

# **Originality and Intellectual Property in the French and English Enlightenment**

**Edited by Reginald McGinnis**

# **Originality and Intellectual Property in the French and English Enlightenment**

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First published 2009  
by Routledge  
711 Third Ave, New York, NY 10017

Simultaneously published in the UK  
by Routledge  
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

*Routledge is an imprint of the Taylor & Francis Group, an informa business*

First issued in paperback 2012

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Typeset in Sabon by IBT Global.

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*Library of Congress Cataloging in Publication Data*

Originality and intellectual property in the French and English Enlightenment / edited by Reginald McGinnis.

p. cm. — (Routledge studies in eighteenth-century literature ; 6)

Includes bibliographical references and index.

ISBN-13: 978-0-415-96288-9

ISBN-10: 0-415-96288-9

1. English literature—18th century—History and criticism. 2. Plagiarism—Great Britain—History—18th century. 3. Plagiarism—France—History—18th century. 4. Originality in literature. 5. Imitation in literature. 6. Intellectual property—Great Britain—History—18th century. 7. Intellectual property—France—History—18th century. 8. Copyright—Great Britain—History—18th century. 9. Copyright—France—History—18th century. I. McGinnis, Reginald, 1959–  
PR448.P55O75 2009  
700.942'09033--dc22  
2008018808

ISBN13: 978-0-415-96288-9 (hbk)

ISBN13: 978-0-415-54298-2 (pbk)

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# Preface

The idea for this volume began with a session at the 2006 meeting of the American Society for Eighteenth-Century Studies in Montreal, Canada, entitled “Originality and Intellectual Property in the Eighteenth Century.” The papers presented on that occasion have been either extensively or entirely rewritten and are included here, along with three further contributions. While originally conceived as a comparative study of law and literature, the scope of this volume has been expanded to include a chapter on painting. The editor wishes to thank the Barber Institute of Fine Arts, the British Museum, Gainsborough’s House Society, the Huntington Library, the J. Paul Getty Museum, the Royal Academy of Arts, and the Tate Gallery for granting permission to use their images.

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# Introduction

*Reginald McGinnis*

That discussions of intellectual property and copyright surfaced in eighteenth-century England and France at a time when originality is said to have emerged as a new aesthetic category is a point that appears to have been largely neglected by legal as well as literary scholars. Are legal concepts of intellectual property and copyright related to artistic notions of invention and originality? Do literary and legal scholars have anything to learn from each other or should the legal debate be viewed as separate from questions of aesthetics? Bridging what are usually perceived as two distinct areas of inquiry, this interdisciplinary volume begins with a reflection on the “origins” of literary and legal questions in the Enlightenment to consider their ramifications in the post-Enlightenment and contemporary world.

In the opening chapter, Robert W. McHenry, Jr. considers the question of literary paternity in John Dryden’s dramatic adaptations. Writing in the late seventeenth century when, as in the Renaissance, imitation of models was still accepted literary practice, Dryden’s usage of “originals” was nonetheless a subject of controversy. From the Duke of Buckingham’s parody *The Rehearsal* to Gerard Langbaine’s critical catalogues, accusations of plagiarism afforded Dryden an opportunity to explain his ideas on imitation and the appropriation of earlier writings. Comparing reflections from Dryden’s essays and prefaces with his plays and critical responses, McHenry outlines a debate that helps to formulate definitions of originality and plagiarism at the dawn of the Enlightenment.

Dryden’s case is interesting because he combines a strong sense of his own originality—and an aggressively competitive attitude toward other writers—with an easy acceptance of imitation and appropriation as legitimate elements of original composition. Relying on a distinction derived from Petrarch, who said that the borrowing of another man’s ideas makes poets whereas the usage of his words makes apes, McHenry shows how, apart from spawning controversy over plagiarism, literary filiations also elucidate Dryden’s sense of his place in the emerging history of English drama. Whereas the “resemblance of a son to his father endows the newcomer with an honorable heritage and may confer the

benefits of having a nurturing and protecting family, the appellation of ‘ape’ suggests not only mindless mimicry, but also banishment from the human and literary families.”

The question of paternity considered by McHenry with respect to literary filiations appears in a different light in the second chapter exploring authors’ parental interests in their fictional characters. Importing a term from present-day internet culture, referring to newly written fiction by fans featuring characters created by another author, Elizabeth F. Judge considers the cultural and legal consequences of “fan fiction” associated with the novel during the eighteenth century, when “reading circles penned annotations in the margins, circulated alternate endings, corresponded with authors to advocate for happier endings, and shared their revisionist interpretations with other fans (as with Lady Bradshaigh and her sister Lady Elizabeth Echlin and their happier endings for Samuel Richardson’s *Clarissa*).”

The 1710 Statute of Anne defined rights with respect to the “book” as a whole, leaving individual elements such as fictional characters unprotected. And while eighteenth-century English law did not prohibit people from including famous characters in spurious sequels to novels, in plays, or in satires, such appropriations were often condemned by the original authors and likened to legal wrongs against a person—“ravishing, counterfeiting, and kidnapping.” Tracing legal history through the treatment of fictional characters rather than fictional works, Judge offers a new perspective on the relation between authors and their readers (including fan fiction writers) and questions the traditional views of copyright opposing English economic rights with continental European authorship rights (*droit d’auteur*). During a time that saw the emergence of both the novel and copyright law, authors’ interests in their characters are shown to have been “custodial” and “moral,” rather than solely proprietary.

The contributions to this volume share a common concern with comparing twenty-first-century views of law and literature to those of the Enlightenment. As observed by Simon Stern, “theories of aesthetic originality have been so massively influential since the early nineteenth century that, to modern eyes, any reference to originality seems necessarily to include some element of creativity.” Reviewing the eighteenth-century debate over copyright, from the passage of the 1710 *Act for the Encouragement of Learning* to the writings of lawyers such as William Blackstone and Francis Hargrave, Stern challenges the assumption that legal accounts of literary property during this period were based on aesthetic theories of creative genius. Although the eighteenth century is rightly associated with discussions of literary creativity, such as Edward Young’s *Conjectures on Original Composition*, the connotation of creativity or novelty was absent from legal discussions of “originality,” principally concerned with the reprinting of texts, and where a work was said to be “original” so long as it was not a reproduction of another work. Opposing our modern

“high-threshold” definition of originality whereby novelty and ingenuity are considered as the justification for authorial property with an earlier “low-threshold” definition where originality was taken to mean only that a text had not been reproduced, Stern considers the implications of these views for literary culture and for individual writers in their continued reliance on the public domain.

From English discussions of copyright, originality, and the public domain, we turn to the French context in the chapter by Anne Sechin. If the eighteenth century established a legal basis for the notion of intellectual property and witnessed the emergence of originality as an aesthetic category, certainly no other figure reflects this convergence more than Denis Diderot, who, apart from being considered an original author, was accused of plagiarism in his *Encyclopedia* and held what is still perceived to be a controversial position regarding copyright and “privileges” in his *Letter on the Book Trade*. Focusing on *Jacques The Fatalist and His Master*, a novel known for its innovation and originality as well as for its borrowings, Sechin shows how this work of fiction, written after the *Encyclopedia* and the *Letter on the Book Trade*, allows us to make sense of Diderot’s seemingly paradoxical and reputedly antimodernist theories. Whereas Stern recalls Henry Fielding’s view of the public domain as a “rich common” from which authors should be free to borrow, Diderot’s ideas on intellectual property are illustrated in particular by one of his characters, the “landlady,” whose worth as a storyteller is undiminished by her habit of telling second-hand stories.

Philosopher, author, and editor of the *Encyclopedia*, Diderot is also remembered for his influential art criticism. Turning to England and painting in Cristina S. Martinez’ chapter on Thomas Gainsborough, we are never far from Diderot and France. Not only does Martinez’ discussion of Gainsborough include frequent references to the French, but at times closely echoes the preceding chapter. The example of an English master, Joshua Reynolds, for instance, who “admitted that he had been obliged to examine for a longtime a copy by Gainsborough of a Vandyke before he could decide if it were an imitation or an original,” recalls a passage on painting from *Jacques the Fatalist* where the master concedes that “[he] could take a bad copy for a sublime original.” Although issues of copying among painters could seem distant from the concerns of writers, the world of Gainsborough shows striking parallels between art and literature, as, for instance, when Reynolds, accused of plagiarism “for having borrowed attitudes from ancient masters,” was defended on the grounds of “quotation.”

Exercising his profession at a time when the issue of copyright was frequently discussed by artists as well writers and jurists, Gainsborough was aware of the abuses associated with copying. With piracy a constant threat and the demand for copies increasing in England and on the European continent, he cultivated a singular style that effectively served to

protect his works. As observed by one of his biographers, “[his] manner of penciling was so peculiar to himself, that his works needed no signature.” But if Gainsborough’s idiosyncratic style is attributed to his “touch” or “handling,” it was also related to his unusual choice of painting tools—such as sugar-tongs, bits of sponge or paper dipped in skimmed milk—which he guarded with secrecy. In the context of this volume, the example of Gainsborough as an artist protective of his secrets offers an interesting contrast with the attitude of Diderot, who emphasized the importance of disseminating knowledge and who wrote in *The History and Secret of Painting in Wax* that “nothing is more contrary to the progress of knowledge than mystery.”<sup>1</sup>

In the following chapter, Tilar J. Mazzeo takes us from the Enlightenment to issues of plagiarism and copyright associated with the anonymous publication of Lord Byron’s *Don Juan*. Beginning with the print culture surrounding Byron’s domestic scandals, from his failed marriage and adultery to his illegitimate and legitimate daughters, Mazzeo shows how, during the Romantic period, metaphors of paternity and moral rights became increasingly linked with discussions of intellectual property. Tying in with the opening chapters of this volume where paternity is related by Judge and McHenry to kidnapping and to improvement of one’s sources, Mazzeo’s discussion of Byron highlights his reputation as a father as related to parental authority and authorship as well as to borrowings and the theft, not of fictional characters, but of authorial identity. What may appear surprising to modern readers is the “essentially aesthetic nature” of plagiarism in the early nineteenth century when “immoral works” were not considered property and only works publicly recognized as “literary” were granted legal protection. In light of the new legal emphasis on the individuality of authors, this chapter reviews the standards required to “prove” a charge of plagiarism in the Romantic period and focuses on the ways in which the conventions of literary appropriation were historically distinct from both earlier eighteenth-century and later modern constructions.

The final chapter by John Vignaux Smyth picks up where Mazzeo leaves off, questioning portrayals of Romanticism in recent scholarship. In contrast with supposedly Wordsworthian notions of poetry and solitary genius, Smyth recalls Friedrich Schlegel’s insistence on the novel as the modern literary form *par excellence* and particularly on the “proto-Romantic” and comically plagiaristic works of Diderot and Laurence Sterne. “Sterne’s most obvious technique, openly imitated by Diderot in *Jacques The Fatalist*, stages the abstract difficulty of distinguishing between law and arbitrariness very concretely for his readers, since precisely where he and Diderot appear or claim to narrate most arbitrarily we would be well advised to suspect the opposite”—a problem that becomes particularly pointed when it is a matter of deciding whether “what looks superficially like an arbitrary or ‘original’ maneuver is in fact a conscious plagiarism,

or whether the resemblance we see belongs to a more fundamental law, where (like Leibniz and Newton) two authors arrive independently at similar results.” “The trouble,” as Smyth observes, “is that a theory of originality seems sometimes to amount to a theory of almost everything and sometimes to almost nothing.” While not venturing so far as to discuss “everything,” Smyth expands reflection on originality beyond the legal and literary spheres to include theories of law and arbitrariness in philosophy, anthropology, science, and mathematics.

## NOTES

1. Regarding *The History and Secret of Painting in Wax*, see Arthur M. Wilson, *Diderot* (New York: Oxford University Press, 1972), 225–228.



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# 1 Plagiarism and Paternity in Dryden's Adaptations

*Robert W. McHenry, Jr.*

John Dryden thought a great deal about literary paternity during his career as a successful playwright especially because he spent a great deal of his time during the 1670s and 1680s writing appropriations and adaptations of Shakespeare and other writers. While he did so, he also wrote extensively about the proper relationship between contemporary writers like himself and the literary ancestors with whom they competed and simultaneously honored as paternal figures. One of the main elements defining this issue was that of plagiarism because Dryden faced accusations that he both stole from his predecessors and showed them no respect. When Gerard Langbaine published his attacks on plagiarism in English drama, concentrating especially on Dryden, he seemed particularly offended that Dryden took elements from the very authors he disparaged. Not that Langbaine was the first to adopt this line of attack, but his criticisms provided a more specific and sweeping set of arguments. Ironically, these allowed Dryden to defend his approach to the appropriation of earlier writings, but they also exposed areas of the discussion that he avoided. The result is a debate that helps to formulate definitions of originality and plagiarism for the Restoration. In addition, the controversy over plagiarism and the idea of literary filiations help to reveal Dryden's sense of his place as an heir of the great earlier figures in the emerging history of English drama.

By Dryden's time, distinguishing the proper imitation of a writer's sources versus slavish copying was already a well-explored topic, as shown by Harold Ogden White, who declared in his groundbreaking 1935 book that "English writers from Sidney to Jonson [argued] that originality of real worth is to be achieved only through creative imitation."<sup>1</sup> These sixteenth- and seventeenth-century poets insisted on their right to appropriate materials from their predecessors. Even earlier, Petrarch, in 1366, sought to make a clear distinction between acceptable imitation and plagiarism when he declared that the "proper imitator should take care that what he writes resembles the original without reproducing it," and he introduced the influential idea of literary paternity into the discussion when he insisted that the resemblance should be like "a son to his father":

## 2 Robert W. McHenry, Jr.

Therein is often a great divergence in particular features, but there is a certain suggestion, what our painters call an “air,” most noticeable in the face and eyes, which makes the resemblance. As soon as we see the son, he recalls the father to us, although if we should measure every feature we should find them all different. But there is a mysterious something there that has this power.<sup>2</sup>

His application of this distinction is as simple as it is revealing:

Thus we may use another man’s conceptions and the colour of his style, but not use his words. In the first case the resemblance is hidden deep; in the second it is glaring. The first procedure makes poets, the second makes apes.

Jonathan Bate, who quotes elements of this letter in his brilliant study of Shakespeare’s relationship to Ovid, goes on to argue that Shakespeare’s imitation of Ovid is of the kind approved by this tradition, an affiliation, as Petrarch described it, “often more easily felt than defined” and “planted so deep that it can only be extricated by quiet meditation.”<sup>3</sup> The connection between writers of different eras was important to early criticism, as it remains today, and in many ways the polar alternatives for describing that relationship, from the perspective of the imitating younger writers, is well expressed in Petrarch’s “son” and “ape.” The resemblance of a son to his father endows the newcomer with an honorable heritage and may confer the benefits of having a nurturing and protecting family. The appellation of “ape” suggests not only mindless mimicry, but also banishment from the human and literary families. Because both terms recur explicitly in Dryden’s discussions of plagiarism and imitation, and because in the Restoration the issues addressed by Petrarch and others in the Renaissance received a higher degree of often acrimonious airing in the public press, it seems useful to explore the question of the value of those terms for describing the relationship between Dryden and other writers, particularly Shakespeare. Can Petrarch’s quiet meditation yield an understanding of Dryden’s imitations of Shakespeare and other great writers that can be considered filial? Or would his injunction against using another writer’s words properly condemn Dryden’s appropriations, at least for those applying Petrarch’s values?

Petrarch’s notion of a literary “son” would certainly not be surprising to Dryden, for whom the idea that there were lineal relationships among poets of different eras was important to his sense of himself as an artist. In the retrospective Preface to *The Fables, Ancient and Modern* (1700), he observes that the major English poets of the Renaissance eagerly placed themselves with their literary genealogies. Having praised Spenser and Edward Fairfax, the translator of Tasso, as great Elizabethan “Masters [of] our Language . . . who saw much farther into the Beauties of our Numbers,

than those who immediately followed them" (7:25),<sup>4</sup> he records as their true descendents—not those who "immediately followed them," but those who understood their styles and adapted them for their own:

*Milton* was the Poetical Son of *Spencer*, and Mr. *Waller* of *Fairfax*; for we have our Lineal Descents and Clans, as well as other Families: *Spencer* [sic.] more than once insinuates, that the Soul of *Chaucer* was transfus'd into his Body; and that he was begotten by him Two hundred years after his Decease; *Milton* has acknowledg'd to me, that *Spencer* was his Original; and many besides my self have heard our famous *Waller* own, that he deriv'd the Harmony of his Numbers from the *Godfrey of Bulloign*, which was turn'd into *English* by Mr. *Fairfax*. (7:25)

Clearly, these descendents are proud of their literary progenitors and wished to acknowledge them because they regarded such lineal descents as wholly honorable. As Laura Rosenthal points out, images of descent are even important in satires, when the implications were dishonorable. The most famous example is in Dryden's own *MacFlecknoe* (1682), where Dryden's ironic coronation of Thomas Shadwell as king of dullness includes a hyperbolic account of his descent from the odious poet Richard Flecknoe. "MacFlecknoe" means "son of Flecknoe." There it is an important means of defining his lineal right to reign and be acknowledged throughout the literary world as the absolute monarch of nonsense.<sup>5</sup>

That sense of literary forbears seems always to have been important to Dryden, and he often invoked this traditional image of Shakespeare as a literary father. Yet in his earliest criticism, his attitude is complex because it is not uniformly deferential. Indeed it is sometimes openly rebellious. Being a literary son did not for Dryden always lead to expressions of respect or admiration. In the "Essay of Dramatic Poesy" (1667), for example, his witty image for the Shakespeare and his Elizabethan contemporaries is surprising because his spokesman Neander paints these "honour'd and almost ador'd" ancestors as wastrels:

We acknowledge them our Fathers in wit, but they have ruin'd their Estates themselves before they came to their childrens hands. There is scarce an Humour, a Character, or any kind of Plot which they have not us'd. All comes sullied or wasted to us: and were they to entertain this age, they could not now make so plenteous treatments out of such decay'd Fortunes. This therefore will be a good Argument to us either not to write at all, or to attempt some other way. There is no bayes to be expected in their Walks. (*Works*, 17:73)

Dryden transforms the plentitude of his predecessors into a liberating fault: since they've used up everything, those of his generation must begin anew. This witty complaint forms the basis for an important argument

against imitating the masters of the previous age, yet it also suggests that imitation, if not plagiarism, is almost inevitable because the “fathers” have seemingly already been everywhere or—perhaps more accurately—the lands they have explored now seem to be all that can be conquered. His main concern here is that respect for literary fathers not result in a generation of “apes” who copy too much from such powerful fathers. That fear justifies his emphasis on the rebellious side of the filial relationship.

That the attitudes of actual sons might include a range of emotions beyond love and reverence should come as no surprise in our post-Freudian age, in which the Oedipus complex is a well-known tenet of psychoanalysis. As a common dictionary definition has it, the “libidinal feelings in a child, especially a male child, for the parent of the opposite sex [is] usually accompanied by hostility to the parent of the same sex.”<sup>6</sup> Generational conflict, especially between fathers and sons, is surely a frequent pattern in human behavior. Indeed, the great authority exercised by fathers in the seventeenth century could easily result in sons having negative feelings about their fathers. About the period in which Dryden was a child, Lawrence Stone observes that, “from 1540 to 1660 there is a great deal of evidence, especially from Puritans, of a fierce determination to break the will of the child, and to enforce his utter subjection to the authority of his elders and superiors, and most especially of his parents.”<sup>7</sup> During this time, it was commonly expected that children would “kneel before their parents to ask their blessing every morning, and even as adults on arrival at or departure from the home.”<sup>8</sup> Not surprisingly, some parents’ demands or punishments were so excessive that they resulted in abhorrence and fear as well as outward deference. Stone cites the example of Bishop Gilbert Burnet—born in 1630, a year before Dryden—whose childhood memories included “much severe correction; the fear of that brought me under too great an uneasiness, and sometimes even to a hatred of my father.”<sup>9</sup> Clearly, what Stone calls “this pattern of extreme deference to parents in the home”<sup>10</sup> could also result in antagonism, however suppressed or regretted. Although we have no evidence that Dryden’s puritan upbringing led to fear or hatred of his father, it is important to recall that in a period in which parental authority was enforced with severity, the idea of “paternity” could represent an ambiguous claim on loyalty or affection.

In just the same way, the claims of paternal literary masters result in a coiled nest of conflicting motives that include admiration and distaste, submission, and competitive pride. This combination of emotions can result in considerable complexity when applied to literary relations between generations because the acknowledgment of paternal authority might take the form of imitation and of what some would call plagiarism, whereas rebellion might encompass both a rejection of early models and a inclination to fall short of adequate acknowledgments of the influence of past masters on new works. In fact, Dryden was judged by some to be guilty on both counts, but he steadily denied the charges.

Some insight into Dryden's complex feelings about the paternal figures of the English dramatic tradition may be gained indirectly from examining his comedy, *Sir Martin Mar-all* (1667), written in collaboration with the Duke of Newcastle (1592–1676) during the same period that saw the publication of the *Essay of Dramatic Poesy*. After collaborating with the elderly Newcastle, known for his earlier patronage of Ben Jonson, Dryden may well have imagined the play's final conflict between old Moody, the heroine's father, and the amorous Sir Martin as representative of the clash of old and new theatrical styles. Even the play's two authors may be implicated in this satirical theme. Moody has the blunt, inelegant style of one "bred up in the old *Elizabeth* way of plainness" (3.1.33–34; 9:237) while the heedless Sir Martin enrages him with his modish language usually based on French words. Moody demands that he speak in plain English: "If thou wilt have a foolish word to lard thy lean discourse with, take an *English* one when thou speakest *English*" (3.1.83–85; 9:239). While Moody is otherwise a standard blocking figure whose efforts to marry off his daughter to a man she dislikes are clearly doomed, he is not such a fool as Sir Martin. Moody easily sees through Sir Martin's inept plotting, even having Sir Martin beaten for pretending, ineptly enough, to be Moody's long-lost son. Moody as a father seems close to Dryden's sense of the older writers he admired, once powerful and still upright, but now unfashionably plain, blunt, and inelegant. In the same way, Sir Martin is a parody of the faults of the new style because he is full of French elegance, but senseless and ineffective.

However, Moody does have a true son in this play. He is Warner, who, in the end, marries Moody's daughter Millisent and reveals himself to be a nobleman. Once that fact has been established, Moody quickly accepts Warner as a son-in-law and offers to pay off the mortgage to his estate (5.2.126–127; 9:289). This turn of events is not in the play's sources; there the title character gets the girl. Dryden and Newcastle, however, make Sir Martin into such a dolt that no audience would want him to succeed with an attractive heroine like Millisent. By contrast, Warner, once revealed to be of the proper class, is a perfect match in wit for her and a good alliance for Moody. Though young, he does not use the Frencified cant of Sir Martin. Warner's unexpected success suggests that an alliance between the honest but unsophisticated style of the pre-Civil War days and an intelligent English contemporary manner can happily succeed, much as the collaboration of Newcastle (at age 74) and Dryden (at age 36) did in writing this play.

One last image concerning Moody serves to reinforce this connection. In the play's farcical final scene, Moody is tricked into standing on a high stool while the young people sneak into the next room to get married. When they return to unmask and reveal what they have done, Moody is left high above on his stool, unable to get down. Now his high position suggests not exalted status, but powerlessness. Finally, he asks: "What am I kept here for?" The question is both challenging and pitiable; it is just the sort of question that those who valued the old style of drama might well

ask, as new plays began to push the old from the repertory. Warner's reply is generous:

I might in policy keep you there, till your Daughter and I had been in private, for a little consummation: But for once, Sir. I'll truste your good nature. [*Takes him down too.*] (5.2.114–116; 9:288)

The play's conclusion shows that Warner is right to trust Moody; once assured of his status as a gentleman, Moody does accept him with the same degree of generosity that Warner showed in helping his new father-in-law down from his high and precarious isolation. Is it too much to conclude that this action serves as a symbol of the proper relationship of the old and new styles? Moody returns to the practical ground level and finds a son-in-law he can respect, and Warner helps him to rejoin the party and demonstrates his own worthiness. Amid the farce and the contrived happy marriages decreed by convention—and by the two main sources, Molière and Philippe Quinault—this play contains some notions about generational conflict and reconciliation that have implications about the proper relations between literary fathers and sons.

These issues of paternity and filial imitation were especially on Dryden's mind during this period because he was then establishing his reputation in the theater and as a critic of drama. They appear once again in the Preface to his much rewritten version of Shakespeare's *The Tempest*, published with the title, *The Tempest or the Enchanted Island. A Comedy* (1670). Having worked once again with an older collaborator, Sir William Davenant, Dryden uses this Preface to record his sense of filial piety toward Davenant, who died shortly after the play began its successful run in the theater, some two years before the text saw publication. Since then, Dryden had succeeded to the position of Poet Laureate that Davenant had held (unofficially), so the notion of filial succession seems apt. His attention to Davenant's memory also allows him to address the accusations of plagiarism that followed those like Davenant and himself who took up the popular practice of adapting old plays. Davenant was by then well known for appropriating or adapting Shakespeare's plays. Dryden begins his defense by citing two much earlier precedents for appropriating elements from *The Tempest*: John Fletcher had "*thought fit to make use of the same Design,*" specifically the "*Storm, desert Island, and the Woman who had never seen a Man*" (10:3) in his (and Massinger's) *The Sea Voyage* (first performed in 1622).<sup>11</sup> Sir John Suckling's *The Goblins* (first performed in 1638) is also invoked as a play that appropriated the characters of Miranda and Ariel.<sup>12</sup>

Audiences were likely to know of these plays, since the rival theater, the King's Company, revived both of them in the fall of 1667, just before the premiere of Dryden and Davenant's *Tempest*. It is unlikely that Dryden would attempt to mislead his audience about the nature of these other appropriations of *The Tempest*, when many members of it had probably seen one of

the recent performances of them. However, it is less clear how many would know of their connection to Shakespeare, which is not mentioned in Suckling's Prologue and Epilogue, and Fletcher's play includes neither prologue nor epilogue. Samuel Pepys saw both when they were revived in 1667, but his diary entries make no connection to Shakespeare.<sup>13</sup>

Modern commentators are apt to think that Dryden exaggerated the indebtedness of these plays to Shakespeare's. Paulina Kewes, who describes them, accurately enough, as "loosely inspired" by *The Tempest*, argues that Dryden provides this "spurious history" of their use of Shakespearean elements to "create the impression that dramatic appropriation is a legitimate and time-honoured practice."<sup>14</sup> Of course appropriation of earlier material was then often considered legitimate and was certainly persistent from the time of Jonson and Shakespeare onward. What was new is the interest in full adaptations of Shakespeare—and Davenant was the first important practitioner to create them—in which the adaptor took over the main elements of the plot and most of the original characters, rewrote his lines and added new scenes, while following some parts of the original play closely.<sup>15</sup> However, the distinction between an adaptation and a play "loosely inspired" by another is not as clear as Kewes seems to assume, despite the adaptors' use of some of Shakespeare's scenes with few changes beyond the wholesale modernization and simplification of the language. Even *The Tempest* or *The Enchanted Island* could be described as 'loosely inspired' by Shakespeare. Because the new version offered several new characters and changed the plot radically, while omitting much that was distinctive in the original, it seems unlikely that Dryden would expect to be convicted of plagiarism for following the original play too closely.

The emphasis of his argument falls on the role of Shakespeare's *Tempest* as the source of the "design" of the appropriating works—the basic plot elements, such as the magical island, the storm, the woman ignorant of men, and the "monster" Caliban who inhabits the place. Further, he is implicitly relying on Petrarch's distinction between filial imitation and the plagiarism of apes when he argues that others had merely copied Shakespeare—although to be fair, Dryden should have added "in some respects," but that Davenant had the notion of adding wholly original new elements, "of which neither Fletcher nor Suckling had ever thought" (10:4).

Like Petrarch, Dryden assumes that all authors borrow. He and the Duke of Newcastle, after all, had just written *Sir Martin Mar-all*, which Davenant had produced and whose plot was borrowed from Molière and Quinault, who had appropriated elements from Niccolò Barbieri's *L'Inavertito* (1630) (9:365). Like good literary sons, all used the appropriated material differently, added features from other sources, and invented elements of their own. In fact, Dryden sees no irony in using the occasion of a commentary on their adaptation of *The Tempest* to stress Davenant's originality. After all, Davenant invented Hippolyto, the male counterpart of Miranda, and the "Saylors were also his invention, and for the most part his writing"



(10:4). Dryden stresses that when he got to know Davenant, he was struck by his lively and original imagination: "*And as his fancy was quick, so likewise were the products of it remote and new. He borrowed not of any other; and his imaginations were such as could not easily enter into any other man*" (10:4). More than his eulogy for a colleague fondly remembered, this declaration is a useful way to address the criticisms of both authors for their appropriations of Shakespeare. In particular, Davenant had been attacked for them by Richard Flecknoe, not as a plagiarist, but for "spoiling and mangling" the Shakespearean originals—an accusation implying a lack of filial piety and of dramatic skill that calls into question the adaptor's literary lineage.<sup>16</sup>

Dryden defiantly began this Preface with a satire on mere copiers, singling out "some Ape of the French Eloquence" (possibly Richard Flecknoe himself) and at the end of the Preface, he returns to the idea of originality to express his disapproval of plagiarism. He cites writers who ungratefully gave no credit to Davenant for "*whole Scenes together*" (10:5) that he contributed to their plays. Dryden strongly condemns such silent appropriations of another's work, declaring "*there [is] nothing so base as to rob the dead of his reputation*" (10:5). Taking such a firm stance condemning plagiarism, Dryden implicitly treats Shakespeare's play as a mere source for the adaptors' "design" and argues—accurately enough—that it is a source from which they immediately, radically, and determinedly depart. In his Preface, he acknowledges Shakespeare as fully as possible. As Kewes notes,

to "improve" one's source [in the plays of this period] was to demonstrate one's skill, and to enhance the quality both of the current repertory and of the native dramatic tradition. To absorb "respectable" sources was quite different from filching from outlandish romances or from obsolete plays. By contemporary standards, the plays of Shakespeare and Fletcher needed upgrading and modernization, even if their authors were revered in literary circles.<sup>17</sup>

Does Dryden also have the assurance to claim that his use of Shakespeare is good enough to justify the theft? He is, of course, too sophisticated to boast about his own work. He declares that he is writing his Preface "*not to set a value on any thing I have written in this Play, but out of gratitude to the memory of Sir William D'Avenant, who did me the honour to joyn me with him in the alteration of it*" (10:3).

Thus, Dryden sidesteps the question of the adaptation's literary worth (as he is well aware, it is the right of the audience to judge it) so that he can stress the argument that a writer who makes original use of borrowed material justifies the appropriation. On that issue, he and Davenant are on firm ground, at least insofar as the design of their new play is concerned: it contains a great deal of new plot, many new characters, revisions of the