



Research Article

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Authors, Inventors and Entrepreneurs: Intellectual Property and Actors of Extraction¹

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Abstract: The ideas and ideals of authorship and the discourse on property rights that emerged in parallel since the 18th century have come to form the bedrock of copyright law. Critical copyright scholars argue that this construction of authorship and ownership contributes to individualisation and privatisation of artistic works that disregards the collective aspects of creativity. It also embodies a certain kind of authorial character—or “author function” as Michel Foucault puts it—imbued with racial and gendered powers and privileges. While the gendered and racialised biases of intellectual property rights are well documented within copyright research, the commodification of ideas and cultural expressions relies on individualisation of creativity that is significant not only to the cultural economy but also to the 20th-century notion of the entrepreneur as the protagonist of capitalism. This article relates the idea of the entrepreneur to the deconstruction of authorship that was initiated by Foucault and Roland Barthes in the late 1960s, and the critique of an author-centred IPR regime developed by law scholars in the 1990s. It asks if and how the deconstruction of the author as a cultural and ideological persona that underpins the privatisation of immaterial resources can help us understand the construction and function of the entrepreneur in extractive capitalism.

Keywords: Intellectual property rights, gender, (post)colonialism

The Death of the Author

The Author is a modern figure, a product of our society insofar as, emerging from the Middle Ages with English empiricism, French rationalism and the personal faith of the Reformation, it discovered the prestige of the individual It is thus logical that in literature it should be this positivism, the epitome and culmination of capitalist ideology, which has attached the greatest importance to the “person” of the author (Barthes 143).

In his essay “The Death of the Author” from 1968, Roland Barthes instigated the deconstruction of authorship as a myth of modernity. The following year Michel Foucault published a text on the same topic, aptly entitled “What is an Author?” Foucault’s answer to his own question was, in short, that the author is a function of the text: it is not an actor that precedes the text but a persona that we construct when we categorise texts and draw conclusions about the individuals to which they have been attributed. The author may be a construction, but it is a productive construction, in the sense that it affects how the text can be interpreted and circulated. The author function is “a certain functional principle by which, in our culture, one limits, excludes and chooses; in short, by which one impedes the free circulation, the free manipulation, the free composition, decomposition and recomposition of fiction” (221).

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Both Barthes and Foucault approached the author as a historically and culturally situated figure that emerged at a certain point in time and grew out of specific conditions. As Foucault puts it in the opening of “What is an Author?”: “The coming into being of the notion of ‘author’ constitutes the privileged moment of individualization in the history of ideas, knowledge, literature, philosophy and the sciences” (205). Foucault makes no claims to analyse this moment more closely; instead, he points to it as a starting point for further studies, arguing that “it would be worth examining how the author became individualized in a culture like ours” (205).

While neither Foucault nor Barthes explicitly addresses copyright law, their deconstruction of authorship cuts to the heart of intellectual property rights (IPR). And although they are surprisingly absent in studies of copyright, Foucault’s call to examine the creation of the author function has been put into practice by a large body of critical copyright scholarship that has emerged since the 1980s to question the relation between the ideology of authorship and the construction of copyright (c.f. Craig, *Copyright, Communication and Culture: Towards a Relational Theory of Copyright Law*; Fredriksson, “Review of *A Critical Guide to Intellectual Property*”).

As Barthes suggests, the author is both a cultural and an ideological actor, and it plays a part not only in the development of modern aesthetics but also in the evolution of capitalism. Consequently, this article will analyse how the author as an ideological character prefigures the construction and function of the entrepreneur in contemporary capitalism. The article largely takes a synthetic approach in the sense that it relies on an overview and critical analysis of a wide range of existing research on the formation of appropriative authorship—mostly in copyright but also in patent law. The overview is however also illustrated through a few short historical cases that adds an empirical perspective to the theories. Most importantly, the article contributes new knowledge by relating the critical discussion of IPR to the construction of the modern entrepreneur in order to explore how the author as a historically grounded proprietor of culture can give a richer perspective on the role of the entrepreneur in extractive capitalism.

The Birth of the Owner

The idea of authorship, as we know it today, emerged at a certain point in history, for particular reasons. Foucault sees the birth of the author as a way to impose control: a tool to regulate the meaning and circulation of the text. Barthes, on the other hand, discusses authorship as a matter of appropriation: of attributing meaning, which essentially arises out of collective communication processes, to a single individual origin. As the history of copyright tells us, these two factors are connected.

United Kingdom’s copyright Act Statute of Anne of 1709 is usually mentioned as the first modern copyright law. Previous to that moment, rights to literary works had existed in the form of literary privileges, where the state endowed certain printers exclusive rights to publish certain works. In England, these privileges were administrated by “The Stationer’s Company,” an association of printers, publishers and book traders who allotted the privileges among its members. This arrangement was to mutual benefit for the state and the publishers: in exchange for a monopoly on the English book trade, the Stationers Company helped the state to manage the book market and enforce censorship (Patterson; Rose).

Since these privileges were not only exclusive but also indefinite, in the sense that they never expired, they could act as extremely valuable investments. Consequently, the members of the Stationers Company traded with privileges, which soon resulted in a concentration of privileges into the hands of a few successful and wealthy stationers who had amassed the rights to large parts of England’s literary heritage (Feather; Patterson). The Stationers Company was criticised for increasing the book prices and profiting from the work of the writers (Feather). The Statute of Anne was partly an attempt to address this problem, and it challenged the Stationers’ dominance in two important ways. First, it defined the author as the original owner of a work s/he had created, and second, it limited the terms of protection to 14 years after the work was published, with possibilities for an extension as long as the author was alive (Patterson; Rose). Making the author the default owner of the text provided a strategic alternative to the literary privileges. The Stationers Company often argued that literary privileges served the interest of the authors by giving them a stable livelihood; by

granting rights to the authors themselves, the legislators could undermine that argument (Patterson; Rose). This, however, did not pose a significant problem for the Stationers Company since its members could still buy the rights from the authors who were often economically dependent on their publishers. The limited terms of protection, however, were more problematic, as they meant that rights to literary works lost their value as commodities when they could not be traded and sustained forever (Patterson; Rose).

As copyright terms began to expire, the Stationers Company attempted to reassert their old privileges in a new guise by claiming to the proprietary rights of the authors, now drawing on the teachings of John Locke. In *Two Treatises of Government* from 1690, Locke famously formulated his labour theory of property which defined property as the product of an individual's labour:

every man has a “property” in his own “person”. This nobody has any right to but himself. The “labour” of his body, and the “work” of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property (Locke 116).

The Stationers Company argued that if the right to hold property is a natural right, then the work of art is the author's property with which he [sic]¹ can do whatever he wants. This not only means that the author is fully entitled to sell that property to a publisher, but it also means that the state cannot limit the terms of protection. The literary property should, just like any other kind of property, last forever (Rose). It is telling that it was the publishers, and not the authors, who made claims to the rights of authors. The authors themselves were generally satisfied with 14-year copyright protection which gave them sufficient protection since it could be continuously extended throughout their own lifetime (Patterson; Rose).

However, parallel to the discourse of the author as an owner emerged a discourse of the author as an autonomous creator. While the pre-romantic author had been regarded as an intellectual craftsman, the romanticists minimised the elements of craftsmanship and defined aesthetic creativity as an expression of the author's personality. When the author was elevated to a genius who created art from his mere imagination, the work of literature was no longer the product of an intellectual craft but an original expression of the author's personality (Woodmansee; Kelly). In *Ideology of the Aesthetic* Terry Eagleton argues that the birth of aesthetics as an intellectual discipline in the 18th century coincided with an intensified commodification of art and literature, with the veneration for aesthetic values serving as compensation for this degradation: “it is just when the artist is becoming debased to a petty commodity producer that he or she will lay claims to transcendental genius” (65). Defining the work of art as an original expression of the author's person maintained a connection between the author and the work without reducing the author to a mere labourer (Rose).

Since both discourses, each in its own way, created a strong bond between the author and the work, they came to be mutually enforcing, and ultimately merged into an aesthetic and ideological fundament for copyright laws across Europe (Rose). The origins of copyright thus show how liberal property rights and romantic aesthetics developed simultaneously to underpin a specific form of immaterial ownership.

The Gendered Proprietor

As we have seen, copyright is not a transcendent moral idea, but a specifically modern formation produced by printing technology, marketplace economics, and the classical liberal culture of possessive individualism. It is also an institution built on intellectual quicksand: the essentially religious concept of originality, the notion that certain extraordinary beings called authors to conjure works out of thin air. (Rose 142)

As Mark Rose demonstrates, historicising the construction of authorship helps us see how ideas and ideals around property and creativity that were formulated in the 18th century have been reified into a legal and cultural order that is now taken for granted. The history of copyright adds empirical substance to Foucault's observation that “The coming into being of the notion of ‘author’ constitutes the privileged moment of

individualization in the history of ideas” (205). Furthermore, it provides a concrete example of how the author function is enforced and materialised as a legal and economic practice, to the advantage of certain actors and the disadvantage of others.

The discourses around creativity and property that emerged in the 18th century were blind to these inequalities. More recently, the liberal grounding of property rights in a very specific understanding of personhood has been criticised for being both gender and racially exclusive. In Locke’s days, the rights of personhood were still the uncontested privilege of white men while colonized subjects were usually dispossessed, and sometimes even turned into possessions (Schillings). While race was absent from Locke’s discourse, the gender exclusivity is explicit in his terminology, and his constant use of the term “Man” is not so much a carelessly chosen metonymy for humankind as a concrete gendering of the property holder.

These were not only philosophical questions but also had actual legal and material consequences. Even though American slavery was finally abolished in the 1860s, racial barriers to full citizenship persisted in America as well as in the European colonies until the nineteen-hundreds, and most Western countries did not allow women full property rights until late 19th and early 20th century. The lack of fundamental civil and proprietary rights also had consequences for how copyright could be enforced. When Harriet Beecher Stowe in 1853 turned to the courts to stop a pirate edition of *Uncle Tom’s Cabin*, she had to rely on her husband to represent her: although she was acknowledged as the legitimate author of the work under the American copyright act, her gender disqualified her from appearing in court as a property holder and an independent legal subject (Hemmungs Wirtén, *No Trespassing; Homestead*). As Eva Hemmungs Wirtén puts it: “The author as a proprietor is analogous to the author as a free man” (Hemmungs Wirtén, *No trespassing* 19).

Ann Bartow makes a similar point when she argues that “Copyright laws are written and enforced to help certain groups of people, largely male, assert and retain control over the resources generated by creative productivity” (551). This is evident in how the law tends to acknowledge and protect forms of creativity that are traditionally male over those which are traditionally female (Bartow; Pollack; Tushnet). Although copyright doctrine insists that the legal definition of an original work is free from aesthetic and ideological judgement, the very category of “artistic works” is, according to Craig, inherently gendered. She argues that:

the distinction between “artistic work” and utilitarian works of craftsmanship represents an important boundary in the legal limits of copyright protection governed by a hidden aesthetics. To the extent that the arts-crafts boundary disproportionately excluded women from public recognition in the visual arts, copyright’s boundaries compounded this exclusion by withholding the benefits of legal protection (“Feminist Aesthetics and Copyright Law: Genius, Value, and Gendered Visions of the Creative Self” 284).

The proprietary author—or the “author-owner” as Craig calls it—is thus based on a traditional liberal view of the individual as autonomous, self-sustained and in full possession of his own person and labour. This presumes a privileged individual: an upper or middle-class man who can disregard the women and servants whose unacknowledged labour keeps him alive and lets him assume that his achievements and privileges are entirely his own doing (c.f. Marcal). If liberalism’s understanding of personhood is based on a certain construction of the free individual that excludes those who do not meet that model, then consequently, “copyright’s version of the author cannot accommodate—and so excludes or silences—those people whose communicative activities do not fit within the individualized and originative account of authorship” (Craig, “Symposium: Reconstructing the Author-Self: Some feminist Lessons for Copyright Law” 236; c.f. Craig, *Copyright, Communication and Culture: Towards a Relational Theory of Copyright Law*; Meese, *Netowrked Subjects*; Meese, *Authors, Users and Pirates*).

In this liberal construction of the “author-owner,” both authorship and ownership are seen as expressing an isolated relation between the author/owner and the work/possession. This relation nevertheless has profound social implications. Craig argues that copyright has a “capacity to structure relations of communication, and also, to establish the power dynamics that will shape those relations” (52). The consequence is a copyright regime that “propertises and over protects the work of some authors while dismissing others as copiers and trespassers” (Craig, *Copyright, Communication and Culture: Towards a*

Relational Theory of Copyright Law, 26). In contrast, she calls for a “relationalist” understanding of copyright that can challenge the inherent power dynamics in the liberal understanding of authorship. James Meese describes this shift as moving away from understanding rights as embodied in autonomous individuals: “No longer do autonomous individuals, wholly separate from society, possess legal rights. Instead, legal rights are viewed as vehicles through which relationships are constructed between actors” (*Networked Subjects*, 14). A relationalist approach to copyright challenges both the (post)romantic understanding of creativity and the (post)Lockean understanding of ownership. Its approach to aesthetics corresponds to Barthes’ questioning of the author as the uncontested origin of meaning. Furthermore, it also challenges the Lockean assumption that property is a personal right emanating solely from individual labour. Instead, it shows how property is created through social relations and maintained, protected and enforced through societal institutions, such as property laws.

Many feminist scholars have argued that expansive and robust copyright laws are detrimental to the interests of women and that the liberal, patriarchal definition of authorship as an autonomous endeavour contributes to an inherently gendered inclination to attribute collectively created expression to individual authors (Bartow; Pollack). As Jessica Litman argued already in 1990, the emphasis on the individual, autonomous creator downplays the value of the public domain, or the cultural commons, as a source of the “raw material that all authors use” (966). More than 25 years later, Andrew Gilden (2016) claims that the concept of raw material has taken a more prominent role in recent copyright debate and doctrine, largely because the growing popularity of derivative works requires closer consideration of legitimate and illegitimate appropriation and the balance between protecting works of art against appropriation and promoting a vital public sphere. The concept of raw material is however potentially problematic since it implies a hierarchy, and Gilden argues: “It is impossible to identify something as raw—whether art, food, or data—without some perceived notion of the process that can move it into some higher, more refined state” (383). The capability to take credits for processing raw material into the higher state of an artistic work is largely depending on the social and cultural standing of the individual. Gilden concludes that “the built-in hierarchy between the raw and those who cook it has directly benefited only a particular subset of celebrated artists” who are more likely to get away with reappropriating existing cultural expressions than less acknowledged authors (408).

A historical example of how providers of raw materials are rendered invisible can be found in the works of the Grimm brothers. Acting in the early 19th century, Jacob and Wilhelm Grimm were inspired by the romantic fascination with a folk culture that had emerged in parallel with the veneration for the autonomous genius. Consequently, they made great efforts to collect and compile orally narrated stories that they considered representative for a popular German tradition. However, the Grimm brothers were, according to Jack Zipes, “not mere collectors” (68):

In fact, their main accomplishment in publishing their two volumes of 156 tales in 1812 and 1815 was to *create* an ideal type of literary fairy tales, one that was intended to be as close to the oral tradition as possible while incorporating stylistic, formal and substantial thematic changes to appeal to a growing middle-class audience. (68)

Although these tales were cherished as anonymous products of collective imagination, they were attributed to the Grimm brothers who emerged as their authors in place of an anonymous collective that had fed the German oral tradition. It is significant that many of the storytellers whom the Grimm brothers consulted when gathering tales for their compilations were young, middle-class women (Zipes). We can assume that these women—like most storytellers—made their own adaptations of the stories depending on the audience. In that sense, their contribution to collecting and editing the stories might not have been very different from that of the Grimm brothers. The defining difference is that these women rarely transcribed and published them and none of them embodied the author function like the Grimm brothers did. The chorus of indistinguishable voices that makes up this anonymous, collective narration thus consisted of several individual contributors who were made indistinguishable by virtue of the fact that they did not meet the norms of authorship. This reflects both a patriarchal definition of authorship and a gendered distinction between productive and reproductive work. The young women who served as sources for the

Grimm brothers were not authors but mothers, nannies and teachers, and when they told their stories, they did not produce artistic works but merely conducted the reproductive labour of raising, socialising and educating children. The Grimm brothers, on the other hand, had the authorial agency to get those stories published and acknowledged as artistic works and thus also transformed them from collective cultural heritage to authored literary texts.

Patents, Inventors and Extraction

Certain power dynamics were thus inscribed in the construction of the modern author from the outset as the autonomous creator became the protagonist in the world of arts and letters. Mario Biagioli has identified a similar change in the history of patent law where patents, throughout the 18th and 19th century, were transformed from a kind of state endowed privileges into an acknowledgement of an individual, property related, right derived from inventor's personal achievements. According to Biagioli, the first French and American Patent acts of the 1790s initiated a redefinition of the inventor from a "producer of material devices to thinker and author—the creator of the idea and the author of the specification" (1144). As with authorship, the defining characteristics of the inventor shifted from technical skills to creative capacities, and the claims to ownership were, consequently, grounded in a personal relation between the individual and the work/invention. However, in the case of patents, "the law did not reinterpret a text as being authorial but rather mandated the production of a new kind of text and, by doing so, constructed the inventor as the author" (Biagioli 1144). The new text that Biagioli refers to here is the patent specification which came to be the ground for granting patents. With the emergence of the modern patent system, then, "the idea of the invention did not emerge through a process of abstraction but through one of inscription—not by thinking it up but by writing it down" (1145).

This emphasis on inscription to achieve recognition as an inventor has implications for how patent law privileges certain actors over others. James Boyle describes the concept of authorship— both in copyright and patent law—as "a gate through which one must pass in order to acquire intellectual property rights," and concludes that:

At the moment this is a gate that tends disproportionately to favour the developed countries' contribution to world science and culture. Curare, batik, myths and the dance "lambada" flow out of developing countries, unprotected by intellectual property rights, while Prozac, Levis, Grisham and the movie *Lambada!* flow in— protected by a suit of intellectual property laws, which are in turn backed by the threat of trade sanctions (*Shamans, Software and Spleens* 125).

Many have criticised how the global IP regime limits access to medicine, crops and other crucial resources in the third world while it contributes to the appropriation and privatisation of traditional knowledge and the patenting of genetic resources from the global South. The power dynamics of the patent specification is particularly important when it comes to such exploitative patent practices, sometimes described as "bioprospecting" or biopiracy": practices where Western or multinational corporations forage the forests of biodiversity-rich developing countries to appropriate and commercialize biological substances that have been known, developed and deployed for centuries by Indigenous communities (Halbert; Boyle, *Shamans, Software and Spleens*; Coombe; Drahos & Braithwaite; Fredriksson, "From Biopiracy to Bioprospecting: Negotiating the Limits of Propertization"). Daniel Robinson describes biopiracy as "a dramatic heightening of past appropriations and colonizations" (1). Bringing back useful biological substances from the colonies has a long history (c.f. Hemmungs Wirtén, *Terms of Use*; Schiebinger), but new technologies and the expansion of intellectual property rights, and particularly of patents, add a new dimension to biopiracy as it makes a wider range of genetic resources subject to extraction, exploitation and appropriation.

Biopiracy relates directly to neo-colonialist modes of exploitation enforced through international trade institutions and agreements, particularly the agreement on Trade Related Aspects of Intellectual Property (TRIPS), introduced as one of the three fundamental agreements of the World Trade Organization in 1994. As the TRIPS agreement requires all WTO member countries to adopt certain minimum standards for IPR, it has been criticised as an instrument for the developed countries to impose their IPR agenda on the

developing world (Drahos & Braithwaite). It is indicative of its priorities that the TRIPS agreement protects patents on plants and genetic material while it disregards traditional knowledge and traditional cultural expressions (Boateng).

According to the criteria of Western IP law, traditional knowledge and Indigenous use of medical plants are considered to be neither new nor innovative and thus not fit for protection as IP. Yet when Western companies take those substances to the lab and turn them into pharmaceutical drugs, they qualify as new inventions. Biopiracy thus exemplifies the power dynamics hidden in a legal system in which patents are granted not primarily to those who originally held the knowledge but to those who have the legal skills to claim it in a patent specification. The patent specification thus becomes a mechanism that denies traditional knowledge holders rights to that knowledge and passes it on to other actors who can redefine that knowledge to meet the requirements of the patent law (Oguamanam). Boatema Boateng sums up the exploitative logic of biopiracy:

Countries and groups that seek protection for these kinds of knowledge are also countries and groups that have been historically disadvantaged internationally and whose goods and knowledges have long had the status of raw material. Even where such knowledge is produced in line with Western conventions, it is still often treated as raw material (Boateng 157).

When traditional knowledge, as Boateng puts it, is treated as raw material it exposes a logic of extractivism that is central to the liberal understanding of property creation but also closely connected to colonial exploitation. This brings us back to the famous words of John Locke, but also evokes the sentences that precede and follow the most recapitulated part of the quote:

Though the earth and all inferior creatures are common to all men, yet every man has a “property” in his own “person.” This nobody has any right to but himself. The “labour” of his body, and the “work” of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state Nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men (116, my italics).

Here Locke acknowledges that the earth is common to all but that the property that arises when labour is mixed with natural resources is excluded from that commons. Thereby he defines property not only as the product of labour but also as the product of extraction. While this quote is usually regarded as a defence of the individual’s right to his own person and property, it is also equally a legitimisation of his right to extract and appropriate resources from the common state of “Nature.” To Locke, the common state of nature referred to tangible environmental resources. Resources that would be increasingly exploited and privatized through the industrial revolution and the reorganization of agricultural production leading up to the so-called enclosure of the commons: an extended process where land that had freely available for collectively use, for instance through foraging and small game hunting, was gradually fenced off by private landowners (Thompson). With the recent growth of the information economy, culture and other immaterial resources are increasingly subjected to similar forms of enclosure. James Boyle describes this as a “second enclosure movement” where intellectual property rights are used to privatise a growing range of previously common resources, from information and cultural heritage to traditional knowledge and genetic material (Boyle, “The Second Enclosure Movement and the Construction of the Public Domain”).

Michael Hardt and Antonio Negri use a similar metaphor when they discuss the ambiguous and intimate relation between capitalism and the commons, where capitalism is inherently reliant on the commons to produce new commodifiable resources and ensure the constant growth of the market. This applies both to common natural resources and to intellectual or “artificial” commons which Hardt defines as “the results of human labour and creativity, such as ideas, language, affects, and so forth” (3). The information commons is not a static pool of resources that is being tapped and exhausted by capitalism. It is, rather, a sphere of communication and social interaction that produces forms of culture and information that are essentially social but potentially commodifiable.

The Cult of the Entrepreneur

Drawing on Hardt and Negri, Campbell Jones and Anna-Maria Murtola argue that production, in an information economy, has become a “production in common” in the sense that production is increasingly conducted cooperatively, drawing on commonly created social and cultural values and knowledge, and creating new commonly shared cultural and communicative experiences and resources (Jones & Murtola 641). Just like Barthes, they see meaning and culture as collectively created but individually appropriated when capitalism calls for these products to be extracted, commodified and privatised. Jones and Murtola look to the entrepreneur as the “key ideological operator” to perform this extraction of the commons (637):

Entrepreneurship is a matter of dispossession or expropriation of value produced in common, of inserting oneself into the flows of capital and labour and then systematically denying one’s place in that network so as to claim that one has created by oneself, that one or one’s corporation has been the source and locus of creation. In doing so, the entrepreneur and the society that believes in the myth of entrepreneurship denies the necessary history of collective social production that is antecedent to and coincident with entrepreneurship (Jones & Murtola 641).

Land and information commons might seem worlds apart, but focusing on the logics of extractivism rather than on the particular resource at stake helps us see the commonalities between different actors of extraction, such as the author formulated in copyright, the inventor constructed through patent law, and the entrepreneur that emerged as a hero of modern capitalism in the 20th century. Like the author, the entrepreneur is also, as Jones and Murtola argue, an ideologically constructed character, and while it may have different historical roots to the author, the two characters also have significant similarities. The idea of the modern entrepreneur was largely spawned by the Austrian economist Joseph Schumpeter in the 1940s. Schumpeter argued that one of the distinctive features of entrepreneurs is that they do not adapt to given conditions but strive to find creative ways of changing or circumventing those conditions. In this regard, the entrepreneur contributes to what Schumpeter calls “Creative Destruction”. In his 1942 book *Capitalism Socialism and Democracy* Schumpeter argued that capitalism develops through a “process of industrial mutation that incessantly revolutionizes the economic structure from within, incessantly destroying the old one, incessantly creating a new one” (Schumpeter, *Capitalism, Socialism and Democracy*, 83; c.f. Schumpeter, *Change and the Entrepreneur*). Capitalism thus evolves through a continuous progression where old technologies, practices and structures are discarded and replaced by new innovations, sometimes with disastrous short-term consequences when existing industries and trades are made redundant and wiped out. The entrepreneur is the protagonist of this process of death and renewal, acting as what Jones and Spicer describe as “the irrational destroyer of existing combinations of economic orders” (50).

This vision of the entrepreneur as an avant-gardist who challenges existing structures, and established practices and drives the creative destruction necessary for economic progress, is still common in contemporary management discourses. However, the entrepreneur also has striking similarities to the romantic author of the late 18th century, propagated by English romanticists such as Edward Young. In his essay *Conjectures on Original Composition*, Young argued for a new understanding of authorship, seeing the author as genius who is no longer subjected to the aesthetic rules laid down by classicism but follows his own creative impulses: “For Rules, like Crutches, are a needful Aid to the Lame, tho’ an Impediment to the Strong. A Homer casts them away ... by native force of mind” (§ 107-108). By making rules instead of following them, the romantic genius provokes paradigmatic changes in the world of art and aesthetics that are analogue to the innovations in business practices attributed to the most idolised entrepreneurs of the 20th century. The very rhetoric of creative destruction also recalls Goethe’s maxim “Stirb un Werde”—“death and becoming”—which became a credo for much German romanticism, seeing the world evolving through a constant process of destruction and resurrection (Goethe). Even in the DNA of the modern entrepreneur, we find traces of the same romantic aesthetics that gave rise to the autonomous author which underpinned copyright law in the 18th and 19th century.

More than 40 years after Schumpeter launched his view on entrepreneurship, one of his followers, the economist and management guru Peter Drucker, published his book *Innovation and Entrepreneurship*. Here Drucker defined entrepreneurship as “the act that endows resources with a new capacity to create wealth”:

Entrepreneurs innovate. Innovation is the specific instrument of entrepreneurship. It is the act that endows resources with a new capacity to create wealth. Innovation, indeed, creates a resource. There is no such thing as a “resource” until man [sic] finds a use for something in nature and thus endows it with economic value. Until then, every plant is a weed and every mineral just another rock (24).

Drucker’s words recall the Lockean proprietor, but it identifies not labour but knowledge as the grounds for the individual’s right to extract and appropriate the raw materials around him. To be fair, Drucker’s definition of entrepreneurship and innovations does not focus exclusively on the use of natural resources, but if we are to apply it to that sphere, then entrepreneurial innovation is a matter of using knowledge to turn nature into a resource, or—in a capitalist context—into a commodity.

Sources and Extractors—A New Divide with an Old Legacy

In a sense, “endowing resources with a new capacity to create wealth” is exactly what biopiracy does when it finds commercial applications for traditional knowledge that has hitherto only carried values within a local community. However, by exploiting the resource’s value in a global capitalist system, the act of extraction risks denying the value that the resource held within the community from where it originated (Fredriksson, “From Biopiracy to Bioprospecting: Negotiating the Limits of Propertization”; Robinson, Drozdowski & Kiddell). Darrell A. Posey argues that biopiracy reenacts a colonial logic of dispossession as: “existing values recognized by local communities are ignored and ... the knowledge and managed resources of Indigenous and traditional people are ascribed no value and assumed to be free for the taking. This has been called intellectual *terra nullius*” (11).

The legal doctrine of *Terra Nullius* was a cornerstone in European colonisation, indicating that a state could lay claims to any piece of land that was not the proclaimed territory of another sovereign state (Drahos). To the extent that the state was defined according to European standards, this meant that the “new” territories that European explorers “found” became the property of the colonial states. The fact that this land was in most cases already inhabited was insignificant as the original inhabitants were not acknowledged as legal subjects. So by connecting biopiracy to *terra nullius*, Posey points to their analogous logic, where original knowledge holders are dispossessed because their rights are not acknowledged by Western law.

In colonial law, the foreign land becomes a raw material that can be found, extracted and appropriated, echoing the way natural resources are appropriated by the Lockean proprietor, the Druckerian innovator or the biopirate. That raw materials are taken for granted—that everything that is not owned by someone is assumed to be there for the taking—sums up the problems with Locke’s property theory, which persists in modern understandings of entrepreneurship as well as in biopiratical practices. And the capacity to claim to be an innovator is essentially connected to social hierarchies: as Gilden puts it (referencing Madhavi Sunder): “rich people’s knowledge becomes intellectual property and poor people’s knowledge becomes raw material” (385). The concept of raw material is thus a way to render certain users of information and natural resources invisible, in order to allow others to make proprietary claims.

This brings us back to James Boyle’s critique of the concept of authorship as a discriminating gateway to ownership. In his 1997 book *Shamans, Software and Spleens: Law and the Construction of the Information Society*, Boyle discusses how the expansion of intellectual property rights privatizes a wide range of resources and places those resources in the hands of a smaller group of intellectual property owners. Drawing on Marx, Boyle concludes that in “a society where one group compiles, modifies, redesigns, and commodifies information gleaned in part from the genes, consumption patterns, and culture of the rest of the population” the crucial class distinction is that between “manipulators of information and ‘sources’” (177).

While the patenting of genes seems distant from the apparently esoteric discussion of the death of the author that opened this article, the logic of appropriation that Boyle criticises is reminiscent of Barthes’ deconstruction of authorship as an appropriation of collectively produced meaning. The history and politics of intellectual property rights provide concrete examples of how this dispossession and expropriation can

be enacted in relation to cultural works and traditional knowledge. More generally, it also shows how an aesthetic discourse on authorship has conditioned us to see and accept autonomous individuals as the source of creativity and innovation that in various ways draw on a pool of collective knowledge. As the information economy subjects an ever-wider range of resources to the forces of commodification, the author function grows in magnitude. Although its shape might shift, casting off the cloak of the romantic genius and putting on that of an inventor or entrepreneur, its importance for a continuous privatisation and commodification of the commons persists.

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ⁱ Since this article discusses how the stereotypical author and proprietor is constructed as a male actor, the author and proprietor will consistently be addressed as "he." This solely refers to the culturally and ideologically constructed, and gendered, authorial identity that I aim to analyse.