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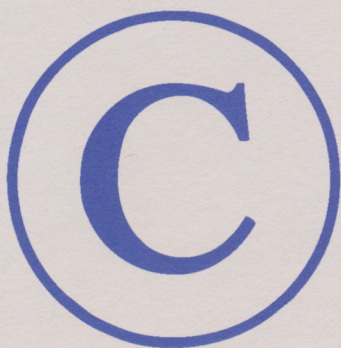
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ANCIENT AND MODERN NOTIONS OF PLAGIARISM: A STUDY OF CONCEPTS OF INTELLECTUAL PROPERTY IN CLASSICAL GREECE

by MARIANINA OLCOTT*

As many writers on contemporary plagiarism have remarked, the body of texts relating to intellectual property is both large and ambivalent.¹ Classical Greek culture proves no exception. We find frequent accusations of literary misappropriation from all periods of the ancient Greek world, from fifth century BCE to the fifth century CE. A substantial portion of this material, however, post-dates the rise of large research libraries founded throughout the Hellenistic empire around 320 BCE, when scholars had ample time and opportunity to pry out parallel passages, repeated lines and other similar phenomena.² The earliest inquiries seem motivated by pure research. Later, however, one discerns in the various Christian writers who charge the ancient Greeks with literary theft that there is a Christian agenda which distorts and, therefore, partially invalidates the writer's charges. Indeed, whenever a comparison of the offending text and its alleged source is made, we find that the grounds for such charges are none that we today would recognize as substantive or persuasive.³ The level of generality of the items borrowed is so great that, certainly today, we would see no misappropriation in these examples. Eusebius (260-340 CE), in his *Praeparatio Evangelica*, for example, tried to demonstrate Plato's unacknowledged borrowings from biblical sources. An examination of his charges in light of modern judicial opinions, especially the notion of access, exonerates Plato of the charge, since the span of his lifetime, 429-347 BCE, predates by at least a hundred years the first translation of portions of the Hebrew Bible into Greek, the so-called Septuagint. Access, therefore, becomes problematic.

This article, then, examines our earliest evidence of plagiarism in order to reconstruct what conceptions the Greeks of the fifth and fourth

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¹ See especially Alexander Lindey, *Charting the Maze*, in PLAGIARISM AND ORIGINALITY (1952). Cf. K. Ziegler, *Das Plagiat*, in PAULYS REAL-ENCYCLOPAEDIE DER CLASSISCHEN ALTERTUMSWISSENSCHAFT (1950) (authoritative article on plagiarism in the ancient world reiterating that in the ancient world also there seems to be a bit of confusion about what constitutes literary theft).

² See especially R. PFEIFFER, HISTORY OF CLASSICAL SCHOLARSHIP (1968) (discussion of Alexandrian scholarship).

³ See discussion *infra*.

centuries BCE had relating to intellectual property. We confine our discussions to statements contemporary or near-contemporary with the authors charged with literary misuse. In addition, I looked particularly for instances where rivals in a literary field would make accusations against each other, since these situations approximate modern judicial proceedings under Title 17 of the United States Code. Although, as noted above, plagiarism literature persists well into the Christian era, these later writings are for the most part contaminated by other critical agenda, most prominent among them, the desire to discredit pagan philosophy as dishonest and, therefore, worthless in comparison with Christian thought.

A perusal of our earliest texts reveals that even though the modern word "plagiarism" is derived ultimately from the Greek word "plagios" (πλάγιος from πλάγος meaning "side" or "flank"), derivatives in Greek from all periods, Classical through Byzantine, did not acquire the sense in which we use the word today.⁴ Since the modern word, although ultimately of Greek origin, is clearly a late addition to our critical vocabulary, how then did the ancient Greeks express concepts related to our notion of intellectual property and its misappropriation?

Even the most cursory glance at the ancient testimonia collected by Ziegler (1912) and Stemplinger (1950) reveals the frequent use, in all periods of Greek culture, of strong language denoting theft or misappropriation. Most often the words used are related to the Greek verb "klepto" (κλεπτω), meaning "to steal," although we also find synonyms such as "uphaireo" (ὑφαίρω), meaning "to filch or purloin," used to express plagiarism. Thus, we conclude that the Greeks as early as the fifth century BCE had a notion of intellectual property, and, further, that its misuse, as with other forms of property, constituted theft.

Our discussion now examines on what grounds such charges could be made. A remark credited to the Sophist, Hippias of Elis (c. 485- 415 BCE), preserved in Clement of Alexandria (born c. 150 CE), offers a starting point. Hippias, after citing some of his sources, among them Homer and Hesiod, then states:

But after collecting the most important of these points on the same subject matter I shall make them my own [πσιησμαι] with new and complex language [καινόν λόγον καί πολυειή] ἐγὼ δὲ ἐκ πάντων τούτων τὰ μέγιστα καί ὁμόφυλα συνθεῖς τοῦτον καινόν τόν λόγον καί πολυειδή ποιήσομαι.⁵

Thus Hippias gives credit to his sources, but indicates that he will rework and expand in his own words the materials which he has collected and reorganized. The future middle "poiesomai" (ποιήσομαι) indicates both his intent and his appropriation for himself of the credited items.

⁴ E.g., EURIPIDES, IPHIGENEIA IN AULIS 332 (πλάγια γάρ φρονίς = you are thinking twisted thoughts). Cf. PINDAR, ISTHMIAN ODE 3.5 (πλαγίαις φρένεσσιν = with twisted thoughts).

⁵ Quoted in Ziegler, *supra* note 1, at col. 1963.

The concept of one's own words as intellectual property we find also in the orator Isocrates (436-338 BCE). In oration 12.16 ff, Isocrates criticizes his detractors because "they use my own words and examples although they have had no association with students of what has been said by me," [οὐδέν μέρος ἔχοντες τοῖς μαθηταῖς τῶν εἰρημένων ὑπ' ἐμοῦ τοῖς τε λόγοις παραδείγμασι χρώμενοι τοῖς ἐμοῖς].⁶

We may infer from this that he means his detractors must have stolen his words and examples because there is no other way they could be acquainted with them since they are not students of his. His syntax at one particular point is instructive; in the participial phrase τοῖς λόγοις τε παραδείγμασι χρώμενοι τοῖς ἐμοῖς the location of the adjective phrase "my" (τοῖς ἐμοῖς) at the end of the clause is clearly emphatic, thereby underscoring his ownership of his words and examples. In another oration to Philip⁷ he gives further indications that one's own phrases and examples amount to property. He extends the adjective οἰκείους which usually means "belonging to one's household, one's property," to describe his words: τοῖς οἰκείοις 9 (λόγοις understood). His actual words are instructive as are Jebb's translation and explanatory notes to this sentence:

Τοί μὲν οὖν οἰκείοις τυχόν ἂν ξρησαίμην, ἢν ποὺ σφόδρα κατεπεῖγῃ καὶ πρέπη, τῶν δ' ἄλλοτρίων οὐδέν ἂν προσδεξαίμην, ὥσπερ οὐδ' ἐν τῷ παρελθόντι χρόνῳ. Now, I may perhaps draw upon my own materials [i.e., repeat my own thoughts or language from former works], if in any case there be urgent need, and it be fitting; but I will adopt nothing from the work of others, any more than of old.⁸

Isocrates further underscores the contrast between "the works of others" (τῶν δ' ἄλλοτρίων) and "my own" (τοῖς μὲν οὖν οἰκείοις) by locating the operative phrases in the sentence and clause initial positions in addition to his use of the antithesis (τοῖς μὲν and τῶν δ').

The current Modern Language Association guidelines on plagiarism reveal a similar understanding of one's own words constituting property. According to the authors of the current MLA style manual, charges of plagiarism are sustained by one or more of the following acts:

- a) reproducing someone else's sentences, more or less verbatim (as your own);
- b) repeating another's particularly apt phrase without acknowledgement;
- c) paraphrasing someone else's argument as your own;
- d) introducing another's line of thinking as your own development of an idea;

⁶ See *id.* at col. 1974.

⁷ RICHARD C. JEBB, *SELECTIONS FROM THE ATTIC ORATORS* 140 (1899).

⁸ *Id.* at 324.

e) failing to cite the source for a borrowed thesis of approach.⁹

These guidelines are actually more inclusive than definitions found in our modern judicial opinions. Thus, to review our discussion, the charges made by Isocrates above clearly would fall within the MLA guidelines. Furthermore, a reconsideration of Hippias' remarks quoted earlier indicate the appropriative right of rewording and reorganizing, or in Stemplinger's term "Beherrschung" ("control, dominion").¹⁰

Further discussion will allow us to conclude that an author's property also resides in the characters s/he may create. The American jurist, Learned Hand, in his opinion on the *Abie's Irish Rose* case, reiterates the notion that something more is at stake than loosely copying someone's plot. He states, "[a]s respects (plagiarism) in plays, the controversy chiefly centers upon the characters and sequence of incident, these being the substance."¹¹

Clearly a similar understanding of intellectual property underlies the charges of the comic poet Aristophanes against his rival Eupolis (fl. 429 BCE) when he accuses the latter in the parabasis of the play:

[W]ith turning my plays around dreadfully when he added to it a drunken old woman so she could do the (bawdy) kordax dance — and it was this character that Phrynichus a long time ago had created (πεπόηχ) and she got eaten by a whale. [Εὐπολὶς μὲν τὸν Μαρικὰν πρῶτιστον παρείκυσεν ἐκστρέψας τοὺς ἡμετέρους Ἰππέας κακὸς κακῶς προσθεὶς αὐτῷ γραῦν μεθύσῃν τοῦ κόρδακος, ἣν Πρύνιχος πάλαι πεπόηχ' ἦν τὸ κῆτος].¹²

Since we do not have Eupolis' play the *Marikas*, which is the offending text, we cannot judge the extent of his (Eupolis') misappropriation of Aristophanes' *Knights*. However, his accusation against Eupolis for stealing from Phrynichus (fl. 494 BCE) and the precise details Eupolis supposedly copied are consonant with modern conceptions of plagiarism both from academic situations and from the law courts, viz. the more details which an expression reproduces from another the closer it comes to infringement.

We note in Aristophanes' accusations that Eupolis borrowed a very unique character who comes out to perform a specific dance, the bawdy kordax, and is thereupon eaten by a whale. The degree of specificity here both in the character and in the sequence of incidents copied would seem to convict Eupolis as charged.

⁹ WALTER S. ACHTERT & JOSEPH G. GIBALDI, *THE MLA STYLE MANUAL* § 1.4 (1985).

¹⁰ EDUARD STEMPLINGER, *DAS PLAGIAT IN DER GRIECHISCHEN LITERATUR* 125 (1912).

¹¹ *Quoted in* GERALD GUNTHER, *LEARNED HAND: THE MAN AND THE JUDGE* 324 (1994).

¹² ARISTOPHANES *CLOUDS* 36 (K.J. Dover ed., 1968) (*Clouds* 554 ff).

The historian, Theopompos of Chios (born c. 378 BCE), preserved in fragments in Athenaeus, accused Plato of having stolen from Homer the idea that the soul is "created immortal" (διαλαττωμένη ... ἀθάνατος).¹³ He cites a passage in *Iliad* 16.856 ff on the death of Patrocles as evidence that Plato stole (κεκλεμμένων) his ideas about the soul's immortality. The participle, κεκλεμμένων, comes from the perfect stem of the verb κλέπτω, meaning to steal and therefore would seem to present a serious charge. Unlike other instances¹⁴ where Plato is accused of plagiarism, we have, in this case, actual texts to compare and so we can judge for ourselves the merit of the accusation. In Homer's brief description of the soul leaving Patrocles' body we find:

As he [Patrocles] spoke the finality of death hid him and his soul flitted away from (his) body and went towards Hades mourning its fate as it abandoned strength and youth. [μιν εἰποντα τέλος θάνατοιο κάλυψε. ψυχή δ' ἐκ ῥεθέων παμένη ? ?Αἰδόσδε βεβήκει ὃν πότμον γοόωσα λιπούς' ἀνδρτήτα καὶ ἥβην].¹⁵

Any comparison of Plato's complex notion of the soul, its relation to the Good and Plato's lengthy discussions in several of his dialogues, such as the *Republic* and the *Phaedrus* with Homer's brief poetic text clearly exonerates Plato from any charge of literary misappropriation. Again in this instance modern judicial opinion would release Plato of the charge. Here the remarks of Learned Hand are once more apposite.

[T]here is a point in this series of abstractions [about the similarities in the plot of *Abie's Irish Rose*] where they are no longer protected, since otherwise the playwright could prevent the use of his 'ideas,' to which apart from their expression, his property has never extended.¹⁶

Thus, the level of generality in Homer's description of the soul would not be protected by our notion of copyright. Rather only the very poetic text itself (cf. "expression" above) would be protected.

One final word from our modern law courts seems appropriate both to Plato's defense and Aristophanes' charge against Eupolis. In a 1965 decision, *Lapsely v. American Institute of Certified Public Accountants*, the following was stated:

Though to constitute infringement ... of copyright there need not have been verbatim copying ... [the] alleged copy must

¹³ Quoted in K. Ziegler, *supra* note 1 (Deipnosophists, XI 507e).

¹⁴ Cf. *id* at 1971 ff.

¹⁵ *ILIAD* 16.856 ff.

¹⁶ *Nichols v. Universal Pictures Corp.*, 45 F.2d 119, 121 (2d Cir. 1930), quoted in GUNTHER, *supra* note 9, at 324.

come so near to original as to give every person seeing it the idea created by the original.¹⁷

Thus, Aristophanes was immediately reminded of Phrynichus' scene when the old woman appeared in Eupolis' play and was subsequently devoured by a whale. On the other hand, no one would immediately recognize Homer as the source of Plato's complex notion of the soul.

In conclusion, in the bulk of plagiarism charges against ancient authors made by early Christian writers, which post-dates in most cases by least five hundred years the date of the authors accused, we find displayed a certain bias aimed at discrediting pagan thought and literature. Furthermore, the grounds for the complaint do not fit modern criteria of intellectual property and copyright.

However, the earliest extant charges of literary misuse made in fifth and fourth century BCE Greece, where rivals accuse one another of literary theft, would be persuasive today to an audience familiar with modern concepts of literary property such as the MLA guidelines and modern judicial decisions.

¹⁷ 546 F. Supp. 389, 391 (D.D.C. 1965). See also 17 U.S.C. § 501 (2000).