
THE ORIGINS OF THE PROTECTION OF LITERARY AUTHORSHIP IN ANCIENT ROME

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INTRODUCTION

The private law of ancient Rome possessed detailed regulatory instruments, many of which were adopted in the codifications of continental European law that used it as their basis. Starting at the end of the 19th century, and beginning of the 20th, scholars made attempts to ascertain

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whether ancient Rome knew laws protecting intellectual property—and, most particularly, laws protecting literary authorship.¹ The general conclusion reached by these inquiries was that literary authorship enjoyed no legal protection in ancient Rome. The development of explicit rules and regulations protecting the interests of authors began with the development of a modern conception of the individual and the development of the printing press—that is, with the Renaissance. The Middle Ages knew of authorities (such as Aristotle, to name but the most famous example), but very few authors, and the vast majority of the period's literary production was the work of masters who have remained anonymous. Although ancient Rome appreciated and honored the capacities and acts of individuals, its authors were given no special legal protection.

It is indeed correct, as the scholarship referred to above concluded, that in ancient Rome authors' interests were offered no comprehensive legal protection. The following study seeks to establish, however, that literary authorship was not simply left unprotected, and that a treatment of the question that limits itself to merely examining existing legal mechanisms protecting authors' interests can only misrepresent the matter. Ancient Rome saw to the protection of authors' interests, but not by means of laws or other legal instruments. This was effected by means of powerful social norms governing conceptions of public morals and individual honor. Those authorial interests which today's *droits morales* or moral rights oversee were protected by those social norms. Roman law had no equivalent for today's exploitation rights. This study will demonstrate that in what is today the especially privileged field of economic exploitation, authors in ancient Rome were only seemingly without protection.

PART ONE: SOCIAL AND ECONOMIC CONDITIONS OF LITERARY PRODUCTION

A glimpse into the daily life of ancient Rome, with its publishing networks and large reading public, is necessary for understanding how and why legal, quasi-legal or social norms governing the protection of the interests of authors and publishers functioned. For this reason, the first part of this study will introduce the three parties concerned—authors, publishers and readers—alongside of the social and economic conditions in which they lived.

¹ Cf. Karl Dziatzko, *Autor- und Verlagsrecht im Altertum*, 49 RHEINISCHES MUSEUM FÜR PHILOLOGIE, NEUE FOLGE 559 (1894), and Josef Kohler, *Das Autorrecht: Eine zivilistische Abhandlung, zugleich ein Beitrag zur Lehre vom Eigentum, vom Rechtsgeschäft und vom Individualrecht*, 18 JHERINGS JAHRBÜCHER FÜR DOGMATIK 129 (1880).

A. Authors

The social rank of the author as well as the literary genre in which he or she operated was dependent upon the period in which he or she wrote and was strongly influenced by the political environment in which he or she lived.²

It is beginning with the time and person of Cicero that the process of literary production as well as the everyday life of the author is first well documented. Earlier sources reveal little about the social systems of which authors were a part, and still less about their production process.

In the narrow sense of the term, there were no writers in Rome until the middle of the third century B.C.E. A century earlier, Cato the Elder looked back on the past: *poeticae artis honos non erat; si quis in ea re studebat . . . , crassator vocabatur.*³ In a period beginning around 250 B.C.E. and extending up to the second century C.E., Rome developed into a world empire and—alongside Athens and Alexandria—became the literary center of the Western world.

The first poets were artists who largely improvised their pieces, presenting their public with what they claimed the Muses had bestowed upon them. This tradition remained a strong one long after the widespread rise of literary writing. It was first in Cicero's lifetime that the written text won real status and significance in Rome's literary culture. Up until the first century B.C.E., critics had concerned themselves primarily with founding and shaping a literary heritage based on early Roman poets such as Livius Andronicus, Plautus, Ennius und Terence, and striving to set standards for literary style amongst an increasingly interested public.

Thanks to such poets as Lucretius and Catullus, the literary culture of ancient Rome began to change in the second half of the first century B.C.E. Further changes in that literary landscape were introduced by the increasing role which literature played in the battles for power taking place in the Senate, as well as elsewhere. Literature was increasingly alienated from what had been seen as its original context and shaped to fit the situation or the political ends it might serve.⁴ Individuals such as

² CATHERINE SALLES, *LIRE À ROME* 44 (1992) points to the difficulty of obtaining a single, valid impression of the situation of the authors in Rome. She has collected a list of writers of the 1st century. Works of only 26 of the 206 writers listed exist in whole or in part.

³ Cato, *Carmen de moribus*, in GELLIUS, *NOCTES ATTICAE* 11.2.5.; only Appius Claudius Caecus wrote poems, CICERO, *TUSCULANAE DISPUTATIONES* 4.4.

⁴ Actors interpreted Greek tragedies in a specific—and, often, biased—manner. In one instance a Roman audience is documented as having clearly understood a speech as a criticism of Pompeii. In another, a passage in a Roman historical play was understood as a statement in support of the banished Cicero. See ELAINE FANTHAM, *LITERARISCHES LEBEN IM ANTIKEN ROM*, at 19 (1998) in reference to CICERO, *EPISTULAE AD ATTICUM* 2.19.3.

Cicero or Varro offered writers the possibility of indirectly influencing their society in phases when, for whatever reason, they could not directly engage in political action or debate. During this period, a literary career was often the extension of, or the last chapter in, a political career. On a more general level, it was at this time of general social unrest and weakened social bonds that the concept of the individual—and thereby, of the individual author—gained in significance, and was offered greater freedom. This freedom was in key cases creatively invested in the form and content of new literary works.

The change in the social status of the poet and the increasing respect that literature came to enjoy during this period stood in close connection with a blossoming interest—dating, roughly speaking, from the second century B.C.E.—for Greek culture.⁵ This philhellenism was nowhere more visible than in the education of young Roman men. One of the goals of this education was a level of Greek fluency which led, in many cases, to genuine bilingualism. The education of Rome's ruling class continued beyond the completion of their studies in rhetoric—taught mostly in Greek. It was customary for them to then continue their studies either with Greek philosophers or rhetoricians in Rome, or to attend one of the more renowned schools of philosophy in Greece or Asia Minor. Rhetoric and philosophy both enjoyed special prestige in Roman society and it was these disciplines which an individual needed to master in order to enter a career in magistracy (the *cursus honorum*).

The development of Roman literature was heavily determined by the fact that it did not grow from within, as had Greek literature. The major influence on the rise of Roman literature was not Roman culture, but, instead, Greek literature and Greek culture. As a rule, Roman authors learned their trade first in the Hellenistic world before transferring that knowledge and those talents into Latin. Cicero explicitly addressed this issue in his *Academica posteriora*.⁶ At the beginning of this dialogue, Cicero asks Varro why he has not written any philosophical works even though he has so intensively concerned himself with philosophical questions. Varro's answer is simple: cultivated Romans read philosophy in Greek, and those who do not know Greek could not be interested in philosophy. Varro then adds to this answer that he is reluctant to introduce into Latin new *termini technici* where the cultivated reader already knows those terms in Greek.

In the tumult of the declining Republic many families from Rome's senatorial class lost young men. In their wake, members of the local Italian ruling class as well as those managing to rise from the non-senatorial

⁵ Porcius Licinus, in GELLIUS, *NOCTES ATTICAE*, at 17.21.45 describes this phenomenon in the following manner: *Poenico bello secundo Musa pinnato gradu intulit se bellicosam in Romuli gentem feram.*

⁶ CICERO, *ACADEMIA POSTERIORA* 1.3-8.; see also CICERO, *TUSCULANAE DISPUTATIONES* 1.1.

classes in Rome rose in influence and esteem. They were able to do so, in part, as authors. The most prominent examples of this phenomenon are the poets Gallus and Virgil.⁷ The former was a Roman from the Equestrian class who had fought for both Caesar and Octavian, the latter from Gallia Cisalpina (a community near Mantua) who was freed from military service and first became a Roman citizen in 49 B.C.E.

In the Augustinian period—during which the institutions of the state ceased to be the center of the cultural and intellectual life of Rome—poetry came to play a new role. New systems of social relations came into play—ones focusing ever more on individual experience and new conceptions of nature.⁸ This lent poetry a new prestige and a new power—exemplified by Virgil's *Eclogues*. One of the immediate consequences of this fact was that henceforth poetry became a fully written form. Poems became, as a rule, too intricate and too complex for a listener to easily grasp their richness through a single recitation. From this point onwards, poems were composed for a reader, and, consequently, put into writing.

The works and the poetic persona of Horace bear excellent witness to how authors saw themselves during this period. After having won what one commentator has called “the unofficial title of the speaker for national ideals”⁹ through his *Odes*, Horace reintroduced the idea of *vates* to designate the activity of authors. The term *vates* meant poet-visionary or prophet.¹⁰ It was first introduced into Latin literature two hundred years earlier by Ennius to replace the fashionable Greek term *poeta* during the first wave of interest and enthusiasm for Greek culture in Rome. In Horace's hands, it was used to signify and to underline the poet's dual status as public figure and bearer of inspired authority.¹¹

Despite the intense literary productivity of this period, it should not be forgotten that its authors were increasingly dependent upon the good will and the changing humors of extremely powerful individuals who were soon to be the object of god-like reverence. The first literary victim of this new world order is already to be found during Augustus' reign in the person of Ovid. Ovid was potentially involved in a scandal concerning the Julio-Claudian imperial family—and if not involved, at least knew more about events surrounding young Julia than was good for him. He was, for this reason, banished to Tomi (in what is today Romania), the

⁷ See W.V. Clausen, *The New Direction in Poetry*, 2 CHCL 178 (discussing the *poetae novi*).

⁸ MARIO CITRONI, *POESIA E LETTORI IN ROMA ANTICA* 209, 213 (1995).

⁹ FANTHAM, *supra* note 4, at 82.

¹⁰ Cf. URSULA WENZEL, *PROPERZ – HAUPTMOTIVE SEINER DICHTUNG* 110 (1969) on poets as priests and seers or visionaries.

¹¹ HORACE, *CARMINA* 4.6.44., 4.9.28 on the power of the poet.

official and unlikely reason being that his *Ars amatoria*—published years earlier—was an immoral work.¹²

The tendency to suppress political writers¹³ grew after the death of Augustus, evolving over time into a systematic persecution of writers out of imperial favor. This occurred despite the efforts of Nero, and, later, Domitian, to encourage literary production.¹⁴ Nero himself was the most famous poet of his reign, writing *carmina* on nearly every subject and not rarely reciting his compositions in public—to the horror of the members of the older aristocracy—clothed, at times, as a woman. The unspoken rule was that Nero win every poetic contest in which he took part. More generally, freedom of speech suffered under his reign. Whatever the individual changes that the successive imperial reigns brought with them, however, authors with ties to opposition movements needed at all times to act—and write—with care.¹⁵ Many members of Rome's ruling class were tried for violation of the *maiestas* law—the law concerning high treason¹⁶—and as a result were banished or sentenced to death.

During this period literature became more integrated into the daily lives of Romans—both in the topics it treated and the role it played. As a result, literature came to play an increasingly important role in Roman social life. Illustrations of these new tendencies are visible in such writing as Statius' portraits of women or the erotic poems of Pliny the Younger, in both of which authors no longer exclusively concern themselves with public acts and civic virtues, but also turn to more private experiences. As the senatorial families came to lose more and more political power, literature was, for many, a substitute for the honorific positions of Republican times. Literary creation became an alternative to, and replacement for, political careers no longer open, and took on, as a consequence, some of its status and its possibilities for promotion. Authors' interactions with one another came to correspond, in their respect for rank and privilege, to those prevailing between individuals of different classes during Republican times. Though authors were at times silenced and even persecuted

¹² The events leading up to this banishment are described by FANTHAM, *supra* note 4, at 104; EDGAR MARTINI, *EINLEITUNG ZU OVID 5* (1970); HEINZ WISSMÜLLER, *OVID. EINE EINFÜHRUNG IN SEINE DICHTUNG 7* (1987).

¹³ See Christina S. Kraus, *The Path Between Truculence and Servility: Prose Literature from Augustus to Hadrian*, *LITERATURE IN THE GREEK AND ROMAN WORLDS. A NEW PERSPECTIVE*, 438 (Oliver Taplin ed., 2000).

¹⁴ Of the 206 authors from the 1st century listed by SALLES, *supra* note 2, at 249, only 10 come from the reign of Caligula and Claudius, in contrast to 46 from Tiberius's reign, 53 from Nero's reign, and 66 from the period of the Flavian dynasty.

¹⁵ After the Pisonic conspiracy failed, Nero forced Seneca to commit suicide, banished Verginius Flavius and C. Musonius Rufus and sentenced P. Thrasea Paetus to death.

¹⁶ According to PLINY THE YOUNGER, *PANEGYRICUS TRAIANO IMPERATORI DICTUS* 42.1, those convicted under this law were punished for the *singulare et unicum crimen, eorum qui crimine vacant*.

by the state, literature still offered the real possibility of voicing criticism of the new social order—whether through more or less subtle allusions or through the choice of certain themes or the stories of certain symbolically important historical individuals (such as Brutus or Cassius¹⁷).

With the end of the Julio-Claudian imperial line, the intellectual life of ancient Rome received a new impetus. Under Trajan, Tacitus composed his great senatorial history. The crowning of Hadrian—well known for his cultural interests—was met with great hopes.¹⁸ And yet Hadrian did little to better the station of authors, focusing his energies elsewhere, such as on the construction of monuments, the restructuring of the Pantheon, or the granting of new privileges to actors (Hadrian was a passionate theatergoer).¹⁹

Hadrian's great love was Greece—and his great love in Greece was Athens. He constructed numerous monuments there and oversaw the completion of the Temple of Zeus. In his final years in power, he founded an Athenaeum in Rome for instruction in grammar and rhetoric. This institutionalized meeting place for those interested in Greek culture proved a fertile environment. One of its consequences was that the leading minds in Roman intellectual life no longer stemmed primarily from aristocratic families in Rome, but came ever more to be dominated by individuals from the provinces—above all the Greek-speaking ones. Through such figures, the particularity of Roman literature became less its status as the literature of the city of Rome and more literature written in Latin. From the time of Apuleius onwards, a century transpired in which Rome left behind hardly a single author as the various catastrophes of the 3rd century brought literary activity to a near standstill. Only with the coming to power of learned Christians would Rome return to the center of the intellectual world.²⁰

By all estimates, less than half of the authors active in classical Rome earned their living through their works.²¹ Those authors who did were often freed slaves who chose to dedicate their works to wealthy or influential individuals in the hope that they would receive in return a financial gift or salary.

¹⁷ Cremutius Cordus was banished because he praised Brutus in his *annales* and referred to Cassius as the last true Roman.

¹⁸ JUVENAL, SATIRAE 7.1.

¹⁹ See MARY T. BOATWRIGHT, HADRIAN AND THE CITY OF ROME 43, 208 (1987).

²⁰ Rome became a meeting place for authors from Novatian, C. Marius Victorinus, and Rutilius Namatianus through to the church fathers Hieronymus, Augustine and Ambrosius.

²¹ 77 of the 206 authors from the 1st century listed by SALLES, *supra* note 2, at 249 were descendants of senators, and a further 22 were descended from the equestrian class. Presumably, many authors whose social origin is unknown also belonged to the *ordines*, *op. cit.*, p. 45.

The nearly institutionalized conventions concerning the dedication of texts to important—and wealthy—individuals was the result of a development in Roman culture that spanned from its earliest beginnings to the decadence and decline of the 3rd century.²² Patronage—*patrocinium*—was a fundamental element of Roman society and the relation between author and patron was but a particular instance of this broader phenomenon.²³

With the increasing sophistication of the legal system, the social bond formed through patronage began to decline in importance. Over the course of the first century B.C.E. the relation between *patronus* and *cliens* seems to have steadily lost in significance and social status. Other than in court, the term *patronus* was only employed in cases of clear social inequality. If this inequality was not what was to be highlighted, the term friendship—*amicitia*—was systematically used. Under the smiling cover of the term *amicitia*, assistants and servants of all sorts took on the appearance of acting voluntarily. The term offered the opportunity of designating a relationship—whose real character all were aware of—with an opaque term bearing no negative connotation. An example is found in the celebrated relationship between Horace and Maecenas—a relationship all the more celebrated for the special friendship which went along with Maecenas' patronage. As of the first century C.E., the latter's name became synonymous with a literary connoisseur and patron²⁴—an association which lives to this day in French, German and Italian; languages in which the accepted term for a patron of the arts is derived from Maecenas' name. As to the nature of their relationship, Horace speaks of Maecenas as his *amicus*²⁵, and his *praesidium et dulce decus meum*.²⁶

Maecenas stood in the tradition of the first Roman patrons, such as M. Fulvius Nobilior, who took Ennius with him on his campaign in Aetolia.²⁷

²² MICHAEL VON ALBRECHT, 2 GESCHICHTE DER RÖMISCHEN LITERATUR 1024 (1994) on the downfall of the patronage system in the 3rd century). See also Barry Baldwin, *Literature and Society in the Later Roman Empire*, LITERARY AND ARTISTIC PATRONAGE IN ANCIENT ROME 67 (Barbara K. Gold ed., 1982).

²³ David Braund, *Function and Dysfunction: Personal Patronage in Roman Imperialism*, PATRONAGE IN ANCIENT SOCIETY 137 (Wallace-Hadrill ed., 1989) for the societal advantages and disadvantages of patronage.

²⁴ See, e.g., MARTIAL, EPIGRAMMATA 8.56.5. (*Sint Maecenates, non derunt, Flacce, Marones*).

²⁵ HORACE, CARMINA 3.8.13-14.; HORACE, EPODON LIBER, 1.1-2. See also HORACE, SERMONES 1.10.81-88.

²⁶ For more on the addresses of Propertius to Maecenas, see HORACE, CARMINA 1.1.2. See also Barbara K. Gold, *Propertius 3.9.: Maecenas as Eques, Dux, Fautor*, LITERARY AND ARTISTIC PATRONAGE IN ANCIENT ROME 103 (Barbara K. Gold ed., 1982).

²⁷ Ernst Badian, *Ennius and his Friends*, 17 FONDATION HARDT. ENTRETIENS SUR L'ANTIQUITÉ CLASSIQUE 149 (1972); OTTO SKUTSCH, THE ANNALS OF Q. ENNIUS 553 (1985).

Shortly before Maecenas' time, Lucull, Varro, Caesar and Cicero were all active as patrons of young poets, and during Maecenas' lifetime Pollio and Messalla attained notoriety for their patronage. Patrons in this tradition supported poets not only through financial assistance but also by integrating them into a social context, providing them with an interested public and exposing them to politically powerful individuals. Horace was recommended to Maecenas by Virgil and Varius, and subsequently invited to become Maecenas' *amicus* and to frequent the gatherings in his home.²⁸ These gatherings also stood in an ancient tradition: Scipio Aemilianus and later Laelius had gathered circles of poetic amateurs and professionals around their persons and, thanks to the accounts which Cicero gave of these gatherings, attained great fame as a result.

Literary readings were attended by informal groups composed habitually of a *patronus*, his *clientes* and *amici*, as well as members of other literary circles who maintained relations with the organizing *patronus*. They were led by a professional critic, who, as a rule, was a slave who had been freed by the *patronus* but who was still dependent upon that *patronus* because he had not yet professionally established himself. Authors, on the other hand, were free Romans and thus not formally bound to a *patronus*. All the same, they needed the support and friendship of a patron, if only to obtain access to a group of writers and intellectuals associated with a given *patronus*. Such circles offered authors a library in which they could work, well-educated *librarii* at their disposal, as well as contacts and financial support in the publication of their works. In return, a *patronus* might hope that the author would dedicate his work to him.

Starting under the Principate, it became ever more customary to gather in smaller, more private groups. These offered the possibility of openly expressing political opinions and developing oppositional strategies.²⁹ In these private gatherings—Tacitus referred to them as *circuli*³⁰—the most important questions of the day would be argued. Like the literary circles of Scipio's time, they too were loose gatherings with revolving participants. Authors could frequent multiple circles without fear of conflict as the circles announced no specific goal, platform or program of shared ideas which they sought to carry out and which would align them against other circles.³¹ In the place of such ideological agendas, the concepts of *amicitia* and *patrocinium* played an important role. These circles gradu-

²⁸ See Ovid, *EPISTULAE EX PONTO* 4.16 for information on the guests of Messalla.

²⁹ See, e.g., TACITUS, *HISTORIAE* 1.85.2; TACITUS, *ANNALES* 4.69.1-2, showing that in times of political tension, noble families would have the entry to their houses guarded to protect against spies and would only openly discuss matters in carefully sealed quarters.

³⁰ TACITUS, *ANNALES* 3.54.1.; TACITUS, *AGRICOLA* 43.1.

³¹ Eugen Cizek, *La littérature et les cercles politiques à l'époque de Trajan*, 33.1. *AUFSTIEG UND NIEDERGANG DER RÖMISCHEN WELT* 3, 19 (2d ed., 1994).

ally replaced older political groupings and more traditional clientele relations. They remained active and visible so long as their leader was on good terms with the senatorial aristocracy. In times of crisis, members met only in secret, and their circles were at times harried and even suppressed by imperial order.³²

It was not only private individuals who sought to appropriate literary production and to deploy it in a political direction. The emperors (*principes*) also endeavored to exercise influence upon authors.³³ As it was possible for, say, the epic poem of a well-known poet to raise the general popularity of a given *princeps*, they came to use such poets towards propagandistic ends.

The first evidence of a direct intervention on the part of a *princeps* in literature dates from 20 B.C.E. Virgil's *Aeneas* had remained uncompleted at his death. Augustus, who had kept informed of Virgil's progress, instructed Varius and Tucca upon the poet's death to prepare an edition of the *Aeneas* and personally saw to it that a large edition be prepared (the first poem for which there is documentation of a large first edition).³⁴ Earlier in his reign, Augustus had expressed special admiration for Varius' *Thyestes*, in which Augustus' military triumph of 29 B.C.E. was honored and the heroism of Augustus and Agrippa highlighted. As a token of this admiration, he granted the author a gift of one million sesterces.³⁵ Later, in 17 B.C.E., Augustus commissioned a celebratory hymn from Horace to be sung in the Secular Games and incorporated into their commemorative inscription.³⁶

Subsequent emperors followed Augustus' example and supported authors with political views agreeable or favorable to them—as well as, at times, supporting literary efforts more generally. Tiberius showed interest in Greek poetry and grammar. Claudius was a great fan of recitations,³⁷ and founded a school of higher learning in Alexandria.³⁸ Rome's first poetic competitions in Greek and Latin rhetoric were organized by

³² But see Eugen Cizek, *L'époque de Neron et ses controverses idéologiques*, ROMA AETERNA 4, 55 (1972).

³³ Under the Republic, private and public patronage had not yet become distinguished between private and public. Patricians supported literary activities from their own funds even when acting on behalf of the Republic. For this reason, this depiction of patronage began with the *principes*.

³⁴ On the relation between Augustus and the poets of his day, see John K. Newman, *Augustus and the New Poetry*, 88 COLLECTION LATOMUS (1967) and PETER WHITE, PROMISED VERSE: POETS IN THE SOCIETY OF AUGUSTAN ROME 110 (1993).

³⁵ HORACE, EPISTULAE 2.1.245-250.

³⁶ CIL 6.32323.

³⁷ PLINY THE YOUNGER, EPISTULARUM LIBRI DECEM 1.13.3-5.

³⁸ SUETON, DIVUS CLAUDIUS 42.

Caligula—known for his contempt of writers.³⁹ In 60 C.E. Nero inaugurated the *Neronia*—contests in rhetoric and poetry modeled on the Greek example. The contests were to take place every five years and Nero himself took part in them. In Quintilian, Vespasian hired the first state-employed professor of rhetoric. Domitian restored libraries and sent scribes to Alexandria to make copies of manuscripts that had gone missing in the libraries of Rome.⁴⁰ Domitian also founded the Albanian Games in honor of Minerva and, as continuation of the *Neronia*, founded poetic and oratorical competitions—the *Quinquennalia*⁴¹ or *ludi Capitolini*, which took place every five years up to the 4th century C.E. It is entirely possible that Domitian used the games as a sort of indirect talent contest through which he found poets capable of duly praising him in war and peace. Hadrian founded, as mentioned earlier, the Athenaeum. His successors encouraged literary efforts—as did Gratian, in the case of Ausonius; they encouraged sophistry—the celebrated rhetorician and sophist Fronto was the teacher of Marcus Aurelius; and they encouraged philosophy—particularly Marcus Aurelius and Julian the Apostate.

The public patronage of poets from the beginning of the Empire up to the post-classical period was a constant element in Roman cultural politics. It made authors constantly dependent upon the favor of the emperor. The need to compose texts which would not displease the emperor necessarily influenced authors' choices of genre, form and content.

B. *Book Trade*

No evidence of a book trade during the period of the early Republic has survived. However, by the end of the Republic a publishing industry had evolved which was so complex that it could only have been the result of a long historical development. The beginnings of the book trade must date, therefore, from much earlier.

As a rule, publishers in ancient Rome also served as book dealers (*bibliopola* or *librarius*⁴²) who sold the books they themselves published.⁴³ Alongside these publisher-dealers were smaller book dealers who them-

³⁹ Sueton, C. CALIGULA 34.2 reports that Caligula wanted to censor Homer's works and saw Virgil as lacking in both education and talent. See also *id.* at 53.2, documenting Caligula's contempt for Seneca's work.

⁴⁰ Sueton, DIVUS DOMITIANUS 20.

⁴¹ Sueton, NERO 12.3; Tacitus, ANNALES 14.20.1.

⁴² Initially, a *librarius* was understood to be a copyist, while a *bibliopola* as someone who produced or purchased books for subsequent sale. The distinction between the two terms became less pronounced during imperial times. See Dziatzko, *supra* note 1, at 559, 572; Louis Haenny, *SCHRIFTSTELLER UND BUCHHÄNDLER IM ALTEN ROM* 24 (2d ed., 1885); Joachim Marquardt, *AUGUST MAU, DAS PRIVATLEBEN DER RÖMER*, 151 n. 7 (2d ed., 1886).

selves produced no books and traded mainly in older or outdated scrolls.⁴⁴

Because of his intensive correspondence with Cicero, T. Pomponius Atticus has come down to us as the best-known “publishing personality”⁴⁵ of ancient Rome. Atticus was renowned for the quality of his work and the competence of his proofreaders.⁴⁶ He probably dealt⁴⁷ only with *librarii*⁴⁸ in his own employ, or with whom he was associated, and is the only Roman nobleman known to have been directly involved in the production of books. The book trade was at the time almost exclusively run by freed slaves, many of them with Greek names.

Like Cicero, Atticus was highly interested in Greece and had lived for a time in Athens (one of the reasons he bore the name Atticus). It is likely that he acquired his knowledge of book production there and that after his return to Rome he decided to place that knowledge at his friends’ disposal. Up to this time, Roman publishers seem to have produced mainly work of poor quality. Numerous Roman authors of the period complained about careless publishers employing poor proofreaders or none at all.⁴⁹

Along with Atticus, the Sosius brothers are known for their publishing activity—in particular as the publisher of Horace. Under Augustus they undoubtedly enjoyed a certain renown.⁵⁰ The *bibliopola* Tryphon, possibly a freed slave of Greek origin, made a name for himself as the publisher of both Martial and Quintilian—the latter going so far as to praise

⁴³ TÖNNES KLEBERG, *BUCHANDEL UND VERLAGSWESEN IN DER ANTIKE* 41-42 (1967); Kohler, *supra* note 1, at 451; SALLES, *supra* note 2, at 160-161; WILHELM SCHUBART, *DAS BUCH BEI DEN GRIECHEN UND RÖMERN* 154 (1921).

⁴⁴ Działko, *s.v.* „*Buchhandel*,” 1.5 PAULY-WISSOWA, *REALENCYCLOPÄDIE DER KLASSISCHEN ALTERTUMSWISSENSCHAFT, NEUE BEARBEITUNG* 981 (1897) [hereinafter P-W].

⁴⁵ Hans-Peter Benöhr, *Der Brief. Korrespondenz, menschlich und rechtlich gesehen*, 115 SZ 115, 118 (1998) rightly points out that to call Atticus, who traded extensively and was involved in large financing operations, a “publisher” only insufficiently describes his activities. See also Paolo Fedeli, *I sistemi di produzione e diffusione*, 2 LO SPAZIO LETTERARIO DI ROMA ANTICA 343, 356 (Cavallo, Fedeli, Giardina eds., 1990) who writes that Atticus would on occasion copy his friends’ books, publish them and then pass them off as books of his own or of a third-party.

⁴⁶ NEPOS, *DE VIRIS ILLUSTRIBUS – ATTICUS* 13.3.: *namque in ea [sc. familia] erant pueri litteratissimi, anagnostae optimi et plurimi librarii.*

⁴⁷ CICERO, *EPISTULAE AD ATTICUM* 13.12.2.

⁴⁸ *Id.* at 13.21.4.

⁴⁹ STRABO, *GEOGRAPHICA* 13.1.54.; CICERO, *EPISTULAE AD QUINTUM FRATREM* 3.5.6.; *AD ATTICUM* 2.1.12.; HORACE, *ARS POETICA* 354-355.; LIVY, *AB URBE CONDITA* 38.55.8.; MARTIAL, *EPIGRAMMATA* 2.8.3-4.; GELLIUS, *NOCTES ATTICAE* 6.20.6.; HIERONYMUS, *EPISTULAE* 71.5.

⁵⁰ HORACE, *ARS POETICA* 345-346.; *EPISTULAE* 1.20.1-2.

the quality of Tryphon's work.⁵¹ Thanks to Martial, the names of Atrecus, Secundus—a freed slave of the scholar Lucensis, and Quintus Valerianus Polius are preserved as book-dealers.⁵² Finally, thanks to Seneca a certain Dorus *librarius* is remembered for having purchased a master copy—and perhaps even the original text—of Cicero's, and for publishing and selling Livius' historical work.⁵³

For the final period of the Republic, impressively large editions of works are documented.⁵⁴ Editions numbering a thousand copies were no rarity.⁵⁵ To produce books *en masse*, publishers enlisted the service of slaves. Under the Empire, Roman citizens also served as scribes (*librarii*). Scribes prepared editions with the help of dictation—above all when speed and large quantities were the goal. As a rule, however, original master-copies were at their disposal. Task work methods were not rare. Starting around the middle of the 1st century C.E., scribes were paid a standard fixed rate per line.⁵⁶

Conscientious publishers had copies reread by correctors (*anagnostae*) who then made a special mark in the manuscript to certify that it had been copied and proofed on the basis of a reliable copy (*legi, emendavi, contuli, relegi, recensui*).⁵⁷ Additionally, in part before the *emendatio* phase, punctilious publishers performed *distinctio*—the separation of words, sentences, larger sections and paragraphs which facilitated the reading of texts otherwise exclusively composed of *scriptio continua*. This special treatment was, however, only for a part of each edition. When it

⁵¹ MARTIAL, EPIGRAMMATA 4.72.2.; 13.3.4.; QUINTILIAN, INSTITUTIO ORATORIA praef. 1., 3.

⁵² MARTIAL, EPIGRAMMATA 1.2.7.; 1.113.5.; 1.117.13.

⁵³ SENECA, DE BENEFICIIS 7.6.1.

⁵⁴ In fact, the idea of actually printing works was not far from the considerations of publishers towards the end of the Republic. See REIMAR MÜLLER ET AL., 1 KULTURGESCHICHTE DER ANTIKE 181 (3d ed., 1980), (unfortunately not verified) arguing that Cicero speculated that one could produce a work through the use of movable pieces of metal type such as were already in use for engravings, building inscriptions and as tools to teach literacy. Stamps composed of single pieces of type are preserved from the period.

⁵⁵ See THEODOR BIRT, AUS DEM LEBEN DER ANTIKE 122 (3d ed., 1922); see also BIRT, DAS ANTIKE BUCHWESEN IN SEINEM VERHÄLTNISS ZUR LITTERATUR 351 (reprint 1959), where he makes makes this estimation more cautiously. Kohler, *supra* note 1, at 449 is of the opinion that thousands of copies of the most well-known authors' works were produced; documenting that Marcus Regulus published a speech in memory of his late son in a first edition of one thousand copies—and this for a work whose potential readership would not have been exceptionally broad, see PLINY THE YOUNGER, EPISTULARUM LIBRI DECIM 4.7.2.

⁵⁶ CIL 3.2., at 831 (see edict 7, lines 39-41) notes that stichometry, the measurement of a book's content by virtue of the number of lines it contains, primarily served for the calculation of author's honoraria.

⁵⁷ Dziatzko, s.v. "Buch," in P-W 961.

was performed by a well-known scholar, the copy was deemed of special worth and sold for a high price in bookstores.⁵⁸

Because *librarii* were above all else concerned with speed in their copying, the skill of proofreaders leant much to the prestige of a publisher/book dealer. Gellius recounts how in a certain book store a copy of the annals of Fabius Pictor was on sale whose complete absence of errors was guaranteed by a high sum. A *grammaticus*, summoned for the challenge, ultimately succeeded in finding an error (*duodevicesimo* in the place of *duoetvicesimo*).⁵⁹

Bookstores, or *tabernae librariae*⁶⁰, were already to be found in great number and varying size in the Rome of Catullus.⁶¹ The oldest of these on record is the one in which Clodius was saved.⁶² They were opened in many different neighborhoods in Rome, but naturally favored places where they might hope to attract impulse buyers passing by. There are several bookstores attested to in the vicinity of the *forum Romanum*.⁶³ Under the Empire, the *Sigillaria* seems to have been a center of book selling.⁶⁴ Another major center was the *vicus Sandaliarius*,⁶⁵ near the *templum Pacis* and its public library.

As a rule, stores or *tabernae* were located on the ground floor of multi-storied buildings and opened directly out onto the street. The most important books were to be found inside the stores themselves.⁶⁶ On door-jambes and columns were lists of books for sale, often including sample copies or passages.⁶⁷ Book rolls not laid out for display were kept in protective cases and stacked in *armaria*⁶⁸ with their tags pointing outwards or hanging down. Rolls might also be placed in mobile *capsae*⁶⁹ which might contain multi-volume works and the like.

The book trade was by no means limited to the city of Rome. Bookstores in the provinces seem to have largely resembled those in Rome. Books were shipped overseas⁷⁰, and especially sought-after titles were

⁵⁸ FRONTO, *EPISTULAE AD M. CAESARUM ET INVICEM* 1.6.

⁵⁹ GELLIUS, *NOCTES ATTICAE* 5.4.1.

⁶⁰ CICERO, *ORATIONES PHILIPPICAE* 2.9.; GELLIUS, *NOCTES ATTICAE* 5.4.1.; 13.31.1.

⁶¹ CATULLUS, *CARMINA* 14.17.

⁶² CICERO, *ORATIONES PHILIPPICAE* 2.9.

⁶³ MARTIAL, *EPIGRAMMATA* 1.117.10.; 1.2.7-8.; CICERO, *ORATIONES PHILIPPICAE* 2.9.

⁶⁴ GELLIUS, *NOCTES ATTICAE* 2.3.5.; 5.4.1.; AUSONIUS, *OPUSCULA* 206.

⁶⁵ GELLIUS, *NOCTES ATTICAE* 18.4.1.

⁶⁶ GELLIUS, *NOCTES ATTICAE* 9.4.1-3.; 5.4.1.

⁶⁷ HORACE, *SERMONES* 1.4.71.; MARTIAL, *EPIGRAMMATA* 1.117.11-12.; SENECA, *AD LUCILIUM EPISTULAE MORALES* 33.3.

⁶⁸ MARTIAL, *EPIGRAMMATA* 1.117.15.; 7.17.5.; SENECA, *DE TRANQUILLITATE ANIMI* 9.6.; SIDONIUS APOLLINARIS, *EPISTULAE* 2.9.4.

⁶⁹ MARTIAL, *EPIGRAMMATA* 1.2.4.; STATIUS, *SILVAE* 4.9.21.

⁷⁰ SCHUBART, *supra* note 43, at 150 notes that Xenophon's *Anabasis* mentions finding many books amongst the detritus of stranded ships.

available throughout the Empire.⁷¹ Pliny the Younger wrote happily to his friend Geminus that his books were as popular in Lugdunum (Lyon) as in Rome.⁷² The biography of St. Martin authored by the presbyter Sulpicius Severus was sold in the 4th century C.E. in such distant locales as Carthage, Alexandria, elsewhere in Egypt and even in the desert.⁷³

Roman provinces were not only a welcome supplementary market for best-sellers, but also one for books that publishers and dealers had difficulty selling.⁷⁴ In the event that the size of a run exceeded demand both in Rome and in the provinces, the remaining copies were sold as scrap paper. Students would often use the unwritten side for their exercises.⁷⁵ Authors also saw unsold copies recycled for packing paper or to make small bags in *tabernae* and fish sellers.⁷⁶ Catullus prophesied that the works of his arch-enemy Volusius would be put to such ignominious ends.⁷⁷

The two most important book forms in Greek and Roman antiquity were the *roll* and the *codex*. The papyrus roll was the older of the two and for centuries was the dominant form.⁷⁸ It was developed in Egypt's Nile delta where papyrus was available in great quantities.⁷⁹ A typical roll was 20 to 30 centimeters high and was formed out of roughly 20 pieces⁸⁰ (called *kollemata* or *paginate*) glued together. The inner side or *recto* was written on, with the grain running horizontally, because it provided less resistance to the writing instrument than the reverse side (*verso*).⁸¹ The first page of a roll, the *protokollon*, remained blank so that it could serve as a protective covering for the roll. The sheets following

⁷¹ See HORACE, *CARMINA* 2.20.13-20.; MARTIAL, *EPIGRAMMATA* 7.88.; 11.3.3-5.; OVID, *TRISTIA* 4.9.17-24.; PLINY THE YOUNGER, *EPISTULARUM LIBRI DECEM* 9.11.2.

⁷² PLINY THE YOUNGER, *EPISTULARUM LIBRI DECEM* 9.11.2.

⁷³ Sulpitius Severus, *DIALOGI* 1.23.3.

⁷⁴ HORACE, *EPISTULAE* 1.20.10-14 refers to this.

⁷⁵ MARTIAL, *EPIGRAMMATA* 4.86.11.

⁷⁶ PERSIUS, *SATIRAE* 1.41-43. Compare HORACE, *EPISTULAE* 2.1.268-270.; MARTIAL, *EPIGRAMMATA* 3.2.3-5.; 3.50.9.; 4.86.8-11.; 13.1.1-3.; SIDONIUS APOLLINARIS, *CARMINA* 9.320.; LUDWIG FRIEDLAENDER, *2 DARSTELLUNGEN AUS DER SITTENGESCHICHTE ROMS IN DER ZEIT VON AUGUSTUS BIS ZUM AUSGANG DER ANTONINE* 225 (10th ed., 1922).

⁷⁷ CATULLUS, *CARMINA* 95.7-10.

⁷⁸ Noting that as early as the 4th millennium B.C.E., the Egyptians had a character for papyrus, see ERIC G. TURNER, *GREEK PAPYRI: AN INTRODUCTION* 1 (1968); Hans Widmann, *Herstellung und Vertrieb des Buches in der griechisch-römischen Welt*, 2 *BÖRSENBLATT DES DEUTSCHEN BUCHHANDELS* 35, 39 (January 6, 1967). The oldest discovered papyrus dates to the 3rd millennium B.C.E.

⁷⁹ PLINY THE ELDER, *NATURALIS HISTORIAE* 13.71.

⁸⁰ *Id.* at 13.77.

⁸¹ TURNER, *supra* note 78, at 4; Ulrich Wilcken, *Ein Sososfragment*, 41 *HERMES* 103, 104 (1906).

the *protokollon* were filled with parallel columns (*pagina*) written from left to right.

The codex, first attested to in Rome in the first century C.E., was initially reserved, above all, for school and law books. It achieved importance through the Christians who almost exclusively employed it for both Old and New Testaments.⁸² In the 4th century C.E., thanks to its more comfortable usage, the codex came to replace the papyrus roll for classical non-Christian Latin works and many libraries began to have their classical texts transcribed onto vellum codices.

The codex is essentially the book in its contemporary form. It presented two advantages over the roll: it had a protective outer covering⁸³, and it was more economical. Codices were written indeed in one instead of two columns, but both sides of the paper could be written on, thereby making a codex edition cheaper to produce than a roll one.⁸⁴

The question as to whether books, viewed in relation to today's prices, were cheap or expensive is one impossible to ascertain with any degree of certainty. Some historians estimate manufacturing costs to have been high, and, as a result, the price of books as well.⁸⁵ Other historians stress the fact that books were in large part produced by slaves, which fact radically lowered production costs, and would have led to a correspondingly low unit price for books.⁸⁶ A *libellus* of Martial's epigrams in good condition cost five denars (twenty sesterces) from the book-dealer Atrectus. Martial did not consider that price a cheap one.⁸⁷ The book *Xenia*, the

⁸² Books were published comparatively cheaply in codex editions. As Christianity was initially a religion comprised largely of the poor, the codex came to be preferred over the more expensive use of rolls.

⁸³ Noting that this covering consisted of wooden boards—and in the case of more expensive works, goat or sheep's leather with the haired side facing outwards—glued to the book itself, see HORST BLANCK, *DAS BUCH IN DER ANTIKE* 88 (1992) and SCHUBART, *supra* note 43, at 142.

⁸⁴ MARTIAL, *EPIGRAMMATA* 1.2.3. See T.C. Skeat, *The Length of the Standard Papyrus Roll and the Cost-Advantage of the Codex*, 45 *ZEITSCHRIFT FÜR PAPHYROLOGIE UND EPIGRAPHIK* 169 (1982) finds that the codex was roughly 26% cheaper than a roll of similar (text) length (not including the cost of the binding); see also OTTO MAZAL, 1 *GESCHICHTE DER BUCHKULTUR* 379 (1999), who discusses book bindings in general.

⁸⁵ Dziatzko, *supra* note 44, at 984; Paolo Fedeli, *Autore, committente, pubblico in Roma*, 1 *INTRODUZIONE ALLE CULTURE ANTICHE, ORALITÀ SCRITTURA SPETTACOLO* 77, 93 (Vegetti ed., 1983); MANFRED FUHRMANN, *GESCHICHTE DER RÖMISCHEN LITERATUR* 64 (1999); WILLIAM V. HARRIS, *ANCIENT LITERACY* 225 (Cambridge London 1989); RENATE SCHIPKE, *UNTERSUCHUNGEN ZUR HERSTELLUNG UND VERBREITUNG DES BUCHES IM LATEINISCHEN WESTEN ZWISCHEN DEM 4. UND 6. JAHRHUNDERT* 149 (1976). Roland Barthes, Patrick Mauriès, s.v. "*scrittura*," 12 *ENCICLOPEDIA EINAUDI* 608 (1981), reports that a copy of the *Aeneid* cost 24 denares, while poorly paid infantry soldier would earn 2 denares per ten day period.

⁸⁶ FRIEDLAENDER, *supra* note 76, at 224; Kohler, *supra* note 1, at 450.

⁸⁷ MARTIAL, *EPIGRAMMATA* 1.117.18.

13th volume of his epigrams, was listed for sale from Tryphon for one denar (four sesterces), and Martial reports that had Tryphon sold it for half that price he would still have turned a profit.⁸⁸ It is, however, essentially impossible to calculate the profit margin for books on the basis of such occasional remarks. In a single instance, the material costs for a book are handed down to us. For a quality edition of a *libellus* of his poems to be prepared for an admirer, Statius had to pay approximately two and a half sesterces for papyrus, purple ink and the two buttons of the *umbilicus*.⁸⁹

Book dealers arrived at their prices, then as now, not only in function of the work's production costs, but also its demand—and, in the case of used books, their condition. A copy of the second book of the *Aeneid* which a bookseller claimed was an autographed copy from Virgil himself was bought by the *grammaticus* Fidus Optatus for twenty *aurei* (2,000 sesterces).⁹⁰ It appears that a 750 denars were paid for a faked copy of Tisias' rhetoric.⁹¹ A copy in poor condition of a work by Brutus the Elder cost a single Ass.⁹² Fronto reports that in the 2nd century C.E. enormous sums were paid for Atticus' editions of Cicero and others.⁹³

Thanks to abundant fakes and the risk that the uninformed would find themselves paying exorbitant prices⁹⁴, specialists were called in to consult on prices.⁹⁵ Dion of Prusa complained that as book dealers knew that old books written on durable papyrus fetched high prices, they laid their fresh sheets in flour so as to age their appearance.⁹⁶

C. *Recipients: Libraries and Readers*

The term *library* denoted in antiquity both a sizable collection of books and the space in which such collections were kept⁹⁷ (or, alternately, collections of documents and the bookcases in which they were stored).⁹⁸ Initially, it was only authors who had libraries. It was first with the Hellenizing movement in Roman culture that larger sections of the population developed a taste for books and began to collect them. The first larger library collections were brought to Rome from Greece as the spoils of

⁸⁸ *Id.* at 13.3.3-5.

⁸⁹ STATIUS, *SILVAE* 4.9.6-8.

⁹⁰ GELLIUS, *NOCTES ATTICAE* 2.3.5.

⁹¹ LUCIAN, *PSEUDOLOGISTA* 30.

⁹² STATIUS, *SILVAE* 4.9.20-22.

⁹³ FRONTO, *EPISTULAE AD M. CAESARUM ET INVICEM* 1.7.4.

⁹⁴ LUCIAN, *ADVERSUS INDOCTUM* 1.

⁹⁵ GELLIUS, *NOCTES ATTICAE* 5.4.

⁹⁶ DIO CHRYSOSTOMOS, *ORATIONES* 21.12.

⁹⁷ FESTUS, *DE SIGNIFICATIONE VERBORUM* 34.

⁹⁸ D. 30.41.9.; 32.52.7.; SENECA, *DE TRANQUILLITATE ANIMI* 9.6.; PAULUS, *SENTENTIAE* 3.6.51.

war.⁹⁹ From Cicero's time onwards,¹⁰⁰ however, it became customary for the wealthy to have in their homes—above all in their country houses¹⁰¹—a representative library¹⁰² that was as much a status symbol as an object of regular use. It was not uncommon for authors to look down upon uncultivated individuals who bought books for their decorative value rather than for their content (the contemporary reader might think of the famous passage in F. Scott Fitzgerald's *The Great Gatsby* where the protagonist's sumptuous library turns out to be full of books whose pages have yet to be cut).¹⁰³ Various means were at the disposal of such uncultivated and relatively indifferent collectors such as guides for the purchase and cataloguing of books.¹⁰⁴ Specialists in the outfitting of libraries could be hired, and for the actual work in the libraries, freed slaves were hired or *servi litterati* obtained, who would function as *librarii*, copying works, or as *glutinatores*, gluing, maintained, ordering and organizing rolls. Sulla employed the famous *grammaticus* Tyrannion to see to the restoration, reordering and maintenance of Appellikon's library. Later, Quintus Cicero also turned to Tyrannion for the establishment of his library.¹⁰⁵

As a rule, libraries starting in Imperial times were divided in two parts. The first was the *bibliotheca graeca* or *attica*, the second the *bibliotheca latina*. The latter was smaller than the former for the simple reason that precious editions of the works of Latin writers were few and thus more difficult to obtain than Greek texts.¹⁰⁶ Both libraries were divided between a large section devoted to works already considered to be classics and a smaller one with more recent or contemporary works. It is not possible to say how many rolls a typical private library contained. The poet Persius, who lived in the first century C.E. and died at the early age of 28, left behind some 700 rolls. The philologist Marcus Mettius

⁹⁹ PLUTARCH, *VITAE – AEMILIUS PAULUS* 28.

¹⁰⁰ On Cicero's library, see THEODOR PÜTZ, *DE M. TULLI CICERONIS BIBLIOTHECA* (1925).

¹⁰¹ Compare D. 30.41.9.; 32.52.7.; 33.7.12.34.; CICERO, *DE FINIBUS BONORUM ET MALORUM AD M. BRUTUM* 3.2.7.; *EPISTULAE AD ATTICUM* 2.6.1.; PAULUS, *SENTENTIAE* 3.6.51.; PLINY THE YOUNGER, *EPISTULARUM LIBRI DECEM* 3.7.8.; SIDONIUS APOLLINARIS, *EPISTULAE* 8.4.1.

¹⁰² See VITRUVIUS, *DE ARCHITECTURA LIBRI DECEM* 1.2.7.; 6.4.1, who includes as a matter of course a library amongst the rooms to be contained in a manor house.

¹⁰³ MARTIAL, *EPIGRAMMATA* 14.2.; PETRONIUS, *SATYRICON* 48.4.; SENECA, *DE TRANQUILLITATE ANIMI* 9.4.; 9.6.

¹⁰⁴ ATHENAEUS, *DEIPNOSOPHISTS* 12.515 e.

¹⁰⁵ RUDOLF FEHRLE, *DAS BIBLIOTHEKSWESEN IM ALTEN ROM. VORAUSSETZUNGEN, BEDINGUNGEN, ANFÄNGE* 16 (1986); ELIZABETH RAWSON, *INTELLECTUAL LIFE IN THE LATE ROMAN REPUBLIC* 40 (1985); SALLES, *supra* note 2, at 182.

¹⁰⁶ CICERO, *EPISTULAE AD ATTICUM* 2.1.12.; *EPISTULAE AD QUINTUM FRATREM* 3.4.5.

Epaphroditos possessed some 30,000 rolls and the poet Serenus Sammonicus (3rd century C.E.) is said to have left a library numbering 62,000 rolls.¹⁰⁷ These indications do not, however, allow us to make general conclusions concerning the average size of libraries beyond Martial's remark that the library of a poor Roman held no more rolls than were contained in Livy's historical works (142).¹⁰⁸

Libraries were often used by individuals other than their owners. Lucullus offered unlimited access to his country house's large collection and allowed visitors the opportunity to discuss the works they encountered there.¹⁰⁹

From these private libraries open to the public it was but a small step to the creation of public libraries. Caesar laid the plans for the first public library in Rome—to be composed of a Greek and a Latin section—and sought for it to be as comprehensive as possible. His death prevented the realization of this plan.¹¹⁰ The first public library in Rome came in 39 B.C.E. and was opened by Gaius Asinius Pollio in the *atrium Libertatis*.¹¹¹ Augustus created a library in the *porticus* of the Apollo Temple on the Palatine¹¹² in which, as Caesar had planned, a Greek as well as a Latin section was to be found¹¹³—a format which all imperial libraries were subsequently to adopt.¹¹⁴ Many emperors chose to follow in Augustus' footsteps in this regard and it is reported that by the middle of the 4th century Rome boasted some 28 public libraries.¹¹⁵

Roman libraries were working ones and loaning works out to readers was unusual. The collections of these libraries—often steadily increased through gifts and foundations—could be consulted in a special portico or reading room.¹¹⁶ Books were obtained by requesting them from the

¹⁰⁷ BLANCK, *supra* note 83, at 158; KLEBERG, *supra* note 43, at 48; Kenneth Quinn, *The Poet and his Audience in the Augustan Age*, 30.1. AUFSTIEG UND NIEDERGANG DER RÖMISCHEN WELT 75, 127 (Wolfgang Haase ed. 1982) notes that Persius' library contained 7,000 rolls.

¹⁰⁸ MARTIAL, EPIGRAMMATA 14.190.

¹⁰⁹ PLUTARCH, VITAE – LUCULLUS 42.

¹¹⁰ SUETON, DIVUS IULIUS 44.2.; ISIDOR, ETYMOLOGIARUM SIVE ORIGINUM 6.5.1.

¹¹¹ ISIDOR, ETYMOLOGIARUM SIVE ORIGINUM 6.5.2.; OVID, TRISTIA 3.1.71-72.; PLINY THE ELDER, NATURALIS HISTORIAE 7.115.

¹¹² OVID, TRISTIA 3.1.60-64.; SUETON, DIVUS AUGUSTUS 29.3.

¹¹³ SUETON, DIVUS AUGUSTUS 29.3. HORACE, EPISULAE. 2.1.214-218 shows that, as a result, one of the focal points alongside of legal texts was Augustinian literature.

¹¹⁴ CIL 6.2347.; 6.2349.; 6.4431.; 6.4433.; 6.4435.; 6.5192, describes the division of the library in the *porticus Octaviae*; writing that the library of Pope Hilarus in the 5th century, located near the baptistery of the Lateran Basilica, was a dual one, divided into Greek and Latin subsections, *see* BLANCK, *supra* note 83, at 166.

¹¹⁵ *See* Dziatzko, s.v. "Bibliotheken," in P-W, at 415, citing *Mirabilia Romae* p. 21 P; BLANCK, *supra* note 83, at 165.

¹¹⁶ Describing the architecture of Roman libraries, *see* LORA LEE JOHNSON, THE HELLENISTIC AND ROMAN LIBRARY: STUDIES PERTAINING TO THEIR

library staff¹¹⁷ who were also responsible for the copying and restoration of books and were almost exclusively composed of slaves. Imperial libraries, on the other hand, stemmed from the *familia Caesaris*¹¹⁸ or the group of *servi publici*.¹¹⁹ Claudius established a centralized library administration, which in the 2nd century was managed by a *procurator bibliothecarum* (or a *bibliothecis*) from the Equestrian class and which brought with it a yearly income of 200,000 sesterces and entailed responsibility for the financial management and general well-being of the library.¹²⁰ The centralized administration even employed a medical doctor for the library personnel.¹²¹

With the rise in interest in books—above all, dilettantish works aimed at what would be designated today as pleasure reading—libraries came to be found in such places as public baths. These collections were popular in both senses of the term and their spaces also served as auditoriums for poetry readings or other cultural activities.

The book trade was by no means restricted to Rome and libraries were to be found throughout the Empire.¹²² Around the turn of the millennia (the purported year of Christ's birth), a large reading public with fairly homogenous reading interests spread around the Mediterranean and this growing reading public began to demand libraries. The founding of such libraries—which unlike those in Rome were not divided into separate sections dedicated to Greek and Latin literature—was not always effected by imperial decree.¹²³ In the Greek cities of the eastern reaches of the Empire, for example, libraries were founded by emperors such as Hadrian¹²⁴ (Athens received from him a particularly large library), as

ARCHITECTURAL FORM 84 (1984); ELZBIETA MAKOWIECKA, THE ORIGIN AND EVOLUTION OF ARCHITECTURAL FORM OF ROMAN LIBRARY 23 (1978); JEPPE TØNSBERG, OFFENTLIGE BIBLIOTHEKER I ROMERRIGET. I DET 2. ÅRHUNDREDE E. CHR. (1976).

¹¹⁷ GELLIUS, NOCTES ATTICAE 11.17.1.; 13.20.1.

¹¹⁸ See CIL 6.5184.; 6.5188-91 (describing the *bibliotheca Apollinis*).

¹¹⁹ As in the case of the library of *porticus Octaviae*; compare with CIL 6.2349.; 6.5192.

¹²⁰ Lorne D. Bruce, *The Procurator Bibliothecarum at Rome*, 18 THE JOURNAL OF LIBRARY HISTORY 143, 146 (1983). Later the yearly income was only 60,000 sesterces, perhaps because of decentralization or division of responsibilities.

¹²¹ CIL 6.8907.

¹²² See René Cagnat, *Les Bibliothèques municipales dans l'Empire Romain*, 38 MÉMOIRES DE L'INSTITUT NATIONAL DE FRANCE 1 (1909); Christian Callmer, *Antike Bibliotheken*, 3 OPUSCULA ARCHAEOLOGICA 145, 167 (1944).

¹²³ Cf. CIL 5.5262.; 10.4760.; 11.2704 b.; APULEIUS, APOLOGIA 91.1.; FLORIDA 18.1.; GELLIUS, NOCTES ATTICAE 9.14.3.; 19.5.4.; PLINY THE YOUNGER, EPISTULARUM LIBRI DECEM 1.8.2.

¹²⁴ PAUSANIAS, DESCRIPTION OF GREECE 1.18.9., see also Dietrich Willers, *Hadrians panhellenistisches Programm*, 16 ANTIKE KUNST BEIHEFT 14 (1990).

well as by private individuals, such as the famous Celsus library in Ephesus.¹²⁵

Readers came primarily from the cultivated upper class, and primarily from the cities. Documents such as epitaphs and letters written by soldiers from the fronts of Rome's various military campaigns testify, however, to Imperial Rome having a comparatively high literacy rate.¹²⁶ This is all the more remarkable given the fact that so much of the Empire was populated by peoples speaking neither Greek nor Latin, many of whose languages were oral ones.¹²⁷

Wealthy Romans often used slaves as readers—called *anagnostae* (the same name was employed for proofreaders used in the publication of works). Their services were called upon both for the entertaining of guests as well as for private consumption of works.¹²⁸ A relatively large sector of Imperial Rome—above all the lower classes—knew literary works only through popular versions performed by street performers¹²⁹, or through *recitationes*. In the time of Pliny the Younger, readings took place almost daily.¹³⁰ Attendance at these readings—above all by women, who were less likely than men to be literate—was a frequent replacement for a personal reading of texts.¹³¹ Through such means many works reached wide audiences and were, as a result, frequently cited. In Pompeii alone, twenty-four graffiti inscriptions with citations from the first book of *The Aeneid*, were found alongside citations from

¹²⁵ F. Hueber, V.M. Strocka, *Die Bibliothek des Celsus*, 6 *ANTIKE WELT* 3 (1975).

¹²⁶ See Alan K. Bowman, *The Roman Imperial Army: Letters and Literacy on the Northern Frontier*, *LITERACY AND POWER IN THE ANCIENT WORLD* 109 (Bowman, Woolf eds., 1994); HARRIS, *supra* note 85, at 253; SALLES, *supra* note 2, at 192, points to the limited text on gravestones. It is of course possible that many could not in fact read and arranged for inscriptions so as to give the impression that the deceased had been particularly cultivated.

¹²⁷ See Guglielmo Cavallo, *Alfabetismo e circolazione del libro*, 1 *INTRODUZIONE ALLE CULTURE ANTICHE, ORALITÀ SCRITTURA SPETTACOLO* 166, 173 (Vegetti ed., 1983). HARRIS, *supra* note 85, at 259 believes that in Rome and in Italy only around 20% of the male and 10% of the female population were literate (in addition to which there was an unknown number of partially literate individuals). Alan K. Bowman, *Literacy in the Roman Empire: Mass and Mode*, *LITERACY IN THE ROMAN WORLD* 119 (Beard et al. ed., 1991), disagrees with that estimate, putting the literacy rate at a higher level. In any event, there is little dispute that the illiteracy was especially high among women, slaves, and members of the lower social classes.

¹²⁸ CICERO, *EPISTULAE AD ATTICUM* 1.12.4.; NEPOS, *de viris illustribus—Atticus* 13.3.; 14.1.; PLINY THE YOUNGER, *EPISTULARUM LIBRI DECEM* 3.5.10.; 3.5.11.; 3.5.14.; 5.19.3.; 8.1.2.; 9.36.4.; Sueton, *DIVUS AUGUSTUS* 78.2.

¹²⁹ DIO CHRYSOSTOMOS, *ORATIONES* 20.10.; HARRIS, *supra* note 85, at 226.

¹³⁰ PLINY THE YOUNGER, *EPISTULARUM LIBRI DECEM* 1.13.1.; 8.21.2.; JUVENAL, *SATIRAE* 3.9.

¹³¹ Noting that women were allowed to attend recitations, see TACITUS, *ANNALES* 3.49.1; PLINY THE YOUNGER, *EPISTULARUM LIBRI DECEM* 4.19.3.; 5.17.5.

works by Lucretius, Ovid, Sextus Propertius, Horace, Catullus and even Ennius.¹³² Epitaphs often employed citations from Virgil.

PART TWO: CONFLICTS OF INTEREST AND LITERARY AUTHORSHIP

The following section will examine the legal, paralegal and extra-legal means that authors in ancient Rome disposed of to protect their interests. This section will focus upon the specific cases of the unauthorized revision or alteration of texts, unauthorized publications, plagiarism, and the insuring of financial or other interests in the case of contracts with publishers, theater producers and other parties. This section will also examine the means at publishers' disposal to protect related interests. The goal will be to elucidate the extent to which ancient Rome developed means for resolving conflicting interests regarding authorship—those same interests which today come under the headings of copyright law, publication law, and, more broadly, intellectual property law.

A. *Protection of the Authors' Interests*

It is today a matter of virtual consensus that the Roman Empire possessed no copyright or intellectual property laws granting creative individuals extensive legal control over their creations. Nearly as unanimous is the belief—often expressed without explanation or expansion—that the antique world had a conception of artists and authors as *possessing* in a fundamental sense the works they produced. The nature and limitations of this conception of intellectual property will be the subject of this section.

A word on method: contemporary terms and concepts can only be of limited help in elucidating the social and economic conditions, and the legal systems, which prevailed under the Roman Empire. For ease of exposition and comprehension, we will employ the terms, concepts and categories that have come to shape contemporary treatments of intellectual property law in the knowledge of the fact that these concepts *as such* were unknown in Roman times and, in certain cases, foreign to Roman culture. Every effort will be made to indicate where and to what extent this is the case.

I. Moral Rights

The most important *droits morales*, or moral rights, of an author are the right to determine the moment and the conditions of the publication of a work, the right of authorial recognition and the protection of the integrity of the works. If Rome possessed a conception of the validity and desirability of the protection of authors' interests, and if those interests bore some similarity to those we know today, it would be around these issues that such a concept would have first developed.

¹³² SALLES, *supra* note 2, at 191, 196.

1. *Publication of Works*

The first question to be answered is if and how authors in ancient Rome could or would determine the moment and conditions under which their works were published. Answering this question requires the study of non-juridical sources for the simple reason that nowhere in the documents of Roman law—neither in the *Corpus Iuris Civilis* nor in the juridical fragments which have come down to us—is a law to be found or a case where an author appeared in a court of law to protest the unlicensed or otherwise illegitimate publication of a work.

a) Economic Considerations

As a general rule, in ancient Rome the producer of a work—its publisher—needed the permission of its author. It was economically advantageous for the publisher to obtain this permission, but it was not strictly speaking necessary to do so. It was the author who gave final form—and title—to his or her work and could force a publisher to suffer negative economic consequences by bringing out his own edition of the work.

A prime example of this practice is to be found in Cicero and regards the revisions of the fifth book of his *De Finibus*.¹³³ Cicero had sent Atticus a provisional copy of that work (not destined for publication). It was customary among Roman authors to circulate copies of recently completed works and to ask for others' opinions, and it was not rare for authors to change their texts after having already given them to a publisher.¹³⁴ When author and publisher happened to be friends, as in the exceptional case of Cicero and Atticus, the publisher would have initially been in possession of a provisional version or draft of a work sent to him not for immediate publication but in the hope of obtaining productive criticism from a respected reader. To restrict considerations of the matter to the financial side, publishing such a version would be economically imprudent, which in part explained Cicero's surprise upon learning that, in a subsequent case, Atticus violated such a request.¹³⁵

b) Moral Codes

Economical considerations were, however, just one element which determined publishing practices, authorial interests and intellectual property in ancient Rome. Alongside such considerations were important ethical ones which would have strongly dissuaded a publisher from publishing works without the express permission of the work's author. This moral code concerned not only the illegitimate procurement of texts

¹³³ CICERO, EPISTULAE AD ATTICUM 13.21.4. *See id.* at 13.13.1, where Cicero goes so far as to ask Atticus to alter all extant copies of an already published work.

¹³⁴ MARTIAL, EPIGRAMMATA 6.1.; PLINY THE YOUNGER, EPISTULARUM LIBRI DECEM 1.2.1.; 1.8.3.; STATIUS, SILVAE 2. prooem. 29.

¹³⁵ CICERO, EPISTULAE AD ATTICUM 13.21.4.

(through, for instance, theft) and their subsequent unauthorized publication, but also premature publication of works which had been entrusted to a publisher but which were considered by the author, like Cicero above, as not yet ready for publication. Ovid's unconditional respect for the author's privacy was such that he categorically refused to name unpublished authors—or, in any event, this was the reason he gave and which enjoyed at least some credibility.¹³⁶

aa) Hermodorus of Syracuse

An especially well-known and illustrative case involves a publisher who not only published a work without its author's permission, but also obtained it without such permission. Hermodorus of Syracuse was a student at Plato's Academy, had attended his master's lectures and kept notes from them. He subsequently arranged for the publication of these notes in Sicily.¹³⁷ This practice earned him vehement and widespread contempt in the Antique world—such that the saying “with Plato's dialogues Hermodorus does business” became a proverbial one.¹³⁸ The expression grew to be so well known in ancient Roman culture that Cicero could use the name Hermodorus as a synonym for a person without honor.¹³⁹

The question is why the ancient world should have found Hermodorus' unlicensed publications to be such a perfect example of moral contemptibility. How much does the case tell us about the attitude of the general populace towards the practice of unauthorized publication? The sources are, alas, too scanty and the descriptions too cursory to offer a definite answer to this questions, but they nonetheless offer important indications about the reigning conceptions of intellectual property.

According to one line of thinking, what so offended Romans in Hermodorus' conduct was not his publishing of unauthorized works by Plato per se, but that he became rich through their sale.¹⁴⁰ In this case, the unauthorized reproduction and distribution of works would not be considered in and of itself morally contemptible. What was contemptible was doing so for individual material gain. That Hermodorus faced no legal sanction corresponding to the public disapproval shows that the author had no direct legal protection of his or her works and that the reproduction and distribution of works without the author's express permission posed no direct legal problems.

In light of the particular facts of the case, this line of reasoning is, while pertinent, ultimately unconvincing. During the period in question, Sicily lay outside of the bounds of Athenian control and in such a case only an

¹³⁶ OVID, *EPISTULAE EX PONTO* 4.16.37-39.

¹³⁷ PHILODEMON, *ACADEMICUM HISTORICUM* 6.4-6.; ZENOBIUS 5.6.

¹³⁸ Dziatzko, *supra* note 1, at 559, 568 n. 3. *See also* ZENOBIUS 5.6.

¹³⁹ CICERO, *EPISTULAE AD ATTICUM* 13.21.4.

¹⁴⁰ Dziatzko, *supra* note 1, at 559, 569.

international agreement could have settled the dispute. As a legal resolution of the case would have been effectively useless, the only remaining recourse was to underline the *moral* contemptibility of Hermodorus' activity.

Even had Hermodorus not enriched himself through his publishing activity, his behavior would have been subject to another, more important criticism: he violated the moral code which dictated that a work be published only with its author's consent and approval—something amply reflected in the remarks of other authors. Before his banishment to Tomi, Ovid arranged for the burning of his *Metamorphoses*—which he felt were not yet ready for publication—to protect them from entering into general circulation in incomplete form.¹⁴¹ In a letter to Atticus, Cicero complained that one of his speeches had been reproduced and distributed without his permission and that he did not know how this had come to pass.¹⁴² In his *De Oratore*, Cicero, through Mark Anthony, complains that a work of his was published without his knowledge and against his wishes.¹⁴³ Galen of Pergamon, the private physician of Marcus Aurelius' son Commodus, is on record as lamenting that his works were distributed without his permission.¹⁴⁴ Diodorus Siculus bemoaned that his manuscripts had been stolen and published.¹⁴⁵ Quintilian relates that two books of his *Institutio Oratoria* were published without his knowledge and against his will.¹⁴⁶ In the first case, he gave slaves his permission to note the remarks of a two-day lecture he held. Subsequently, however, the notes were distributed without his permission—most likely through the sale of the manuscript. In the second case, Quintilian again gave a series of lectures stretching over several days and which those present took notes from. These notes were the subject of hastily publication. Thanks to these two incidents Quintilian decided to publish the work himself—and to do so as soon as possible—so that his readership would find more comprehensive and better ordered reflections of his thought than the unauthorized lecture notes then circulating.

On the bases of these sources, some scholars have speculated that what the Roman public found so reprehensible in Hermodorus' dealings was that he acted without Plato's permission.¹⁴⁷ Though it is difficult for scholars to locate, isolate and positively identify, there can be no doubt that the ancient world recognized a certain authorial right of publication. An unauthorized publication like Hermodorus' could have been seen to

¹⁴¹ OVID, *TRISTIA* 1.1.117-118.; 3.14.19-24.

¹⁴² CICERO, *EPISTULAE AD ATTICUM* 3.12.2.

¹⁴³ CICERO, *DE ORATORE* 1.94.

¹⁴⁴ GALEN, *DE ANAT. ADMINISTR.* 1.

¹⁴⁵ DIODORUS SICULUS, *BIBLIOTHECA HISTORICA* 40.8.

¹⁴⁶ QUINTILIAN, *INSTITUTIO ORATORIA* prooem. 7.; 3.6.68.

¹⁴⁷ Kohler, *supra* note 1, at 455.

show disrespect to the author and, for this reason, might well have led to the public outcry in question.

The complaints of Cicero, Diodorus Siculus, Galen, Ovid and Quintilian all bear witness to the fact that the Roman world condemned unauthorized publications and did so on *moral* grounds. And yet these complaints were never as vehement nor ever became as famous as the one lodged against Hermodorus. The prestige which Plato enjoyed in the Greco-Roman world plays an important part in the outrage in question, but it does not suffice to explain the genesis of such a proverb or the universal disdain Hermodorus endured, as the Romans named above enjoyed, in their day, a very considerable and nearly equal renown and influence. Some of the vehemence of the reaction might be attributed to a point not touched on in the literature treating the scandal, namely in Plato's doctrinal insistence upon the disadvantages of knowledge transmitted through writing as opposed to knowledge transmitted through speech (highlighted in his dialogue *Phaedrus*), and which, to the student of Plato, would have made Hermodorus' act all the more contemptible. Another explanation is more plausible.

Hermodorus did not obtain the lecture notes from a third party but made them himself during Plato's lectures. He was Plato's student and thus bound to his teacher by the moral code governing relations between teachers and students in the Greco-Roman world.¹⁴⁸ His Sicilian editions would have violated another moral code than the one mentioned above. As Plato's student he owed his teacher, even after the latter's death, loyalty and respect. By acting as he did, Hermodorus had thus abused his teacher's faith and trust in him, and there can be little doubt that this was a significant element in the extreme reaction to his activities and his person.

This case cannot be treated as *proof* of the existence of an author's legal right to determine the moment and conditions of the publication of his or her work. It shows, however, that for the Romans the publication of an unauthorized work was considered at the very least morally dubious. The special basis of trust which would have prevailed between Plato as teacher and Hermodorus as student was violated in his special case and this violation of a second moral code was likely what made the latter's activity appear so especially contemptible.

bb) Cicero's *De Finibus*

A second case which helps to give a more ample idea of the reigning conceptions of intellectual property in ancient Rome concerns Cicero's *De Finibus*. In this case, a publisher came into possession of a manuscript by legitimate means, but reproduced and distributed it before obtaining the author's final approval.

¹⁴⁸ Discussing the bond of trust linking teacher and pupil in ancient Greece, see MÜLLER ET AL, *supra* note 54, at 198.

The publisher Atticus allowed Balbus to copy the fifth book of Cicero's *De Finibus* then in his possession before Cicero had indicated that the work was ready for publication. Learning of the matter, Cicero sharply criticized his friend and publisher.¹⁴⁹ On what grounds he did so will allow us to better understand the underlying conceptions of authority and intellectual property.

Cicero charged that while the work was in Atticus' possession, it came into the hands of Balbus before Brutus (to whom it was dedicated) received it. Secondly, and of greater interest for the following considerations, is that since giving the work to Atticus for the purposes of constructive criticism, Cicero had altered—and, in his view, bettered—the work, and that Balbus had thus come into possession, and copied, a work that was, in its author's view, not yet complete.

It is illustrative to note first that Cicero nowhere refers to Atticus violating any specific law or rule (which would have, in any event, been very likely considered unseemly in the case of such a close friendship as the rules of friendship would take preference and precedence over the rules of law in such a matter). Cicero's surprise, frustration and anger are clearly seen in the comparison he establishes between Atticus and Hermodorus¹⁵⁰, and the biting conclusion he comes to that Atticus' behavior was still more contemptible than that of the proverbial Hermodorus. Cicero's remarks are meant to be taken, in part, ironically. If he had meant them in a strictly literal sense that would doubtless have been the end of his relationship with Atticus. Nonetheless, beneath the irony is a note of real disquiet and anger. By today's standards Romans were extremely sensitive in questions of honor, dignity and perceived slights. Cicero's reference to Hermodorus, whatever the degree of playfulness ascribed to it, nonetheless pointed to a real parallel.

At first glance, Atticus' trespass seems a minor one when compared to that of Hermodorus. Plato had not confided manuscripts to him. He had made notes of what he heard, and used those unauthorized notes for monetary gain. In so doing, he had shown a flagrant lack of respect for the teacher whose dignity he should have attended to and whose instructions he should have followed. This was true of every teacher, but all the more so of Plato. Atticus, on the other hand, seems to have received the manuscript in question directly from Cicero—a fact illustrated by Cicero being nowhere in uncertainty as to how Atticus came into possession of it, and also by the fact that Cicero routinely gave Atticus advance copies of manuscripts he was still working on. His instructions in this instance to Atticus were simply not to publish the work—yet. What is more, Atticus had not produced a complete edition of the work but allowed one of his own friends to make a copy of it—and doubtless not for monetary gain. The real cause of Cicero's bitter rebuke could only then be that Atticus

¹⁴⁹ CICERO, EPISTULAE AD ATTICUM 13.21.4.

¹⁵⁰ *Id.* at 13.21.4.

made public, or semi-public, a manuscript without his, the author's, permission¹⁵¹, just as Plato was not asked by Hermodorus if he would consent to the reproduction and distribution of the work in question. The intensive friendship which bound Atticus and Cicero, and the duties which came with such a bond could not lead to even the playful conclusion that Atticus had somehow behaved worse than Hermodorus, but that, in a general sense, he was like the latter in violating the special rules governing a special relationship.

Cicero's remarks make sense only in light of the fact that his relations with Atticus were of a parallel nature—both professional and personal—and that Atticus' act had violated both personal *and* professional codes, the first concerning friendship, the second concerning the obligations of a publisher to an author. In all likelihood, a contractual agreement of some sort had already been reached by Cicero and Atticus regarding this fifth book of *De Finibus*, which made Atticus' possession of the manuscript so to speak a double one—both as eventual publisher and as friend (and thereby critic and counselor). Whether through carelessness or some other reason, Atticus failed in his obligations as publisher by allowing Balbus a copy of an incomplete draft of one of his author's works. He failed in his obligations as friend in violating the wishes of that friend and abusing his trust. Seen in this light—the only one which lends coherence to Cicero's acerbic remarks—Atticus' violation was in a certain sense greater than that of Hermodorus. Whereas Hermodorus had simply acted independently of the author's will, Atticus had violated the express wishes of his friend and author.

Cicero's letter to Atticus can serve as an indicator of the nature of the contractual agreements which authors and publishers reached and which, it seems, made clear provision for the author to decide upon the moment of publication. The legal question as to whether contractual agreements expressly provided for such, or whether it was simply and universally viewed as of the nature of the author's position that he or she decide upon the moment of publication is a question which the lack of documentation does not allow us to answer with certainty.

What this case does show, however, is that following the prevailing conceptions of the day, a literary work had an ideal nature. Violation of the rights of an author were not seen as principally concerning the physical manuscript or other material support for a work (such as the dubious or illegitimate acquisition of said manuscript or material support) but the illegitimate appropriation of the work—considered in an ideal sense perfectly familiar to modern readers—itself. The fact that Cicero seems to have of his own authority seen to the reproduction and distribution of the work of Hirtius via Atticus (a work flattering to Cicero) does not change the nature of this fact. It is not known precisely how Cicero came into possession of Hirtius' manuscript, but it is entirely possible and in no way

¹⁵¹ See, e.g., MARIE-CLAUDE DOCK, *ÉTUDE SUR LE DROIT D'AUTEUR* 35 (1963).

unlikely that Hirtius sent Cicero the text with the request that he read it, critically respond to it, and then, if he thought it worthy, pass it on to Atticus.

cc) Virgil's *Aeneid*

A third and still more prominent case illustrates the fact that the Romans conceived of the author as standing in a special—an *ideal*—relationship to his or her works. According to the tradition, Virgil spent the last eleven years of his life writing *The Aeneid*.¹⁵² At his death he considered the work uncompleted. His will is said to have left the care of his writings to Varius and Tucca, who were to see to it that no uncompleted works were posthumously published.¹⁵³ The tradition then relates that the two friends and executors of his literary estate sought to obey his will and would have had Augustus, who had followed the genesis and development of *The Aeneid* with interest, not intervened, leading to their more or less forced publication of Virgil's epic poem.

The circumstances surrounding the case could hardly be more extraordinary. Virgil was very well known at the time of his death, his work highly prized, his literary executors close friends and the decisive actor a *princeps*. Despite its extraordinary nature—and whether or not the traditional account corresponds in its details with the facts of the case—the tradition's treatment of the matter is, at the very least, illustrative of contemporary notions of authorship and intellectual property.

It should first be noted that though Virgil was able to introduce an article in his will stating that his friends were to inherit the unfinished manuscript, this did not mean that he thereby granted them authorial rights to the work it contained. Possession of a copy of the work—such as an author's manuscript—and possession of the work *qua* work were by no means considered identical. On the contrary, the author retained his rights as concerned a work even in the physical absence of the material support on which it was written. Roman testaments of course could make provision for the inheritance of a thing along with dictates for the special handling or treatment of that thing. That Virgil forbade any exploitation of the manuscript and grounded this interdiction on the basis that the work was not finished, shows an awareness of a socially recognized ideal relation to the work—which extended beyond his death and was independent of possession of the manuscript.

Virgil's post-mortem right to decide upon the fate of his work was one which Varius and Tucca acknowledged without hesitation. Initially, they obeyed his wishes, doubtless both out of respect for the last will and testament of a friend, and also in acknowledgement of his right to decide

¹⁵² DONATUS, *VITA VERGILIANA* 89-90.; PHILARGYRIUS, *VITA VERGILIANA* 1.89.; SERVIUS, *VITA VERGILIANA* 26-27.

¹⁵³ PLINY THE ELDER, *NATURALIS HISTORIAE* 7.114.; PROBUS, *vita Vergiliana* 22-23.

upon the fate of his work. It was thus that the two friends only produced and published an edition until Augustus' intervention no longer left them any real choice in the matter.¹⁵⁴ Even then, they refused to revise or in any way complete the manuscript, showing respect for the author's will and acknowledgement of his sole mastery over the work.

On the other side of the literary equation, Augustus, as Emperor and thus representative of the *res publica*, did not feel himself bound to Virgil's individual will. Seen from this official side of things, Augustus, weighing the competing interests, felt it more important—more instrumental to the common good—to make *The Aeneid* available to people under his rule than to respect Virgil's right to determine the moment of publication (and thereby his last wish regarding his unfinished work). Biographies of Virgil describe the events surrounding the posthumous publication of *The Aeneid* in some detail, not only because of the personal involvement of such a figure as Augustus but also because the posthumous publication—against the will of the departed author—was highly unusual. This very detailed interest in the matter testifies to the Romans' consciousness of the author's right to determine the fate of a work even from beyond the grave.

dd) Letters

Another important source for information as to the rights of authors in ancient Rome is found in the legal handling of correspondence.

Roman jurists did not dispute that the sender of a letter possessed a fundamental authorial right. The question for them was at what point the author relinquished this *dominium* to the letter's addressee.¹⁵⁵ Labeo wrote that a letter became the rightful property of the addressee at the moment of delivery (especially in cases where the letter's sender had it delivered through one of his own slaves or employees¹⁵⁶). According to Paulus, the actual transfer of property in cases where the slave in question belonged to the addressee occurred earlier—namely, at the moment when the sender gave the letter to the slave charged with its delivery (and who was the property of the addressee).¹⁵⁷ Ulpian was also of this opinion in treating the question of who was wronged in the event a letter was stolen—that is, who had the right to file the *actio furti*. He believed that the legally wronged party in such a case was the letter's addressee and

¹⁵⁴ DONATUS, *vita Vergiliana* 141.: *iussu Caesaris*; PLINY THE ELDER, *NATURALIS HISTORIAE* 7.114.: *vetuit*; SERVIUS, *VITA VERGILIANA* 29.: *iussit*.

¹⁵⁵ See Benöhr, *supra* note 45, at 115, for an analysis of the conventions concerning how letters were written, sent and received, as well as the legal protections under which they stood.

¹⁵⁶ D. 41.1.65.pr.

¹⁵⁷ D. 41.1.65.pr.

that the giving over of the letter to a slave or other *procurator* of the addressee marked the transfer of property.¹⁵⁸

It has been the opinion of some scholars that these fragments demonstrate that, for the Romans, an author had rights over his or her work only so long as the manuscript or other material support was in his possession. The reasoning of these writers was as follows. Roman jurists made no distinction in the case of letters between their content and their material form. This principle could also be applied to written works which were not letters and from this perspective, anyone in possession of any unpublished manuscript or letter had, as long as he or she was rightful possessor of that unpublished manuscript or letter, the right to publish it.

This reasoning is unconvincing. It limits itself to considering property rights concerning a copy—or an original—of a letter, and ignores rights concerning the contents of such a letter—the question of intellectual property. The anecdotes provided above hardly prove that the author's rights began and ended with the mere physical possession of a manuscript. A letter's sender could, for example, reserve the right to have the letter returned to him or her. In such a case, following Ulpian's schema, the proprietary right to the letter was not transferred to its addressee upon delivery, but only a form of rightful possession.¹⁵⁹ What is more, a letter writer could redirect, republish and even rededicate letters already sent. Pliny the Younger, for instance, speculated, in his letters, about publishing a volume of his correspondence.¹⁶⁰ Evidence points to his friends subsequently encouraging him to do so despite the fact that they themselves were the addressees of his letters (and could then, following the reasoning noted above, have simply published the letters themselves had there been no conception of intellectual property to prevent them from doing so).¹⁶¹

Pliny's letters are suggestive, but they also do not prove that the author disposed of a simple right to first publication.¹⁶² The explanation that Pliny's friends would have published the letters in their rightful possession if Pliny did not do so, would fail to recognize the strict moral codes determining friendship, respect and personal honor in ancient Rome. In a letter to Sabinus, Pliny the Younger stressed how the code of honor is an absolute constraint—of the nature and force of necessity (*neque enim*

¹⁵⁸ D. 47.2.14.17.

¹⁵⁹ D. 47.2.14.17.

¹⁶⁰ PLINY THE YOUNGER, *EPISTULARUM LIBRI DECEM* 1.1.

¹⁶¹ *Id.* at 1.1.

¹⁶² See DOCK, *supra* note 151, at 35, and MARTIAL, *EPIGRAMMATA* 2.6.1., 2.6.17. Dock points to Martial, though the passage in question does not allow her to claim—as she endeavors to do—the existence of a rule of law; see also MARTIAL, *EPIGRAMMATA* 1.26.

minus apud nos honestas quam apud alios necessitas valet).¹⁶³ Honor alone would have sufficed to prevent Pliny's friends from publishing any part of his correspondence without his express consent. This very fact, however, also shows that there was a dominant conception in ancient Rome that a special relationship existed between author and work—even when that author was no longer in physical possession of that work.

2. Recognition of Authorship

The degree to which authors in ancient Rome enjoyed formal recognition of their authorship and authority over their works cannot be ascertained with certainty. Legal provisions for the resolution of such problems are, in any event, not attested to and no cases are on record in which an author brought legal charges against another party for violating his authority or falsely claiming authorship of his work. However, there are extra-legal sources which treat the matter and which allow for a clearer understanding of the status of authorship in ancient Rome.

There are numerous cases of charges of plagiarism to be found in antiquity. They concern citations and other borrowings without indication of provenance as well as works taken in their entirety—whether in unchanged or partially changed form—and attributed to another.

a) Citations and Borrowings Without Indication of Provenance

The Greeks—particularly the authors of comedies—regularly accused one another of plagiarism.¹⁶⁴ Their name for such was “theft.” The context allowed one to distinguish the theft in question as a literary one. Roman authors of comedies also discussed the elusive point at which plagiarism began. Translating from the Greek word, they christened it *furtum* (“theft”).¹⁶⁵ They discussed, for instance, if it was acceptable to take several Greek plays and rework them into a single one, as well as whether it was permissible to take a part of a Greek drama already reworked by a Roman author and use it again.¹⁶⁶ In every case, the object of criticism was not literary borrowing as such, but, instead, keeping such borrowing secret.¹⁶⁷

¹⁶³ PLINY THE YOUNGER, *EPISTULARUM LIBRI DECEM* 4.10.3.

¹⁶⁴ ARISTOPHANES, *FROGS* 936-943., 1298-1303., 1407-1410. EDUARD STEMPLINGER, *DAS PLAGIAT IN DER GRIECHISCHEN LITERATUR* 14 (1912), finds that Antiphanes and Telekleides also accused Euripides of accepting outside assistance, notably from Socrates and Mnesilochos. See also William B. Stanford, *Commentary*, in ARISTOPHANES, *THE FROGS* 943-44, 1408-09 (2d ed., 1976); Konrat Ziegler, *s.v.* „*Plagiat*”, P-W 1956, 1969 (1950). He points to further cases of plagiarism therein.

¹⁶⁵ TERENCE, *EUNUCHUS* 23., 28.; CICERO, *DE FINIBUS* 5.74.; PLINY THE ELDER, *NATURALIS HISTORIAE* praef. 23.; SUETON, *DE GRAMMATICUS* 15.

¹⁶⁶ TERENCE, *EUNUCHUS* 19-28.; *ANDRIA* 15-23.

¹⁶⁷ Disputing this accusation, see TERENCE, *ADELPHI* 15-25; see also KROLL, *STUDIEN ZUM VERSTÄNDNIS DER RÖMISCHEN LITERATUR* 149 (1964).

For works of learning—above all, for anthologies and compendia—providing sources was universally recognized as necessary.¹⁶⁸ Following Pliny the Elder, *furtum* was defined as *veteres transcribere ad verbum neque nominatos*¹⁶⁹: literally, copying without citation. It was usually sufficient to note the source in a general fashion (indicating merely an author or a title without noting at precisely what point in the work it occurred).¹⁷⁰ In more belletristic works, authors could more discreetly indicate their borrowing through means such as comparing figures in their works with figures from the works of others.¹⁷¹

The Hellenistic period gave birth to a broader treatment of the question of plagiarism. This was in large part done by philologists. In part, these philologists used their erudition to carefully and artfully develop both cases of borrowings and simple parallels in the texts of the authors they discussed. Then as now, not all philologists were equally conscientious and some would falsely and unfairly treat the examination of common themes as if they were cases of direct borrowing.¹⁷² They were aided in their efforts by published commentaries to texts which would routinely offer parallel passages drawn from other authors in the margins of works. Such parallel passages were presented as aids to the reader's comprehension, and were usually the work of balanced scholars exploring parallels and thus rarely spoke of plagiarism.

With time, these so-called "plagiarism hunters" became themselves the target of harsh criticism. Macrobius called those who accused Virgil of such *furtum*, *imperiti* and *maligni*, pointing out that Virgil had a solid education in Greek thought, was fully at home in the Greek intellectual world, and had engaged himself in a glorious contest with his poetic precursors.¹⁷³ In short, to speak of plagiarism in such a case was to show oneself as ill-intentioned or ignorant. Seneca also expressed scorn for those, motivated by petty concerns, who sought out possible precedents for Virgil's brilliant inventions.¹⁷⁴ Pliny the Elder praised the *virtus Vergiliana* of *certare* and stressed how glorious it was to compete with the great thinkers and poets of the past.¹⁷⁵

¹⁶⁸ Ziegler, *supra* note 164, at 1969.

¹⁶⁹ PLINY THE ELDER, *NATURALIS HISTORIAE* praef. 20-23.

¹⁷⁰ See, e.g., PLINY THE ELDER, *NATURALIS HISTORIAE* praef. 20-23.; CICERO, *BRUTUS* 76.

¹⁷¹ Vergil compares Turnus with Sarpedon at the point where he borrows the story of Sarpedon from the *Iliad* (VERGIL, *AENEIS* 10.471.), and has Camilla kill Harpalycus so as to make readers attentive to Harpalyke as the model for Camilla (VERGIL, *AENEIS* 11.675.).

¹⁷² See STEPLINGER, *supra* note 164, at 6.

¹⁷³ MACROBIUS, *SATURNALIA* 5.1.2-20.

¹⁷⁴ SENECA, *AD LUCILIUM EPISTULAE MORALES* 108. 34-35.; see also SENECA, *SAUSORIA* 3.7.

¹⁷⁵ PLINY THE ELDER, *NATURALIS HISTORIAE* praef. 20-23.

The Romans were well aware of how the reading of other works might influence one's own. Horace advised his friend Albinovanus Celsus to focus on creating his own works and cautioned him against excessive reading. He warned that if Albinovanus Celsus continued to read so many books, he would one day become like the crow—the laughingstock of the other birds because he had stolen feathers and adorned himself with them.¹⁷⁶ On another tack, Catullus claimed that he was simply incapable of writing without his library¹⁷⁷, and Ovid, banished in Tomi, bitterly complained that without his books he was deprived of the inspiration and material necessary to create his own works.¹⁷⁸

These latter passages referring to an inability to create without a model in mind or hand show the different conception of literary originality in ancient Rome. This was evident above all in the matter of *material*, where originality of theme or story was far less important than it has become today (readers may recall that, to take a single example, Shakespeare's Elizabethan and Jacobean culture's attitude in this respect was far more like Rome's than like our own). While beauty and completeness in form was of central importance for Roman authors, lack of originality with respect to content was unlikely to arouse disapproval or even special attention.¹⁷⁹ This was clearly seen in the case of Horace, according to whom *publica materies privati iuris erit, si non circa vilem palatumque moraberis orbem*.¹⁸⁰ A poet might often employ a motif borrowed from another poet so as to pay that poet a compliment, not, as today's literary culture might lead us to conclude, from a desire to adorn himself with borrowed feathers.¹⁸¹ What is more, a high level of thematic originality within the context of the conservatism of Roman literary forms was hardly conceivable. Importing new material into the strict confines of these old and well-established genres was not very practical and had variations upon established themes not been allowed, these genres would have soon simply died out. It was on the basis of this conception that Macrobius praised Virgil for keeping the spirit of antique poets alive for posterity through his own reworkings of their treasured material.¹⁸²

b) Appropriation of Another's Work

Unlike citing, or borrowing common themes or materials, without indicating provenance, appropriating an author's work unchanged—or only

¹⁷⁶ HORACE, EPISTULAE 1.3.15-20.

¹⁷⁷ CATULLUS, CARMINA 68.33-40.

¹⁷⁸ OVID, TRISTIA 3.14.37.

¹⁷⁹ See STEPLINGER, *supra* note 164, at 131. Socrates even objected to individuals wishing to speak of things that had never yet been spoken of; the point was to speak in a way like no other could.

¹⁸⁰ HORACE, ARS POETICA 131-132.

¹⁸¹ See SENECA, SUASORIA 3.7.

¹⁸² MACROBIUS, SATURNALIA 6.1.5.

with minor alterations—and presenting it as if it were one's own creation was harshly condemned by the Romans.¹⁸³ This is to be heard in the very word used to designate the act: *plagiarism*. The term initially referred to the kidnapping of free men and the selling of them into slavery.¹⁸⁴ Martial employed it in a figurative sense to characterize and condemn a certain Fidentinus who gave a reading of Martial's poems, presenting them as his own.¹⁸⁵ From the context it is clear that plagiarism was understood as the appropriation of another's work and the presentation of it as one's own. Martial had in all probability borrowed the term from the Greek, as Diogenes Laertius accuses the Stoic Zeno of such literary theft, using the term *andrapodistes*, man- or slave-thief, to do so. Fidentinus' actions appear to have deeply angered Martial, who refers to him numerous times in the first book of his epigrams and returns to heap contempt upon him at later points.

Martial recounts how he came to hear that Fidentinus was giving a reading of Martial's poems as if they were his own. He then challenged Fidentinus to either note their true author when he presented them—in which case they were his free of charge, or, if not, to pay Martial for the right to present them as his own.¹⁸⁶ He later returns to the question, counseling Fidentinus in the future to buy the silence of an unpublished author as a published work cannot change its master.¹⁸⁷ At still another moment he contemptuously remarks that Fidentinus was such a dreadful reader that the poems became more and more Fidentinus' own thanks to his incompetent elocution.¹⁸⁸ Martial also relates, how Fidentinus published a volume of Martial's verse as his own, adding to the collection a single poem of his own composition. Martial claimed that this single authentic poem convicted the supposed author of the theft of all the others in the volume.¹⁸⁹ And finally, never sparing in his scorn, Martial explained to Fidentinus that it did not suffice to adorn oneself with stolen feathers to be honored as a poet, just as a bald man does not possess a luxuriant head of hair simply by putting on a wig.¹⁹⁰ In another epigram, Martial addresses Quintinian, in all probability then in contact with Fidentinus, advising him that he should hinder the false poet from presenting Martial's books as his own. If he stated loudly enough that

¹⁸³ ZARA ALGARDI, *IL PLAGIO LETTERARIO E IL CARATTERE CREATIVO DELL'OPERA* 233 (1966), argues that there was no legal awareness of plagiarism and without further justification, claiming that it was only in few cases that plagiarism was harshly reacted to.

¹⁸⁴ See *lex Fabia de plagiariis*, Inst. 4.18.10.; D. 21.1.17.7.; 48.15.; C. 9.20.16.

¹⁸⁵ MARTIAL, *EPIGRAMMATA* 1.52.9.

¹⁸⁶ *Id.* at 1.29.

¹⁸⁷ *Id.* at 1.66.

¹⁸⁸ *Id.* at 1.38.

¹⁸⁹ *Id.* at 1.53.

¹⁹⁰ *Id.* at 1.72.

Martial was the real author of the poems, the plagiarist would blush (*inpones plagiaro pudorem*), which passage gave the act its lasting name.¹⁹¹

The frequency with which Martial addresses or apostrophizes Fidentinus and those close to him, as well as the contempt with which he does so, shows that plagiarism of this sort was not a common occurrence (for if it were, it could hardly have seemed so worthy of notice, and repetition). The idea that anyone in ancient Rome could simply maintain that any given work was his own creation is a false one.¹⁹² In the case of famous works, this was doubly hindered by the fact that the cultivated reading public already knew the work and would know to attribute it to its rightful author. It was doubtless true that the farther one was from Rome the easier it was to plagiarize works (Martial also aimed his scorn at another plagiarist, a man from Corduba, showing thereby that plagiarism was to be found throughout the Empire¹⁹³), but factors that may have made such acts practically feasible did not make them forasmuch legal.

c) Convertibility of Authorship?

For the Romans, the case of an individual bestowing the rights of authorship for a work not yet published to another party was a different one from that of an individual claiming authorship of the (already published) work of another.

Ghostwriters in the contemporary sense were unknown in ancient Rome. But authors in financial need were known to have allowed third parties to present their unpublished works as those third parties' own in return for a fee. Martial, a writer who, as we saw, was singularly concerned with the question of plagiarism, relates the story of two poets, Gallus and Lupercus, who conducted such affairs¹⁹⁴, as well as that of a certain Paulus who bought poems which he subsequently recited and claimed as his own.¹⁹⁵ The same procedure is attributed to Gaditanus who Martial bitingly claimed wrote nothing, and yet was a poet.¹⁹⁶ As concerns the special case of Fidentinus, Martial repeatedly encouraged the former to buy the rights of authorship from him so that if he was going to present the works as his own he would at least have some right in doing so.¹⁹⁷

Martial's sarcasm shows that he condemned such transactions, and his offer to Fidentinus was, above all, an incitement and an insult. What it shows all the same is that the Roman reading public was significantly less

¹⁹¹ *Id.* at 1.52.9.

¹⁹² *But see* SALLES, *supra* note 2, at 169.

¹⁹³ MARTIAL, EPIGRAMMATA 12.63.

¹⁹⁴ *Id.* at 12.46.

¹⁹⁵ *Id.* at 2.20.

¹⁹⁶ *Id.* at 10.102.3-4.

¹⁹⁷ *Id.* at 1.29.4.; 1.66.13-14.

harsh in its condemning of individuals who had purchased the unpublished works of third parties and subsequently presented them as their own, than they were of individuals who simply took a given published work and claimed it was the fruit of their own mind and pen. Here too we see a special, if difficult to define, bond between author and work—a bond that Martial repeatedly gave the name of *dominus* to—the dominion an author had and held over his poems.¹⁹⁸

From these fragments it cannot, however, be concluded that there was a *right of authorship* that could be transferred from one individual to another.¹⁹⁹ On the one hand, the fragments offer no information about the specific legal status—if any—of such transactions. Furthermore, a right of authorship could only be legally transferable on the condition that it *existed* (on the condition that the initial author possessed it). Martial's angry responses to plagiaristic practices amply show that moral contempt was the lot of those caught engaging in such practices, but it is not conclusive proof that specifically *legal* mechanisms existed for the protection of an author's rights.

3. *Protection of a Work's Integrity*

The authors of antiquity were much concerned with maintaining the integrity of their works. Dramatists were eager to see textually faithful versions of their plays for the same reasons as today's dramatists. Then as now, plays were, as a rule, written to be performed and were thus in their natural element on stage. In addition, the public an author reached through performance was far greater than that reached through print or written editions of plays (many of which appeared only after the death of a dramatist). Prose authors were more simply concerned with seeing editions of their texts produced which were without error, and free from addition, subtraction and supplemental commentary.

There are no cases on record where an author filed charges as a result of changes made to a work, or because inaccurate copies of a work or works were made, nor is there any indication that legal provisions were made for such cases. In all probability, authors had no *legal* recourse against such instances. The surviving sources record the complaints and frustrations of authors working with unreliable or inefficient publishers and bear witness to the strength of fundamental social norms governing authority.

In response to his brother Quintus' request for books, Cicero replied that it was nearly impossible to find Latin books of satisfactory quality and that Roman publishers so mishandled and disfigured their products that it was difficult in good conscience to purchase them.²⁰⁰ Strabo lamented that in Rome, as in Alexandria, publishers used too little care in

¹⁹⁸ *Id.* at 1.52.6.; 1.53.2.; 1.66.9.

¹⁹⁹ *But see* HAENNY, *supra* note 42, at 107.

²⁰⁰ CICERO, *EPISTULAE AD QUINTUM FRATREM* 3.5.6.

the selection of scribe slaves and that they did no substantial proofreading so as to insure quality and fidelity.²⁰¹ Gellius dedicated a chapter of his *Noctes Atticae* to complaining about a passage in Virgil's *Georgica* that was copied and reproduced in faulty form.²⁰² Galen of Pergamon reported arbitrary changes in the writings of Hippocrates.²⁰³ Quintilian sent a warning reminder to Tryphon that his work would only have success if and when Tryphon worked to insure that the individual copies were without error.²⁰⁴ This shows that shoddy workmanship in the publishing industry was far from rare. As concerned the matter of changes to the text (as opposed to errors), Diodorus Siculus went so far as to try and prevent such by giving a summary at the outset of his work stating in which volume which events would take place.²⁰⁵

Authors were not the only ones interested in protecting and preserving the integrity of their works—so too were their readers. The reading public influenced the market by seeking out copies reputed or known to be accurate. The great library in Alexandria was founded with the ambition of gathering together in a single place a maximal number of *accurate* copies of works (alongside of, where possible, original manuscripts). In Rome, autographed or renowned first editions were bought for significantly higher prices than simpler or hurried editions. Despite the broad concern evidenced by the literary communities of ancient Rome, there is no indication that any specifically legal recourse existed in the case of inaccurate copies beyond the contractual obligations publishers had to show care and attention in the reproduction and distribution of works.

Authors concerned with ensuring the faithful reproduction of their works needed, then, to employ other means. To begin with, an author could seek out a publisher known for working carefully and responsibly—a recourse which was much easier for a celebrated author than for an unknown or relatively unknown one. Publishers also had means at their disposal to publicize the quality of their work and thereby attract readers particularly interested in reliable editions of the works they were seeking. Such publishers worked with proof-readers who would mark the copies they had inspected with a sign or seal of certification. This mark attested that *anagnostae* had examined the text and served as a sign and symbol of quality. The author could also aid in such matters by referring to the publisher and bookseller in the work itself so that readers could be sure where the most reliable copies were to be found. In the *praefatio* to his *Institutio Oratoria*, Quintilian asks Tryphon to employ skilled correctors

²⁰¹ STRABO, GEOGRAPHICA 13.1.54.

²⁰² GELLIUS, NOCTES ATTICAE 1.21.

²⁰³ GALEN, DE NATURA HUMANA 1.2.

²⁰⁴ QUINTILIAN, INSTITUTIO ORATORIA praef. 3.

²⁰⁵ DIODORUS SICULUS, BIBLIOTHECA HISTORICA 1.5.1.

and thereby indicates to the reader that Tryphon worked from an authorized original manuscript.²⁰⁶

In the event an author found himself disappointed in the work of a given publisher, he or she could, of course, change publishers. Nothing prevented an author from consigning subsequent works for first publication to a different, more reliable publisher. He could also give the manuscript of a work he knew to exist in a particularly inaccurate edition to another publisher with the hope that this second edition would prove a better one and would crowd the earlier edition from the market. Despite what were often close relations between authors and publishers²⁰⁷, changes of publishers were not unheard of. Martial began his career with Quintus Pollius Valerianus before turning to the more respected Tryphon. There is significant indication that this change meant for Martial a rise in social status.²⁰⁸ Having a competent and efficient publisher in ancient Rome was thus, to some extent, a question of social prestige and demonstrates the significance which reliable editions had among the cultivated classes.

In the event authors could not, or did not wish to, rely upon the publisher dedicating the requisite attention in producing an edition, there was a final recourse open to avoid them: to proof-read copies themselves. Every such authorized copy was adorned with a special seal called a *sphragis* with the author's name and often accompanied by a more or less ornate characterization of the author in which birth-place and forefathers were frequently named.²⁰⁹

The *sphragides* presented advantages for author, publisher and reader. The author could ensure that at least part of a given edition of a work was carefully proof-read and could testify to the exemplary quality of the publisher's work. That only some copies of a given edition were marked in this fashion meant that readers could distinguish copies whose fidelity had already been attested to from ones where such fidelity might still be in question, or, at the very least, was not guaranteed.

There is every indication that the reading public appreciated such methods. Copies adorned with an author's *sphragis*—like autograph manuscripts²¹⁰—were bought and sold for high prices.²¹¹ Such reliable

²⁰⁶ QUINTILIAN, INSTITUTIO ORATORIA praef. 3.

²⁰⁷ For example, between Martial or Quintilian and Tryphon (MARTIAL, EPIGRAMMATA 4.72.1-2.; QUINTILIAN, INSTITUTIO ORATORIA praef. 1-3.), between Cicero and Atticus, or between Seneca and Polybius (according to WILHELM WATTENBACH, DAS SCHRIFTWESEN IM MITTELALTER 563 (3d ed., 1896)).

²⁰⁸ On Martial's relationship to his publishers, see HAENNY, *supra* note 42, at 60, 65; KLEBERG, *supra* note 43, at 39.

²⁰⁹ Compare MARTIAL, EPIGRAMMATA 7.11.; 7.17.7-8.

²¹⁰ FRONTO, EPISTULAE AD M. CAESARUM ET INVICEM 4.2.6.; DIO CHRYSOSTOMOS, ORATIONES 21.12.; GELLIUS, NOCTES ATTICAE 2.3.5.

²¹¹ FRONTO, EPISTULAE AD M. CAESAREM 1.7.4.

copies—or originals—encouraged publishers to involve authors in the proof-reading process, if only for the financial advantages it offered them. Even the proof-read editions of scholars or *grammatici* (whom conscientious publishers employed in the copying of authors no longer living) served for the public as guarantees of quality and textual fidelity for which readers were ready to pay significantly higher prices.²¹²

Dramatists had no legal right guaranteeing the faithful production of their works—or at least there are no indications of any laws or any individual cases where the problem was raised. Nor were any cases handed down in which dramatists complained about theatrical productions that disfigured their works beyond Plautus' noting his disappointment that a given theatrical company was to put on his work rather than another.²¹³ In any event, the directorial culture of today's theatrical productions was unknown in antiquity. As a rule, productions remained textually true and thus gave authors little cause for complaint.²¹⁴ The original manuscript itself of a play was preserved by the *aediles* who organized and supervised the initial production, so that a definitive version of the text upon which the company could base its production was always available and allowed for the easy and immediate recognition of alterations.

At first sight, this might seem like a governmental institution formed for the protection of the interests of dramatists and ensuring the faithful production of their plays. In fact, the institution represented the protection of the texts themselves through the *aediles*, and thereby of the faithful and literal transmission of the common cultural property rather than the protection of individual authors. The Greek model for the Roman practice, a law passed in 330 B.C.E. by one of Plato's students, Lycurgus of Athens, indicates this distinction. Following this law, exact copies of the dramas of Aeschylus, Euripides and Sophocles were made and preserved in the city-state's archives. These copies formed then the bases for the city's theatrical productions. At the time of the law's passage, all three authors in question were dead, but the practical effect of the law was to protect, through the *aediles*, the interests of dramatists in that deviations from their dramas were easily seen, and thereby hindered, resulting in a system where the legal resolution of such problems proved unnecessary.

II. Exploitation of Works

Publishing institutions and the accompanying book trade were relatively advanced in ancient Rome. They were at the same time, however,

²¹² FRONTO, EPISTULAE AD M. CAESAREM 1.7.4. and 4.2.6.

²¹³ PLAUTUS, BACCHIDES 214-215.

²¹⁴ See, generally, RICHARD C. BEACHAM, THE ROMAN THEATRE AND ITS AUDIENCE (1991); MARGARETE BIEBER, THE HISTORY OF THE GREEK AND ROMAN THEATER 147 (1961); HORST-DIETER BLUME, EINFÜHRUNG IN DAS ANTIKE THEATERWESEN 107 (2d ed., 1984).

very different from today's institutions and markets. It is possible that these very significant differences are responsible for considerations of the possible exploitation of works. Today's legal institutions place immense weight upon the financial side of such exploitation. The clarifying of the state of affairs in the book trade of ancient Rome will be the topic of the following section.

1. *Reproduction and Distribution*

Whereas in today's law the author has the exclusive right to determine the reproduction and distribution of his or her works, in ancient Rome any individual in legitimate possession of a copy of an already published work could reproduce and distribute copies of the work at will. For this reason, Martial compared his published poems to freed slaves (*manu missos*).²¹⁵ In the 4th century C.E., Symmachus wrote to Ausonius, who had out of modesty protested against Symmachus reproducing a previously published work of his: *sed in eo mihi verecundus nimio plus videre, quod libelli tui arguis proditorem. Nam facilius est ardentis favillas ore comprimere, quam luculenti operis servare secretum. Cum semel a te profectum carmen est, ius omne posuisti; oratio publicata res libera est.*²¹⁶

Symmachus did not aspire to coin a juridical formula but, instead, was referring to a state of affairs where an author gave up virtually all usage rights upon the publication of his work. The happily surprised remarks of Pliny the Younger upon discovering that his work was being sold in Lyon show that there were editions and copies the existence of which authors had no knowledge.²¹⁷ Such instances also show that, as a rule, authors were not offended by such independent editions of their works. Fame and honor rather than money were the rewards they sought through their works and for this reason such editions were far more likely to please than to upset them.²¹⁸

Because of the unambiguous nature of the sources available to us, it is the general consensus amongst scholars that authors in ancient Rome disposed of no legal recourse against unwanted reproduction and distribution of their works. It is possible, though, that even after the publication of his work, the author retained a right important for our evaluation of authorship in ancient Rome. This was the right to introduce changes into his or her work.

Cicero is known to have fully revised his *Academica* after Atticus had already completed the copying of the text. Atticus was forced to produce a new edition of the work and did so at his own expense.²¹⁹ Cicero also relates on another occasion how, in his *Orator*, he confused the names

²¹⁵ MARTIAL, EPIGRAMMATA 1.52.7.

²¹⁶ SYMMACHUS, EPISTULAE 1.31.

²¹⁷ PLINY THE YOUNGER, EPISTULARUM LIBRI DECIM 9.11.2.

²¹⁸ HORACE, ARS POETICA 345-346.; MARTIAL, EPIGRAMMATA 11.3.6-10.

²¹⁹ CICERO, EPISTULAE AD ATTICUM 13.13.1.

Aristophanes and Eupolis.²²⁰ He first realized his error after the work had already been published and, in part, sold. He immediately asked of Atticus that his copyists collect and correct every obtainable text. All surviving copies of the work reflect this correction.²²¹ Finally, Cicero, ever the demanding author, asked Atticus to change the following error in his *De re publica*: the residents of the Greek city *Phliasia*, were called, in Latin, *Phliasii*, and he had called them by mistake *Phliuntii*.²²² In the only surviving copy of this text, a copy dating from the 4th century, the residents of the town are called *Phliuntii*, demonstrating that Atticus had not been able—or perhaps not been willing—to track down and correct every extant copy.²²³

This last example should not be granted excessive weight. Only a single copy has come down to us and it is entirely possible that Atticus corrected all copies within reach but that this particular copy, which was the basis for the later (4th century) copy, may have been already sold and thus beyond Atticus' reach. What the example *does* demonstrate is an author's right to alter his or her work even after publication. It should be not forgotten, however, that Cicero and Atticus as author and publisher enjoyed a special relationship not common to many publisher-author relationships. This is that above and beyond whatever business dealings they had with one another, they were friends and Atticus' agreeing to correct the copies in question might have been done in his capacity as a concerned friend rather than as a conscientious publisher following the norms of the day, just as it might have been an extraordinary privilege granted to an especially lucrative author (which Cicero was). The fragments thus do not permit the deduction of a general rule from these individual cases²²⁴, though they do help give us a clearer idea of authorial rights in Rome.

While the reproduction and distribution of published books were subject to no fixed rules, there is much evidence to suggest that authors concerned themselves intensely with the first publication of their works and entered into formal contracts for the initial publication—and thereby first reproduction—of their works. There were three ways of doing so. The author could enter into a contract with a publisher, the author could choose to dedicate the work to an individual or collective, or the author could publish the work him- or herself. The third possibility—self-publication—will be left out of consideration in the following for the obvious reason that it sheds little juridical light on the relationships we are endeavoring to understand here.

²²⁰ *Id.* at 12.6.3.

²²¹ CICERO, ORATIONES PHILIPPICAE 29.

²²² CICERO, EPISTULAE AD ATTICUM. 6.2.3.

²²³ CICERO, DE RE PUBLICA 2.4.8.

²²⁴ HAENNY, *supra* note 42, at 55, claims the contrary.

Those scholars who have studied the legal nature and status of relationships between authors and publishers have traditionally begun with the question of honoraria. Where such honoraria existed, many have concluded that a right of reproduction and distribution existed. Where it did not, the opposite conclusion was reached. This manner of proceeding is not the most efficient or logical one. Even in contemporary law, a fee agreement between author and publisher is not a necessary condition for the existence of a publisher's contract. The sources concerning relations between publishers and authors in ancient Rome will then be, in the following, pursued independently of the question of whether or not honorarium were granted.

One of Cicero's letters has often been cited in this connection. Here, Cicero praises Atticus for having managed to sell Cicero's speech *Pro Ligario* so well (*Ligarianam praeclare vendidisti*). Cicero then tells Atticus that as a result, he will, in the future, offer Atticus all his works for publication.²²⁵

Between author and publisher—in this case, Cicero and Atticus—there was thus a contractual relationship at whose center lay the right to publish a work, by which was meant the right to the first reproduction and distribution of a text. Authors and publisher therefore sometimes were in contractual relations with one another.²²⁶ The exact form and formulations of the contract were, however, different than has traditionally been assumed. According to these traditional views, the contract provided for a purchase of the manuscript²²⁷, regarded without any further explanation either as a purchase amongst traders or as a rental contract.²²⁸ The object of the contract was simply the manuscript itself, considered as incorporation of the work, and with the right to the manuscript came, for the publisher, the right to reproduce and distribute it as seen fit.²²⁹ Legitimate ownership of the manuscript, it seems, was the only legally recognized relation between author and publisher.²³⁰

This conclusion is too narrow to correspond to the information handed down to us. The fact that a published work could be copied and circulated by anyone in possession of it does indicate that legitimate possession of a copy of a work—or a manuscript—was the extent of the law's

²²⁵ CICERO, *EPISTULAE AD ATTICUM* 13.12.2.

²²⁶ See Dziatzko, *supra* note 1, at 559, 568; Widmann, *supra* note 78, at 35, 76, has a different opinion on the matter.

²²⁷ See LUDWIG ADAM, *ÜBER DIE UNSICHERHEIT LITERARISCHEN EIGENTUMS BEI GRIECHEN UND RÖMERN* 10 (1906); WALTER BAPPERT, *WEGE ZUM URHEBERRECHT* 17, 44 (1962); LUDWIG GIESEKE, *VOM PRIVILEG ZUM URHEBERRECHT* 2 (1995); Kohler, *supra* note 1, at 454.

²²⁸ See, e.g., Károly Visky, *Geistiges Eigentum der Verfasser im antiken Rom*, 106 *UFITA* 17, 33 (1987).

²²⁹ See Visky, *supra* note 228, at 33.

²³⁰ See BAPPERT, *supra* note 227, at 16; Visky, *supra* note 228, at 33.

concern. But the conclusion cannot be drawn that in such contracts the author only conferred the legitimate possession of the manuscript upon his or her publisher and nothing else—that beyond the proprietary right to the possession of the manuscript, no other right regarding the work existed.

Proof of this can be found in a remark from Seneca where the author states that the *dominium* over a work of the mind might well belong to two persons at the same time.²³¹ In his example, Cicero retained possession of the work of his mind even when he sold the manuscript to another—in this case Dorus, a *librarius*, who bought autographed manuscripts so as to produce particularly faithful copies of works: *libros dicimus esse Ciceronis. Eosdem Dorus librarius suos vocat, et utrumque verum est. Alter illos tamquam auctor sibi, alter tamquam emptor adserit, at recte utriusque dicuntur esse.* Here we can see the acknowledgement of a relationship between author and work that is not tied merely to the physical possession of the work's material support (in this case an autographed manuscript). It is instead linked to the author's authority as creator of the work in question—a right he or she retains even in absence of the work's material support.

The inalienable right of which Seneca speaks (that of an author's authority over his or her work) is not the only relation that extends beyond the legitimate physical possession of the work. We saw in the letter cited above that Cicero presents to Atticus the prospect of publishing his future works.²³² He speaks not of the transmission or sale of future manuscripts—which is for both parties a peripheral concern—but of the publication of works. Cicero cannot only have been speaking of the transfer of the property of future manuscripts, but necessarily of the exclusive right of first publication, and thus a right of first reproduction and distribution of the work.

This seems especially reasonable in light of the financial and political risks which publishers bore. To begin with, then as today, there was the real financial risk involved in the production of works whose sale was by no means guaranteed—a risk compounded by the fact that, once published, copies of the works could be made and then sold or distributed without impediment. Secondly, publishers of politically unpopular authors could be themselves subject to state persecution. If a publisher were to take this double risk upon himself, he would need to at least be certain that his first publication was to be exclusive and thereby protect himself from competing interests in at least the first phase of the book's distribution.

²³¹ SENECA, DE BENEFICIIS 7.6.1.

²³² CICERO, EPISTULAE AD ATTICUM 13.12.2.

Some scholars claim that in ancient Rome authors received no honorarium from publishers,²³³ just as it has been claimed that authors, depending on the genre they worked in, were quite well paid²³⁴, and had, in any event, a financial interest in the sale of their works. Other scholars are of the opinion that authors received a one-time only payment upon the conclusion of a contract with a publisher and which was thus completely independent of the eventual financial success, or failure, of the work.²³⁵ Authors thus would have had no share in the proceeds from their works. Other scholars have suggested that authors such as Cicero indeed received a share in their works' profits.²³⁶ Still other experts have speculated that even authors such as Cicero must in some cases themselves have had to contribute to the production costs for their works—at least in the case of deluxe editions.²³⁷

The reason for such wide divergence in scholarly opinion is to be found in the contradictory nature of the documents that have survived. Horace complained that a good book read around the Mediterranean brought his publisher, Sosii, profit, while bringing him only fame.²³⁸ Martial lamented in one of his epigrams that though his books were read as far away as Britain, his wallet remained ignorant of his success.²³⁹ In another epigram, Martial evoked the case of Maevius, who, though a great poet, shivers in a simple cloak, whereas Incitatus, a dealer in mules, went about in fine purple garments.²⁴⁰ Still other fragments seem to reflect another state of affairs. Martial recommended that a certain Lupercus obtain a copy of one of his works from Martial's publisher, Atrectus, instead of visiting Martial himself at home for a copy.²⁴¹ Such a recommendation might indeed reflect the author having a share in the publisher's profits. Martial explains at the end of the eleventh book of his epigrams that he must soon end his work because Lupus required his interest and his hired boys their daily wage.²⁴² This remark as well seems to indicate a financial profit of some sort to be had from the publication of a work. The same

²³³ See, e.g., Dziatzko, *supra* note 44, at 979 and *supra* note 1, at 559, 562; MARQUARDT, & MAU, *supra* note 42, at 829.

²³⁴ BIRT, DAS ANTIKE BUCHWESEN, *supra* note 55, at 348; BIRT, AUS DEM LEBEN DER ANTIKE, *supra* note 55, at 122; DOCK, *supra* note 151, at 28; Kohler, *supra* note 1, at 452.

²³⁵ See DOCK, *supra* note 151, at 28.

²³⁶ BIRT, DAS ANTIKE BUCHWESEN, *supra* note 55, at 354. SCHUBART, *supra* note 43, at 151, speculates the same, while considering this scenario an unlikely one.

²³⁷ Referencing CICERO, EPISTULAE AD ATTICUM 13.25.3, see BAPPERT, *supra* note 227, at 49; Dziatzko, *supra* note 1, at 559, 566; FEHRLE, *supra* note 105, at 43; HAENNY, *supra* note 42, at 52.

²³⁸ HORACE, ARS POETICA 345-346.

²³⁹ MARTIAL, EPIGRAMMATA 11.3.6.

²⁴⁰ *Id.* at 10.76.7-9.

²⁴¹ *Id.* at 1.117.

²⁴² *Id.* at 11.108.

applies for the *praemium libellum* which Martial wishes for himself on another occasion.²⁴³ A passage from the work of Pliny the Younger suggests the same. Pliny recounts how his uncle was once offered 400,000 sesterces in return for a volume of his notes by a jurist and orator, Largius Licinus, but refused the offer.²⁴⁴ Suetonius recounts a similar offer wherein M. Pompilius Andronicus sold his works for 16,000 sesterces.²⁴⁵ Finally, on the basis of the letter from Cicero to Atticus quoted above, it has been debated whether Cicero indeed received a percentage of his publisher's profits from his works.²⁴⁶

None of these passages proves the existence of an authorial right or claim to an honorarium. Martial's advice to Lupercus (that he needn't visit Martial at home but could easily obtain a copy from Atrectus) might simply have served the purpose of distancing himself from an importune admirer and need not lead to the conclusion that Martial was pursuing financial interests in doing so. In the case of Pliny, what he describes is a private purchase from an individual with the aim not of publishing the notes in question, but of using them for his own personal edification. It is thus not a convincing piece of evidence for the existence of an author's honorarium. The same applies for the work of Pompilius Andronicus. Cicero would have been above all concerned with seeing to it that his works reached as large a readership as possible and any financial profits he might have received would have been minor in comparison with his other sources of income. Even the haste which Martial cites, as well as the *praemium* he would receive at its end, need not have indicated a financial one due upon the delivery of his manuscript to the publisher. It was more likely that the sum in question, following an old Roman tradition, would come from his dedication of the work.

Dedications had a long tradition in Roman society. Under the Republic, an author would typically dedicate his or her work to a friend or literary model as a sign of gratitude, admiration and respect. Financial motives were secondary in this period, though there is evidence that already during this period dedications were well-suited to help an author find favor and advantage (as touched upon briefly in the earlier section of his study dedicated to *amicitia*).

In the course of time, such dedications became coy petitions for favor.²⁴⁷ Financially needy authors dedicated their works to wealthy and respected citizens in the hope of receiving a monetary gift or reward. The practice of dedications evolved, in time, into that of patronage. The financial security which patrons, and those to whom works were dedi-

²⁴³ *Id.* at 10.74.7.

²⁴⁴ PLINY THE YOUNGER, *EPISTULARUM LIBRI DECEM* 3.5.17.

²⁴⁵ SUETONIUS, *DE GRAMMATICIS* 8.

²⁴⁶ CICERO, *EPISTULAE AD ATTICUM* 13.12.2.

²⁴⁷ See Gordon Williams, *Phases in Political Patronage of Literature in Rome*, *LITERARY AND ARTISTIC PATRONAGE IN ANCIENT ROME* 3 (Gold ed., 1982).

cated, freed authors from the need to secure an honorarium from publishers.

Dedications gradually replaced not only the author's fees paid by a publisher to an author, but also the contracts themselves. An author could dedicate his work to a given individual with an accompanying request to see to the work's publication. The dedicatee would then either employ his or her own slaves to reproduce and distribute the work, or make the necessary arrangements with a publisher him- or herself. Statius directed his *Silvae* to the wealthy Atedius Melchior in part so that the latter would see to the reproduction of the work.²⁴⁸ Thanks to Martial, we know that the dedicatees of works sometimes saw to, and paid for, costly special editions of the works.²⁴⁹ Both he and Horace praise the poet's power to make others immortal.²⁵⁰ This was a form of speculation which often, though not always, paid off.²⁵¹

From a legal perspective, the dedication of a work has been typically qualified as a gift²⁵², sometimes through reference to Horace who praised the poet's capacity for making men immortal, paraphrased as *carmina possumus donare et pretium dicere muneri*.²⁵³ But here too, scholars have overlooked that there were not one, but *two* items to which the contract referred. The first of these was the material support—the manuscript—given to the dedicatee as a gift and thus requiring no payment. The second was the right of the author to determine the initial reproduction and distribution of his or her work. Thus, the dedication of a work also comported the giving over to the dedicatee, in addition to the material manifestation of the work (the manuscript), a right as concerned its first reproduction and distribution. Other than in the case of a publisher, the dedicatee was under no obligation to then actually use that right and publish the work.

2. Recitations

The exclusive right of an author to publicly recite his or her published as well as unpublished work did not exist in ancient Rome. There were many readings organized where authors read from unpublished works in a public setting. As a rule, the audience was determined by an author who would have invited his or her guests to offer constructive criticism of the work and help it reach its final—and thus publishable—form.²⁵⁴

²⁴⁸ STATIUS, *SILVAE* 2. prooem. 29-30.

²⁴⁹ MARTIAL, *EPIGRAMMATA* 3.2.6-12.

²⁵⁰ HORACE, *CARMINA* 3.30.1-2.; 4.8.11-12.; MARTIAL, *EPIGRAMMATA* 5.16.; 7.97.

²⁵¹ MARTIAL, *EPIGRAMMATA* 11.108.4.; STATIUS, *SILVAE* 4.9.

²⁵² BIRT, *AUS DEM LEBEN DER ANTIKE*, *supra* note 55, at 129; HAENNY, *supra* note 42, at 64.

²⁵³ HORACE, *CARMINA* 4.8.11-12.

²⁵⁴ Fedeli, *supra* note 45, at 343, 349.

Alongside this well-established forum, poetic contests in which competing poets read from their works were also popular literary cultural events.

Once a text had been published, however, any and everyone was free to read publicly from it. The many lavish banquets which took place almost daily in ancient Rome included, together with astounding menus, song, dance and the reading of texts between courses.²⁵⁵ These occasions alone offered public, or semi-public, readings of texts by individuals other than their authors and did not require the permission of authors.

There is no sign that authors were disturbed by this convention, nor is there any sign of a sense that they possessed some sort of exclusive right over the reading of their published works. Their only complaints address the issue of cases where another individual presented their work as his or her own—that is, cases of plagiarism.²⁵⁶

3. Performances

Performances of texts in ancient Rome were structured quite differently from those of today—both in their final form and in the organizational steps leading up to it. In the following we will begin with how theatrical performances were organized before then turning to the conflicts of interest they might have produced.

a) The Organization of Theatrical Performances

Theatrical performances were ancient institutions in Rome. The first reported performance dates from 364 B.C.E. and was organized to free Rome from an epidemic of the plague.²⁵⁷ The plays produced were of religious origin,²⁵⁸ and took place primarily on holidays such as the *ludi Romani* dedicated to Jupiter,²⁵⁹ the anniversary of the consecration of the Temple of Jupiter on the Capitoline Hill, or the *ludi plebei*, games also dedicated to Jupiter and marking the plebeian triumph following their march on the Aventine Hill. Under the Empire, plays were also organized on other holidays or special occasions—often ones having to do with the life or person of the *princeps* or the Imperial family.²⁶⁰ The plays performed on these occasions often commemorated—and venerated—the acts of the emperor and served, in addition to their entertainment value, the goals of what is today called state propaganda.

The performances were in the majority of cases organized by the state itself. In the compilations of Theodosius and Justinian, detailed rules

²⁵⁵ MARTIAL, EPIGRAMMATA 2.6.6-8.

²⁵⁶ *Id.* at 1.29.1-2.; 1.38.; 1.52.; 1.66.13-14.

²⁵⁷ LIVY, AB URBE CONDITA 7.2.1-6.; VALERIUS MAXIMUS, FACTA ET DICTA MEMORABILIA 2.4.4.; AUGUSTINE, DE CIVITATE DEI 2.8.

²⁵⁸ VALERIUS MAXIMUS, FACTA ET DICTA MEMORABILIA 2.4.1.

²⁵⁹ FESTUS, DE SIGNIFICATIONE VERBORUM 122.

²⁶⁰ See CASSIUS DIO, HISTORIA ROMANA 56.46.5., and CIL 1.2. p. 302; *Tertullian de spect.* 6.2.

governing the organization of plays are to be found.²⁶¹ The *aediles curules*—amongst other things, supervisors of the theatrical productions (*curatores ludorum*)—would contract a private theater producer (*dominus gregis*) for such occasions.²⁶² He would organize the productions, cast the actors and bear whatever financial risks there were to bear.²⁶³ The *aediles* would also participate in the selection and purchase of plays to be performed and in some cases determined such selections themselves.²⁶⁴

The author of a play selected by the *aediles* for performance would be paid directly by the *aediles*, and would be paid independently of the number of productions envisioned.²⁶⁵ The *aediles* would then be reimbursed for this fee by the *dominus gregis*.²⁶⁶ At times, advance performances of the plays would take place for the *aediles* before being presented to the public.²⁶⁷ After the production, the *aediles* retained and preserved the original manuscript version of the play.

This system combining private individuals (theater companies) and magistrates (the *aediles*) led to a form of *de facto* state censorship through the great influence that the *aediles* enjoyed over all aspects of the production, but above all in the selection of texts.²⁶⁸ Texts which met with special favor from the Emperor were, as a rule, richly rewarded. Lucius Varius Rufus glorified the deeds of Agrippa and Augustus in his tragedy *Thyestes* and received as reward for the Emperor's favor the sum of one million sesterces (the highest sum that had at that time been paid for a play).²⁶⁹

²⁶¹ See, e.g., D. 50.10.

²⁶² See MAX HERRMANN, *DIE ENTSTEHUNG DER BERUFSMÄßIGEN SCHAUSPIELKUNST IM ALTERTUM UND IN DER NEUZEIT*, 190 (Berlin 1962); KLEBERG, *supra* note 43 at p. 52; HANNIS KURZ, *PRAXISHANDBUCH THEATERRECHT* 9 (1999); Visky, *supra* note 228, at 23. OVID, *TRISTIA* 2.508, evokes a praetor as the purchaser of a play: *praetor emit*.

²⁶³ Leading one to suspect that financial risks remained those of the state, see TERENCE, *EUNUCHUS* 20.; *HECYRA* 56-58.; SUTTON, *DE POETIS* 11.; JUVENAL, *SATIRAE* 7.87. OVID, *TRISTIA* 2. 507.

²⁶⁴ TERENCE, *EUNUCHUS* 20.; SUTTON, *DE POETIS* 11.

²⁶⁵ HORACE, *EPISTULAE* 2.1.175. See also JUVENAL, *SATIRAE* 7.87.; OVID, *TRISTIA* 2.507-508. and HORACE, *EPISTULAE* 2.1.175-176.

²⁶⁶ See, e.g., TERENCE, *HECYRA* 48-49.

²⁶⁷ SUTTON, *DE POETIS* 11.

²⁶⁸ See HOLGER ASMUSSEN, *DIE GESCHICHTE DES DEUTSCHEN THEATERRECHTS* 42 (1980), whose claims on the matter are unfounded; see also THEODOR MOMMSEN, 2 *RÖMISCHE GESCHICHTE: VOLLSTÄNDIGE AUSGABE IN ACHT BÄNDEN* 421 and 3 *RÖMISCHE GESCHICHTE* 449 (1976).

²⁶⁹ HORACE, *EPISTULAE* 2.1.245-247.

b) Legal Qualifications

As a result of the system described above, three individuals were directly involved in the first production of a play: the *aediles curules*, the *dominus gregis*, and the author. This triadic construction complicates the evaluation of the legal roles and status of the parties.

The contractual relationship between the author of a play and the *aediles* with whom the author entered into a contract as concerned the play's manuscript was a complex one.²⁷⁰ Authors spoke consistently of the purchase of manuscripts. Following Terence, the *aediles* bought the work (*postquam aediles emerunt*)²⁷¹ and Ovid also speaks of *praetor emi*²⁷². For this reason, the contract between *aediles* and author, isolated from the entire complex of contracts which theatrical productions involved, has been classified by many scholars as a mere purchase of the manuscript.²⁷³ The manuscript, and thereby its content, was transferred from the author to the *aediles* in a manner such that after the purchase of said manuscript the latter was free to do with it—both manuscript and content—as he liked.

This interpretation is not compatible with Seneca's remark that, from time to time, two men had simultaneous *dominium* over a work.²⁷⁴ Seneca's opinion was expressed in view of Cicero's speeches and not plays, but his words reflected a sense and awareness of a relation between author and work which was not merely limited to orators, and not merely limited to the physical possession of a manuscript, but indicated an enduring mastery and authority which the author retained over his or her works even when the manuscripts were no longer in his or her possession.

The interpretation of the purchase of a play as a mere purchase of the manuscript is thus insufficient. It was out of question for the *aediles* (and, subsequently, the *dominus gregis*) to be granted a complete authority over the manuscript. Once his costs were repaid, he would subsequently pass the manuscript along to the *dominus gregis* so that the latter could organize the production of the play. The manuscript would then later return to his possession. Part of the price paid by the *aediles* was thus paid for the manuscript itself.

Alongside this purchase of the manuscript, author and *aediles* simultaneously entered into a further contract. The contract had as its object the

²⁷⁰ KLEBERG, *supra* note 43, at 52, is of the opinion that the *dominus gregis* paid the author. In this case, the relation between *aediles* and author would need to be reevaluated. *But see* TERENCE, EUNUCHUS 20. *and* OVID, TRISTIA 2.508, which points to the *aediles* (or in the some cases the *praetor*) paying authors themselves—and thus having concluded contracts with them.

²⁷¹ TERENCE, EUNUCHUS 20.

²⁷² OVID, TRISTIA 2.508.

²⁷³ Dziatzko, *supra* note 1, at 559, 562; KURZ, *supra* note 262, at 9; as well as Kohler, *supra* note 1, at 466; Visky, *supra* note 228, at 23.

²⁷⁴ SENECA, DE BENEFICIIS 7.6.1.

as of yet unproduced and thereby unpublished play.²⁷⁵ This is testified to not only by Seneca's expression of the idea that authority over a work was not coterminous with its physical possession. That the *aediles'* payment to the author was in recognition not only for the manuscript but also for the right of first production is shown through the case of Terence's *Eunuchus*. The play had been especially celebrated by its public and, as a result, Terence's honorarium was subsequently increased.²⁷⁶ This would not have been possible had Terence given up all authorial rights with the sale of the play to the *aediles*. This testifies to the fact that the contractual relationship between *aediles* and author was by no means limited to mere legitimate physical possession of a manuscript, as well as that the *aediles* recognized an author's authority over his or her work beyond physical possession of the manuscript.

All the same, neither author nor *aediles* nor *dominus gregis* could hinder the play's production by other (often less skilled) theater companies after its premiere.²⁷⁷ The *aediles'* preservation of the original copies of works offered authors the only protection at their disposal. This protection was not conceived of to protect the author's rights, but instead the protection of the cultural heritage of which it was a part, following the model the Romans adopted from the Greeks. Thanks to this custom, however, a reliable final version of the play existed and thanks to it changes were easily recognizable and led to productions, as a rule, remaining remarkably faithful to their texts. One of the main goals of today's performance rights was thereby indirectly achieved.

With the clarification of the relationship between the *aediles* and the author, the understanding of the relationship between the *aediles* and the *dominus gregis* presents no fundamental difficulties. The *dominus gregis* was charged by the *aediles* to oversee the organization of the performance, including the selection of persons participating in the production and, in some cases, took part in the negotiations regarding the price which the *aediles* were to pay the author for the play to be produced. In return, the *dominus gregis* had all rights to whatever financial success the production had.²⁷⁸ He reimbursed the *aediles* for the price paid for the purchase of the play, and was responsible for the payment of the actors, and it was he who most bore the financial risk of failure.²⁷⁹

The *dominus gregis* and the author stood in no direct contractual relationship to one another. From time to time, the *dominus gregis* negotiated, along with the *aediles*, the price paid to the author for the play. He was present at such negotiations in his own interest as this was a fee for which he would need to reimburse the *aediles*. Ultimately, however, the

²⁷⁵ TERENCE, *HECYRA* 56-57.

²⁷⁶ SUTTON, *DE POETIS* 11.

²⁷⁷ PLAUTUS, *BACCHIDES* 214-215.

²⁷⁸ TERENCE, *HECYRA* 6-7, 56-57.

²⁷⁹ *Id.* at 48-49.

purchase of the play—the text as well as the right of first production—was effected by the *aediles*, and the author's contractual relation was only with the latter.

All the same, there is little doubt that authors would have followed the actions of the *dominus gregis* with more or less interest as the success of their work lay to a considerable extent in his hands. The success of this initial production would have a determining influence on the play's subsequent success—or lack thereof.

c) Failure to Actuate Performance Rights

There is one documented case in which an author in ancient Rome was able to reacquire his right of performance for a play as a result of his contractual partner's failure to utilize that right. It thus concerns a case, as we saw above, in which an author had a financial interest at stake (other than prose writer, dramatists were paid for their works).

Terence concluded a contract for the inaugural performance of his play *Hecyra*. The play, however, was not performed on the planned occasion. Terence wrote: *nunc haec planest pro nova, et is qui scripsit hanc ob eam rem noluit iterum referre, ut iterum possit vendere*.²⁸⁰ Terence thus reclaimed his performance right over his work and was able to confer it upon another party in return for payment.²⁸¹

The possibility of reacquiring the performance right concerning the initial production of a play when no use was made of that right shows again—contrary to popular opinion—that the object of contracts between authors and the organizers of theatrical productions was not merely the manuscript or material support of the work in question. As a consequence, the legitimate possession of the manuscript was not the only recognized legal tie that linked author to work. Had that been the case, with the sale of the manuscript he or she would have nullified all subsequent claims made upon the work and the right to reclaim a usage right of the nature of the one examined in this case would not have been recognized.

B. Protection of the Publishers' Interests

Insofar as publishers' rights were linked with authors' rights, publishers in ancient Rome could not enjoy the same comprehensive rights as they do today—above all in the areas concerning reproduction and distribution—because authors themselves enjoyed no rights approaching those we know today and which they then might have been able to confer to their publishers.

The author's rights as concerned his or her work were completely limited to the initial publication of that work. He or she could do nothing

²⁸⁰ *Id.* at 5-7.

²⁸¹ *But see* BAPPERT, *supra* note 227, at 17; Dziatzko, *supra* note 1 at 559, 563; Kohler, *supra* note 1, at 466; Visky, *supra* note 228, at 23.

whatsoever to combat later reproductions and distributions of that work. For this reason, he or she could only communicate to his or her publisher a right of *first* publication. As a result, the author was in no way hindered thereafter from reproducing and distributing his or her own works. Martial's *non habeo [libellos], sed habet bibliopola Tryphon* does not contradict this fact.²⁸² As described above, the reason for the remark was likely his desire to rid himself of an unwanted visitor and there is no sign whatsoever that he was not permitted to make and distribute copies of his own work.²⁸³

The publisher had thus no recourse against copies made by authors of their own works. They could also not hinder an author from giving a copy of their work to another publisher as the basis for a subsequent edition. Neither case would have, however, been a frequent one. To begin with, an author would have had no grounds for damaging the financial prospects of his or her publisher except if he or she was unhappy with the publisher's work (or, eventually, with the publisher himself). What is more, publishers had at their disposal skilled scribe slaves who could produce high quality copies at low prices—something with which an individual author could not, as a rule, compete.

A necessary conclusion of the author's lack of legal protection for his or her rights as concerned the reproduction and distribution of his or her work is that the publisher not possessed no such protection vis-à-vis his published authors—that is, with his contractual partners—but also disposed of no such protection against third parties wishing to make copies of the works they published. Anyone—be they publishers or simply private citizens—could legally and legitimately make an unlimited number of copies of any published work. The publisher could protect his or her interests in this regard only to a limited—but real—extent. He could do so initially by producing a first edition of the work of sufficient enough size as to meet the demand for the work, and could seek to sell that first edition as quickly as possible so as to discourage competing publishers from producing their own edition of the work. What is more, the relatively high standards of the reading public offered him a certain protection insofar as that first edition would be viewed by that reading public as being of a more reliable quality than later ones. An edition produced hastily and without the aid of the original manuscript would probably not offer great prospects for financial success. Devices such as the *sphragides* and proof-readers' certifications could serve as guarantees of quality.

The market in Rome seems to have been relatively stable. Martial's epigrams are one of the few works for which there is more than one documented publisher and/or book dealer. The first four volumes of that work were published by Tryphon²⁸⁴, as was, amongst the subsequent

²⁸² MARTIAL, EPIGRAMMATA 4.72.1.

²⁸³ *Id.* at 1.117.10-18.

²⁸⁴ *Id.* at 4.72.1-2.

volumes, at least the thirteenth.²⁸⁵ The first volume was available in a deluxe special edition charter roll by Atrectus.²⁸⁶ At least volumes one and two were available in a vellum edition from Secundus.²⁸⁷ And, finally, the *Iuvenilia* were available from Quintus Pollius Valerianus.²⁸⁸ It is possible that still other book dealers whose identities have not been handed down also offered these works for sale. However, amongst the book dealers named above, Atrectus and Tryphon were in direct competition for the first volume of the epigrams, as the scroll and the codex were marketed differently.

It is possible that Atrectus was a general book dealer whereas Tryphon was a publisher, since Martial speaks only of Atrectus as *nomen dominus gerit tabernae*,²⁸⁹ and not as a publisher. In this case, none of the above book dealers were in direct competition with one another. Perhaps, in practice, publishers required no express legal protection.

PART THREE: ANALYSIS OF FINDINGS

In light of the preceding, it might seem that when compared with contemporary copyright law, the reigning norms in ancient Rome were incomplete, fragmentary—and thanks to the limited possibilities for filing suit—generally inefficient. The following section will endeavor to examine the birth and development of these norms and to show how the system that they formed was, in fact, internally coherent and successful at meeting the needs of its time and place.

A. *Res incorporales*

Literary authority is an abstract notion and, therefore, of an *ideal* nature. It follows that protection of it can only exist in a society which recognizes such notions and considers them worthy of protection.

An operative notion of an ideal thing—what Romans called a *res incorporalis*—is documented in the legal literature of ancient Rome.²⁹⁰ The most important instances of its treatment are found in three nearly identical passages from the *Institutions* of Gaius (2.12-14. = D. 1.8.1.1.) and Justinian (2.2.pr. ff.):

*Quaedam praeterea res corporales sunt, quaedam incorporales.
Corporales hae sunt, quae tangi possunt: veluti fundus homo vestis*

²⁸⁵ *Id.* at 13.3.4.

²⁸⁶ *Id.* at 1.117.10-16.

²⁸⁷ *Id.* at 1.2.3-8.

²⁸⁸ HAENNY, *supra* note 42, at 65; *but see* BIRT, DAS ANTIKE BUCHWESEN, *supra* note 55, at 358 (positing that this book concerns itself with the first book of Martial's epigram).

²⁸⁹ MARTIAL, EPIGRAMMATA 1.117.14.

²⁹⁰ GAIUS, INSTITUTIONES 2.12-14.; 2.17.; 2.19.; 2.28.; 2.38.; 3.83.; 3.85.; 4.3.; as well as: D. 41.1.43.1.; 41.3.9. Cf. also in his reworking of the question: *Ulpian* D. 23.3.39.pr.; D. 42.1.15.9.; D. 10.3.4.pr. *See also* PAULUS, D. 8.1.14.pr. and *Marcian* D. 20.6.8.pr.

*aurum argentum et denique aliae res innumerabiles. Incorporales sunt, quae tangi non possunt. Qualia sunt ea, quae [in] iure consistunt: sicut hereditas, ususfructus, obligationes quoquo modo contractae. Nec ad rem pertinet, quod in hereditate res corporales continentur: et fructus, qui ex fundo percipiuntur, corporales sunt et, quod ex aliqua obligatione nobis debetur, id plerumque corporale est, veluti fundus homo pecunia: nam ipsum ius successionis et ipsum ius utendi fruendi et ipsum ius obligationis incorporale est.*²⁹¹

Under the heading of concrete things, *res corporales*, Gaius understands ones which *quae tangi possunt*. Ideal things, *res incorporales*, on the other hand, are ones that *quae tangi non possunt, quae [in] iure consistunt*. It has not been this definition which has spurred discussion, but instead the examples Gaius chose to elucidate it.²⁹² As examples of *res corporales*, Gaius chose land, clothing, slaves (*homo*), gold and silver. For *res incorporales*, he gives the examples of inheritance, usufruct, and obligations of any sort.

From our perspective, Gaius' examples are curious ones. They raise, however, the question as to whether ancient Rome in fact considered ownership a *res corporalis*, and all other rights pertaining to objects or things as pertaining to *res incorporales*. The fragments cited above indicate that the Romans were fully capable of, and quite used to, conceiving of the things of their world as having rights that went beyond material one—rights pertaining to things that, as Gaius would say, could not be physically grasped, but existed instead only in, and through, the law (*quae tangi non possunt [. . .] quae [in] iure consistunt*). It can therefore be safely concluded that the reason that literary authorship was granted no specific legal protection was not that Romans did not possess abstract notions that might correspond to it.

B. *Artes liberales*

The fact that no legal instruments for the protection of literary authority were developed in ancient Rome despite a more than ample capacity for legal abstraction is sometimes attributed to its relation to the *artes liberales*. Though they did not take on the canonical form familiar today

²⁹¹ GAIUS, INSTITUTIONES 2.12.-14.

²⁹² Helmut Coing, *Zum Einfluß der Philosophie des Aristoteles auf das Römische Recht*, 69 SZ 24, 38 (1952), handles the question as to from where Gaius borrowed this pair of concepts; Werner Flume, *Die Bewertung der Institutionen des Gaius*, 79 SZ 1 (1962); Max Kaser, *Gaius und die Klassiker*, 70 SZ 127, 142 (1953); Hans Kreller, *Res als Zentralbegriff*, 66 SZ 572 (1948); PAUL SOKOLOWSKI, 1 DIE PHILOSOPHIE IM PRIVATRECHT 41 (1902); Johannes Stroux, *Griechische Einflüsse auf die Entwicklung der römischen Rechtswissenschaft gegen Ende der republikanischen Zeit*, 1 ATTI DEL CONGRESSO INTERNAZIONALE DI DIRITTO ROMANO 113, 121 (1934); Franz Wieacker, *Griechische Wurzeln des Institutionensystems*, 70 SZ 93 (1953).

until late antiquity,²⁹³ the basic curriculum²⁹⁴, called by the Greeks *enkyklios paideia*²⁹⁵, was to be found in ancient Rome and was divided between a *trivium* consisting of grammar (understood as the study of Greek and Latin authors), rhetoric and dialectics, and a *quadrivium/quadruvium*²⁹⁶ consisting of the somewhat less central disciplines²⁹⁷ of arithmetic, geometry, astronomy and music. Contrary to a position frequently advanced by legal historians²⁹⁸, the engagement with the *artes liberales*, or liberal arts, was not limited to free citizens. It should be also born in mind in the following that when the Romans spoke of *artes liberales*—the first documented use of the term is found in Cicero²⁹⁹, and other expressions such as *bonae artes* are still more frequently attested to during this period³⁰⁰—they were not designating intellectual work in the narrow sense of remunerative employment.

²⁹³ ISIDOR, ETYMOLOGIARUM SIVE ORIGINUM 1.2.; MARTIANUS CAPELLA, DE NUPTIIS PHILOLOGIAE ET MERCURII 3-9.

²⁹⁴ See CASSIODOR, INSTITUTIONES DIVINARUM ET SAECULARIUM LITTERARUM 2 praef. 3-4, who misunderstands this concept; see also ISIDOR, ETYMOLOGIARUM SIVE ORIGINUM 1.4.2, where *liberalis* is falsely traced to *liber* (book).

²⁹⁵ The exact meaning of the concept remains a subject of uncertainty. See Harald Fuchs, s.v. “*enkyklios paideia*,” RAC, columns 365, 366, 371; ILSETRAUT HADOT, ARTS LIBÉRAUX ET PHILOSOPHIE DANS LE PENSÉE ANTIQUE 263 (1984); Richard Meister, *Die Entstehung der höheren Allgemeinbildung in der Antike*, 69 WIENER STUDIEN 256, 263-4 (1956).

²⁹⁶ BOETHIUS, DE INSTITUTIONE ARITHMETICA 1.1.

²⁹⁷ See CICERO, TUSCULANAE DISPUTATIONES 1.5.; HORACE, ARS POETICA 323-330. on mathematics.

²⁹⁸ ANTOINE BERNARD, LA RÉMUNÉRATION DES PROFESSIONS LIBÉRALES EN DROIT ROMAIN CLASSIQUE 32 (1936); Édouard Cuq, s.v. “*honorarium*,” 3.1. DICTIONNAIRE DES ANTIQUITÉS GRECQUES ET ROMAINES D’APRÈS LES TEXTES ET LES MONUMENTS 238, 240 (Daremberg, Saglio eds., reprint 1963); Walter Erdmann, *Freie Berufe und Arbeitsverträge in Rom*, 66 SZ 567 (1948).

²⁹⁹ Noting that the manner in which Cicero employs the term points to it being at the time an already established *terminus technicus*, see CICERO, DE INVENTIONE 1.35; FRIEDMAR KÜHNERT, ALLGEMEINBILDUNG UND FACHBILDUNG IN DER ANTIKE 4 (1961); and RAWSON, *supra* note 105, at 117; see also AUBREY GWYNN, ROMAN EDUCATION: FROM CICERO TO QUINTILIAN 79, 180 (1926). Compare Henri-Irénée Marrou, *Les arts libéraux dans l’Antiquité classique*, ARTS LIBÉRAUX ET PHILOSOPHIE AU MOYEN ÂGE 5, 20 (1969) with HADOT, *supra* note 295, at 52.

³⁰⁰ See JOHANNES CHRISTES, BILDUNG UND GESELLSCHAFT. DIE EINSCHÄTZUNG DER BILDUNG UND IHRER VERMITTLER IN DER GRIECHISCH-RÖMISCHEN ANTIKE 196, 235 (1975), who finds the term *artes liberales* in only 26 places amongst original sources, and the term *bonae artes* more than twice as often (62 times).

I. The Republican Period

During the Roman republic, the only socially acceptable source of income for the upper classes was agriculture.³⁰¹ This was because it demanded comparatively little investment of time and energy and thus allowed members of the ruling class to more fully dedicate themselves to the *res publica*. The Republican ideal measured individual worth in function of the individual's contribution to the social whole.

As elements favorable to the fulfillment of this ideal, Cicero listed jurisprudence, court patronage, military leadership (*imperator*) and statesmanship (*senator/orator*).³⁰² He singled out these vocations for their clear and immediate service to the common good. These careers were not subsumed under the heading of the *artes liberales*, and were recognized as *non mediocres artes, sed prope maximae*³⁰³, such that the question as to whether they were *liberal* in the sense of whether they were appropriate activities for a *free* individual was not raised.

In the Roman society of the period the *artes liberales* served above all as preparation for the careers listed above. They were seen as instrumental schooling for later contribution to the common good. Defined as *artes, quae sunt libero dignae*³⁰⁴, as worthy of a free man and not likely to bring him to bad ends, the exercise of these liberal arts was seen as helpful to the growth and fostering of an individual's civic identity³⁰⁵, and as shaping the *vir bonus* into an effective tool to be employed in the service of the *res publica*.³⁰⁶ Because of the practical utility (*utilitas*) to be had from them, non-professional occupation with the disciplines of the *artes liberales* was prized.³⁰⁷ For precisely this same reason, however, professional occupation with them was considered unworthy of a member of the ruling class.³⁰⁸ If pursued in and for themselves, it was thought that they

³⁰¹ See *lex Claudia* von 219 v. Chr.; CICERO, DE OFFICIIS 1.150-151.; PARADOXA STOICORUM 6.2. For the imperial period, see SENECA, AD LUCILIUM EPISTULAE MORALES 86.5.

³⁰² CICERO, DE OFFICIIS 1.74-77., 2.65-67.; DE ORATORE 1.6-8.

³⁰³ CICERO, DE ORATORE 1.6.; PRO L. MURENA 30; BRUTUS 155.

³⁰⁴ CICERO, DE ORATORE 1.72.; see also SENECA, AD LUCILIUM EPISTULAE MORALES 88.2.

³⁰⁵ Noting that the term *liberales* distinguishes above all what was considered beneath it—the *sordidae* and *vulgares artes*, see CHRISTES, *supra* note 300, at 202; KÜHNERT, *supra* note 299, at 4.

³⁰⁶ Compare CICERO, DE ORATORE 3.58. with QUINTILIAN, INSTITUTIO ORATORIA 1.10.34.

³⁰⁷ This was especially true for rhetoric. GWYNN, *supra* note 299 at 60-61, 87; EMILE JULLIEN, LES PROFESSEURS DE LITTÉRATURE DANS L'ANCIENNE ROME ET LEUR ENSEIGNEMENT 87 (1885); HENRI-IRÉNÉE MARROU, GESCHICHTE DER ERZIEHUNG IM KLASSISCHEN ALTERTUM 358 (6th ed., 1970).

³⁰⁸ PLUTARCH, VITAE – PERICLES 2.; SENECA, CONTROVERSIAE 2. praef. 5.; PHILOSTRATOS, VITAE SOPHISTARUM 2.600.

would distract and divert energies which the Republican ideal required to be funneled directly into the service of the *res publica*.³⁰⁹

As the *artes liberales* were not seen as the highest arts (the modifier *liberales* merely designated a delimitation from what lay socially below it), studying them was by no means the exclusive privilege of the nobility. A general contempt for remunerated employment prevalent amongst members of the upper class, and the powerful Republican ideal dictating that individuals should dedicate themselves first and foremost to the *res publica*, made it such that members of the aristocracy were *de facto* kept from professionally exercising these liberal arts. To be a rhetorician or a grammarian required substantial education and training. These factors suited slaves who had been freed, as well as particularly cultivated slaves—primarily of Greek origin—for such posts. Many slaves worked in fact as rhetoricians or grammarians and it was to them that the Roman ruling class sent their children for instruction.

The social class of the service provider was not a determining factor for the legal status of the activity.³¹⁰ It was merely for reasons of social standing and personal honor that members of the upper classes were *de facto* disqualified from such professions (as it would have been unbecoming to receive payment for their activities and thereby lower themselves to the social level of a non-free individual). Work in the areas of *artes liberales* was often the affair of a *locatio conductio*³¹¹ as these disciplines were predestined for well-educated freed slaves to earn a living in.

II. Empire

With the coming of the Empire came the weakening of the Republican ideal, as well as the narrowing of the field of political activity for the senatorial class. The Senate itself suffered massively in influence and effectiveness and, in general, possibilities for exercising direct political influence were drastically reduced. Thanks to these factors, as well as to the growing prestige enjoyed by Stoic thought³¹² amongst many who held true to the Republican ideals, those who occupied themselves intensively

³⁰⁹ For this reason, the writing of histories was particularly praised. See CICERO, DE OFFICIIS 3.1-6.; TUSCULANAE DISPUTATIONES 1.1.; 1.5.; Jean-Marie André, *La sociologie antique du loisir et son apport à la réflexion moderne*, ARBEIT MUßE MEDITATION. STUDIES IN THE VITA ACTIVA AND VITA CONTEMPLATIVA 35 (2d ed., Vickers ed., 1991); Erich Burck, *Vom Sinn des otium*, 34 RÖMISCHE WERTBEGRIFFE, WEGE DER FORSCHUNG 503, 510 (Oppermann ed., 3d ed. 1983); Anthony Corbeill, *Education in the Roman Republic: Creating Traditions*, EDUCATION IN GREEK AND ROMAN ANTIQUITY 261, 266-67, 282 (Too ed., 2001).

³¹⁰ See CHRISTES, *supra* note 300, at 221-222.

³¹¹ First demonstrating this, see FRANCESCO MARIA DE ROBERTIS, I RAPPORTI DI LAVORO NEL DIRITTO ROMANO 63 (1946); and H. Siber, *operae liberales*, 52 JHERINGS JAHRBÜCHER FÜR DOGMATIK 161 (1939/1940).

³¹² See Sueton, DE RHETORIBUS 25.1-4.; Tacitus, ANNALES 16.21-22.; see also Ulrich Knoche, *Der römische Ruhmesgedanke*, 89 PHILOLOGUS 102 (1934); Gregor

and even professionally with the liberal arts began to rise in social standing, and, in some cases, even led to their amassing significant wealth.³¹³

The Empire also saw intellectual cultivation itself become increasingly valued. Demand for it rose as even adults came to take instruction in rhetoric³¹⁴, and with this rise in demand so too rose the social standing of practitioners. With political possibilities at an ebb for many of Rome's senatorial class, the energies that during Republican times had flowed directly into political life now found outlet in other activities—above all, poetry. Rhetoric began to lose its immediate, practical relation to everyday civic life, but this meant that it became more oriented to the art of speech-making and the goals of general aesthetic education and cultivation.³¹⁵

The social status of intellectual work also saw itself raised through another factor: Roman society was evolving during this period from an agrarian to a metropolitan one. This brought with it the consequence that intellectual work came to be more strongly valued over bodily work. It remained, however, the case that the *ordo senatorius* was forbidden from earning any funds beyond those stemming from their land holdings. The grounds given for this, though, were no longer practical or political ones relating to the Republican ideal, but instead more individual and ethical ones. Moreover, this restriction placed upon the *ordo senatorius* functioned as a sort of status symbol and influenced the attitude of the senatorial class to the activity of those who worked for their living. It should come as no surprise that those pursuing an intellectual career at this time endeavored to enhance the value of their work by emphasizing the intellectual rather than financial returns to be had, as well as stressing the side of their production which aimed at general education—such as in the case of Vitruvius for architecture, Strabo for geography, Pseudo-Soranus for medicine and Lucian for dance.³¹⁶

MAURACH, *GESCHICHTE DER RÖMISCHEN PHILOSOPHIE. EINE EINFÜHRUNG* 50, 63 (1989).

³¹³ SUETON, *DE RHETORIBUS* 25.11. See FRIEDLAENDER, *supra* note 76 volume 1, at 178; GWYNN, *supra* note 299 at 137, 158; JULLIEN, *supra* note 307, at 171; MARROU, *supra* note 307, at 413; DE ROBERTIS, *supra* note 311, at 73; Dieter NÖRIT, *Zur sozialen und rechtlichen Bewertung der freien Arbeit in Rom*, 82 SZ 67, 71 (1965).

³¹⁴ QUINTILIAN, *INSTITUTIO ORATORIA* 12.11.14.; STANLEY F. BONNER, *ROMAN DECLAMATION IN THE LATE REPUBLIC AND EARLY EMPIRE* 149 (1949); DONALD LEMEN CLARK, *RHETORIC IN GRECO-ROMAN EDUCATION* (1957); Robert A. Kaster, *Controlling Reason: Declamation in Rhetorical Education at Rome*, *EDUCATION IN GREEK AND ROMAN ANTIQUITY* 317 (Too ed., 2001).

³¹⁵ SENECA, *CONTROVERSIAE* 1. praef. 8-9.; see also GWYNN, *supra* note 299 at 153, 180; KÜHNERT, *supra* note 299, at 109; MARROU, *supra* note 307, at 415; MANFRED FUHRMANN, *DICHTUNGSTHEORIE DER ANTIKE. ARISTOTLE – HORAZ – “LONGIN”* 185 (2d ed., 1992).

³¹⁶ Speaking of a general education for painters, see LUCIAN, *DE SALTATORIBUS* 35.; PSEUDO-SORANUS, *INTRODUZIONE AD MEDICINAM PROOEM.*; STRABO,

Significantly, there is no sign that in the emperor's entourage exercising a pedagogical calling lowered one's prestige.³¹⁷ The members of the *princeps'* administration were often freed slaves or members of lower social classes. They were paid for their work and had no qualms or trepidations regarding such paid employment. Teaching, in fact, enjoyed such favor that the state itself contributed to the payment of instructors in the *artes liberales*³¹⁸, as well as offering them tax reductions.³¹⁹ An edict from the emperor Vespasian dated December 27th 74 C.E. discovered in Pergamon details special privileges granted for teachers and doctors. Hadrian is known to have issued an edict granting special benefits to philosophers.³²⁰ Thanks to Modestinus it is documented that Antoninus Pius composed a letter addressed to the administration of the Asian province³²¹ in which he *de facto* declared that every city, in function of its population, had the right to exempt a fixed number of doctors, sophists, and grammarians from paying taxes.³²² These special benefits were in part confirmed by later emperors, in part even extended.³²³

III. Extraordinaria cognitio

Exercise of the *artes liberales* was by definition non-remunerative only in cases involving a member of the senatorial class. For this reason, legal recourse to the *extraordinaria cognitio* was possible in cases involving disputes concerning the payment of rhetoricians, grammarians and geometers.³²⁴ The payment demanded in such instances was not an *honorarium*, but rather a *merces*—a legally binding payment due for the completion of

GEOGRAPHICA 1.1.1.; VITRUVIUS, DE ARCHITECTURA LIBRI DECEM 1.1.12-13.; 6. praef. 4.; PLINY THE ELDER, NATURALIS HISTORIAE 35.76.

³¹⁷ Hist. Aug. Hadr. 16.10. See also PAULUS, AD THESS. 2.3.10, who claims that he who does not work, should not eat; LUCIAN, APOLOGIA 11-12 had to justify his entry into imperial service; CASSIUS DIO, HISTORIA ROMANA 52.21.7, who states that such scruples at his time are no longer required.

³¹⁸ Compare LUCIAN, eunuchus 3.; PHILOSTRATOS, VITAE SOPHISTARUM 2.566, stating that a professor's earnings in the 2nd century C.E. was 10 000 drachmas, with TATIAN, oratio ad Graecos 19.1, finding a professor's earnings at that time to be 600 gold pieces.

³¹⁹ CHRISTES, *supra* note 300, at 240; HADOT, *supra* note 295, at 226.

³²⁰ Presumably speaking of both edicts, see Charisius D. 50.4.18.29-30; see PLINY THE YOUNGER, EPISTULARUM LIBRI DECEM 10.58.1, who notes that Hadrian was probably not the first to grant special privileges to philosophers.

³²¹ D. 27.1.6.1-2.

³²² Cf. GLEN W. BOWERSOCK, GREEK SOPHISTS IN THE ROMAN EMPIRE 33 (1969); FRIEDRICH OERTEL, DIE LITURGIE. STUDIEN ZUR PTOLEMÄISCHEN UND KAISERLICHEN VERWALTUNG ÄGYPTENS 395 (1917). Opposing both are HADOT, *supra* note 295, at 227-228; ADRIAN N. SHERWIN-WHITE, THE LETTERS OF PLINY 641 (1966). Compare also Ulpian D. 50.5.2.8.

³²³ See C. 8.12.1.; 10.52.6.pr.; 10.52.11.pr.; CIL 2.1. p. 831.

³²⁴ D. 50.13.1 pr.

intellectual work. The form of remuneration that members of the upper classes received for their activities up until late antiquity was an *honorarium*. Their payment was a social rather than a legal requirement. If a payment was a legally required one, however, it could fall under the heading of a claim of *extraordinaria cognitio*.

Only legal scholars and philosophers could not reclaim an *extraordinaria cognitio*³²⁵, probably because these disciplines were principally exercised by members of the upper classes. Ulpian, for instance, who was himself in all probability a member of the *ordo senatorius*³²⁶, sought to conform these disciplines to his class's code of conduct. Because he had recourse to explanations beyond ones relating to honor, he raised the supplementary point that philosophers would of necessity see monetary rewards for their efforts as beneath their dignity: . . . *quia hoc primum profiteri eos oportet mercenariam operam spernere*.³²⁷ What is more, he underlined the value of legal scholarship at the same time as he stressed the impossibility of measuring it in monetary terms: *est quidem res sanctissima civilis sapientia, sed quae pretio nummario non sit aestimanda nec dehonoreanda*.³²⁸

Ulpian's account does not accord with those of the *magistri iuris* of the post-classical period.³²⁹ Before being adopted in the *Corpus Iuris Civilis* this passage received a supplement from an unnamed later jurist³³⁰: *dum in iudicio honor petitur, qui in ingressu sacramenti offerri debuit*.³³¹ This offered indirect justification for legal scholars and philosophers to receive remuneration for their efforts.³³²

The Roman conception of the *artes liberales* cannot be held directly responsible for the fact that authors' interests in ancient Rome enjoyed no legal protection, as the work in the *artes liberales* was not necessarily non-remunerative. It was far more the attitude of Romans towards paid work of all sorts which was decisive and, in the area of the *artes liberales*, hindered the development of a functional equivalent for contemporary exploitation rights.

C. Conservative Values and the Role of Tradition

The role played by tradition and the generally conservative nature of values in Roman society also hindered the development of legal instru-

³²⁵ D. 50.13.1.4-13.

³²⁶ WOLFGANG KUNKEL, *DIE RÖMISCHEN JURISTEN. HERKUNFT UND SOZIALE STELLUNG*, 245, 252 (2d ed., 1967).

³²⁷ Ulpian D. 50.13.1.4.

³²⁸ Ulpian D. 50.13.1.5.

³²⁹ KUNKEL, *supra* note 326, at 343

³³⁰ KUNKEL, *supra* note 326, at 343, speaks of the "doubtless unauthentic final phrase."

³³¹ Ulpian D. 50.13.1.5.

³³² Cf. KUNKEL, *supra* note 326, at 343.

ments for the protection of intellectual property. Though Roman society indeed underwent many changes from its origins to the final fall of the western empire, the old, the respected and the time-honored remained for Romans an absolute good: *moribus antiquis res stat Romana virisque*.³³³

Attitudes and notions, such as the disreputability of remunerative work, dating from the origins of Roman culture were in many cases never put earnestly into question. The time-honored and handed down—the *mos maiorum*—was considered in and of itself worthy of respect and constrained in many cases by sheer virtue of its age.³³⁴ Beginning in the middle period of the Republic, as Cato the Censor began his reflections on the decline in morals in Rome³³⁵, the moral integrity and the lofty accomplishments of the state's forefathers were held up as exemplary, and used to counter unwanted developments and hinder social innovation. With the end of the Republic, widespread faith in the idea that the present could be sensibly bettered by reflection upon the past declined in influence and importance. Tradition, however, retained its normative validity in many areas.³³⁶ In the early Empire, the *mos maiorum* was again called upon to serve as a standard for dealings of various sorts. In his reform of the state, Augustus sought to rehabilitate morals and to return to customs in the sense of the *mos maiorum*³³⁷—an example which later emperors would in part follow.³³⁸

The notion that the time-honored was good and worthy of imitation was not without consequence for the legal system. Ancient Rome possessed comparatively few actual laws and these laws were of a fundamental nature. The two major codifications of Roman law dating from the beginning and the end of the Empire—the Law of the Twelve Tables and the *Corpus Iuris Civilis*—form exceptions to a legal development in which rights in the form of laws did not play a preponderant role. The activity of the senate, to choose a cardinal instance, was governed only through the *mos maiorum* and was nowhere fixed in writing. This however did not prevent it from obliging the members of the senate to follow

³³³ ENNIUS, ANNALES fr. 500. See also PLAUTUS, TRINUMMUS 1028.

³³⁴ CICERO, IN L. CATILINAM ORATIONES 2.3.; PRO P. SESTIO 16.; ORATIONES PHILIPPICAE 2.51., 12.28.; 13.14.; SALLUST, BELLUM CATILINAE 52.36.; BELLUM IUGURTHINUM 62.5. See JOCHEN BLEICKEN, LEX PUBLICA. GESETZ UND RECHT IN DER RÖMISCHEN REPUBLIK 355-356 (1975); HANS RECH, MOS MAIORUM. WESEN UND WIRKUNG DER TRADITION IN ROM 9 (1926).

³³⁵ LIVY, AB URBE CONDITA 39.41.4. See BLEICKEN, *supra* note 334, at 347; L. R. Lind, *The tradition of Roman moral conservatism*, 1 STUDIES IN LATIN LITERATURE AND ROMAN HISTORY, 164 COLLECTION LATOMUS 7 (1979).

³³⁶ CICERO, DE RE PUBLICA 5.1-2.; de off. 2.27.

³³⁷ AUGUSTUS OCTAVIAN, INDEX RERUM GESTARUM 8.; SUETON, DIVUS AUGUSTUS 31.4. See GELLIUS, NOCTES ATTICAE 15.11.2.; RECH, *supra* note 334, at 9.

³³⁸ SUETON, DIVUS CLAUDIUS 22.; TACITUS, ANNALES 3.55.4.

forms and obey conventions with a strength and rigor equal to that granted by laws and written legal regulations in other societies.³³⁹

One reason that the *mos* was experienced as *per se* binding lay in the fact that during the early and high Republican periods laws themselves were not clearly distinguished from customs.³⁴⁰ This fact was to have long reaching effects and led to the growing respect for the time-honored. As we saw earlier, Pliny the Younger stressed that in Rome, honor was binding in a way that for other cultures only necessity was: *neque enim minus apud nos honestas quam apud alios necessitas valet*.³⁴¹ According to Roman notions, legal norms were ultimately nothing more than special instances of social norms. They were, of course, endowed with special instruments for their enforcement, but were not for as much necessarily experienced as more binding than *mos maiorum* and its measurements of decorum and custom.

The special esteem for the time-honored is also one of the reasons that though the complicated legal institutions of the Twelve-Tables period gradually declined in significance, they were never annulled, rescinded or suspended. Many aspects of the civil law of pre-classical times survived into the post-classical period. This esteem for the old led not only to the fact that numerous legal institutions from the period when Rome was still an agrarian society without a developed economic system were retained, but also that certain notions concerning morality and honor tended to stagnate and ceased to conform to the demands of the present. The opinion that it was dishonorable for members of the *ordo senatorius* to perform work in return for payment remained valid at a time when Rome had already begun to pay its civil servants for their activities. To cope with this and related facts, the institution of the *honorarium*³⁴² lost its initial character of an optional and voluntary reward and gradually took that of real obligation, but retained the outward appearance of a gift rather than recompense.

D. *Philosophical Conceptions of the Creative Process*

The development of legal institutions for the protection of authorial interests is in every period dependent upon the conceptions of the author as creator and the creative process as a whole. When a society does not consider an author as an individual creator of works, this society is

³³⁹ QUINTILIAN, *INSTITUTIO ORATORIA* 12.3.6.; ISIDOR, *ETYMOLOGIARUM SIVE ORIGINUM* 2.10.1-2 named the distinguished characteristic of sign of *mos* in opposition to *lex*, as it not being fixed in writing. See also RECH, *supra* note 334, at 12, who writes that in its form *mos* was freer than any other form of law, but in its authority more constraining than any other form.

³⁴⁰ But see Max Kaser, *Mores maiorum*, 59 SZ 52 (1939).

³⁴¹ PLINY THE YOUNGER, *EPISTULARUM LIBRI DECEM* 4.10.3.

³⁴² Writing on *honorarium*, cf. Cuq, *supra* note 298, at 238; F. Klingmüller, s. v. „*honorarium*“, 1.16 P-W, 2270.

unlikely to see a need to develop instruments for the protection of his or her interests.

Conceptions of the creative process in ancient Rome were strongly influenced by Greek thought. The most highly respected teachers of philosophy and rhetoric in Rome were Greeks and students were trained in a fundamentally Greek tradition. In many capital respects, Romans stood under the powerful influence of Greek philosophical notions.³⁴³ This influence extended quite naturally to conceptions of the essence and nature of poetic creation, as well as to questions concerning the function of poetry and the nature of the author's creative act. These questions necessarily touched upon the matter of to what extent poets created, so to speak, from within—through their own talent and as a result of their own master—and to what extent they were in need of divine assistance to compose their works.

In the ancient Greece of Homer and Hesiod³⁴⁴, and in the tradition which grew out of those origins, poetic works were considered gifts of the gods—in particular, gifts from the Muses acting under Apollo's guidance.³⁴⁵ Homer not only began some of his hymns with invocations to the Muses, asking that they aid his poetic enterprise, but also did so at the outset of both the *Illiad* and the *Odyssey*.³⁴⁶ The nine Muses³⁴⁷, traditionally considered daughters born of the union of Zeus and Mnemosyne³⁴⁸, were more than simple personifications meant to represent the arts. They were the precondition for memory itself and it was through their graces that what was, is and will be was preserved. As early as Homer, however, the poet in the throes of creation was not exclusively dependent upon the favor of the Muses. It was instead, in his account, that they instructed him and indicated to him the poetic path he should follow.³⁴⁹ In the *Odyssey*, he asked them to simply name the man—to grant him the necessary impetus to begin his poem. In the *Illiad* his request is more comprehensive: he asks the Muses to sing to him his song and tell him his story. In some of his hymns³⁵⁰, as well as in the *Odyssey*³⁵¹, Homer designates himself as a singer of praise without referring to

³⁴³ CICERO, *ACADEMICA POSTERIORA* 1.3-8.; *TUSCULANAE DISPUTATIONES* 1.1.

³⁴⁴ HESIOD, *THEOGONY* 24-25., 94-98.

³⁴⁵ HOMER, *HYMNS* 25.1-5.

³⁴⁶ HOMER, *HYMNS* 4.1.; 5.1.; 9.1.; 14.1-2.; 17.1-2.; 19.1. f.; 20.1-2.; 31.1.; 32.1-2.; 33.1.; *ILLIAD* 1.1.; 2.484.; *ODYSSEY* 1.1-2.; 1.10.

³⁴⁷ Their name and number are stable beginning with HESIOD, *THEOGONY* 60, 75-80.

³⁴⁸ HESIOD, *THEOGONY* 53-61.; PSEUDO-APOLLODOR, *BIBLIOTHECA* 1.3.1. DIODORUS SICULUS, *BIBLIOTHECA HISTORICA* 4.7.1 names Uranus and Gaia as parents.

³⁴⁹ HOMER, *ODYSSEY* 8.480-481.

³⁵⁰ HOMER, *HYMNS* 2.1.; 10.1.; 11.1.; 12.1.; 13.1.; 15.1.; 16.1.; 18.1.; 22.1.; 23.1.; 26.1.; 27.1.; 28.1.; 30.1.

³⁵¹ HOMER, *ODYSSEY* 8.73-74.

the power of the Muses. At points, he also asks questions of them.³⁵² In the *Odyssey*, Homer has Phemios, the singer at Odysseus's court, announce that he is an autodidact and that a god sowed the seeds of song in his soul.³⁵³ Select individuals found themselves thus in partner-like communication with the Muses who were able to teach them what men could not.³⁵⁴

Inspiration from the Muses soon came to be described through terms borrowed from the oracular tradition. Heraclitus refers to how the sibyls, possessed by the gods, spoke "with frenzied mouth."³⁵⁵ Beginning in the 5th century B.C.E. and influenced by this conception, the poet's creative process came to be considered as one in which the poet stepped outside himself (*ekstasis*) or one where he was filled with divine presence or energy (*enthusiasm*) such that the mortal and divine were in conjunction.³⁵⁶

Plato repeatedly seized upon this notion of poetic enthusiasm in his works and deployed it in various ways. He used it on the one hand to argue for the superiority of philosophy over poetry. Whereas poetry was for him an unreflective form of intuitive creation, philosophy—the fruit of reason and the child of wisdom, or *sophia*—was of a higher order. In the *Apology*, he notes that the poet is only able to create works thanks to divine inspiration and that this results in poets' inability to interpret their own works.³⁵⁷ The *Meno* sees Plato grant that visionaries, poets and politicians indeed may do what is right and true, but when they do so it is not from understanding, but merely as a result of less reflective and therefore less worthy forms of speculation.³⁵⁸ At the end of *Ion*, Plato again declares poets unfit to interpret their own works³⁵⁹ and half-playfully suggests that a charioteer could have spoken better in those parts of Homer's epics concerning chariots, just as a doctor could in passages treating medical matters, and so forth.³⁶⁰

In the *Phaedrus*, however, this poetic enthusiasm is not accompanied by the same pejorative tone. There, enthusiasm is credited as the deepest foundation of all authentic dialectic, poetry and even philosophy.³⁶¹ And

³⁵² HOMER, *ILIAD* 1.8.

³⁵³ HOMER, *ODYSSEY* 22.347-348.

³⁵⁴ Penelope Murray, *Poetic Inspiration in Early Greece*, 101 *THE JOURNAL OF HELLENIC STUDIES* 87, 89, 97 (1981); Klaus Thraede, *s.v.* „*Inspiration*”, 18 *RAC*, 330, 333 (1998).

³⁵⁵ HERACLITUS, *FRAGMENTS* 12.

³⁵⁶ Penelope Murray, *Inspiration and Mimesis in Plato*, 25 *APEIRON* 27, 32 (1992); Thraede, *supra* note 354, at 330, 333.

³⁵⁷ PLATO, *APOLOGY* 22 a-c.

³⁵⁸ PLATO, *MENON* 99 b-d.

³⁵⁹ PLATO, *ION* 533 c-536 d.

³⁶⁰ *See also* PLATO, *REPUBLIC* 10.599 c.

³⁶¹ PLATO, *PHAEDRUS* 245 a; 249 d-e.

yet despite this praise, Plato generally reserved an unfavorable place for poetry and clearly saw it as of a lower order than philosophy.³⁶²

Plato's student Aristotle sought to reconcile the Platonic conception of the creative process as an enthusiastic or ecstatic state with the growing rationalism that characterized the middle of the 5th century B.C.E. His more rationally based approach characterized the poet's creative process as one primarily concerning a *techne*, a technique or family of techniques, which could be studied and learned.³⁶³ Unlike Plato, he saw no need to argue for philosophy's superiority to poetry.

In his *Poetics*, Aristotle begins with the position that poetry is produced through *techne*, through techniques aimed at the favorable production of works.³⁶⁴ Like Plato, Aristotle is, however, of the opinion that *techne* alone is not the source of good poetry. Unlike Plato, he does not focus upon the exaggeratedly subjective preconditions for poetic creation, but in opposition to the idea of enthusiasm focuses his attentions on the less glamorous concept of talent, *euphyia*, and the ability to form apt metaphors and recognize subtle similarities.³⁶⁵

Plato concerns himself not only with the circumstances of a work's coming into being, but also with what he sees as the essence of poetry. The conclusions he reaches are somewhat paradoxical.³⁶⁶ His ontological divisions separate essence, or idea, from appearance, or image-copy. Whereas ideas, which enjoy the highest intellectual and spiritual rank, are unchangeable and eternal, appearances have in his thought a complex place composed of both positive and negative elements. On the one hand, appearances are the representatives of ideas and by pointing towards them take part in their dignity—above all in the area of law.³⁶⁷ On the other hand appearances are measured against ideas and thereby highlighting not only the distance which separates them, but also the fundamental loss in truth and fullness in the move from idea to appearance. Art appears doubly deficient in relation to ideas since, for Plato, a work of art is a reflection of appearances—which are themselves but reflections of ideas—setting the work of art at a double remove from the purity and intensity of the world of ideas.³⁶⁸

³⁶² PLATO, PHAEDRUS 248 d-e.; 278 b-e.

³⁶³ See ARISTOPHANES, FROGS 762-1533.

³⁶⁴ ARISTOTLE, NICOMACHEAN ETHICS 6.4.; see PHYSIK 194 a, which demonstrates that for Aristotle the *techne* were an analogue to the *physis*.

³⁶⁵ ARISTOTLE, POETICS 1459 a.

³⁶⁶ See Murray, *supra* note 356, at 27, writing that Plato's opinion of literature is "notoriously ambiguous."

³⁶⁷ PLATO, REPUBLIC 300 c.; LAWS 817 b.; TIMAEUS 39 d-e., 48 e., 50 c.

³⁶⁸ PLATO, REPUBLIC 10.595 a-597 e.

To clarify his positions Plato employs a notion that gained great currency in the 5th century—that of *mimesis*.³⁶⁹ *Mimesis* is used both to indicate sensually perceptible images as well as imitation in action or behavior.³⁷⁰ Plato employs this double meaning to emphasize the low value of poetry. He turns then to the art of painting and reaches the conclusion that painting merely imitates appearances—themselves but imitations of ideas—and the rich plenitude of being decreases with each remove from the reality of the world of ideas, with the result that images produced by visual artists, no matter their technical virtuosity, are but a faint reflection of the real.

Plato applies this same reasoning to poetry to show that it too is but a reflection of a reflection and thus twice removed from the truth and beauty of ideas.³⁷¹ He claims that everyone would prefer a thing to its copy or reflection, and for this reason no poet has ever truly fostered or furthered his fellow man and thereby served as an example because poets deal only in reflections.

For Aristotle, the notion of *mimesis* is nearly as central as it is Plato. But *mimesis*—which, in contradistinction to Plato, he nowhere defines—has in his case less importance in his general philosophical theory—as well as a far different valence. To begin with, for Aristotle, imitation is not a pejorative epithet and not a negatively valorized notion. It is, in fact, the ultimate cause of poetry and its imitative nature is thus not considered a disadvantage or drawback. For Aristotle, the pleasure of poetry is rooted in the pleasure of learning—a pleasure which is always positive. Every successful imitation, he stresses, brings with it this pleasure from and in learning—even when that which is represented or imitated is itself unpleasant or undesirable.³⁷² For there are things whose sight is unpleasant, but whose representation can be observed with pleasure because studying them, through the neutralizing medium of an imitation, is instructive.³⁷³ Aristotle's fundamental position is thus one of benevolence towards poetry and, unlike Plato, he is not interested in arguing for the superiority of philosophy over it.³⁷⁴

³⁶⁹ See Hellmut Flashar, *Die klassizistische Theorie der Mimesis*, 25 FONDATION HARDT, 79 (1979); FUHRMANN, *supra* note 315, at 85; STEPHEN HALLIWELL, ARISTOTLE'S POETICS 109 (1986); EVA C. KEULS, PLATO AND GREEK PAINTING 19 (1978); HERMANN KOLLER, DIE MIMESIS IN DER ANTIKE 119-121 (1954); Murray, *supra* note 356, at 27.

³⁷⁰ See PLATO, REPUBLIC 3.393 b-c.; 10.598 c.; SOPHIST 267 a.; AESCHYLUS, CHOEPHORI 564.; ARISTOPHANES, FROGS 1019.; CLOUDS 559.; EURIPIDES, HELENA 74.; HERODOTUS, HISTORIAE 2.104.4.; 3.37.2.; 4.166.1.; THUCYDIDES, HISTORY OF THE PELLOPONNESIAN WAR 2.37.1.; XENOPHON, MEMORABILIA 1.2.3., 1.6.3.; 3.10.1-3.

³⁷¹ Stating that proof of this thesis would be difficult, as poetry is figured not as an object but as an act—as Plato himself remarks, see FUHRMANN, *supra* note 315, at 87.

³⁷² ARISTOTLE, RHETORIC 1371 b.

³⁷³ ARISTOTLE, POETICS 1448 b.

³⁷⁴ ARISTOTLE, RHETORIC 1371 1376 a.; 1398 b.

Aristotle opposed the Platonic doctrine of Ideas, following which alongside—or beyond—the things of this world of appearances there exists a realer and fuller world composed of Ideas. In the place of the Platonic Ideas, Aristotle advances a conception of what he calls *entelechy*, of potentiality becoming actual. According to this conception, form actualizes itself in matter in a fashion such that the idea or form integrally inhabits the appearance of the thing. In such a conceptual system, works of art would not be conceived of as copies, but originals, not imitations but instead as a rich reality of matter and form/idea.

With the mounting interest surrounding Greek culture in Roman society beginning in the 2nd century B.C.E., Greek intellectual tradition—and especially the philosophical notions which animated it—came to occupy an important role. Just as in Roman literature (where adaptations of Greek texts were prevalent), Greek thought was held up in philosophical circles as exemplary. Cicero went so far as to claim that if one didn't know Greek, one could neither practice nor produce philosophy.³⁷⁵ This position was a common one and indicative of the degree to which philosophical thought at the time was bound up with the Greek language. As we saw earlier, philhellenes spent a significant portion of their training in Greece and often brought some part of its intellectual riches back with them to Rome. They also brought with them numerous cultivated slaves who became the teachers and tutors of generations of young Romans.

In the Greek world, Plato and Aristotle's conceptions of poetic creation and of poetry in general were central. As this intellectual tradition came to be carried to Rome, this important and integral current of Greek thought was brought with it.

From its earliest beginnings, Latin poetry embraced and adopted the Greek practice of invoking the Muses at the outset of a work. As early as Livius Andronicus' *Odusia* we find an invocation of the Muses (employing the Latin word *camena*).³⁷⁶ In his *Annales*, Ennius does the same.³⁷⁷ Virgil declares at the outset of the *Aeneid* of what he will sing, adding eight lines later an imploring call to the Muses—as he had also done in his *Georgica*.³⁷⁸ In the *Metamorphoses*, Ovid asks all the gods to inspire him.³⁷⁹ In the *Ars amatoria*, he stresses the intimate connection of poets and gods and speaks of the divine spirit which enters into the poet.³⁸⁰ In the *Fasti*, the invocation of the Muses becomes a question and answer game between Ovid, Calliope, Urania and Polyhymnia.³⁸¹ The idea that

³⁷⁵ CICERO, *ACADEMICA POSTERIORA* 1.3-8.

³⁷⁶ Citing an epigram from Naevius, see GELLIUS, *NOCTES ATTICAE* 1.24.2.

³⁷⁷ ENNIUS, *ANNALES* 1.1.

³⁷⁸ VERGIL, *AENEIS* 1.1.; 1.8.; VERGIL, *GEORGICA* 2.475.

³⁷⁹ OVID, *METAMORPHOSES* 1.2-4.

³⁸⁰ OVID, *ARS AMATORIA* 3.549-550.

³⁸¹ OVID, *FASTI* 5.1-110.

the poet requires the inspiration of the gods to create is also found in Cicero.³⁸²

Horace's *Ars poetica* is rich in Greek borrowings. It is improbable that Horace knew Aristotle's *Poetics*, but the proximity of his concerns makes it likely that Aristotle's reflections on the question were known to him through other writers. A special influence upon his work was exercised by the *Poetics* of Neoptolemos of Parion, which like the *Ars poetica* contained Alexandrian as well as Aristotelian elements. Like Neoptolemos and Aristotle before him—and in opposition to the Platonic conception of poetic enthusiasm—Horace defended the position that poetic creation was dependent upon two conditions which were normally understood as opposites³⁸³: *ars*—training, exercise, artistry, craftsmanship, and *ingenium*—endowment or vocation.³⁸⁴

In Plato and Aristotle, poetry imitated reality. Horace too asks that poetry remain close to reality, as well as to Roman customs.³⁸⁵ In his hands, the concept of mimesis—probably under the influence of rhetoricians³⁸⁶—takes on a new point of reference. This point is poetry itself—or, more precisely, literary precedents and models. Horace concedes that it is difficult to conceive of new characters and situations for a literary work. Instead of attempting to do so, he suggests that one focus upon literary models with the proviso that one take care not to slavishly imitate them.³⁸⁷ Material that was the common good could then come to belong more intensively to the poet. What is more, he frequently singles out Greek culture for its exemplary value and explicitly encourages borrowing from it.³⁸⁸ In Horace, poetry is thus partially self-referential, in that it endeavors to imitate not just reality, but also literary models.

In recommending the mimetic position, Horace was taking a position in a popular debate of his time. In the first century B.C.E., a canon³⁸⁹ of outstanding writers from the classical period was being formed—no longer merely to facilitate philological study, but to serve as guides and to provide criteria for further literary creation. Classicists endeavored to imitate the writers gathered together in this canon. They focused their attention on what they considered the correct imitation of stylistic models—a form of mimesis which was by no means plagiarism, but which, in

³⁸² See CICERO, DE ORATORE 2.194.; PRO A. LICINIO ARCHIA 18.

³⁸³ HORACE, ARS POETICA 295-296.

³⁸⁴ *Id.* at 408-411.

³⁸⁵ *Id.* at 317-318.

³⁸⁶ See, e.g., FUHRMANN, *supra* note 315, at 153.

³⁸⁷ HORACE, ARS POETICA 119-130., 131., 134.

³⁸⁸ *Id.* at 268-269.; HORACE, SERMONES 1.10.17.

³⁸⁹ See QUINTILIAN, INSTITUTIO ORATORIA 10.1.; William J. Dominik, *The Style Is the Man: Seneca, Tacitus and Quintilian's Canon*, ROMAN ELOQUENCE. RHETORIC IN SOCIETY AND LITERATURE 50 (Dominik ed., 1997); Neil O'Sullivan, *Caecilius, the „Canons” of Writers, and the Origins of Atticism*, ROMAN ELOQUENCE. RHETORIC IN SOCIETY AND LITERATURE 32 (Dominik ed., 1997).

spite of the large part accorded to imitation therein, endeavored to represent something all its own, and, if possible, to surpass literary models of the past.³⁹⁰

The discussion begun in Greece as to which authors to admit to this canon, as well as how best to imitate them, was vigorously continued in Rome. Latin literature up to the turn of the millennia consistently imitated Greek models—treating not only typically Greek themes but also doing so in forms inspired by Greek works. In ancient Rome, literary mimesis meant not only the imitation of nature, but also the imitation of earlier literature—initially, exclusively Greek literature, though with time including a select group of Roman authors as well. In the wake of the debate ignited in Greece, Roman rhetoricians came to argue how best to achieve a literary style of maximal purity.

The adaptation of the Greek canon, as well as the debate concerning the proper style for an author to adopt, served to foster a classical style in Rome. The debate took place during a period in Latin literature now known as its classic one, so that the classicists (Atticists were by definition classicists), or those who imitated Greek classes, became the classical authors of Roman literature.

Following the Greek conventions adopted in Rome, the author was not confronted with a completely independent creative task. His role was limited to a maximally faithful—faithful to specific detail and general truth—reproduction of the reality surrounding him and the beauty that dwelt within it—the divine order. His task was above all to recognize the beautiful and to imitate it, either through the imitation of nature or through the imitation of the works of others in which he endeavored to outdo those models in his depiction of this beauty.

Following the ancient conception, the author required the assistance of the gods to be capable of true mimesis. They inspired him during the process of creation or transferred him to an enthusiastic place or state. In the moment of creation, the author stepped, so to speak, out of himself (*ek-stasis*), becoming the spokesman of the gods. In a certain real sense, the making visible of the beautiful was for the author thus no purely individual achievement.

It should come as no surprise then, that according to views prevalent in ancient Rome, it was not the author but the product of his or her artistic activity—the reproduction of the divine—that stood in the foreground. Romans were thus especially careful to preserve the integrity of texts by speaking out against poor copies, endowing *aediles* with the task of preserving the originals of dramas, and supporting the use of the authorial *sphragides* as a mark of quality, but none of this was done with the primary interest of preserving the author's interests.

³⁹⁰ QUINTILIAN, *INSTITUTIO ORATORIA* 10.2.8-9 voices this claim. See also DIONYSIOS OF HALIKARNASSOS, *ON IMITATION*; PSEUDO-LONGINUS, *ON THE SUBLIME*.

E. *Fame and Immortality as Motivation*

The fact that Roman authors were not widely viewed as the source of their creations but, instead, as either the mouthpiece of the gods or as imitators of the natural (and thereby of the divine which inhered in the natural world) did not mean that, from a societal perspective, recognition, fame and honor were denied them. Works were indeed personally credited to their creators, and the idea of personal responsibility remained—both in positive and negative forms. This fact is well illustrated by such incidents as the citing of the content of Ovid's *Ars amatoria* as the reason for the author's banishment to Tumi. The author may have been in contact with the divine in the moment of creation, but he or she remained responsible for his or her creations.

Many poets prized their capacity for lending immortality to that about which they sung. This ability was valued highly by individuals such as patrons—who were eager to grasp immortality through the songs sung about them. In addition to this ability, many authors stressed their ability to bring fame and lend immortality to their own persons through their creations. In the case of Ovid this is expressed as *parte tamen meliore mei super alta perennis astra ferar, nomenque erit indelebile nostrum*³⁹¹ and *carmina vestrarum peragunt praeconia laudum, neve sit actorum fama caduca cavent*.³⁹² In the case of Horace: *non omnis moriar multaque pars mei vitabit Libitinam: usque ego postera crescram laude recens, dum Capitolium scandet cum tacita virgine pontifex*.³⁹³ In that of Martial: *ante fores stantem dubitas admittere Famam teque piget curae praemia ferre tuae?*³⁹⁴.

In pre-Christian times the dominant conception of immortality was not directed towards a beyond, towards the places of eternal renown or guilt evoked by Christian thought, but, instead, was directed at the portion of immortality that could be achieved in *this* world.³⁹⁵ For Romans, immortal were they who lived on in the minds and hearts of the living. For this reason, men sought to erect monuments to and for their immortality during their own lives³⁹⁶ through such massive initiatives as Augustus' resto-

³⁹¹ OVID, METAMORPHOSES 15.875-876. See also OVID, TRISTIA 3.3.77-78.; 3.7.50.

³⁹² OVID, EPISTULAE EX PONTO 4.8.45-46.

³⁹³ HORACE, CARMINA 3.30.6-9.

³⁹⁴ MARTIAL, EPIGRAMMATA 1.25.5-6. See also *id.* at 11.3.6-10.

³⁹⁵ See FRANZ CUMONT, AFTER LIFE IN ROMAN PAGANISM 1 (1922); ROBERT MUTH, EINFÜHRUNG IN DIE GRIECHISCHE UND RÖMISCHE RELIGION 287 (2d ed., 1998); CHRISTOPH G. PAULUS, DIE IDEE DER POSTMORTALEN PERSÖNLICHKEIT IM RÖMISCHEN TESTAMENTSRECHT 32 (1992); WENZEL, *supra* note 10, at 141.

³⁹⁶ A deeply misguided form of this belief is to be found in the case of Herostratos who lit one of the seven wonders of the ancient world, the Temple of Artemis at Ephesus afire so that posterity would remember him (for this act of arson). Thereafter, the Ephesians made it a crime punishable by death to name him (in whatever context). His criminal act is first recorded two generations later by the

rations of the city of Rome, as well as through inscriptions, monuments, foundations or specific testamentary provisions of varying sorts.³⁹⁷

Authorial activity was well-suited as a means for ensuring immortality—and in more senses than one. The heroes described and praised in a work could be rendered immortal through it. The heroes of the literature of Rome often had real models whose names they bore. One need only think of the fictive conversations that Cicero stages with members of Scipio's circle that profoundly influenced the memory of that circle as well as the lasting images of the individuals from whom it was comprised. A literary form particularly well-suited, and highly valued, for its ability to preserve and to consecrate the memory of individuals was history. It allowed the author to favorably sketch the portrait of a person and his or her acts for posterity while maintaining the modest pretence of an objective narrative.

The citations from Roman authors given above underline the fact that a literary work could also grant immortality to its author. When an author adorned his work with his name, he also created a link between the hero or heroes of the poem and—for the contemporary world as for posterity—a link with himself. This bond lasted as long as the memory of his work, or its heroes, lasted. What is more, an author could aspire to fame, respect, and immortality through the form chosen and do so independently of the content and individuals depicted therein.

The poet came to be seen as a special individual through his ability to recognize the divine in the natural or, in some cases, through his receiving of the divine gift of inspiration (making the poet a *vates* or seer). Romans of course recognized differences in quality between individual works, but thanks to their philosophical conceptions of the creative process, such differences in quality could be explained by the differing favor or proximity of poets to the source of divine inspiration.

The proximity of the author to the gods was for this reason carefully judged and highly valued by society. If it was reserved to the author to determine the moment of first publication of his work this lay in a widespread recognition of his ability to determine when the moment most propitious to the inspiring gods would be. Readers' efforts to procure the most faithful copies of works and the complaints of both authors and readers about changes in texts can be traced back to the author's recognized ability to produce a version of his or her text which conforms to the wishes of the gods, through whose grace the work had been composed. In light of author's concern with immortality, the vehemence of response to cases of plagiarism is easily understood: plagiarizers robbed from authors the recognition that was their ultimate source of fame and immortality.

historian Theopompos on the island of Chios. See VALERIUS MAXIMUS, *FACTA ET DICTA MEMORABILIA* 8.14.ext.5.

³⁹⁷ See PAULUS, *supra* note 395, at 34.

When one considers that authors were motivated in the composition of their works above all by this long for fame, honor and immortality, it is no wonder that monetary payment for their efforts was not represented as a fundamental motivating factor. The goal of writing was a higher one, and a pursuit in which the receipt of monetary rewards was of little assistance. For this reason, authors themselves were not especially interested in the formation and development of copyright and intellectual property laws to protect their financial interests. Their interest lay far more in reaching as large an audience as possible through their works and to do so through copies of their works that were as faithful as possible. An exclusive right of reproduction and distribution such as is found in contemporary American law would have run contrary to the author's fundamental interests.

Against this backdrop, it should hardly surprise us that no cases are handed down in which an author attempted to defend his interests before a court of law. In his striving for immortality he was striving for social recognition of the sort that would bring him fame and honor, and which no decision or decree by a court of law could grant him. When a sufficiently strong social consensus was reached wherein a specific activity such as plagiarism was condemned, no judge was required. Fame was dependent on the judgments of others.³⁹⁸

CONCLUSION

The form that protection of literary authority took in ancient Rome reflects that culture's system of values, as well as its conception of the creative process. In the early phase of the Republic, authors enjoyed no special social standing. Agriculture was the only legitimate source of income for Rome's ruling class, and was considered particularly appropriate as it required of them comparatively little time and energy and allowed those members of the ruling class to dedicate themselves to the *res publica* in such capacities as general or statesman—posts that were without remuneration. In the best of cases during this period, writing served the common good by providing the public with edifying works of history.

With the rise of interest in Greek culture seen in Rome starting in the 2nd century B.C.E., the social status of authors rose. After the end of the Republic, literature offered members of the opposition who were no longer able to directly engage in political activity a welcome new field of endeavor. Literary groups were founded and certain wealthy Romans acted as patrons for authors in financially precarious situations. Even the top of the social pyramid—the *principes*—showed a marked interest in literature. From time to time, they too would patronize authors, and in return would have the direct pleasure of hearing themselves expertly

³⁹⁸ CICERO, DE INVENTIONE 2.166.; ORATIONES PHILIPPICAE 1.29.

praised as well as, often enough, increased support and admiration amongst their general populace.

As early as in the final period of the Republic, Rome was home to large reading public and enjoyed a relatively high literacy rate. The book trade was correspondingly well developed. Rome boasted numerous bookstores and books were shipped to and sold in every part of the empire. Private individuals as well as *principes* came to found libraries open to the public.

At this time, a successful book could reach a relatively large number of readers. Publishers and book-dealers produced ample editions thanks to the work of educated slaves, and authors of works sought out conscientious publishers. It was important to those authors that their works appear at times of their choosing, and only in the form agreed upon with the publisher. That the copies made be as accurate as possible was a primary concern. The maintenance of fidelity to originals was facilitated in the case of plays by the preservation of original manuscripts by the *aediles*. Finally, it was of particular importance to authors that they be recognized as the author of their work and that third parties not claim authorship for those works. The failure to respect this fundamental convention resulted in moral outrage and was seen as a violation of an important social norm.

The reproduction, distribution, production or presentation of already published texts without the author or publisher's permission were not sanctioned in any form. On the contrary, authors strongly tended to be interested in a maximal circulation for their works and, as a rule, were quite content to see subsequent distribution. For the publication of their works they concluded contracts with publishers—or in the case of dramatists, with the *aediles*—in which they granted their contractual partner the exclusive right to initial publication or production. In return, authors generally received some form of remuneration. In the special case of dramatists, this was guaranteed, and usually came in the form of a sum paid on a single occasion independent of the planned number of performances.

There are multiple grounds for the moral outrage voiced in cases of plagiarism, the disfiguring of texts, and of publishers publishing unpublished works on their own authority, as well as indifference regarding the utilization of already published works by third parties. One of these was that, following the dominant conceptions of the period, the author stood in close contact with the gods during the process of creation. He alone, therefore, best knew when a work had reached a form propitious to the gods and for this reason reserved the right to determine the time and circumstances of its publication. Because the gods themselves were conceived as participating in the creative process, the arbitrary alteration of texts was seen not only as a violation against the author, but against the forces that inspired him and was correspondingly criticized. Lastly, it was permitted for the author to make his or her proximity to the gods public.

For this reason, cases of plagiarism resulted in the outcries examined above. Through their works, authors strove for immortality.

This fundamental striving for immortality had as a result that, for authors, the exploitation rights for their works were of minor interest and importance to them. They wrote for what they saw as far higher goals than mere money. A legal instrument that would have secured a financial participation in the success of their works at the price of limiting the circulation of those works would not have met with their approval as it would not have satisfied the desires they so frequently voiced. Finally, ancient Rome was an extremely conservative society as concerned social values. The time-honored was in and of itself considered a fundamental good. In senatorial circles remunerative work had always been deemed unseemly and helped shape the disdain for remunerative work at other levels of society. Authors saw the principal return on the investment of their gifts not as money, but instead as the considerably higher wage of immortality.

