance movement.

The set piece begins in the first section of Part Nine when the dog circus arrives at the camp. This scene moves in a linear fashion and is narrated from

a third-person point of view—in contrast, say, to the limited viewpoint that Indigo’s consciousness offers in the Ghost Dance passages. In the dog circus passage, the emphasis falls on the spectacle of the costumed dogs as they leap through hoops, catch gourds, and ultimately tear apart “a strange doll almost two feet tall, made of white canvas, with a long beard of white horsehair and a matching wig topped by a paper hat painted with stripes of red, white, and blue” (382). This swarming and staged attack on Uncle Sam releases resentful energy, and a brawl breaks out between the construction workers and soldiers who have gathered for the circus. Under the cover of this brawl and the resulting fire, the crippled mother dog escapes with the buried gold. This theft is not portrayed directly; only lingering paw prints reveal the action once Delena and the dogs have disappeared in the chaos.

In this scene, the pace of description intentionally drags, especially when Delena dances around the circus ring with the effigy. Attention is directed to the staging of the event, the lantern shadows and rehearsed cues, as well as the costumes. When the theft is finally revealed, the reader’s discovery of both the artificiality of the Gypsy disguise and its association with the historically extant Yaqui gunrunners is nearly immediate.²² In short, the dog circus scene makes theft spectacular, historical, and dramatic simultaneously. It fuses together theft of money and cultural appropriation—in this case, the Yaqui smuggler’s appropriation of representations of Gypsies as thieves. This complicated affirmative appropriation counterbalances the negative depictions of cross-border biopiracy, affiliating Delena’s actions instead with the openly scandalous inclusiveness of the Sand Lizard sexual ethic. Silko’s pseudo-Gypsy brings a politically positive theft closer to the flagrant parodic excesses of 2 Live Crew than to the desire for cultural sovereignty and tribal control over representation articulated by Tsosie.

The novel tilts even further toward syncretic parody when Delena tells fortunes. Using both the Gypsy and the Mexican decks of Tarot cards, Delena reads the future for Sister Salt, the Chemehuevi twins, and herself several times. Silko provides extensive description of the symbolism of the cards and the *dichos*, or sayings, inscribed on them, as well as the significance of the pattern in which the ten cards are laid. Like the ten parts of the novel, each card in a reading has several interpretive possibilities. For example, Delena reads Sister Salt’s fortune: “The healthy Fish swam upside down, and even used this ability to escape trouble. This card, said Sister, would come out on top, after greed was punished. The fourth picture was a Scale on its side, which Sister did not recognize; Delena explained the Scale’s connection with justice; on its side, the image of the Scale meant you must keep your balance to survive. These

pictures formed by the cards touched one another, which meant all these things were to happen about the same time, not far in the future” (356).

The two women read the cards together. Sister Salt grasps the meaning of the upside down Fish, but Delena explains the sideways Scales and their relation to justice. Both readers contribute to the cards’ significance, and the meaning of any individual card varies. The image and saying inscribed on each card are reinterpreted depending on the interlocutor, the nature of recent events, and the position of the cards relative to one another. When “the cards touched one another,” for instance, additional inferences were drawn.

The flexible, situation-specific, and esoteric system of Tarot interpretation is so crucial to the novel’s metafictional themes that it is soon repeated. The “Gypsy cards” described above employ Western European symbols, such as the scales of justice, and apparently derive from an eighteenth-century European interest in the occult.²³ Delena uses these and also the so-called Mexican cards, or *Taotl*. Historically, the Mexican deck was divided into Aztec and Spanish suits and included a number of symbols derived from Mayan glyphs as well; it is a concrete instance of appropriative syncretism. Delena’s reading of cards from this deck concludes with a *dicho* that mentions “‘the hand of the criminal,’ though luckily it was reversed, which meant the criminal hand was hers!” (363)—thus underscoring the way the syncretic system of interpretation figured by the cards explicitly affirms her project of theft. Ultimately, the Tarot system is her most important nonpossession. When Delena later feels her death from thirst is imminent, she undresses and places her clothes and shoes “on the money pile, next to the decks of cards,” because “this was all she possessed except her last breath and her body.” She freely relinquishes these possessions: “Take it all, she told the sky” (422). The cards are provisionally hers but can and should be released back into a natural cycle upon death. Tellingly, when Delena is restored to life by the rain, she finds all the Mexican cards, “but not even one of the Gypsy cards” (442). The syncretic system that she uses for herself, the deck of cards that names her own “criminal hand,” is retained, and she sheds the borrowed disguise of the Gypsy.

If the Tarot cards represent appropriation and a nonexclusive, nonproprietary system of creating meaning, then Delena is an author figure. Within its ten parts, the novel repeats Tarot-like symbols—the monkey, the parrot, the stone, the snake, and the garden, for example. The Tarot scenes also recall the syncretic logic of the Ghost Dances that bookend the novel.

In the Ghost Dance, as Silko presents it in *Gardens in the Dunes*, religious cross-fertilization regenerates indigenous culture and restores balance. Violent theft and destruction of land and, in Indigo’s and Sister Salt’s cases, loss of

the mother have disturbed the natural order, and as a result floods and fires plague the world of the novel. Into this unstable climate come the teachings of Wovoka, the Paiute prophet. He describes “great winds [that] would roar out of clear skies, winds the likes of which were never seen before; the winds [that], for weeks without end, would blow away all the topsoil and strip the trees of all leaves. The winds [that] would dry up all the white people and all the Indians who followed the white man’s ways” (23). The people flock to the Ghost Dance to hear these prophecies but also to see Jesus and the Holy Family and renew contact with personal ancestors. Painting themselves white and wearing white shawls, Indian and white Mormon dancers drag their feet to stay in touch with the earth, and a peaceful snow falls on them. Silko’s description of the Ghost Dance stresses the inclusion of participants of different races. They share one common, achievable project of cleansing the world of its contemporary problems and renewing it through a collective ritual that draws from both Christian and indigenous traditions.

In the first Ghost Dance scene, the Messiah and Holy Mother actually arrive, speaking a language that “all the dancers could understand . . . no matter what tribe they were from” (31). This pantribal vision comforts Indigo throughout her journey. The second and final Ghost Dance of the novel, however, is disrupted by the police before the Messiah appears; the prophecy of the cleansing wind is not completed, and visions of a peaceful and cosmopolitan Holy Mother are forestalled. Symbolic whiteness and the invocation of the wind do not bring an end to white domination on their own. They require the worldly force represented by the heavily coded thief Delena. Rising from the dust of the desert, Delena literalizes the power of the earth; she represents the wind called up at the beginning of the novel and released into the world in the final ceremony. The thief makes the Ghost Dance political: “Delena said they were lucky to have the storm winds do the work for them; in the south they had to do the fighting themselves” (354).

This political rather than spiritual/ethical treatment of theft brings the sustained meditation on the nature of justice, law, and criminality in *Gardens in the Dunes* to a close, presenting a concrete, institutional approach to the issues unlikely to be alien to a former law student, such as Silko.²⁴ The novel routinely describes crimes against the person (rape, assault, murder, abduction, abandonment of children or the wounded) as “criminal,” but many thefts of tangible or intangible property (soap, husbands, or cards, for instance) are treated much less seriously. Indeed, they are sometimes figured as non-crimes. Executors of the law—soldiers, police, and customs officers—are political enemies: “All police were the same,” Indigo reflects after Edward’s arrest; “they worked for

the devil, and the soldiers did too” (326). Theft has different meanings, but even the most serious instances (such as the blasphemous disturbance of the meteorite’s ceremonial grave) do not outweigh the novel’s commitment to affirmative appropriation. The content of *Gardens in the Dunes* demonstrates Silko’s cosmopolitan ethic. At the same time that she recognizes problems arising from the seizure of traditional knowledge, Silko makes a case for the revolutionary value of a counterappropriation that might serve, one day, to restore a utopian commons organized around sharing and reseeded to feed future generations.

PARODY IN *GARDENS IN THE DUNES*

In *Gardens in the Dunes*, Silko not only builds up an allegory for the appropriation of intellectual property, she also engages directly and positively with copyright questions in the novel’s form. Silko’s many embedded parodies demonstrate her participation in a tradition of celebratory and creative fair uses of copyrighted material. While recognizing the ethical force of claims to collective and perpetual ownership of culture, Silko undercuts any absolute versions of such claims by addressing them through parody.

Silko’s parody is readily apparent to literary critics, many of whom define this form more broadly than Justice Souter did in the 2 Live Crew decision. While the Supreme Court definition of parody is restricted to works that copy from an original in order to comment directly upon its style or content, literary critical definitions often distinguish less sharply between parody and neighboring forms such as satire. For example, Seymour Chatman in “Parody and Style” refines Gérard Genette’s four types of parody by adding three different variants on Genette’s fourth type—the category that verges closest to satire of general social norms not necessarily contained in any particular text. Significantly different from the legal standard for parody (which requires a maximum of new material), Chatman’s categories include “strict parody [which] imitates an original by substituting as *little* as possible”—for example, changing the meaning of the original by altering only a syllable or a single word (28, emphasis added). This minimalist type of parody is respectable from a literary critical point of view, although it would inevitably exceed standards of parodic fair use established in the courts.

Chatman’s discussion of “satiric pastiche” also dims the bright line distinction between parody and satire made in *Campbell v. Acuff-Rose Music*. He describes various reasons a parody might borrow from an original text that it does not target. Such indirect satires parody typical features of an original’s

overall style, features not necessarily evident in any specific passage, for the purpose of making a satirical point about the author's work, values as a whole, or both. With this example and others, Chatman demonstrates how literary definitions of parody differ from legal ones. They recognize larger amounts of legitimate copying and expand the concept of the parodic target from a specific set of words or phrases to more global elements of the style and content of a work.

Literary critical discussions of parody also routinely include considerations of transcultural or interethnic dialogue. While *Campbell* scrupulously avoids mention of race, literary critics have been extremely interested in intraracial and transracial parody. Gates's expert testimony in the 2 Live Crew obscenity case, for instance, reproduces in miniature the influential arguments he made in *The Signifying Monkey: A Theory of African-American Literary Criticism*, a landmark work arguing that "the black tradition is double-voiced." Gates takes the "trope of the Talking Book, of double-voiced texts that talk to other texts," as "the unifying metaphor" of his study (xxv). The figure of the monkey as a "double-voiced" and sometimes double-mouthed trickster, Gates argues, continues a tradition in African storytelling that involves calling up, inverting, ridiculing, adapting, and imitating the work of other texts. Inspired by the monkey, African American writing, for Gates, is by definition parodic. Following Gates's lead, hundreds of works of literary criticism have analyzed ethnic parody over the past decade, as a quick search of the bibliography of the Modern Language Association will indicate.

In short, when Leslie Marmon Silko uses parodic forms to stake out her relation to texts in Anglo-American literature and simultaneously to place herself in a tradition of minority writing, she undertakes a project that makes perfect sense in a literary critical context, although it may not always be legible in a legal one. Silko's writing practice links her novel to a tradition of ethnically and racially specific parodic fair use. It also affirms the more expansive literary interpretation of parody and stylistically resists limits imposed by copyright.

Many intertextual and parodic references have already been identified in Silko's novel. A. M. Regier describes Silko's modifications to James Mooney's ethnographic accounts of the Ghost Dance; Brewster Fitz attends to her treatment of Elaine Pagels's work on the gnostic gospels; Angelika Khler describes Jamesian elements of *Gardens in the Dunes*; and so on. The novel also refers directly to Margaret Fuller and Mary Baker Eddy as sources for the Hattie character and further links this figure to other neurasthenic women in turn-of-the-century writing—such as the heroine of Charlotte Perkins Gilman's

now canonical story “The Yellow Wallpaper.” Silko’s parodies range from homages to overt ridicule and commentary directly critical of their targets, but in all cases they include both specific textual referents and a broader satirical purpose.

The importance of parody to Silko’s novel becomes especially clear when we recognize her repeated, although buried, references to two of the definitive works of parody in the English language: Lewis Carroll’s *Alice’s Adventures in Wonderland* and *Through the Looking-Glass*.²⁵ At least one reviewer described *Gardens in the Dunes* as invoking traditions of the “Victorian children’s tale,” noting that Indigo exhibits “the priggish self-sufficiency of a Victorian child heroine” generally.²⁶ A general Victorian sensibility would make *Gardens* a satire and provide no special link to copyright questions. If, however, Carroll’s Alice in particular serves as a prototype for Indigo, the result is a bit different. The parody is definite.

Like Alice, Indigo falls against her will into a disorienting world, full of peculiar rules, strange food, and threatening female authority figures. In the course of a difficult train journey across the chessboard of western states, Indigo, like Alice, befriends several surprisingly human animals that she treats as equals and beloved companions. Both heroines are repeatedly subjected to very uncomfortable and destabilizing physical transitions and experience the disempowered condition of childhood as a series of traumatic jolts, and both rely on lessons they have learned (about seed gathering and desert survival or William the Conqueror and poetry) in order to find their way in their respective wonderlands. In the end, after frightening confrontations with the law (the soldiers in Indigo’s case and a trial in Alice’s), both heroines return to the arms of their older sisters for a comforting meal.

Carroll’s novel has been read, although perhaps not widely, as an allegory for colonial relations—in which the ultra-white and civilized Alice treads unknowingly on the feelings and (to her) ridiculous customs of the Wonderland natives.²⁷ We might, in this context, read Silko’s parody as an inversion of the colonial elements of Carroll’s novel—an inversion that brings an indigenous Alice into the alien and sometimes quite ridiculous world of a colonizing white America.

Beyond the indirect parody linking Silko’s and Carroll’s girl heroines, more specific details also reinforce the association. For instance, the scenes in which Indigo first encounters the monkey Linneaus bear some resemblance to Alice’s introduction to the White Rabbit in *Alice’s Adventures in Wonderland*. Like the famous White Rabbit, Silko’s monkey character is very heavily coded (bearing the name of the Swedish botanist and recalling the character of the Chinese

Monkey King in the stories Hattie reads to Indigo on their train journey).²⁸ After the birth of Sister Salt's "little black grandfather," the child she fears will be born with a monkey tail because his father is African American, Linneaus ("the little hairy monkey man" [84]) also becomes indirectly associated with blackness and the signifying monkey. While Carroll's White Rabbit consistently points toward power and bourgeois anxiety, in Silko's multilayered parody, the monkey inverts those associations, becoming a multiracial sign of opposition.

In *Alice's Adventures*, the White Rabbit is also the first magical creature Alice meets, and he is surprisingly human from the outset: "but when the Rabbit actually *took a watch out of its waistcoat-pocket*, and looked at it, and then hurried on, Alice started to her feet, for it flashed across her mind that she had never before seen a rabbit with either a waistcoat-pocket, or a watch to take out of it" (7–8). The White Rabbit takes the lead; only when she follows him down the rabbit hole does Alice enter Wonderland. The White Rabbit is Alice's inadvertent guide, leading her to body-altering new foods and a world of keys and passages. The worried rabbit appears and disappears several times while Alice's body grows large and small. He is intelligent but only occasionally engages directly with Alice.

Most of these elements appear in Silko's novel as well. Like Alice, Indigo is resting (although under a lilac bush, not on a bank) when she first spies "a little bearded man no taller than a turkey" (71). He reaches out to touch her in a very human gesture in their first encounter, and his presence brings Hattie to discover Indigo. Hattie peers down at Indigo, witnessing her fall, as it were, down the rabbit hole of whiteness. After an interlude told from Hattie's point of view, the narrative returns to Indigo's exploration of the garden (including encounters with lilies and roses, although they do not speak like those Alice meets in *Through the Looking-Glass*). Indigo follows the wandering paths and like Alice finds herself drawn back to the house in the garden because the monkey, serving as her guide, "motioned for her to come to him" (84). Certainly the playful tone in the passages describing Indigo and Linneaus differs substantially from Carroll's arch anxiety, but when Indigo joins the monkey in the greenhouse, she too plays hide-and-seek with her animal companion and eats and drinks substances that make her conspicuous to others. Indigo does not become enormously large, like Alice, but she is trapped in a house and threatened with a rope (not the pebbles with which the animals pelt Alice) before the narrative shifts into a new episode in which language is very unstable.

When Alice recites "You Are Old, Father William," easily Carroll's most well-known parody, she is concerned that "some of the words have got altered"

(41), but in Silko's inversion of Carroll's parody, it is the relatively aged Edward who gets things wrong. When he "began to attempt to pronounce words in Shoshone and Paiute to see if the child responded," she "laughed out loud." Indigo as an alter-Alice asserts, "I talk English...I talk it way better than you talk Indian" (108). Official adult language is askew in *Gardens*, not the child's.

In short, in Silko's parody, a black monkey replaces the White Rabbit, the gardens are safe rather than vaguely menacing, and the heroine's body remains the same size although the world shifts strangely about her. The most important transformation, however, involves the treatment of language. While Carroll's wordplay frequently scrambles rules and imitates the sensation of comprehension without allowing its realization (for example, with the use of nonsense syllables such as those used throughout "Jabberwocky" in *Through the Looking-Glass*), Silko's parody aims to restore something like a universal language, one apparent in the Ghost Dance and shared by animals.²⁹ Unlike Edward, Linnaeus "seemed to understand the language of the Sand Lizard people when [Indigo] spoke to him" (104). In the specific details as well as in the more global elements, Silko's novel reinforces its central thematic concern with theft and borrowing. Adapting Carroll's parodic project to one that suits her own metafictional purposes, Silko affirms the significance of parody as a creative form while also demonstrating its utility for affirmation of interracial cultural politics.

Not all of Silko's other parodies work this way, though. Her treatment of another significant intertext, Willa Cather's *Death Comes for the Archbishop* (1927), is considerably less specific and less honorific than her use of the Alice stories. Invested in the very narrative of the disappearing Indian that Silko sets out to contest, Cather's novel follows the developing cultural sensitivities of a French archbishop (closely modeled on the historical Jean-Baptiste Lamy, archbishop of Santa Fe) as he comes to know the indigenous peoples of New Mexico, Arizona, and Colorado in the immediate aftermath of the Treaty of Guadalupe Hidalgo.

Sometimes accompanied by a missionizing vicar, the archbishop visits Hopi, Zuni, and Navajo settlements, not infrequently reflecting on his sense that these people are entirely alien to him, inhabitants of another era and topographical zone: "He felt as if he were celebrating Mass at the bottom of the sea, for antediluvian creatures; for types of life so old, so hardened, so shut within their shells, that the sacrifice on Calvary could hardly reach back so far" (115). Something of an alienated aesthete, the archbishop reconnects with the people and with his faith primarily when witnessing indigenous expressions of worship, such as an elderly bondswoman's veneration of the Virgin: "He

seemed able to feel all it meant to her to know that there was a Kind Woman in Heaven, though there were such cruel ones on earth...the beautiful concept of Mary pierced the priest's heart like a sword" (352–53). Only in the final pages of the novel, when the acculturated archbishop lies on his deathbed, does he recall the paradisiacal scene revealed to him by his Navajo friend Eusabio. In this vision, the archbishop could "behold the strange cliff ruins; once more crops were growing down at the bottom of the world between the towering sandstone walls; sheep were grazing under the magnificent cottonwoods and drinking at the streams of sweet water; it was like an Indian Garden of Eden" (344–45). Concluding that God will preserve "the Indian," the archbishop is free to die. The survival in question may be merely legendary, though, like the lost garden itself. After all, Cather's novel describes the aging archbishop's Catholicism as a historical relic, insufficiently robust to endure the onslaught of a violent and commercial Anglophone Protestant capitalism. The world of the Navajo seems even more fragile.

Many elements of Cather's novel reappear in inverted form in *Gardens in the Dunes*, from the title onward. For instance, when the train journey first takes Hattie, Edward, and Indigo through Sand Lizard territory, Hattie is reading "a volume of early church history by Eusebius" (118). Silko's reference to this early Christian desert dweller illuminates the spiritual wandering of the white Catholic woman, however, not the supposed placidity of a Navajo leader. Similarly, while Cather uses the "Indian Garden of Eden" to imagine an ambivalent form of cultural survival, Silko produces a much more complicated image. Her old gardens certainly survive the soldiers' pursuit of the Sand Lizards, and the heroines do return there for the recuperative final scene of the novel, but Silko invented the Sand Lizard tribe, as she has made quite clear in interviews, precisely because she wanted to portray "one of these remnant, destroyed, extinct groups" (Arnold 164). The garden image works toward an opposite end in Silko's novel. Also, where Cather's archbishop discovers the feminine principle to be the heart and inner life of Catholic worship, Hattie, of course, experiences the reverse. She is prohibited from researching the feminine principles of the gnostic gospels and later berated by priests in Corsica during an apparition of the Virgin. In short, Silko's account of the same themes treated by Cather, while verging much closer to satire in their movement outward to larger social concerns, conjures up the earlier work in order to invert its association of Indians with "antediluvian" mollusks and silent creatures of the sea.

Finally, a third sort of parody at work in Silko's novel criticizes specific textual sources but nonetheless verges on satire of historical trends and thus

exceeds the boundaries of parody as the Supreme Court has defined it. Silko's vivid and inventive descriptions of Edward's journey down the Pará River certainly invoke the adventures of the moderately well-known nineteenth-century naturalist Alfred Russel Wallace. A heroic common man for some contemporary science writers,³⁰ Wallace was an independent English collector who operated without the sanction of academic prestige or a gentleman's private income to sustain him. Historians of science have credited him with independently developing a theory of natural selection either before or at the same time as Darwin's.³¹ Wallace published accounts of his expeditions to South America (including the Pará River) and to Malaysia, and he was well known in nineteenth-century collecting circles, especially for procuring beetles and pursuing the supposedly footless bird-of-paradise.³² In contemporary terms, however, Wallace might be considered a biopirate, especially during the Pará River expedition.

The historical Wallace edited and published an account of a close friend's journey to the Pará River. Even while bemoaning the scarcity of orchids, the notes left by Wallace's friend Richard Spruce describe many incidents relevant to Silko's account of Edward's eventful journey—as do the records of Wallace's own journeys. For instance, Spruce notes in amazement how “many Indians, without any apparatus at all, will walk up a smooth, slender tree, monkey fashion” (13), and he describes a visit with a slave-owning heretic, Mr. Hislop, who trades with the natives for gold and diamonds (62–63). Spruce also identifies the men who took him up the river as “the Cabo or captain—a fine young fellow, the eldest son of the French baker—and two mariners, the one a Mamaluco or half-breed, the other a pure Indian of the Yuma tribe” (167). According to his twentieth-century biographer Ross A. Sloten, on his own 1848 expedition, Wallace collected numerous plant species (including a few orchids) and a very unusual blue macaw (47–55). The expedition, undertaken with his friend and companion Henry Bates, culminated in a terrible falling out, and the two men separated in mid-journey. Wallace's solitary return to Europe onboard the *Helen* in 1852 was seriously disrupted by a fire that destroyed all of his collections; he was left with only a selection of his notes and journals and the effects of illnesses he suffered during his travels. In a letter published in the *Zoologist* after his return, he describes his lost collections (which the Brazilian government suspected of being contraband) as consisting primarily of specimens “from the country about the sources of the Rio Negro and Orinooko, one of the wildest and least known parts of South America,” and he concludes the list with mention of “a small collection of living monkeys, parrots, macaws, and other birds [that] are irrecoverably lost.”³³

In *Gardens in the Dunes*, Silko combines and condenses many elements of Spruce's narrative and Wallace's well-documented travels, as well as distributing some elements (such as the unusual surname Hislop/Hyslop—which she gives to Hattie's first attempted rapist). Silko literalized Spruce's metaphorical comparison of Indians to monkeys in the figure of Linneaus, as well as adding the episode of the Mayan Negress at Tampico to the narratives of the botanical expedition. In many other respects, however, her narrative follows the naturalists' accounts quite faithfully. The composition of the crew on Edward's journey, the falling out between scientists, the destructive fire that triggers a new smuggling plan, and the naturalist's lifelong illness all reappear in her novel.

These references become critical parodies rather than neutral sources because Silko's transformative use adds new meaning. Silko's account of the Wallace/Spruce narrative fuses their adventures with those of more successful orchid hunters and vivid descriptions of the flora themselves. The new content and dramatic details entirely alter the readers' relation to the white adventurers. While the firsthand accounts stress the explorers' sense of excitement, discovery, and wonder and demean or caricature many of the cultural others they encounter (for example, describing them as monkeys), Silko's version underscores the commercial rather than scientific underpinnings of the Englishmen's expeditions and qualifies the naturalists' expressions of awe by framing them with disaster. Rather than narrating the expedition as a sequence of practical impediments overcome in the interest of science and at the will of the hearty adventurer, as the genre of the explorer's journal seems to require, Silko parodies the overall form and the specific details of expedition records by ornamenting these incidents with curses and symbols of an inherently female and rebellious nature.

The parody accomplished in the biopiracy sections is thus of a different order from either the more embedded although still critical Cather references or the more affirmative and generic Carroll materials. In producing the biopiracy narrative of *Gardens in the Dunes*, Silko has undertaken her own oppositional literary piracy, as it were, borrowing and adapting specific and recognizable source materials in order to transform their meaning in a new work. Silko comments directly and critically on the meaning of the originals in so doing. Because these originals are all too old to qualify for copyright protection any longer, Silko's writing satisfies both literary critical and legal definitions of legitimate parody. Nonetheless, it is crucial to the paradoxical logic of *Gardens in the Dunes* that the novel condemns piracy most energetically when it uses words that are parodic, and in some cases symbolically piratical, themselves.

A COMMON GARDEN

Gardens in the Dunes contributes to a tradition of contemporary fiction that periodically writes back to the power of property. From Hattie's satisfaction at the verification of the authenticity of the feminine gnostic texts to the introduction of Indigo's hybrid gladioli into the old gardens and Delena's repeated reinterpretations of the syncretic Mexican Tarot, this novel provides a number of occasions designed to illustrate the benefits of refusing a static, purist notion of tradition. The embedded parodies from which Silko's novel is built affirm hybridization thematically, at the same time that her writing insists upon both the possibility of and necessity for making traditions part of an ongoing community.

In other words, Silko's novel certainly does not exemplify a postmodern free-for-all in which all appropriations are equally meritorious or legitimate and no differentiations between fair and unfair use are made. Her novel does not endorse the unrestricted market logic that Rebecca Tsosie and other advocates of communal copyright in indigenous people's traditional knowledge also criticize. Like the other novelists discussed in this book, Silko makes a definite critique of market logic. She describes market-driven appropriation as a violation of sacred burial sites and a miserly damming up of natural resources that belong to all. Her version of piracy prioritizes meeting basic human needs. Against a market that operates on a strongly proprietary model and employs the law on behalf of owners, however, Silko does not set the imaginary alternative of a purportedly more moral law.³⁴ In this historical fiction (as opposed to the more explicitly political vision of *Almanac of the Dead*), a renewal of the commons involves, in part, a spiritual renewal. The goal is not legal reform but contact with a restorative, syncretic, and self-renewing life of the spirit that inspires local resistance movements. For Silko, keeping that tradition active requires the absorption of outside influences and materials—that is, a kind of positive piracy.

Because delineating a static tradition and trusting the law to protect it is simply not worth the risk of cultural extinction that this proprietary procedure entails, in Silko's novel, as in those of the other authors considered in this book, the language of antiproperty triumphs. Ultimately, the utopian commons, "the old gardens [that] had always been there," reunite the Sand Lizard sisters (14). These descendants of Grandfather Snake are enjoined to reseed the gardens "because human beings are undependable; they might forget to plant at the right time or they might not be alive next year" (15). With this enduring image, Silko's novel affirms the ethic of shared and hybrid cultivation over proprietary

containment, suggesting that stewardship of the commons is the only way to ensure the continuing growth of the natural world that sustains us all. In this respect, her writing joins that of Le Guin, Barrett, and Acker. Together, all of these authors imagine a renewed tradition of feminine exteriority and positive piracy—a tradition grounded in anarchist revolution for Le Guin, in bridges across global divisions of labor for Barrett, in obscene physicality for Acker, and in the cultivation of botanical hybrids for Silko. In diverse genres and styles, each of these authors joins her peers in producing a strong account of an ideally better world beyond the scope of intellectual property.

CONCLUSION

Toward a Pink Commons

In reaction to the historical exclusion of women from literal and figurative equality in the Anglo-American copyright regime, all of the writers discussed in this study demonstrate a commitment to recovering the figure of the pink pirate and making her the subject of the commons. From Le Guin's anarchist mother to Barrett's traveling scientists, Acker's obscene appropriators, and Silko's gardeners, pink pirates consistently signal a feminist critique of copyright. This critique culminates in a vision of women's creativity being sustained by the commons. The pink commons grounds the shared utopian project of rethinking property. When we extract this vision of the commons from its more specifically literary context, we soon discover that this contemporary feminist initiative enhances a political philosophy of the commons more generally. For the utopian tradition in particular, the latent theme of the pink commons is illuminating.

The commons arguably provides the foundation for all utopian thought. Book One of Thomas More's genre-defining meditation *Utopia* describes problems plaguing More's England and identifies the enclosure of common pastures as the root cause of social dislocation. More understands the loss of a commons in land as a major factor in the creation of a class of landless peasants driven to thievery and piracy. However satirical his motives might be,¹ More's vision in Part Two compensates for the disappearance of the English commons by imagining a stable economy organized around communal households and the absence of property. In More's indispensable work, the commons frames England on both sides: it appears as a lost or vanishing origin populated by subjects retroactively defined by their lack of private property, and as a positive alternative populated by ideal subjects purified of the proprietary lusts of More's day, such as a desire to accumulate gold.

More's vision of a regime of property bookended by the commons combines elements of other accounts of the commons, from the guardians' compound in Plato's *Republic* to Catholic monasteries and reports of practices indigenous to the Americas.² To these, we might add the marital commons. After all, despite its important inclusion of aspects of gender equality in labor and education, More's vision of domestic life replicates many elements of the feudal household—from the subservience of wife to husband and the assignment of domestic labor to the social centrality of the wedded couple. Understood not as a proto-modern rights-bearing individual, but rather as a sign of the housewifely, nonmarket, managerial logic that informs his larger vision of common storehouses of goods, drawn upon and shared by all, More's woman installs a pinkness at the origin of the utopian concept of the commons. This trace of an idyllic domesticity receding even in More's day, along with his critique of the overly proprietary present, nostalgia for Golden Age virtues, and ambiguity about location shaped many subsequent utopian political philosophies of the commons.

A similar, latently pink concept of common property is also central to American utopian fiction—from the Puritans' city upon a hill to the Romantic primitivism of Herman Melville's *Typee*, Nathaniel Hawthorne's considerably more ambivalent *Blithedale Romance*, Mark Twain's satirical *Connecticut Yankee*, Edward Bellamy's programmatic *Looking Backward*, and Charlotte Perkins Gilman's conflicted feminist eugenics in *Herland* at the tail end of the nineteenth century. Often reacting to contemporaneous utopian socialists who founded separatist communities organized around shared labor, common property, and, quite often, unconventional gender relations, an American tradition of utopian fiction has kept these social experiments and the eccentric political philosophies that inspired them (for example, the works of Charles Fourier, Henri de Saint-Simon, Étienne Cabet, and Robert Owen) in view for later generations. They often employ a strong parallel between the fictive rupture of historical narrative and the intended opposition of utopian communities to the everyday practices of the surrounding societies. They then conjoin an account of the community's failure to establish a lasting, separate, and fully realized commons in land, love, or labor to the intellectual common space of a skeptical narrating subject. That is, expanding on the convention established by More's mysterious Raphael Hythloday, a seafaring expatriate/pirate/guide, many American utopian fictions of the nineteenth century compensate for the overdetermined failure of extant utopian communities with the creation of a narrating subject whose own appropriation of the story of utopia prefigures the revival of the cultural commons so crucial in the contemporary digital

context. Whether in the person of Hawthorne's carefully veiled Miles Coverdale, Melville's erotically entranced Tommo, Twain's entrepreneurial Hank Morgan, or the less rounded figures guiding readers through *Looking Backward* and *Herland*, the narrating pirate allows a transfer of story and ideas; the narrator becomes a transitional figure of the commons framing a proprietary present. Especially in their empathetic, largely receptive roles as witnesses, these narrators bridge actual and imagined social spaces. The task of comparing the imagined utopia with a remembered exterior world makes of these narrators not only author-figures who write the utopia into existence, but also figures for intellectual labor as a process of adapting, tinkering, and adjusting rather than ex nihilo creation. Such narrators necessarily appropriate from their social environments and usually from a tradition of utopian writing as well. In this respect, utopian guides formally perpetuate a type of commons even when they also anticipate the rise of twentieth-century dystopian sensibilities by documenting the erosion of the commons in the content of their texts.

Reading for embedded concepts of the commons can also remind us to investigate more mainstream political philosophies. The writings of Hobbes, Locke, and Rousseau, for example, also invoke the commons repeatedly. Even when the main thrust of the argument is individualist (as for Locke) or statist (as for Hobbes), each of these early modern philosophers continues elements of More's project. Each advances a political philosophy in the context of a receding commons and each probes the persistent analogy between a commons in land and a cultural commons.

In particular, Hobbes, Locke, and Rousseau imagine a state of nature as an origin and use that commons to illuminate the proper exercise of power. Each vision of the state of nature also exhibits some gendered content: for example, Hobbes's assumption of primordial and masculine aggressivity, Rousseau's identification of the presocial subject with the happy bachelor, and Locke's reliance on a biblical conception of patriarchy as the cornerstone of liberalism.³ Each philosopher's state of nature also injects a free space of literary invention into its stream of philosophical assertion. While not necessarily "feminist" in content (despite Locke's relatively modern assertion of limited property rights for wives), these accounts of a common state of nature as an imagined condition, not a location, helped later generations of writers launch a commons populated by women and/or postgendered pirate subjects.⁴ The transparently fictive site of the primordial commons provides a vital resource for later and more utopian accounts of property.

Images of a gendered state of nature indisputably influenced the vision of the primitive matriarchy Marx explored in his *Grundrisse* notebooks. These

ideas were later published in a controversially flat-footed form by Friedrich Engels as *The Origin of the Family, Private Property, and the State*. Although implausible on archaeological grounds,⁵ the thesis of a primitive matriarchy imagines a primordial commons where enclosure and overthrow of maternal rule create the modern state. Marx and later Engels interpreted early anthropological studies of family structure as evidence of the contingent nature of women's subordination and the property concept. Synthesizing J. J. Bachofen's speculative *Mütterrecht* with Henry Lewis Morgan's research on the Iroquois, they hypothesized a communal mode of production prior and exterior to classical and proprietary patriarchies. In so doing, Marx and Engels not only created an appropriative pastiche of sorts, they also employed utopian narrative logic in the pattern introduced by More. Retrojecting through a sequence of dialectical reversals to primitive matriarchy, Marx and Engels also projected a future restoration of the dignity of woman. They imagined this restoration accompanying the abolition of a marital system entangled with private property. "What will be new?" in a world in which property in persons as well as things has been abolished, they asked:

That will be answered when a new generation has grown up: a generation of men who never in their lives have known what it is to buy a woman's surrender with money or any other social instrument of power; a generation of women who have never known what it is to give themselves to a man from any other considerations than real love, or to refuse to give themselves to their lover from fear of economic consequences. When these people are in the world, they will care precious little what anybody today thinks they ought to do; they will make their own practice and their corresponding public opinion about the practice of each individual—and that will be the end of it. (75)

This bold conception of a future erotic commons anticipates the liberties of subjects that do not yet exist. These new men and women "will make their own practice" and establish new public opinions. The enormous creativity that this cultural revolution will entail is imagined by analogy to the residual cultural commons entered into provisionally by the writing subject. Future subjects will, in short, write a new propertyless world into being.

Released from the tedious responsibility of distinguishing a genuinely utopian abolition of property from the travesties of Soviet institutions, a post-Cold War generation has revived aspects of Marx and Engels's rhetoric of the commons. For observers such as geographer David Harvey, this new appeal to the commons necessarily follows from the rise of forms of neoimperial-

ism that wield intellectual property law as a weapon, and the position statements of nongovernmental organizations such as Food First! would appear to support his contention. We might also, however, attribute the revival of the concept of commons to the “fall” of Soviet Communism itself. Like the many nationalisms arising in the wake of the Cold War, the commons provides a language for invented traditions and invokes a sense of common cause with those imagined to be one’s kin or religious brethren. As one form of utopian communalism falls, another rises to fill its place. Virulent nationalism might sometimes provide a kind of utopian vocabulary for the commons.⁶ With the shattering of state-imposed collective property, in short, comes the rise or return of another vision of what belongs to “us.” This imagined property of the collective is not only composed of land, but also of the culture, language, and tradition so crucial to the cultural commons.

At least, this idea guides the strongest contemporary statement of a philosophy of the commons: Michael Hardt and Antonio Negri’s *Empire*. Splicing some of the themes of *The Origin of the Family, Private Property, and the State* with the Spinozan project of radical democracy, Hardt and Negri understand sexual liberation as vital to the existence of the new political subject that *Empire* seeks to contain. They explicitly identify this subject, which they call the multitude, with the commons: “*The commons is the incarnation, the production, and the liberation of the multitude*” (303, emphasis in original). As instances of the multitude’s commons they offer the voluntary labor of cultural creation, a legacy of indigenous peoples’ practices as preserved in legend, and the so-called affective labor of housework. “From a methodological point of view,” they write, “we would say that the most profound and solid problematic complex that has yet been elaborated for the critique of biopolitics is found in feminist theory, particularly Marxist and socialist feminist theories that focus on women’s work, affective labor, and the production of biopower” (422, n 17).

That is, Hardt and Negri introduce a concept of the commons that stresses its actuality in germinal form in the present, and they locate “the most profound and solid” tool for explaining the biopolitical elements of the commons in contemporary materialist feminism. *Empire* pulls feminist utopianism back into conversation with a global political philosophy that ranges from the nature of state power to the origins of property.

Although exciting, this abrupt transition from the particularities of the domestic labor debate to Hardt and Negri’s broader characterizations of biopower and state or poststate authority is also somewhat jarring.⁷ Perhaps these sudden bounces register the stalled character of feminist debates on the household, especially in the United States.⁸ Despite the interest in rethinking

women's household labor in relation to economic globalization that important feminist geographers have shown,⁹ linking gender, property, and the commons may still require a bold conceptual leap in many discourses. In *Empire*, this leap takes a form that reverses the path-smoothing work of the narrative guide in nineteenth-century utopian fictions. Precisely in its most abbreviated, sporadic, and visionary moments, *Empire* creates a textual instantiation of the commons. The flashes of utopian speculation introduced into *Empire* in italicized passages such as those devoted to the commons disturb the flow of synthetic reason elsewhere on display. Rather than providing a unifying space outside of reason, however, these passages serve as a textual correlative to an extant and visionary commons at odds with yet generated by the present. This ecstatic italicized language tells the story of the commons in the voice of the pirate. For Hardt and Negri, as for novelists narrating the adventures of the pink pirate, the greatest writerly challenge is to humanize and domesticate the potentially alien character of the commons for readers held in the intellectual grip of property.

To sum up, then, the pink pirate, as the subject of the commons, continues the legacy of More's Hythloday. The pink pirate travels from world to world, from containment to open seas, from historical document to utopia. The pink pirate also exhibits some of the untrustworthiness and instability with respect to state systems that Romantic fiction has led us to expect of pirates and rebels or reformers in general. She seizes materials and smuggles them away. She quarrels, sometimes very unsystematically. She exposes her hygienic and erotic flaws. The pink pirate is not a hero above the norm; her utopian qualities derive as much from satire as from romance, as Northrop Frye would have it.¹⁰ Equidistant from a pacific state of nature and a future liberation, she is neither more virtuous nor braver than others. The pink pirate recalls these lost idylls by failing to inhabit them. At sea in a fallen world, she is free to be a remorseful, abject figure, broken by longing and venturing into moments of ecstatic loss of control. She is mobile and moderately unstable, sometimes a site of radical instability regarding gender. Nonetheless, the pink pirate is not preoccupied with the content of gender ideologies, although sexual difference often plays some role in her narratives. What matters most for the tale of the pink pirate is an affirmative relation to a common condition. She moves in a conflicted terrain of property, sifting through the layers of already owned or disowned texts. Her story brings into view different versions of the commons—from the gift, nature, and the body to myth itself.

The pink pirate's commons can be a difficult space to map. It may be broken into enclaves and exclaves, but it is nonetheless immanently present in

many locations—on Le Guin’s home world and travel destination, as well as in Barrett’s Philadelphia and Arctic seas, Acker’s treasure island and feminine interior, and Silko’s Mediterranean and desert oases. The pink commons is not a distant, tragic, or ruined space; it is not a vanished Golden Age or a purely negative possibility, available only in a far-off future. Instead, the pink commons realizes qualities of both ordinary domesticity and creative narration. It is the place where our tangibly gendered everyday life enters writing and animates its nonproprietary potential.

By moving toward the pink commons, the pirate pulls up the rope ladder of cruder utopian progress narratives that proceed from a contaminated present through specific units of space or time to arrive at a purified ideal. The pink pirate moves the entire story of the loss and reinvention of the commons into the different terrain of gender, a terrain where multiple options are always available. In this respect, the narrative of the pink pirate subsumes and transforms the utopian political philosophers’ story of the commons, at the same time that it proposes an alternative to the very differently constructed legal system within which individual works of fiction are published to a diminishing audience of readers in the United States. The figure of the pink pirate takes up the themes of utopian domesticity, narratorial appropriation, and visionary speech latent within the tradition of utopian political philosophy, as well as overturning the proprietary account of creativity envisioned in copyright law. She reorganizes both of these narratives around a story of domestic misrule. She works as a buccaneer in contested waters ruled by others, contributing all the while to a rethinking of the commons as a pink terrain.

NOTES

INTRODUCTION

1. In another context, Stowe defends this practice, describing the way the desire to achieve a powerful effect on important topics can lead an author to “risk the imputation of plagiarism by weaving in the impressions of authors or of eye-witnesses in ways incapable of being conveniently indicated by quotation mark or reference.” Stowe, “Introductory Essay” 1323.
2. The text of the U.S. copyright law can be found online at <http://www.copyright.gov/title17/>.
3. Sell, *Private Power* ch 1.
4. Dan Itzkoff, “\$1.92 Million Fine for Music Piracy,” *New York Times* (June 19, 2009): 2; Mike Harvey, “Single Mother Digital Pirate Jammie Thomas-Rasset Must Pay \$80,000 per Song,” *Times* [London] (June 19, 2009), <http://www.timesonline.co.uk>; “Woman Fined \$1.92M in U.S. File Sharing Case; Kind of Ridiculous,” *National Post* [Canada] (June 20, 2009): A20.
5. This theme was most evident in Lessig’s earlier writings on copyright, esp. *The Future of Ideas* 111–15.
6. Here, I have in mind the provocative thinking on the question of determinism offered by Fredric Jameson in *The Political Unconscious* 25–28. Jameson’s complex discussion of “determination in the last instance” argues that taking infrastructures, such as the law, as causes of social organization is characteristic of the political unconscious of what he will come to call postmodernism, and that logic ultimately results in an analytic inability to locate any causes. In contrast to this vision of a holographic world (which Jameson describes as the effect of “expressive causality”), he offers a defense of Louis Althusser’s approach to causality, one that takes culture and ideology seriously while still understanding economy as determinate “in the last instance.” I attempt to tease out some of the implications of that position here.
7. Naomi Mezey’s “Approaches to the Cultural Study of Law” offers an impressively thorough program for cultural studies approaches to the law.
8. There are exceptions to this critical consensus, namely, Gaines, *Contested Culture*; Edelman, *Ownership of the Image*; Bettig, *Copyrighting Culture*; Perelman,

Steal This Idea; and Saint-Amour, *The Copywrights*. Each usefully situates copyright within a larger ideological and material framework, and I gratefully build on their insights in what follows.

9. See Bartow, "Fair Use and the Fairer Sex"; Halbert, "Feminist Interpretations"; Pollack, "Towards a Feminist Theory"; Katyal, "Performance, Property"; Sunder, "Intellectual Property and Identity Politics"; and Tushnet, "My Fair Ladies."
10. Tushnet makes this point in "My Fair Ladies" 304.
11. Garrett Hardin's famous essay "The Tragedy of the Commons" has become a standard reference for the idea that individual users always take more than their share from common resources. Frequently overlooked, however, is the fact that Hardin's primary case study is overpopulation, not a commons in land. Hardin sees the uterus as a common property overused by unthinking and selfish mothers and argues in support of China's one-child policy as an alternative to a self-regulating commons.
12. Anupam Chander and Madhavi Sunder, in "The Romance of the Public Domain," assert that appeals to the commons in copyright discourse too often smack of an elite neo-Romanticism; they argue for more pragmatic strategies of reform, such as those being applied in discussions of traditional knowledge.
13. Elinor Ostrom provides a very smart synthesis of a range of on-the-ground strategies for successful management of common resources in *Governing the Commons*. Among the conditions that she identifies for successful collective self-management of common resources is a shared ethic of reciprocity (211), and this ethic, I would argue, is crucial for contemporary women writers who convert a self-deprecating ideology of feminine sacrifice into an affirmative pirate project.
14. Veronika Ek, "Sweden's Pirate Party Captures Euro Seat" (June 7, 2009). <http://af.reuters.com/article/oddlyEnoughNews/idAFTRE55623320090607>.
15. Anne Rice, "Anne's Messages to Fans." <http://annerice.com/ReaderInteraction-MessagesToFans.html>.
16. Helprin expanded and reprinted his views in *Digital Barbarism*.
17. For details of the Google settlement, see "Authors Guild v. Google Settlement Resources Page," <http://www.authorsguild.org/advocacy/articles/settlement-resources.html>.
18. For definitions and a description of archiving problems posed by digital works, see Dearstyne, "Blogs, Mashups & Wikis, Oh, My!" See also *Issue 1*, the 3,785-page anthology of pirated poetry edited by Stephen McLaughlin and Jim Carpenter, Principal Hand 001 (October 3, 2008). <http://www.forgodot.com> (no longer available).
19. In *The Public Domain*, Boyle asserts that the majority of works in library col-

- lections are orphan works; Samuelson agrees (“Legally Speaking”). In its 2006 “Report on Orphan Works,” the U.S. Copyright Office found the problem of orphan works real but difficult to quantify (Library of Congress).
20. See Llewelyn, *Grania*; Gold, *The Pirate Queen*; Maxwell, *The Wild Irish*; Fairburn, *The White Seahorse*; Farley, *Kingston by Starlight*; MacLeod, *The Changingling*; Stout, *Cassandra, Lost*; Garrett, *The Sweet Trade*; Shannon, *Branded Ann*; Friend, *A Pirate’s Heart*; Stephenson, *The Confusion*; and Lindsey, *Captive of My Desires*.
 21. Morris, *The Pirate’s Fiancée*.
 22. See Vollmann, *The Rifles* (on ownership of traditional knowledge); Powers, *Plowing the Dark* (on property questions in virtual reality); Franzen, *The Corrections* (on patents and paternity); and Leavitt, “The Term Paper Artist” (on plagiarism as erotic exchange).
 23. Quoted in Nigel Reynolds, “The Borrowers: ‘Why McEwan Is No Plagiarist,’” *Daily Telegraph* (December 5, 2006).
 24. This strategy of examining the cultural effects of 1970s feminism, rather than assessing its validity or lack thereof as a theory of gender identity, characterizes several new contributions to feminist literary and cultural studies. In this respect, I understand my work as related to that of Elliott, *Popular Feminist Fiction*; Travis, *The Language of the Heart*; and Farland, “Total System.”
 25. On the gate-keeping function of legal publications, especially their notorious fixation on a quantity and style of citation actively discouraged in the humanities, see the anonymously authored *Harvard Law Review* essay “Originality.”
 26. Of course, these literary fantasies of a premodern or nonmodern indigenous essence do not reflect the concrete historical situation of Native Americans in the United States. As I argued in an earlier essay on Silko’s *Almanac of the Dead* as well as in a related essay on writing by the Zapatistas, a distinctly postmodern fractured temporality characterizes these landmarks of indigenous cultural expression. See “The Timeliness of *Almanac of the Dead*” and “All Published Literature Is World Bank Literature.”

1. A FEMINIST HISTORY OF COPYRIGHT

1. The most influential contemporary proponents of the economic incentive theory of copyright are Richard Posner and William Landes; see Landes and Posner, *The Economic Structure of Intellectual Property Law*.
2. See Gordon, “An Inquiry into the Merits of Copyright.” Gordon considers “the origins of intellectual property...quite separable from the issue of its present functioning” but nonetheless allows that “the circumstances under which the

- doctrines first appeared may leave a residue of doubt” with respect to the role of consent and the significance of common-law rights (1347–48).
3. See Abrams, as cited and critiqued in Gordon.
 4. In context, it is clear that Patterson’s rhetorical emphasis on “all persons” is meant to distinguish modern copyright from the membership requirements of preceding models of ownership of texts.
 5. Self-ownership or property in one’s own physical person is a foundational right in John Locke’s contract theory of government. Property in one’s own body guarantees autonomy and establishes limits to the sovereign’s power. The self-owning individual is then empowered to make contracts with the sovereign. For a discussion of problems this concept of ownership produces when applied to women (who historically have had insecure rights to their physical persons as well as limited rights to enter into contractual agreements), see Naffine, “The Legal Structure of Self-Ownership.”
 6. The metaphor of the face is considered in special detail in Rose’s earlier essay “The Author as Proprietor” 72–73.
 7. See esp. Staves, *Married Women’s Separate Property*. Staves argues that, in addition to wives suffering the loss of property under coverture, daughters were also systematically disinherited. Along the same lines, Ruth Perry argues in *Novel Relations* that aristocratic daughters were dispossessed when the English property system shifted from a consanguineal structure emphasizing family of origin to a conjugal one emphasizing the husband’s privilege. In this account, coverture was not simply a holdover from feudalism, but in fact was strengthened during the rise of the early capitalist marketplace.
 8. Staves suggests that Charlotte Lennox was not typical of women writers of the period in her comprehensive *A Literary History*.
 9. See Ezell, *Social Authorship*. Susan Stabile develops a similar account of the American context in *Memory’s Daughters*.
 10. See also Wright, “A Feminist Exploration,” for an explicitly feminist analysis of the concept of the author used in copyright disputes in the nineteenth and twentieth centuries. Feminist approaches are included within and taken for granted by Lacey, “Of Bread and Roses and Copyright,” and, less directly, in Treiger-Bar-Am, “Kant on Copyright” (arguing that Kant’s concept of autonomy includes transformative or nonoriginal authorship).
 11. It is commonplace for scholars of copyright to assert that modern authors’ rights derive from the passage in Locke’s Second Treatise that describes property rights as the laborer’s right to control those objects “he hath mixed his labor with” because he has “joined to it something that is his own”; see John Locke, *Second Treatise of Civil Government*, ch 5, section 27.

12. In addition to Craig, “Reconstructing,” see Cohen, “Copyright, Creativity, Catalogs.”
13. Johns, however, makes a good case for understanding the positions of the Statute of Anne and the Stationers’ Company more generally as deriving not from a false conception of the written text as a stable document, but rather from precisely the opposite—namely, a deep anxiety about the multiplicity of texts that often circulated in numerous versions during the early modern period (58–186).
14. Bartow, “Women in the Web”; Burk, “Copyright and Feminism”; and Katyal, “Performance, Property.”
15. Tushnet, “Copyright as a Model”; Bartow, “Women in the Web.” In a more casual panel discussion, Bartow argued that “in copyright law, the invocation of stereotypes is generally an easy way to avoid infringement lawsuits. There is a copyright doctrine called *scènes à faire*, which says, basically, that stereotypes are out there for everybody to use; they can’t be individually owned. It is slightly ironic, because you would not necessarily think of copyright laws as enforcing stereotypes; but, in fact, a prudent lawyer would advise a client that using well known stock characters and stereotypes might prevent liability for infringement” (Heminway and Bartow 18).
16. L. Ray Patterson argues that diversity among copyright standards in the American colonies reveals the presence of intellectual contradictions regarding natural versus economic rights of the author (ch 8). William Fisher makes a similar argument about disagreements among the authors of the Constitution on the nature of property; drawing extensively from the work of historian James Kloppenberg, Fisher argues that religious and political differences carried over from the English context were crucial to debates over property (“Religious Dimensions” 56).
17. The overturning of primogeniture is a central theme of Wood, *The Radicalism of the American Revolution*.
18. For discussion of the diversity of colonial-era property law as it influenced women’s rights in particular, see Salmon, *Women and the Law of Property*, and selected essays in Tomlins and Mann, eds., *The Many Legalities of Early America*.
19. Article I, section 8.
20. See Farrand, *Records of the Federal Convention* 321–22.
21. Paul Goldstein asserts that little debate over the copyright clause was required during the Constitutional Convention because “many of the delegates, George Washington among them, had been present at the debates over the state copyright acts” (“The History of an Idea,” in Merges and Ginsberg, *Foundations* 281).

22. See Sherman and Bently, *The Making of Modern Intellectual Property Law*.
23. Melissa Homestead argues that the small number of abandoned author-wives was less significant than the power of the rhetoric about them; she also argues that the wife-as-slave metaphor became central to nineteenth-century women authors' self-description on the topic of copyright reform (*American Women Authors* ch 1). This analogy, however, does not appear to have been self-evident to the participants of the Constitutional Convention. Lauren Berlant also discusses this metaphor and offers a more critical take on free white women's self-pitying stance ("The Female Woman").
24. See James Madison, "The Debates in the Federal Convention of 1787." http://www.constitution.org/dfc/dfc_0809.htm.
25. A landmark case for defining the role of the market versus the public sphere in American copyright law was *Wheaton v. Peters* (1834); see Meredith McGill's discussion of the somewhat counterintuitive effects of this case in "The Matter of the Text."
26. See Newbury, *Figuring Authorship*; Dauber, *The Idea of Authorship*; and esp. Gilmore, *American Romanticism and the Marketplace*, drawing on Charvat's enormously useful study *The Profession of Authorship*.
27. The complicated relationship of early American women writers to the marketplace and their exploration of social issues unaddressed by the Constitution are developed at greater length in Davidson's classic study *Revolution and the Word*.
28. Rowson's career offers some parallels to that of Charlotte Lennox, at least as described in Gallagher, *Nobody's Story*.
29. See also Karcher, *The First Woman in the Republic* 435–37.
30. Homestead argues this point at length in *American Women Authors*.
31. Homestead argues in her epilogue that the geographical unevenness in the reform of married women's property law allowed coverture to persist in literary property cases into the 1890s. While her reading of *Belford v. Scribner* (1892) as the definitive end of coverture for copyright provides a persuasive account of legal norms, my own survey of more than five hundred contracts between female authors and publishers in the Houghton Mifflin publishing house from the 1840s to 1900 (Houghton Mifflin Papers) suggests that this case addressed the exception rather than the rule. Regardless of the norms articulated in the law, I found no evidence that Houghton systematically dispossessed married female authors in practice after 1860.
32. Particularly detailed information is available on *Uncle Tom's Cabin* in part because of claims printed in the publishing industry press that the copyright for the novel had been improperly registered. Houghton Mifflin, to whom copyright was later transferred, went to great lengths to protect its valuable contract

- with the author. See Stowe, Houghton Mifflin Papers.
33. For details, see Geary, "Harriet Beecher Stowe" 353, and Homestead, *American Women Authors* ch 3.
 34. FJG to AR Spofford, letter of March 19, 1892, and A. S. Wheeler to AR Spofford, Stowe, Houghton Mifflin Papers.
 35. See also Stowe's exchange with Fanny Fern's husband, James Parton, requesting advice on relations with publishers. James Parton to Harriet Beecher Stowe, February 14, 1868, Stowe, Radcliffe Institute for Advanced Study.
 36. See Stowe, correspondence with various publishers, 1859, 1863, and [1873?], folder 251, Radcliffe Institute for Advanced Study.
 37. Stowe, file 2725, Houghton Mifflin Papers. This change in practice occurred well before Calvin Stowe's death in 1886.
 38. See Homestead, "Every Body Sees the Theft," for a strong reading of this case.
 39. See also Berlant's critical take on this association in "The Female Woman."
 40. See Walker, *Fanny Fern*.
 41. See also Basch, *In the Eyes of the Law*.
 42. In my survey of contracts between more than five hundred female authors and their publishers during the period 1840–1900, fewer than ten made reference to male co-owners of the copyright (Houghton Mifflin Papers).
 43. See Foster, *Susan and Anna Warner*.
 44. See Kessler, *Elizabeth Stuart Phelps*.
 45. Susan S. Williams, in *Reclaiming Authorship*, reinforces this point, arguing that socially obsolete forms of the separate sphere ideology surfaced in late-nineteenth-century female authors' assertions of social privilege.
 46. See Franklin, ed., *The Master Letters of Emily Dickinson*.
 47. Clare Pettit makes this point for English authors in *Patent Inventions*, arguing that coverture made women writers less anxious about entering the marketplace.
 48. See Geary's excellent explanation of this process.
 49. On the early-nineteenth-century book trade, see Remer, "Preachers, Peddlers, and Publishers."
 50. The literature on international copyright is extensive. For a very readable recent interpretation, see Wirten, *No Trespassing*.
 51. See "Mass Culture as Woman: Modernism's Other," in Andreas Huyssens' outstanding collection *After the Great Divide* 44–62.
 52. For a selection of Pinkham's advertising images, see Stage, *Female Complaints*. In histories of advertising, however, Pinkham most commonly appears as a demonstration of misleading pseudomedical information.
 53. See Basch and, for the relevant English context, Staves's comprehensively re-

- searched *Literary History*.
54. See Kessler-Harris, *In Pursuit of Equity* chs 1 and 2.
 55. Christine Bose revises standard census data, arguing that 24.8 percent of all American women engaged in “formal economy work” in 1900 (40).
 56. On gender inequality in the turn-of-the-century labor market, see Bose, *Women in 1900* 103, and Smuts, *Woman and Work in America* 17–18.
 57. On fiction factories, see Denning, *Mechanic Accents*.
 58. For more on Twain, see Vaidhyanathan, *Copyrights and Copywrongs* 35–80.
 59. See Gaines, *Contested Culture*, and Saint-Amour, *The Copywrights*.
 60. On the late-nineteenth-century discussions of international copyright, see Wirten, *No Trespassing* ch 1; Drahos and Braithwaite in passing, *Information Feudalism* ch 3; and McVey, “Publishing in Nineteenth Century America” 78–79.
 61. Kessler-Harris offers a succinct analysis of the contradictions of *Muller v. Oregon* in *Pursuit of Equity* 30–33.
 62. John P. Esser offers an interesting typology of changing forms of contract as they correlate to changes in the organization of industry in “Institutionalizing Industry.”
 63. Generalizations in this section derive from examination of more than five hundred Houghton Mifflin contract files deposited at the Houghton Library, Harvard University.
 64. See Houghton Mifflin Papers, William Dean Howells folder 1444.
 65. Clara Louise Burnham to Houghton Mifflin, November 17, 1921. Folder 422. Houghton Mifflin Papers.
 66. Mary Noailles Murfree, folder 1998. Houghton Mifflin Papers.
 67. For example, Willa Cather to Mr. Greenslet, July 3, 1937. Folder 514. Houghton Mifflin Papers.
 68. In stressing this point, my intention is not to “blame” women for their own oppression, but rather to assert, in something of the spirit that Nancy Armstrong asserts the contradictory role of domestic ideology in *Desire and Domestic Fiction*, the uneven pace of women writers’ actions on their own behalf, as well as some of the ways that habits and customs other than those of the marketplace continued to play a significant role in women writers’ careers. Copyright is, after all, not the only regime by which authorship can be organized, and women writers’ continuing attachment to networks of personal affiliation and their disavowal of business knowledge can both be understood as reproducing aspects of a precapitalist or noncapitalist commons, as well as perpetuating the forms of social domination coded as coverture.
 69. For more on Barbie litigation, see Bollier, *Brand Name Bullies* 84–93.

70. Edward A. Adams, "Barbie Goes to the Mat with Miss America—and Wins," *New York Law Journal* (April 26, 1991): 1; Marjorie Williams, "Barbie in the Volley of the Dolls: Mattel Goes to Court against 'Miss America' Competitor," *Washington Post* (August 1, 1991): A1; M. P. McQueen, "Lawsuit Settled, Barbie's Still Top Doll," *Newsday* (August 27, 1992): 6; McQueen, "Barbie Retains Crown in Round 1," *Newsday* (August 27, 1991): 7.
71. Attorney for Miss America Carol F. Simkin is quoted in Williams, "Barbie in the Volley of the Dolls."
72. Rosemary Coombe offers a similar discussion of the effects of Barbie litigation in trademark cases in *The Cultural Life of Intellectual Property* 66–67.
73. See Guy Trebay, "And the Bead Goes On," *Village Voice* (July 6, 1999): 36.
74. The commercialization of publishing is a central theme of West, *American Authors*.
75. For highlights of the legislative history of copyright, see Merges and Ginsberg.
76. Among many discussions of media conglomerates, Ben Bagdikian's frequently updated *The New Media Monopoly* has been particularly influential. Ron Betig documents the role of copyright in multimedia monopolies in *Copyright Culture*.
77. See West, *American Authors* ch 7.
78. For interesting analyses of secretarial contributions to the book form, see Price and Thurschwell, *Literary Secretaries/Secretarial Culture*.
79. See Coser et al., *Books* ch 6.
80. 245 F. Supp. 451 (S.D.N.Y. 1965).
81. 604 F.2d 200 (2nd Cir. 1979).
82. *Titan Sports, Inc. v. James Hellwig aka Warrior* (1999) U.S. Dist. LEXIS 10523; *Candace Anne Carell v. The Shubert Organization et al.* 104 F. Supp. 2d 236 (S.D.N.Y. 2000) U.S. Dist. LEXIS 8807; *Jim Henson Productions v. John T. Brady & Associates* 16 F. Supp. 2d 259 (S.D.N.Y. 1997).
83. On intellectual property and globalization, see Drahos and Braithwaite, *Information Feudalism*; Drahos and Mayne, eds., *Global Intellectual Property Rights*; Sell, *Private Power*; and May, *A Global Political Economy*.
84. Drahos and Braithwaite offer a pointed critique of the economic logic supposedly underlying the industry claim that widespread software piracy is occurring (*Information Feudalism* ch 1); Perelman makes a similar point in *Steal This Idea*, as does Fisher in *Promises to Keep*.
85. BBC News, "Spears Warns against Piracy" (September 26, 2002). <http://news.bbc.co.uk/2/hi/entertainment/2283072.stm>.
86. The report "Intellectual Property Rights and Women's Knowledge" by the United Nations Development Fund for Women (UNIFEM) makes this point,

offering a sweeping critique of the losses female consumers incur when the fruits of traditional knowledge, including popular song, are privatized and women are positioned as illicit consumers of individually owned property (see <http://www.unifem.org/trade/sa11.htm>). Similarly, the World Intellectual Property Organization now maintains a separate Web space (<http://www.wipo.int/portal/index.html.en>) drawing attention to women as bearers of traditional knowledge and the vast underrepresentation of women among patent-owning inventors. Other activist organizations, such as the Indigenous Women's Continental Network, have also drawn attention to similar issues.

87. RIAA, "Piracy: Online and on the Street." <http://www.riaa.com/physicalpiracy.php>.
88. RIAA, "Freedom of Speech—History." http://www.riaa.com/whatwedo.php?content_selector=whatwedo_fs_history.
89. RIAA, "Piracy on the Street." http://www.riaa.com/physicalpiracy.php?content_selector=piracy_details_street.
90. For a fuller interpretation of the underpinnings of RIAA's antipiracy campaign, as well as the common ground it shares with pirates' self-descriptions, see Marshall, *Bootlegging*.
91. Lessig, *Free Culture* 206, and Fisher, *Promises to Keep* 126. The case was taken up by the Electronic Frontier Foundation, with which both Fisher and Lessig have had professional relationships. For a journalistic account of this episode, see John Accola, "Single Mom 'Scared' by Music Piracy Suit," *Rocky Mountain News* (September 10, 2003): 16B.
92. Pirate Party, "Declaration of Principles 3.2." <http://docs.piratpartiet.se/Principles%203.2.pdf>.
93. Especially notable among feminist critics of copyright are Pollack, "Towards a Feminist Theory"; Halbert, "Feminist Interpretations"; Katyal, "Performance, Property"; Tushnet, "My Fair Ladies"; Craig, "The Third Annual IP/Gender"; and Burk, "Copyright and Feminism."

2. THE MATERNAL COMMONS

1. Ligaya Mishan, "First Contact: A Talk with Ursula K. Le Guin," *New Yorker* (July 24, 2009). <http://www.newyorker.com/online/blogs/bookclub/2009/07/first-contact-a-talk-with-ursula-k-le-guin.html>.
2. Le Guin's objections to the circulation of digital copies of *The Left Hand of Darkness* provide the lead for Motoko Rich's article "Print Books Are Targets of Pirates on the Web," *New York Times* (May 11, 2009). <http://www.nytimes.com>.
3. For informed historical accounts of different facets of the reconsideration

of maternity during the 1970s, see Vogel, *Mothers on the Job*; Lay, *The Rhetoric of Midwifery*; Solinger, ed., *Abortion Wars*; and Kaplan, *Motherhood and Representation*.

4. The repudiation of 1950s suburban motherhood is also clear in central texts of the second-wave feminist revival, esp. Betty Friedan's *The Feminine Mystique*. Daniel Horowitz's important article "Rethinking Betty Friedan" places Friedan's classic in the context of her own conflict between maternity and work life and her long-term advocacy for maternity leaves in a union context.
5. For largely impartial analysis of major tenets of all wings of the 1970s feminist movement, see Jagger, *Feminist Politics and Human Nature*.
6. The most important and persuasive work on possessive individualism remains MacPherson, *The Political Theory of Possessive Individualism*.
7. See the version of this view offered in Gilligan, *In a Different Voice*.
8. See Dalla Costa and James, *The Power of Women*. Gayatri Spivak took up Dalla Costa and James's line of argument in her important essay "Scattered Speculations on the Question of Value" in *In Other Worlds* 154–78. During the 1970s, the American activist Shulamith Firestone came closest to the Italian *autonomia* position (*The Dialectic of Sex*).
9. William H. Chafe describes this transition in the last chapter of *The Paradox of Change*.
10. See Bruce W. Bugbee, "Genesis of American Patent and Copyright Law," in Merges and Ginsberg, *Foundations* 269. On maternal metaphors for copying, see Roof, "The Ideology of Fair Use." Rosemary Coombe extends this argument further, asserting that copyright law not only relies on paternity metaphors, but also regulates the array of gender and sexual identities legitimately in circulation (88–129).
11. 499 U.S. 340 (1991).
12. Cott, "Feminist Politics in the 1920s."
13. Hoppe, "Whose Life Is It, Anyway?"; Estell, Review of *The Fon and His Hundred Wives*; and Bascom, Review of *The Fon and His Hundred Wives and Women of the Grassfields*.
14. Ver Steg, "Defining Author for Purposes of Copyright" (arguing that as a result of post-1976 confusion about the definition of authorship, *Reyher* privileges expression over idea); and Sadler, "Federal Copyright Protection" (citing *Reyher* as an example of a typical copyright case in which ideas are not protected, while expression is, as opposed to trade secrets cases in which ideas can be protected).
15. Some approve of the introduction of the "total concept and feel" category and see it as a basis for extending property rights to other as yet unprotected

- aspects of texts, such as characters or jokes. See Feldman, “Finding a Home for Fictional Characters,” and Madison, “The Uncopyrightability of Jokes.”
16. Francione, “Facing *The Nation*.”
 17. Der Manuelian, “The Role of the Expert Witness” (arguing for expert witnesses in music copyright cases because courts may not understand the aesthetics involved); Sharb, “Getting a ‘Total Concept and Feel’ of Copyright Infringement” (arguing against expert witnesses, on the grounds that copyright should give the audience what it wants and the court can serve as a typical audience member); and Cohen, “Copyright Law and the Myth of Objectivity” (questioning the suitability of judges deciding aesthetic matters).
 18. In much the same spirit, see Simon, “A Constitutional Analysis” (citing *Reyher* as a typical copyright case in which private incentive and public good are balanced, in the context of a larger argument for limiting copyright in publicly commissioned artistic works). Justin Hughes argues in “The Philosophy of Intellectual Property” that a commons in both extraordinary ideas and commonplace expressions is necessary to Lockean intellectual property law.
 19. This is the tactic taken by quite a few of the essays in Davis and Stillman, eds., *The New Utopian Politics*.
 20. Critical analyses of Le Guin’s feminism include Moylan, *Demand the Impossible* 91–120; Klarer, “Gender and the ‘Simultaneity Principle’”; Lothian, “Grinding Axes”; Rashley, “Revisioning Gender”; and, in passing, Farland “‘Total System.’”
 21. Le Guin also figures centrally in *Archaeologies of the Future* (the title is borrowed from Le Guin), in which Jameson considers the possibility that the concern with gender manifested by Le Guin and other science fiction writers during the 1960s and 1970s may require a rethinking of the entire “phase” of so-called subjective fictions (93).
 22. More recently, Le Guin has been one of the authors in the Authors Guild taking a stand against the digitization of literary works. See Motoko Rich, “Digital Books are the Target of Piracy on the Web,” *New York Times* (May 11, 2009). Although explaining the transformation of Le Guin’s views of authorship after the 1970s lies beyond the scope of this chapter, I do want to note the difference between her early feminist sympathy for anarchism and the somewhat different language of digital anarchy used in the early twenty-first century. This is one of several senses in which 1970s feminism provides a repertoire of images rather than a literal program for contemporary copyright activists.
 23. I stress this point because Le Guin is sometimes misread as affirming a normative rhetoric of maternity and marriage. See Mark Tunick, “The Need for Walls: Privacy, Community, and Freedom in *The Dispossessed*,” in Davis and Stillman, *The New Utopian Politics* 128–48.

24. Orin Starn gives a compelling account of current thinking on the assimilation, rather than extermination, of indigenous peoples of California in *Ishi's Brain*.
25. In *Ishi's Brain* Starn describes his efforts to recover Ishi's brain from a collection in the Smithsonian despite claims that Ishi's body had been interred whole in accordance with his wishes.
26. On Le Guin's use of the quest, see Bittner, *Approaches*; Rochelle, *Communities of the Heart*; Moylan, *Demand the Impossible*; and Rashley, "Revisioning Gender." Moylan in particular criticizes Le Guin for insufficiently revamping the masculine quest hero.
27. Le Guin, "Is Gender Necessary? Redux," in *Dancing at the Edge of the World*.
28. Le Guin's interest in Jungian psychology is well established (see Cummins, *Understanding Ursula K. Le Guin* ch 1), as is her concern with Taoism (see, among others, Erlich, "Le Guin and God").
29. Philip Wegner in *Imaginary Communities* makes a very persuasive case for understanding Le Guin's novel as a rewriting of Zamiatin's dystopian classic *We* (172–82).
30. Here, I disagree somewhat with Cummins (*Understanding Ursula K. Le Guin* 111ff.), who sees Shevek's sexual relationships in *The Dispossessed* as compensation for a lack of intellectual property. I am arguing that both intellectual property and eroticism have some dystopian qualities in this novel.
31. Lewis Hyde's classic discussion of gift economies as a model for artistic exchange is certainly relevant here; see *The Gift*, esp. ch 6, "A Female Property." After a survey of marriage practices, this chapter concludes that "in a modern, capitalist nation, to labor with gifts (to treat them as gifts, rather than exploit them) remains a mark of the female gender" (141).
32. Here, I disagree with Samuel Delany's well-known critique of *The Dispossessed* as heterosexist. There certainly is a resistance to sexuality per se in the novel, but this does not amount, in my analysis, to an explicit effort to exclude homosexual men from parentage. See Delany, "To Read *The Dispossessed*," in *The Jewel-Hinged Jaw*.
33. For a reading of a not entirely dissimilar case involving product tie-ins, see my "Curious George at the Border." For publishers' statistics on the market in juvenile fiction relative to other areas of the book trade, see "Association of American Publishers 2007 S1 Report, Estimated Book Publishing Industry Net Sales 2002–2007." <http://www.publishers.org/main/IndustryStats/documents/S12007Final.pdf>.
34. For an engaging history of the effect of commodity culture on American conceptions of childhood, see Cross, *The Cute and the Cool*.

3. APPROPRIATING INUIT FASHIONS

1. "Economic Power Called Key in Helping Inuit Women," *Globe and Mail* (February 22, 1994); see also Betsy J. Fowler, "Preventing Counterfeit Craft Designs," in Finger and Schuler, eds., *Poor People's Knowledge* 122–23. Fowler makes the point that the counterfeiting or relabeling of craft goods has become a major sector of the global economy and describes the *amauti* dispute as a necessary form of cultural protectionism. The capitalist utopianism underlying such assertions becomes especially apparent in projects such as Mau and Leonard, *Massive Change*.
2. Hadani Ditmars, "My Clothes, My Identity," *Ottawa Citizen* (November 18, 1999): E1. Information in this paragraph is derived from Ditmars; see also Hattie Klotz, "Inuit Fight on 'poaching' Gains Support," *Ottawa Citizen* (November 17, 1999): A8; Margo Roston, "True Northern Style Celebrated at Museum," *Ottawa Citizen* (February 23, 1995): E5; Rick Mofina, "Culture 'Confiscated' for High Fashion," *Ottawa Citizen* (November 16, 1999): A1; Ken MacQueen and Rick Mofina, "Inuit Want to Throw Legal Hood over Designs," *Vancouver Sun* (November 16, 1999): A1; and Eva Friede, "Borrowed Style a Cultural Issue," *Gazette* (December 3, 2002): D2. On the basis of experiences with the *amauti* dispute, the Pauktuutit organization prepared a case study and ran a workshop for the World Summit on Sustainable Development in 2002; see Phillip Bird, "Intellectual Property Rights and the Inuit Amauti: A Case Study." http://www.wipo.int/tk/en/igc/ngo/wssd_amauti.pdf.
3. See Heather Harlan, "Donna Karan Named in Sweatshop Suit," *Asian Weekly* (June 15–21, 2000); and Associated Press, "Seamstresses Protest Factory Conditions," *New York Times* (July 1, 1999): B8.
4. See Louie, *Sweatshop Warriors*.
5. In a bold and necessary polemical essay, "Technology and Below-the-Line Labor in the Copyright over Intellectual Property," Andrew Ross argues that in the entertainment industry, "additional residues have brought handsome benefits to those above the line. Below the line, however, the capacity to produce overseas or in right-to-work states has decimated the livelihoods of technicians, set designers, sound engineers, cinematographers and grips. . . the development of the new technologies has only accentuated the uneven distribution of income that is governed by the line" (755).
6. For related analyses of the contradictions produced by the contemporary global division of labor, see Ehrenreich and Hochschild, eds., *Global Woman*. For an earlier and more theoretical analysis of related phenomena, see Mies, *Patriarchy and Accumulation*. Summarizing the results of a study of the lace-

making industry, Mies describes, for instance, how “working class women in [European] countries can afford a lifestyle formerly only possible for bourgeois women because poor rural women in India make these things for a wage below their own subsistence level” (134–35). Some aspects of Mies’s analysis have been updated and integrated into the more optimistic political analysis offered in Moghadam, *Globalizing Women*; Moghadam argues that despite enormous divisions among women located at center, periphery, and semiperiphery of the global economy, numerous transnational feminist projects directly address the global concentration of wealth and assert women’s economic and political rights.

7. A similar analysis informs Barnett, “Shopping for Gucci.”
8. See Tsai, “Fashioning Protection,” who argues for the extension of the kind of protections offered to designers in the European Union to those in the United States.
9. Ann Bartow makes this point in “Fair Use and the Fairer Sex.” While noting the lack of protections for spheres of creativity traditionally associated with women, she also asserts that “low barriers protection is the correct feminist position on copyrights” (570).
10. The UNESCO “Universal Declaration on Cultural Diversity” was passed on November 2, 2001; its rapidly expanding group of signatory nations explicitly affirms the need for protection of intangibles, such as crafts and indigenous knowledge. Similarly, the “Convention for the Safeguarding of the Intangible Cultural Heritage” entered into force in April 2006; its signatories agree to actively protect traditional knowledge and other aspects of cultural heritage. See the UNESCO Website at <http://www.unesco.org>.
11. A major sweatshop dispute regarding factories on the island of Saipan resulted in Donna Karan and other major designers paying \$1.5 million for the introduction of increasingly intense surveillance of the factories and conditions of factory workers. See Diane E. Lewis, “Four Retailers Settle Sweatshop Allegations,” *Boston Globe* (August 10, 1999): D6.
12. My discussion of the division of labor in the fashion industry continues themes introduced by a new generation of women’s historians, many of whom examine cross-class fantasies in the fashion industry. See Nan Ensted’s argument for reading garment workers’ own consumption choices as part of the production of a politically enabling “ladyhood” in “Fashioning Political Identities.” Katrina Srigley makes a similar point about oral histories in “Clothing Stories.” Angela McRobbie takes a materialist analysis of the production of garments and images in the largely female-dominated fashion industry much deeper in her imaginative study *British Fashion Design*.

13. Only one piece of scholarly criticism on Barrett's writing has appeared to date; see Dale, "Those Filthy Irish."
14. Corynne McSherry's outstanding analysis of the gift economy in scientific research, *Who Owns Academic Work*, provides a useful backdrop here; she describes in detail the scandals produced by the same scenarios Barrett explores in narrative form and explains how changes in university organization disturb the forms of joint authorship practiced in scientific research (see esp. 68–100).
15. Barrett's attention to the textuality of scientific knowledge about nature and indeed nature itself is relatively unusual in American nature and science writing. See Dana Phillips's pointed critique of realist tendencies in nature writing, *The Truth of Ecology*.
16. John C. Spurlick and Cynthia A. Magistro, in *New and Improved*, trace some forms of twentieth-century women's resentment of a sense of isolation resulting from the loss of forms of intimacy associated with the nineteenth-century female world of love and ritual famously described by Carol Smith-Rosenberg.
17. Reviewers emphasized the novelty of the Chinese setting. See D. J. Taylor, "Grace under Pressure," *Spectator* (December 9, 2000): 44; and Katherine A. Powers, "A Review of *The Middle Kingdom*," *Washington Post Book World* (May 5, 1991): 11.
18. Lee Edelman argues in *No Future* that the figure of the child as a sign of the future is one of the most powerful and conventional hallmarks of heterosexual privilege in contemporary American culture.
19. Descriptions of ambivalent childlessness in Barrett's writing echo other contemporary narratives of conflicted maternity. See Hansen, *Mother without Child*, who proposes that contemporary feminist writers have reached an impasse regarding representations of motherhood.
20. In his 1987 review essay, "The View from Quabbin Hill," Philip F. Gura asserted that no sufficiently compelling general account of the flooding of the four towns had yet been written. Specialized accounts of these events include Donald W. Howe's nostalgic photo-essay *Quabbin: The Lost Valley* and Fern L. Nesson's discussion of the debates among water supply engineers during the construction of the reservoir system in *A History of Boston's Water Supply*. Notably, Barrett does not cite sources for this novel, a practice that is strongly characteristic of her later writing.
21. Barrett received the National Book Award over "the hands-down favorite that season, David Foster Wallace's 'Infinite Jest.'" Peter Kurth, "Andrea Barrett." *The Salon Interview*. http://www.salon.com/books/int/1998/12/cov_02inta.html.
22. While disassociating her work repeatedly from historical fiction, Barrett makes a point in her acknowledgments (255) of underscoring the research underlying

- the events described in the novella, citing Cecil Woodham-Smith's study, *The Great Hunger*, as important to her understanding of Irish migration and J. A. Jordan's turn-of-the-century compilation *The Grosse Isle Tragedy* as a source for several events and peripheral figures.
23. This depiction of class politics and migration in the Adirondacks is developed more fully in several of Russell Banks's novels, notably *The Rule of the Bone*. While Banks's narratives move toward the Caribbean and Africa, Barrett's more typically have east/west axes.
 24. The nineteenth-century sentimental novel arguably understood marriage as utopian in this sense, in that it frequently figured marriage as the moment when the wife ascends to her position as a domestic goddess authorized to act for reform in the outer world as well. See Tompkins, *Sensational Designs*. Nancy Armstrong provides in *Desire and Domestic Fiction* an even more pointed analysis of the marriage trope in English women's writing, arguing that it is precisely the act of removing themselves from public power in a retreat to domesticity that gives middle-class women force and authority, especially relative to the working-class women or racial others they define as in need of scrutiny. To varying degrees, Barrett's novels explore some of the contradictions of this move—straining against while still recognizing the divisions among women that are reproduced by the assertion of domestic authority.
 25. Kane's narrative in particular seems to have inspired details of plot and characterization for Barrett. For relevant selections from Kane's writings, see Brandt, ed., *The North Pole* 226–50.
 26. In this respect, Barrett's project in *Voyage of the Narwhal* resembles those outlined in Hite, *The Other Side of the Story* (an argument for the postmodern strategies of feminist fiction), and Peterson, *Against Amnesia* (which sees women's writing as tending toward the creation of "postmodern histories"), rather than those described in critical accounts that stress the separation of women's authentic experience from postmodern reflexivity.
 27. Although Barrett focuses on the crew's journals, many Arctic voyages also produced other kinds of writing—from shipboard newsletters and playbills to so-called balloon letters designed to locate lost sailors. Sometimes shipboard printing presses were used for these projects. See Hoag, "Caxtons of the North."
 28. Details in these passages and the story of the unreliable narrative derive from Charles Francis Hall, *Life with the Esquimaux*. Inspired by Kane, Hall financed his own journey to the Arctic to search for the Franklin expedition, spent several years living with Inuit on Baffin Island, and published this account of his experiences before apparently being murdered by a crew member on a later voyage. See Loomis, *Weird and Tragic Shores*, which was reissued by Random

- House in 2000 with an introduction by Barrett.
29. On Lossing, see Van Tassel, "Benson J. Lossing." Although Alice Barritt died in 1855, it is possible that she contributed to the illustration of Kane's enormously popular 1854 book *U.S. Grinnell Expedition in Search of Sir John Franklin: A Personal Memoir*.
 30. Here, Barrett's narrative incorporates insights of scholars of polar exploration such as Susan Kollin in "'The First White Woman in the Last Frontier.'" Kollin argues that "white women, in claiming a larger cultural role for themselves as travelers, frequently did so by reproducing the same discursive tactics used against them.... consigning the racial other to the realm of nature" (106).
 31. Minik's story is discussed in passing in Bloom, "Constructing Whiteness," and in greater detail in Huhndorf, "Nanook and His Contemporaries," and Harper, *Give Me My Father's Body*. The investment of Smithsonian curators in nineteenth-century theory of racial polygenesis and phrenological accounts of racial difference provides some of the backdrop for Starn's *Ishi's Brain*. For an astute reading of the cultural politics of ethnographic displays in a commercial context, see Adams, *Sideshow U.S.A.*
 32. These passages also recall the dazzled reverence of Barry Lopez in *Arctic Dreams*, esp. ch 4, on the narwhal.
 33. Barrett's descriptions of the Arctic paintings seem to owe something to Frederic Church's celebrated luminist works. See Lopez's account of Church in *Arctic Dreams* (245–47), and Mitchell, "Frederic Church's 'The Icebergs.'"
 34. Vollmann's Sedna story appears to be adapted from versions collected by Franz Boas; see *The Central Eskimo*.
 35. Anupam Chander and Madhavi Sunder make this point about the Romantic qualities of many commons-based arguments in their essay "The Romance of the Public Domain." Arguing that without added protections, "the commons often functions more in the interests of traditional property owners than in the interests of commoners," they assert the oppositional force of sui generis protections such as those discussed in the later chapter on Silko (1343).
 36. On the dialectical fit between domesticity and American imperialism in the late nineteenth and early twentieth centuries, see Kaplan, *The Anarchy of Empire*.

4. OBSCENITY VERSUS FREEDOM OF SPEECH

1. On the pornography debate, see MacKinnon and Dworkin, eds., *In Harm's Way*. MacKinnon's and Dworkin's positions have been critiqued for mischaracterizing the effects of legal prohibition by Judith Butler in *Excitable Speech* and

- for too drastically reducing women's imaginative space by Drucilla Cornell in *The Imaginary Domain*.
2. Greater profitability resulted in part from the removal of a requirement that owners formally renew copyrights; when the maximum term was automatically extended to all copyrighted works, losses created by gaps in earnings diminished; see Lessig, *Free Culture* 135.
 3. For a mainstream account of the rise of the so-called postmodern economy of images and information in the highly developed nations, see the writings of management guru Peter Drucker, *The Post-Capitalist Society*. Other economists with a broader view see the "knowledge society" not so much as an entirely new development, but rather as a symptom of a new phase in the export of production to the developing world; see, for example, Giovanni Arrighi's brilliant world-systems analysis *The Long Twentieth Century*.
 4. A definitive statement of this position appears in Melville B. Nimmer, "Does Copyright Abridge the First Amendment Guarantees of Free Speech and Press?," in Merges and Ginsberg, *Foundations* 430–34.
 5. See Saunders, "Copyright, Obscenity and Literary History."
 6. See the Supreme Court's ruling on the 2 Live Crew case discussed at length in chapter 5.
 7. While parody defenses can be made in trademark cases, the standards for such judgments appear to be more confused than in copyright cases, especially when sexually explicit material is involved. In "Trademark Parodies," Emily Adelman argues that "there are few objective guidelines the courts follow when analyzing a trademark parody case. This often results in judges using their subjective view of the parody. This subjective view includes factors such as the judge's sense of humor and his sensitivity to offensiveness or vulgarity" (80). In *The Cultural Life of Intellectual Properties*, Rosemary Coombe makes almost the same point: "parody, although recognized as a possible defense by the United States Supreme Court in the copyright area, has not been definitively legitimated in the field of trademark" (75). Landes and Posner, in *The Economic Structure of Intellectual Property Law*, agree that there is legal confusion and offer their own method for differentiating between copyright and trademark parodies (159–63).
 8. Jessica Litman presents a compelling description of differences between public and professional views of intellectual property law in "Copyright as Myth."
 9. *Dallas Cheerleaders v. Pussycat* is the primary example of pornographic tarnishment for Adelman (78), among others.
 10. In an important article asserting that the U.S. copyright regime has expanded to the point of becoming unconstitutional, Jed Rubenfeld provides a close

reading of this phrase, arguing that the confusing “trammel” (a type of shackle) should be read as “trample”; see “The Freedom of Imagination.”

11. 354 U.S. 476 (1957).
12. 383 U.S. 413 (1966).
13. 413 U.S. 15 (1973).
14. Despite controversial high-profile cases, judgments on moral questions often lag behind changes in culture. For example, historian Marc Stein notes that “on the very day that the Court announced its ruling in *Fanny Hill* it upheld obscenity convictions in cases dealing with fetishism, homosexuality, and sadomasochism” (497) and argues that despite the appearance of an increase in tolerance for sexual variation, the *Fanny Hill* case was actually an aberration in the Supreme Court’s overall defense of heteronormative sexual standards.
15. The text of the Family Entertainment and Copyright Act of 2005 is available online at The Library of Congress, THOMAS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:S.167>. Jonathan Zittrain, in “Internet Points of Control,” analyzes similar proposals to filter both pornography and copyright-infringing material at the state level and argues that a patchwork of such ad hoc systems is likely to exceed desirable levels of content regulation.
16. The Communications Decency Act was overturned in *Reno v. ACLU* (521 U.S. 844 [1997]) on the grounds that First Amendment protections at the level enjoyed by newspapers were appropriate to the Internet. In her prize-winning article “The New Surveillance,” Sonia Katyal argues that, despite such free-speech victories, a new panoptic private regime of surveillance of Internet usage has still emerged, one that threatens privacy and free speech in the interest of protecting copyright.
17. See Tushnet, “Copyright as a Model” (arguing that copyright should imitate anti-pornography legislation because both suppress “bad speech”).
18. Among the many commentators asserting the relevance of freedom of speech to copyright are Netanel, “Locating Copyright” (outlining the shift in congressional and judicial interpretations of copyright since 1970); Benkler, “Free as the Air” (arguing for a return to Justice Louis Brandeis’s conception of the public domain); Balkin, “Digital Speech”; Ghosh, “Deprivatizing Copyright”; Chan, “The Authorial Parent”; Rubinfeld, “The Freedom of Imagination”; Lemley and Volokh, “Freedom of Speech”; and Tushnet, “Copyright as a Model.”
19. See also Tushnet, “Using Law and Identity” (arguing that fan fiction has no adverse market effect); Cohen, “Intellectual Property” (arguing more generally that piracy discourse is unnecessarily moralizing); and Lemley and Volokh, “Freedom of Speech” (arguing that because copyright has a chilling effect

- comparable to that of obscenity cases, the same arguments used in obscenity cases—for instance, objections to prior restraint—ought to apply in copyright disputes).
20. A strong version of the market logic that Acker rejects is offered by Landes and Posner, *The Economic Structure*, esp. ch 2, “How to Think about Copyright”; perhaps surprisingly, they conclude that “copyright holders might well find it in their self-interest, ex ante, to limit the scope and duration of copyright protection” (69). This stance emphasizes the fact that it is not the conclusions they draw to which Acker objects, but rather the assumption that market considerations precede or coincide with creative production.
 21. See the preface to *Bodies of Work* (viii–ix) and “Paragraphs.”
 22. “I can write only from, in, that free space” (“Paragraphs” 91).
 23. Acker’s earliest works include *Politics* (1972), *The Childlike Life of the Black Tarantula* (1973), *I Dreamt I Was a Nymphomaniac: Imagining!* (1974), *The Adult Life of Toulouse Lautrec by Henri Toulouse Lautrec* (1975), and *Kathy Goes to Haiti* (1978). Few critics discuss these early works in detail.
 24. Major works of Acker’s middle period include *Great Expectations* (1982), *Blood and Guts in High School* (1984), *Don Quixote* (1986), and *Empire of the Senseless* (1988). Most literary criticism on this period explores either Acker’s plagiarism or her politics; see Berresem, “Body-Wound-Writing”; Conte, “Discipline and Anarchy”; Hawkins, “All in the Family”; Hume, “Books of the Dead”; and Pitchford, *Tactical Readings*. On sadomasochism, see Pitchford, “Flogging a Dead Language,” and esp. Redding, “Bruises, Roses.”
 25. In Acker’s late period, I include *In Memoriam to Identity* (1990), *My Mother: Demonology* (1993), and *Pussy, King of the Pirates* (1996). See Harryman, “Residues or Revolutions; Hughey, “Cyberpunk Pilgrimages”; Kocela, “Resighting Gender Theory”; Mintcheva, “To Speak with the Voices of Others”; Rock, “Poetics of the Periphery”; Weinstein, “The Lay of the Land”; and Worthington, “The Territory Named Women’s Bodies.”
 26. See Chisholm, “Kathy Acker’s Grave Songs,” and Cooley, “Painful Bodies.”
 27. See Acker, “Against Ordinary Language: The Language of the Body,” in *Bodies of Work* 143–51. A number of critics describe Acker’s work as a continuation of the projects of French feminist Luce Irigaray; see Kocela, “Resighting Gender Theory”; Mintcheva, “The Paralyzing Tensions of Radical Art in a Postmodern World,” in Hardin, ed., 47–68; and Chisholm, “Kathy Acker’s Grave Songs.”
 28. The “end of ideology” thesis so strongly associated with neoconservative Francis Fukuyama was not, however, only a right-wing thesis. As Walter Benn Michaels persuasively argues in *The Shape of the Signifier*, a liberal politics of difference and identity also displaces ideological arguments based on equality

- and disagreement, thereby advancing the postideology project as well.
29. Critics have some interesting differences on the relationship between Acker's writing and tactics of terror. Milletti ("Violent Acts, Volatile Words") and Michaels ("[The Response to] Terror") describe Acker's interest in embodiment as a literary adaptation of the techniques of terror, while Clune ("Blood Money") and Houen ("Sovereignty, Biopolitics, and the Use of Literature") describe Acker's later writing as a recovery from or alternative to terror.
 30. While plenty in Acker's writing supports Michaels's thesis in "(The Response to) Terror" about the reduction of writing to an act or mark, it is not trivial, in my view, that she retained throughout her career an investment in ideologies of equality, including class equality. See "Critical Languages," in *Bodies of Work* 89–91.
 31. My essay "Beyond Appropriation: *Pussy, King of the Pirates* and a Feminist Critique of Intellectual Property," in Hardin, ed., 211–34, explores the meaning of O's name in more detail (224).
 32. Acker's interest in Burroughs is widely acknowledged, but no one has (to my knowledge) considered how echoes of Durrell's *Alexandria Quartet* or Bowles's *Sheltering Sky* might influence Acker's North African writings.
 33. See Chisholm and, differently, Clune. Also Dane, "Hysteria as Feminist Protest."
 34. See Weinstein, Chisholm, and Kocela. Judith Roof is more skeptical on this point ("Is There Sex after Gender?").
 35. Here I disagree with Carla Harryman, who argues in "Residues or Revolutions" that Acker's work rejects the heroism of the macho rebel outright.
 36. As Mintcheva notes in "To Speak with the Voices of Others," Acker describes her interest in Bataille's Acéphale movement at length in "Critical Languages" (*Bodies of Work* 89–91). She understands the Acéphale political ideal as meaning that "the head is ruled by the cunt" (90).
 37. As Worthington argues, the fourth option—the transformation of "the pirate"—is self-evident; that is, one must become a new kind of pirate if one is a girl.
 38. Kocela presents a thorough reading of the pirate penis in relation to Butler's concept of the lesbian phallus.
 39. Thomas H. Kane in "The Deaths of the Authors" presents a useful reading of Acker's borrowings from Stevenson.
 40. Robert Siegle in *Suburban Ambush* makes a convincing case for Acker's involvement in a distinctive Lower East Side literary aesthetic.
 41. "When I copy, I don't 'appropriate.' I just do what gives me most pleasure: write. As the Gnostics put it, when two people fuck, the whole world fucks" ("A Few Notes on Two of My Books," in *Bodies of Work* 10).

42. Netanel argues in “Locating Copyright” that the distinction between idea and expression has broken down more generally in copyright rulings to the point that “what once would have been considered the permissible, indeed laudable, reformulation of unprotected idea now constitutes infringing copying of expression” (18–19). This distinction is unclear, arbitrary, and ineffective in practice, says Netanel; uncertainty about its definition leads to self-censorship and infringement suits.
43. As Roberta Kwall remarks in “Author-Stories,” legal scholarship on authorship pays surprisingly little attention to the views of actual authors on the practical and/or ideal workings of their profession. The anonymous author of the *Harvard Law Review* essay “Originality” offers an explanation for this lack of attention to literary experts, arguing that “lawyers tend to place constraints on originality that are analogous to those that we feel when producing legal texts” (2009). Because the norms of the legal profession require a truly maniacal citation fetish, originality is in practice suspect for lawyers, as are the writings of literary authors (who generally value originality, including original critiques of the idea of originality).

5. TRANSRACIAL PARODY

1. 510 U.S. 569. For a clear summary of the oral arguments and main issues of *Campbell v. Acuff-Rose Music*, see Rogow, “Artistic Parody” 127–37. *Campbell* has had an effect on other literary parody cases, such as the Margaret Randall *Wind Done Gone* suit; for an analysis of modifications to *Campbell* (including the introduction of First Amendment concerns and the decision regarding the reduction of the importance of humor in parody), see Gossett, “*The Wind Done Gone*.”
2. *Acuff-Rose Music v. Campbell*, 972 F.2d 1429 (6th Cir. 1992).
3. See Brief Amicus Curiae of PEN American Center, which quotes and affirms Oscar Brand’s analysis: “2 Live Crew’s version, which is unquestionably a comic parody, is aimed at the large black populace which used to buy what was once called ‘race’ records. The group’s popularity is intense among the disaffected, definitely not the audience for the Orbison song. I cannot see how it can affect the sales or popularity of the Orbison song, except to stimulate interest in the original” (43–44). It also seems relevant to de Grazia, “Girls Lean Back Everywhere” 820–23; and Clark, “As Nasty as They Wanna Be,” n 203.
4. Tsosie quotes English professor Elizabeth Cook-Lynn, who published another essay in the same issue of the journal’s report from a symposium on cultural sovereignty.

5. For language of the two most recent additions to UNESCO's three-part structure for protecting culture, see "Universal Declaration on Cultural Diversity" and "Convention for the Safeguarding of the Intangible Cultural Heritage" at <http://www.unesco.org>.
6. See, for example, Paterson and Karjala, "Looking beyond Intellectual Property."
7. For example, Brown, *Who Owns Native Culture?*
8. See esp. chs. 1 and 2 of Brown, on the American and Australian cases, respectively.
9. "Indians Sue Artist over Sale of Recordings," *Los Angeles Times* (October 9, 2003).
10. Madhavi Sunder makes this point in "Intellectual Property." Using the example of controversy surrounding Deepa Mehta's *Fire* (on female homosexuality in India), she demonstrates how cultural protectionists can use appeals to intellectual property to censor critical works and regulate cultural identity.
11. On the rise of a managerial approach to culture as a resource requiring expedient use, see Yúdice, *The Expediency of Culture*, esp. ch 8, which describes the utility of intellectual property rights for the containment of radical cultural politics.
12. See Brief Amicus Curiae of PEN American Center, arguing that courts should not decide what constitutes too much copying because that is an aesthetic decision and also asserting that judges should not base their decisions on parody on their own senses of humor because that is the role of musical or literary critics.
13. In an interview with Ellen Arnold, Silko makes her views of the head of Microsoft clear: "William Gates builds that huge house out on that little island, it's the same thing. These robber baron computer guys are building huge conspicuous consumption homes and gardens. In a hundred years, nothing has changed. That's the weird thing. So [*Gardens in the Dunes*] is really about right now" (182).
14. See esp. Carolyn Merchant's discussion of early modern figurations of mining as rape (29–41). A much more nuanced analysis than some of those it inspired, Merchant's study has been somewhat tarred by association with its successors. For further differentiations of Merchant's historical account from contemporary political movements, see Noel Sturgeon's account of the ecofeminist movement (especially New Age tendencies to romanticize Native American ecological consciousness) in *Ecofeminist Natures*.
15. See also Isernhagen, "Of Deserts and Gardens," in which he argues that "ideologically, Silko writes a global ecofeminist alliance" (179).
16. For a disturbing historical account of the boarding school movement as a tool

- of forced assimilation, see Pfister, *Individuality, Incorporated* 31–96.
17. Hattie's revenge is a figure of revolutionary violence for A. M. Regier, in "Revolutionary Enunciatory Spaces."
 18. In the author's note to the Scribner's edition of *Gardens in the Dunes*, Silko makes it clear that the novel grew from a short story "about a young Indian student who is sent away to Indian boarding school where she learns to cultivate and even hybridize gladiolus" (480) and then encounters conflicts over the water needed to raise decorative plants when she returns home. In short, this plot is the germ of the novel as a whole.
 19. Many critics have noted Silko's interest in syncretism—in this novel and elsewhere. Regier notes that in *Gardens*, "Native American, female communal identities are shown to be deeply hybrid formations," as are Anglo-European identities (136); Martha J. Cutter, in *Lost and Found in Translation*, describes translation as "an exercise in allowing one text (or language) to be read (or spoken) through another" for Silko in *Ceremony* (103). In chapter 3 of *Native American and Chicano/a Literature*, Christina M. Hebebrand argues that the novel as a whole is dialogic, establishing syncretism as an alternative to the master/slave dialectic. See also Suzanne Ferguson, in "Europe and the Quest for Home," arguing that the representations of the Ghost Dance affirm a syncretic impulse. In *The Metanarrative of Suspicion*, Sandra Baringer argues that fear of contamination is the paranoid impulse Silko attributes to dominant culture, implicitly affirming a less anxious taste for intermixing as a countercultural alternative (103–18). These emphases on the somewhat overused metaphor of hybridity as a crucial and generally positive element of Silko's writing run counter to the more polemical account of her racial politics offered by Michaels, *The Shape of the Signifier*.
 20. Philip Yale Nicholson refers to "Big Rock Candy Mountain" as "one of the favorite IWW songs of the day" (152).
 21. An unusual name, Delena might be Silko's homage to Delena Tull, author of *Edible and Useful Plants of Texas and the Southwest: A Practical Guide* (1999).
 22. In his review of *Gardens in the Dunes*, William Willard contests the accuracy of Silko's depiction of Yaqui gun smuggling, but the detail he provides nonetheless underscores the existence of such an enterprise: "All of the Yaqui settlements in the United States paid a tax to collectors who would buy the weapons of resistance in Tucson. Then ten-man squads carried the guns and ammunition south to the Bacatete Mountains, where the Yaqui guerrilla groups had their strong holds. If they had taken them to Hermosillo, as Silko would have it, the Mexican Rural Mounted Police, the infamous Rurales, would have been waiting for them just across the border, because there were spies in Tucson

- watching Yaqui activities and reporting to the Mexican military and the Rural Police. The smugglers would have been shot and the arms rerouted to the Rurales' barracks" (139–40).
23. For an informative short history of Tarot symbolism, see Wood, "The Celtic Tarot."
 24. In her introduction, Arnold writes: "Motivated by her father's success as a tribal leader in the 1950s in helping Laguna Pueblo win back a portion of the land taken by the federal government, Silko had long intended to study law. It was not until she withdrew in frustration halfway through the University of New Mexico's Indian Law program that she began to think of herself as a professional writer. Convinced that the legal system would never achieve justice for Native Americans, she decided writing would be a better tool" (viii).
 25. In addition to being largely composed of parodies, Carroll's writing has also been the subject of numerous parodies; see Sigler, ed., *Alternative Alices*.
 26. Suzanne Ruta, "Dances with Ghosts," *New York Times Book Review* (April 18, 1999): 31.
 27. See Bivona, "Alice the Child-Imperialist."
 28. Native American postmodernist Gerald Vizenor has famously experimented with links between Native American trickster tales and Chinese monkey stories in *Griever*.
 29. In *Silko*, Fitz reads Silko's interest in a universal language as an effort to recover the mystical significance of glossolalia (197–202).
 30. For example, Quammen, *The Song of the Dodo* 62–72.
 31. Quammen summarizes the complicated issue of whose theory of natural selection came first (108–14).
 32. See Andrea Barrett's story about Wallace in *Servants of the Map*.
 33. "Letter Concerning the Fire on the 'Helen' (S7: 1852)," at <http://www.wku.edu/~smithch/wallace/Soo7.htm>.
 34. The hope of finding a foothold in the law for noneconomic interests has led some advocates of communal copyright to emphasize the traces of moral rights doctrines in copyright. See, for example, Milchan, "Whose Rights Are These Anyway?"

CONCLUSION

1. Fredric Jameson, in *Archaeologies of the Future*, follows Darko Suvin in arguing that utopian narratives are a subgenre of science fiction and that both necessarily include satire as a component of their generic substructure.
2. See Jameson's classic essay on More's *Utopia* "Of Islands and Trenches."

3. For an outstanding feminist analysis of the propositional content of major works of Western political philosophy in the contract theory tradition, see Pateman, *The Sexual Contract*.
4. Here, my argument has been influenced by Drucilla Cornell's account in *The Imaginary Domain* of the necessity of imaginative space for feminist legal theory.
5. For a nuanced account of the conflicts between the historical and rhetorical motives for Marx and Engels's appeal to primitive matriarchy, see Bloch, *Marxism and Anthropology* 1–20.
6. Here, I have in mind Jameson's thesis in the conclusion to *The Political Unconscious* that all ideologies, not only those one favors, should be understood as utopian in form.
7. A somewhat technical debate about the category of productive labor as it is understood in socialist theory, the domestic labor debate often takes as its key text Mariarosa Dalla Costa and Selma James's piece *The Power of Women and the Subversion of the Community*. For a succinct statement of the Trotskyist tendencies criticized and modified by Dalla Costa and James, see Cleaver's introduction to *Reading Capital Politically*. Gayatri Spivak's important essay "Some Scattered Speculations on the Question of Value" in *In Other Worlds* links the feminist critique of the economic consequences of these positions to literary and cultural forms of value.
8. For example, despite a commitment to outlining the problems of domestic labor, several essays in Smith, Wallerstein, and Evers, eds., *Households in the World Economy*, question the validity of the household as a unit of analysis in the first place.
9. See Gibson-Graham's important discussion of the "feudal domestic class" in *The End of Capitalism* 215.
10. In *Anatomy of Criticism*, Frye memorably concludes his essay on the mythos of irony and satire with the image of "the gentlemanly Prince of Darkness bottom side up" (239). Following Frye, I would like to imagine the pink pirate not as a bloated or tainted romantic figure, but rather as the happier and more utopian face revealed when we peek under the skirts of property.

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INDEX

- accessibility, 47, 59, 61
- Acker, Kathy: critical reception, 116–17;
philosophy of property, 112, 113–19;
Pussy, King of the Pirates, 119–30
- Adams, Abigail, 27
- Alcott, Louisa May, 46, 63
- amauti*, 77–80
- anarchism, 53, 63–64, 67–69, 72–73
- appropriation, 70, 142–43, 157
- Artaud, Antoine, 120
- asceticism, 63, 67, 70
- Atwood, Margaret, 52
- authors' rights, 19; as economic rights,
25, 37
- authorship: collaborative, 97; feminist
account of, 23; individualist, 33, 35,
48, 95–97, 101; pirate, 23; professional,
36–41, 47; Romantic, 20, 33, 37, 46,
49, 103; scientific, 81, 90; social, 22
- autonomia*, 57
- Baca, Lorenzo, 137
- Barbie, 42–43
- Barrett, Andrea: early fiction, 81–89;
The Forms of Water, 87–89; *Lucid
Stars*, 82–83; *The Middle Kingdom*,
85–87; as middlebrow metafictionist,
92, 101–03; *Secret Harmonies*, 83–85;
Servants of the Map, 92–94; *Ship
Fever*, 89–92; short story collections,
89–94; *The Voyage of the Narwhal*,
94–101
- Bartow, Ann, 24, 25, 51
- Beecher, Catharine, 30
- body, 48, 113, 117
- Bowles, Paul, 123
- Brown, Michael, 137
- Burk, Dan, 24
- Burnham, Clara Louise, 40
- Burroughs, William S., 123
- Campbell v. Acuff-Rose Music* (1994),
133–35
- Carroll, Lewis, 151–53
- Cather, Willa, 41, 153–54
- Catholicism, 140, 142, 153–54. *See also*
monasticism
- celebrity rights, 37
- copyright, 20, 105, 107, 110–11
- Chatman, Seymour, 149–50
- Child, Lydia Maria, 28
- children's literature, 45, 59–62, 65, 74
- Chon, Margaret, 23
- commons: cultural, 52, 59–60; nature
as, 100, 129, 157–58; pink, 80, 159–65;
social institutions of, 66, 68, 98–100;
tradition and, 81, 90. *See also* public
domain
- Communications Decency Act, 110
- communism, 53, 67, 161–63
- Constitution of the United States copy-
right clause, 25–29
- Constitutional Convention, 26
- consumer confusion, 108

- contracts: author-publisher, 29–32, 34; 38–41, 44; captain-crew, 96
- copyright: American colonial concepts of, 25–26, 28; constitutional clause on, 25–29; coverture and, 29–36; icons and, 41–43; incentive theory of, 19, 113; international, 34–35, 38; natural rights theory of, 26; origins of, 18–25; substantive equality approach to, 23
- Copyright Act of 1909, 43
- Copyright Act of 1976, 43, 49, 105
- coverture: formal, 25, 29–35; informal, 36–41
- Craddock, Charles Egbert. *See* Mary Noailles Murfree
- Craig, Carys, 23, 25
- critical legal studies, 24
- cultural protection, 77–79, 136–37, 143
- Cummins, Maria, 32
- Dallas Cowboys Cheerleaders, 106; *v. Pussycat Cinema*, 48, 107–08; *v. Scoreboard Posters, Inc.*, 108–09
- Davidson, Cathy, 27
- Defoe, Daniel, 22
- Dewar, Veronica, 78
- Dickinson, Emily, 33
- domesticity, 68, 93, 163
- Donaldson v. Becket*, 19, 26
- Donna Karan International (DKI), 77–80
- Ducornet, Rikki, 52
- Dunn, Katherine, 52
- Durrell, Lawrence, 123
- dystopia, 70
- Eddy, Mary Baker, 150
- Eisenstein, Elizabeth, 20
- eminent domain, 87
- Engels, Friedrich, 162
- expression concept, 60, 61, 131
- Ezell, Margaret J. M., 17, 22
- fair use, 33, 107, 111, 134
- Family Entertainment and Copyright Act, 110
- Feist Publications, Inc. v. Rural Telephone Service Co.*, 58
- feminism: 52, 115, 131; liberal, 47, 55, 58–59, 62, 64, 65, 73; difference, 56–57, 124; socialist, 57, 165; anti-porn, 105–06
- Fern, Fanny, 31–32, 46
- Fisher, William, 51
- Fitz, Brewster, 150
- Franklin, John, 95, 102
- freedom of speech, 105–06, 107–12
- Fuller, Margaret, 150
- Gaines, Jane, 105
- Gallagher, Catherine, 21
- garment design, 77–80
- Gates, Henry Louis, Jr., 136, 150
- Gates, William, 141
- Geary, Susan, 34
- Ghost Dance, 146, 147–48, 150
- gift concept, 71, 73–74, 142–43
- Gilman, Charlotte Perkins, 150–51
- Glass, Loren, 37
- gypsy. *See* Roma
- Hardt, Michael, 163–64
- Harvey, David, 162
- Hatch, Orrin, 110
- Helms, Jesse, 118
- Hemingway, Ernest, 122
- Hesse, Carla, 20

- Homestead, Melissa, 31, 33
 homosexuality, 87
 Houghton Mifflin, 40
 Howells, William Dean, 39
- icons: text as source of, 42; of femininity, 42–44
- idea concept in copyright law, 60, 61, 131
- indigenous peoples, 77, 133–58, 160;
 Chemehuevi, 144; Hopi, 153; Inuit, 77–81, 98–100; Iroquois, 162; Mayan, 139, 145, 147, 156; Me-Wuk, 137; Navajo, 153–54; Sand Lizards (fictional), 143–44; Yahí, 65–66; Yaqui, 145–46; Yuma, 155; Zuni, 153
- integrity, 24, 107
- Ishi, 65–67, 71–72, 184
- Jacobs, Harriet, 28
- Jameson, Fredric, 62–63
- Jaszi, Peter, 37
- Johns, Adrian, 20–22
- Kane, Elisha Kent, 95, 96, 97
- Katyal, Sonia, 24, 25, 111–12, 131
- Khler, Angelika, 150
- Kocela, Christopher, 117
- Kroeber, Alfred L., 64
- Kroeber, Theodora, 64–66
- Kropotkin, Peter, 63
- labor: affective, 57, 68, 85, 97, 163; global division of, 77–80; domestic, 57, 160, 163–64; intellectual, 68, 70, 161; Lockean theory of copyright deriving from, 23, 44; in print culture, 24, 92; market for, 36, 57, 79, 106; publishing industry and, 45–46; and women writers, 27, 31, 36–37, 42
- Lacey, Linda, 23, 25
- Le Guin, Ursula: *Always Coming Home*, 64, 71; *The Dispossessed*, 66, 67–74; *The Left Hand of Darkness*, 63, 66; interview, 55; political philosophy, 62–67; relation to Theodora Kroeber, 65–66
- l'écriture féminine*, 123
- Lennox, Charlotte, 21
- Lessig, Lawrence, 51
- Levi-Strauss, Claude, 95
- liberalism, 50, 55, 79, 92, 103, 136. *See also* liberal feminism
- literary agents, 41, 44–45
- literary critics, 138
- literary history, 17, 21, 26
- Litman, Jessica, 61–62
- Lossing, Benjamin, 97–98
- Malraux, André, 120
- marketplace: criticism of, 23, 136, 157; logic of, 27, 111, 136, 157; literary, 19, 29, 34, 35; nonmarket and, 114, 160; racial segregation of, 135; women's relation to, 21–22, 29–30, 35, 37
- Marx, Karl, 161–62
- maternity: biological, 87; feminist debate over, 55–57; metaphor for creativity, 33, 66
- matriarchy, 161–62
- Mazzeo, Tilar, 27
- McCarthy, Mary, 46
- McGill, Meredith, 34
- Merchant, Carolyn, 141
- Metalious, Grace, 46
- middlebrow fiction, 29, 101–03
- Minik, 98, 100
- mining, 70, 74, 141
- Miss America, Inc., 42

- monasticism, 85, 87, 88, 160
 More, Thomas, 159–60
 Morris, Gouverneur, 27
 Murfree, Mary Noailles, 41

 Native American Graves Protection and
 Repatriation Act of 1990, 136
 Native Americans. *See* indigenous
 peoples
 nature: representations of, 69, 89–91,
 100, 129, 138–42; state of, 161
 Negri, Antonio, 163–64
 networks, 33, 40, 41, 46–48
 New York Married Women's Property
 Act, 36
 Nimmer, Melville, 109

 obscenity, 110, 112, 118, 129, 130, 136, 150
 O'Malley, Grania, 47
 Orbison, Roy, 133
 originality, 20, 37, 44, 58, 95

 Pagels, Elaine, 150
 Pará River, 139, 155
 parody, 107, 109, 111, 133–35, 149–56
 Parton, James, 31
 Parton, Sara Willis. *See* Fanny Fern
 Pateman, Carole, 23
 patent, 26, 49
 paternity, 33, 43–44, 58, 62
 Patterson, Annabel, 20
 Patterson, L. Ray, 19, 20, 21, 24
 Pauktuutit, 77–80
 Phelps, Elizabeth Stuart, 32, 39–40
 Pinkham, Lydia, 35
 piracy: anticipation of, 29; antipiracy,
 50; biopiracy, 138–43; maritime, 47,
 124; paradox, 80; pink, 25, 33, 48–53,
 75, 117–19, 123–30, 164–65; as syncre-
 tism, 157. *See also* plagiarism,
 appropriation
 Pirate Party, 52
 plagiarism, 47–48, 50–51, 70, 95–96, 113
 Plath, Sylvia, 46
 Pollack, Malla, 58
 pornography, 48, 105, 112
 Posner, Richard, 40
 possessive individualism, 56, 79
 primogeniture, 25
 prior restraint, 107, 109
 property: Acker's philosophy of, 113–19;
 and crime in *Gardens in the Dunes*,
 138–49; concept of, 24; in *The Dis-*
 possessed, 67–74; in image, 38; liter-
 ary, 19, 31, 47; natural rights theory
 of, 67; in persona, 37; real, 26, 31;
 statist theory of, 67; utopian ac-
 counts of, 160–65; in *Voyage of the*
 Narwhal, 95–97; women's right to,
 21–22, 27–28, 29–41, 42, 57
 public domain, 58–62
 publishing industry: gender segrega-
 tion in, 45; market influence on, 34,
 37, 43–44; use of mass production
 model, 35

 Quabbin Reservoir, 87

 race, 135–36, 144, 151–52
 Radway, Janice, 101
 Raustiala, Kal and Christopher Sprig-
 man, 80
 Réage, Paule, 122
 Recording Industry Association of
 America (RIAA), 49–51
 Regier, A. M., 150
 republican motherhood, 75

- Reyher v. Children's Television Workshop*, 58–62
- Reyher, Rebecca, 55
- Rice, Anne, 52
- Rice, Grantland S., 26
- rights: economic, 36, 105–07, 109, 111; political, 36, 105–07, 109
- Rimbaud, Arthur, 123
- Robbins, Harold, 118
- Roma, 145–47
- Romanticism, American, 27. *See also* authorship
- Rose, Mark, 19–20, 52, 58
- Ross, Andrew, 79
- Rowson, Susanna, 27–28
- Rubin, Joan Shelly, 101
- Sawaya, Francesca, 32–33
- scènes à faire* doctrine, 60–62, 66
- Schroder, Jeanne, 24
- secretaries, 45
- self-ownership: adoption and, 141–42; Lockean, 23, 26; women's, 56
- Sesame Street, 55
- sexuality: autoerotic, 123; freedom from, 63; illicit, 43, 72, 106, 109, 112, 113–16; lesbian, 43, 124; posthuman, 128–29; race and, 134–35; as site of oppression, 131. *See also* homosexuality
- Showalter, Elaine, 56
- Silbey, Jessica, 24
- Silko, Leslie Marmon: *Almanac of the Dead*, 145; *Gardens in the Dunes*, 138–58
- slavery, 26, 29
- Slotter, Ross A., 155
- Smith, Carol Crosswell, 47
- Smith v. Little, Brown & Co.*, 47–48
- Spruce, Richard, 155–56
- state, 67, 87, 117
- Stationers' Company, 20–21
- Statute of Anne, 18–25
- Stearns, Laurie, 18
- Stevenson, Robert Louis, 128
- Stowe, Calvin, 30
- Stowe, Harriet Beecher: contracts with publisher, 29–33; *The Minister's Wooing*, 31; *Uncle Tom's Cabin*, 29–31
- Stowe v. Thomas*, 30
- substantial similarity, 61
- sweatshops, 78–80
- tangibility, 24, 25, 48, 119, 122, 130–32
- Taoism, 67
- tarnishment, 108
- Tarot cards, 121, 145, 146–47
- total concept and feel, 61, 62
- trademark, 107–08
- traditional knowledge: cultural sovereignty and, 136–38, 157; garment design and, 77–80, 81; nature and, 142–43, 149; scientific appropriation from, 82, 88
- Treiger-Bar-Am, Kim, 23
- Trumpener, Katie, 145
- Tsosie, Rebecca, 136
- Tushnet, Rebecca, 24
- 2 Live Crew, 133–36
- UNESCO convention on cultural diversity, 80, 137
- utopia: as effect of ideology, 163; as literary genre, 62, 66, 81, 88, 160–61; as political philosophy, 63, 82, 99, 160; as space, 77
- value judgments, 108–09, 111, 131, 134–35
- Vollmann, William T., 94, 102–03

Waldron, Karen, 141
Wallace, Alfred Russel, 155–56
Warners, Susan and Anna, 32
Warren, Samuel and Louis Brandeis, 38
Wilson, Harriet, 32
Wittenberg, Philip, 18
Woodmansee, Martha, 20
Wright, Shelley, 23