

*Copyright Law*

"Norwich, N.Y. - It is almost a relief to find even a trivial and passing remark of THE STANDARD'S to differ with. At the most only three such have refreshed me with a sense of my own superiority of judgment. Postal savings banks (interest paying), and woman suffrage are two of these; but it is to the third that I propose a protest. I do not believe that there is any natural property in the creations of one's brains, or that a government countenances robbery that fails to enact a copyright law for the protection of foreign authors. If I publish my thought or my knowledge by shouting it on the streets or by printing and hawking it, it is no longer mine, except for the credit of it. If a government conceives it politic to encourage its wise men by granting them statutory monopolies in their writings and inventions, it is well; but justice makes no such demand; and it is difficult to see the policy of protecting the production of that which has it owns sufficient incentive in the laws of other countries. The authors cry of 'robber' seems to me as impertinent as the manufacturer's demand for protection."

"G."

The difficulty of my correspondent arises from confusions of thought, which are so common that it is worth while endeavoring to clear them up. Even the advocates of international copyright seldom put their claims upon the true ground, and, with the exception - to her honor! - of the republic of Mexico, which gives perpetual copyright, the copyright laws of all civilized countries, like our own

domestic copyright law, seem to treat the right of the author to control the publication of his book as though it rested upon the same ground and was of the same nature as the patents granted for invention. The constitution of the United States itself does this in declaring that "the congress shall have power to promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

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Nevertheless, though superficially alike, there is an essential difference between the patent for an invention and the copyright for a book. The one, which gives a right of property in the use of a device or process - that is to say, in an idea - rests on no natural right, but can only be upheld as a matter of policy. The other gives no property in ideas. It merely recognizes the right of property in a particular form, itself a product of labor, in which ideas are made tangible; a right which, irrespective of questions of policy, is a natural right - resting on the same ground as the right of the fisherman to the fish he catches, of the farmer to the crop he raises, of the builder to the house he constructs.

There has reached me by the last English mail a little book which I am glad to see. It is a text book on Political Economy by Professor J.E.Symes of University college, Nottingham, published by Rivintons of London. I am exceedingly glad to see it, for it is to me one of the indications that certain great truths which I have striven to popularize are nearing the last of the three stages into which some one, whose name I now forget divided the progress of a

great truth:

1.-It is ridiculous and not to be considered.

2.-It is against religion and destructive to the rights of property and society.

3.-We always knew it.

In this book Professor Symes never once mentions my name nor so much as alludes to me or to any of my writings, for he judges rightly, I think, that it will be read and accepted by many who would be repelled by prejudice from anything bearing my name. Yet the essential doctrines of this book, which are put so quietly and un-aggressively that squire and parson and newspaper writer, to whom Henry George is a dangerous communist, are not likely to notice them, or understand what revolution they mean, are the economic doctrines of "Progress and Poverty," stated as if "we always knew it."

As a matter of fact, Professor Symes got these ideas from my writings - a matter he would be free enough to acknowledge were there no reason why it would be impolitic. But my American copyright gives me no power to prevent the circulation of Professor Symes's book, as a patent in an analagous case would give power to prohibit the use of an invention. Nor have I any moral right to ask it. When another sees these truths they are his as much as much as they are mine. If I discovered them it was only in the sense that one may discover the belt of Orion. They are there to be seen, and have been seen, and will be seen by many before and independently of me. All I, or any one else, can do is to point another in their direction. To really see them, he must see them for himself, with his own powers

of perception.

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Here is the general principle on which all just rights of property must rest and to which they must conform.

Man finds himself in a world which he did not make; but having in himself certain original and personal powers which enable him, not exactly to make things, for man cannot create, but, within limits that are perhaps undefinable, to make things conform to his needs and desires by bringing what he finds here into form and relation. As a matter of abstract justice it is evident that the right of individual ownership cannot attach to what was here before man and independent of man, to what individuals did not make and cannot make; but that it does attach to things produced - i.e. brought forth - by human exertion. This is the true basis of the rights of property. It rests in the last analysis upon the right of the human being to himself, to the use of his own powers and to the benefit of his own exertions. What a man makes, as we say - what, to speak more properly, he produces or brings forth - we all naturally recognize as his. He may pass this right by gift or sale so that it will in full force rest in another. But he cannot justly be deprived of it, save under those conditions in which all individual rights may disappear under pressure of general exigency. In other words, the moral and natural right of property is derived from labor. So clear is this that when we find men attempting to defend conventional rights of property in things not produced by labor we invariably find them confusing the species of things and adducing arguments which are in reality based on that right of property which springs from labor.

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Thus while there does exist to things produced by human labor a clear and exclusive right of individual ownership - a right antecedent to and independent of human law, it is evident that no one can claim as his own what no man produced. Natural laws indeed require that we should recognize a right of individual possession or occupancy of portions of the earth's surface, for this is necessary to the security of the right of property in the proceeds of labor, and can be recognized without injury to common rights. But no man can justly claim ownership of the earth itself, or of the elements about the earth and beyond the earth. Nor can any man justly claim ownership in natural laws; nor in any of the relations which may be perceived by the human mind; nor in any of the potentialities which nature holds for it. These are of the heritage with which all men are endowed by their Creator - or, if there are any who do not like that phrase, of that system of things which we call nature, and in which we find ourselves. Ownership comes from production. It cannot come from discovery. Discovery can give no right of ownership. Islands, continents, stars, natural laws and relations, new ways of doing things, or the possibility of doing new things, may be discovered, and this discovery may be the result of labor. But no man can discover anything which, so to speak, was not put there to be discovered, and which some one else might not in time have discovered. If he finds it, it was not lost. It, or its potentiality, existed before he came. It was there to be found.

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It is evidently the perception of this truth, that discovery

can give no just claim to ownership, that leads my correspondent to think there can be no basis in justice for ownership in literary productions, and gives rise to the common assertion in this connection that there can be no property in productions of the brain. He is right enough as to the principle, but he is confused in its application. He confounds the copyright with the patent, just as the framers of our constitution seem to have confounded it, and as it is generally confounded, and proceeds on the supposition that it involves the right of property in ideas.

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In this he is clearly mistaken. The exclusive privilege given by a patent - the exclusive privilege of making a certain kind of machine or using a certain device, or applying a certain combination for a certain purpose, does not confer property in an idea, a perception, or the use of a natural law. It prevents all but the grantee from making that kind of a machine or using that kind of a device, or applying that kind of a combination. But the recognition of the exclusive right of the author to reprint his book gives no such exclusive privileges. It prevents no one from writing that kind of a book. It prevents no one from using either his own ideas or even the ideas he may find in the copyrighted book. It recognizes a right of property, not in any facts stated, not in any thoughts expressed, not in any discovery pointed out, not in any moral drawn; but merely in the book itself - in that particular arrangement of words which gives it identity as a particular piece of work clearly distinguishable from works of other authors, or even from another work on the same subject written by the same author - should he try to do the same thing twice.

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"If I publish my thought or my knowledge by shouting it on the streets or by printing or hawking it, it is no longer mine, except for the credit of it," says my correspondent. This is quite true in the sense that I am no longer the exclusive possessor of it - as I might possibly have imagined myself to be before. But in the sense that publication takes away any right of ownership, it is not the full truth. To a thought or perception there is no right of ownership either before or after publication. Every one has a moral right to think what I think or perceive what I perceive. He may do it independently of me or he may do it on the hint from me. But in neither case have I any moral right to forbid him. Nor does a copyright give me any power to forbid him.

No matter how hard may have been the mental process by which I arrive at certain conclusions, or how laboriously I may have discovered certain facts, as soon as I publish them - and it is only when I do publish them that the copyright laws apply - any one may appropriate them and use them as his own. All that the copyright law gives me is the right of property in the particular book - in the particular and identical form in which the ideas set forth in my book are expressed.

This form is the result of my labor in the same sense and to the same extent that a coat or a house is the result of labor. And for the same reason there attaches to it of natural right the same exclusive right of ownership.

In the production of any material thing - a machine, for instance - there are two separable parts - the abstract idea or principle, which may be usually expressed by drawing, by writing or by

word of mouth; and the concrete form of the particular machine itself, which is produced by bringing together in certain relations, certain quantities and qualities of matter, such as wood, steel, brass, brick, rubber, cloth, etc. There are two modes in which labor goes to the making of the machine - the one in ascertaining the principle on which such machines can be made to work; the other in obtaining from their natural reservoirs and bringing together and fashioning into shape the quantities and qualities of matter which in their combination constitute the concrete machine. In the first mode, labor is expended in discovery. In the second mode, it is expended in production. The work of discovery may be done once for all, as in the case of the discovery in prehistoric time of the principle or idea of the wheelbarrow. But the work of production is required afresh in the case of each particular thing. No matter how many thousand millions of wheelbarrows have been produced, it requires fresh labor of production to make another one.

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Now the expenditure of labor in the invention or discovery of the idea of a machine gives no natural right of ownership in the idea. Not only is the potentiality of such a machine a part of the common heritage to which there can be in justice no exclusive claim, but each invention or discovery is usually - perhaps, except in cases of sheer accident, it may be said invariably - only the last step in a series which began with the discovery of fire or the invention of the stone ax. And not only can we confidently say in the case of any device that supplies a need, and is therefore valuable, that if one person had not discovered it, others would have done so; but as a matter of



fact it usually appears in such cases that a number of persons<sup>one</sup> have been contemporaneously working toward the same end.

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(is in the use that can be made of the discovery)

The natural reward of labor expended in discovery<sup>^</sup> without interference with the right of any one else to use it. But to this natural reward our patent laws endeavor to add an artificial reward. Although the effect of giving to the discoverers of useful devices or processes an absolute right to their exclusive use would be to burden all industry with most grievous monopolies, and to greatly retard, it not put a stop to, further inventions; yet the theory of our patent laws is that we can stimulate discoveries by giving a modified right of ownership in their use for a term of years. In this we seek by special laws to give a special reward to labor expended in discovery, which does not belong to it of natural right, and is of the nature of a bounty.

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But as for labor expended in the second of these modes - in the production of the machine by the bringing together in certain relations of certain quantities and qualities of matter, we need no special laws to reward that. Absolute ownership attaches to the results of such labor, not by special law, but by common law. And if all human laws were abolished, men would still hold that whether it were a wheelbarrow or a phonograph, the concrete thing belonged to the man who produced it. And this, not for a term of years, but in perpetuity. It would pass at his death to his heirs or those to whom he devised it.

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Now a book - I do not mean the printed and bound volume which is the result of the labor of printers, bookbinders, and subsidiary industries; but the succession of words which is the result of the labor of the author - if not a material thing, is quite as tangible a thing as a machine. And in the labor that goes to its production there are the same two separable parts. There is what I have called the "labor of discovery," which goes to the idea of the book, and as to which, as in the case of the inventor of the machine, the author must draw on those, who have gone before, for a perfectly original literary man would have to begin by inventing letters. There is also the labor of production - labor of essentially the same kind, though it deals not with matter, but with immaterial things, as that which in the case of a machine is expended in bringing wood, steel, brass, etc., into certain proportions and relations. It is this labor of production, which results in a tangible identity, that gives ownership to the author as a matter of natural right. And it is this right of ownership, not in ideas, but in the tangible result of labor expended in production, that copyright secures.

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I presume that one of the principal reasons why the real nature and grounds of property in literary productions is so little appreciated, is that what I have called the "labor of production" is little understood except by writers. The common idea is that the man who writes a book has only to decide as to what he wants to say and then sit down and write it out. Nothing could be more fallacious. Over and above any "labor or discovery" expended in thinking out what to

say, is the "labor of production" expended on how to say it. Even the most carelessly written works require some of this. But carefully written works, and especially the works on thoughtful subjects that read as though they had flowed from the author's pen as easily and as naturally as water flows down hill, require in the mere labor of production, in the mere choice of words, arrangement of sentences and sequence of presentation, an amount and intensity of exertion that one who has not attempted it can hardly appreciate. If any one thinks that to write a book all that is necessary is to get the ideas and then write it out, let him sit down and try. If he has critical ability to judge of what he is doing, he will soon find himself involved in labor to which digging wells or breaking stones will seem easy; and will ere long appreciate the good sense of the man who apologized for the length of a letter on the ground that he did not have time to write a short one. Now, this labor of literary production is essentially the same kind of labor as that which produces houses, crops, clothing, ships, or any of the material things which man makes. It requires the exertion of the same will power; it involves the exhaustion of the same nervous energy. Mental work is no metaphorical phrase. Any one who has held himself to it knows that it is labor as truly as is physical work.

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If my correspondent will take over the matter I am sure that he will see that it is on this firm basis that the right of property in literary productions rests, and that its recognition, instead of being like that system of spoliation called protection, an impairment and denial of natural right, is but the securing to the author of the

natural reward of his labor. He will see that in permitting the works of foreign authors to be republished here without their permission we are really countenancing robbery, as truly as if we permitted our own people to despoil foreigners of their watches or their clothes. And if he has any doubt that in this, as in other things, "honesty is the best policy," he will see, if he chooses to trace it, the cramping and degrading effects of this legalization of robbery upon our national literature and national thought.

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And this also is worth considering. The right to use an author's work without his consent, involves the right to use any part of it - to mutilate and garble. Many instances of this have occurred to foreign writers on this side of the water, and to American writers on that. Not long since a friend of mine, a newspaper man, met another newspaper man.

"What are you doing?" said my friend, "and why do you look so mournful?"

"I am editing Dickens, and I don't like the work."

"Editing Dickens! what do you mean?"

"I am editing Dickens for the ---- Library. It's my business to cut him down, so that every volume will come into 350 pages."

Signed Henry George.

June 23, 1888.