

Literary Copyright

Charles Dudley Warner

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This is the first public meeting of the National Institute of Arts and Letters. The original members were selected by an invitation from the American Social Science Association, which acted under the power of its charter from the Congress of the United States. The members thus selected, who joined the Social Science Association, were given the alternative of organizing as an independent institute or as a branch of the Social Science Association.

At the annual meeting of the Social Science Association on September 4, 1899, at Saratoga Springs, the members of the Institute voted to organize independently. They formally adopted the revised constitution, which had been agreed upon at the first meeting, in New York in the preceding January, and elected officers as prescribed by the constitution.

The object is declared to be the advancement of art and literature, and the qualification shall be notable achievements in art or letters. The number of active members will probably be ultimately fixed at one hundred. The society may elect honorary and associate members without limit. By the terms of agreement between the American Social Science Association and the National Institute, the members of each are 'ipso facto' associate members of the other.

It is believed that the advancement of art and literature in this country will be promoted by the organization of the producers of literature and art. This is in strict analogy with the action of other professions and of almost all the industries. No one doubts that literature and art are or should be leading interests in our civilization, and their dignity will be enhanced in the public estimation by a visible organization of their representatives, who are seriously determined upon raising the standards by which the work of writers and artists is judged. The association of persons having this common aim cannot but stimulate effort, soften unworthy rivalry into generous competition, and promote enthusiasm and good fellowship in their work. The mere coming together to compare views and discuss interests and tendencies and problems which concern both the workers and the great public, cannot fail to be of benefit to both.

In no other way so well as by association of this sort can be created the feeling of solidarity in our literature, and the recognition of its power. It is not expected to raise any standard of perfection, or in any way to hamper individual development, but a body of concentrated opinion may raise the standard by promoting healthful and helpful criticism, by discouraging mediocrity and meretricious smartness, by keeping alive the traditions of good literature, while it is hospitable to all discoverers of new worlds. A safe motto for any such society would be Tradition and Freedom—"Traditio et Libertas".

It is generally conceded that what literature in America needs at this moment is honest, competent, sound criticism. This is not likely to be attained by sporadic efforts, especially in a democracy of letters where the critics are not always superior to the criticised, where the man in front of the book is not always a better marksman than the man behind the book. It may not be attained even by an organization of men united upon certain standards of excellence. I do not like to use the word authority, but it is not unreasonable to suppose that the public will be influenced by a body devoted to the advancement of art and literature, whose sincerity and discernment it has learned to respect, and admission into whose ranks will, I hope, be considered a distinction to be sought for by good work. The fashion of the day is rarely the judgment of posterity. You will recall what Byron wrote to Coleridge: "I trust you do not permit yourself to be depressed by the temporary partiality of what is called 'the public' for the favorites of the moment; all experience is against the permanency of such impressions. You must have lived to see many of these pass away, and will survive many more."

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The chief concern of the National Institute is with the production of works of art and of literature, and with their distribution. In the remarks following I shall confine myself to the production and distribution of literature. In the limits of this brief address I can only in outline speak of certain tendencies and practices which are affecting this production and this distribution. The interests involved are, first, those of the author; second, those of the publisher; third, those of the public. As to all good literature, the interests of these three are identical if the relations of the three are on the proper basis. For the author, a good book is of more pecuniary value than a poor one, setting aside the question of fame; to the publisher, the right of publishing a good book is solid capital,—an established house, in the long run, makes more money on "Standards" than on "Catchpennies"; and to the public the possession of the best literature is the breath of life, as that of the bad and mediocre is moral and intellectual decadence. But in practice the interests of the three do not harmonize. The author, even supposing his efforts are stimulated by the highest aspirations for excellence and not by any commercial instinct, is compelled by his circumstances to get the best price for his production; the publisher wishes to get the utmost return for his capital and his energy; and the public wants the best going for the least money.

Consider first the author, and I mean the author, and not the mere craftsman who manufactures books for a recognized market. His sole capital is his talent. His brain may be likened to a mine, gold, silver, copper, iron, or tin, which looks like silver when new. Whatever it is, the vein of valuable ore is limited, in most cases it is slight. When it is worked out, the man is at the end of his resources. Has he expended or produced capital? I say he has produced it, and contributed to the wealth of the world, and that he is as truly entitled to the usufruct of it as the miner who takes gold or silver out of the earth. For how long? I will speak of that later on. The copyright of a book is not analogous to the patent right of an invention, which may become of universal necessity to the world. Nor should the greater share of this usufruct be absorbed by the manufacturer and publisher of the book. The publisher has a clear right to guard himself against risks, as he has the right of refusal to assume them. But there is an injustice somewhere, when for many a book, valued and even profitable to somebody, the author does not receive the price of a laborer's day wages for the time spent on it—to say nothing of the long years of its gestation.

The relation between author and publisher ought to be neither complicated nor peculiar. The author may sell his product outright, or he may sell himself by an agreement similar to that which an employee in a manufacturing establishment makes with his master to give to the establishment all his inventions. Either of these methods is fair and businesslike, though it may not be wise. A method that prevailed in the early years of this century was both fair and wise. The author agreed that the publisher should have the exclusive right to publish his book for a certain term, or to make and sell a certain number of copies. When those conditions were fulfilled, the control of the property reverted to the author. The continuance of these relations between the two depended, as it should depend, upon mutual advantage and mutual good-will. By the present common method the author makes over the use of his property to the will of the publisher. It is true that he parts with the use only of the property and not with the property itself, and the publisher in law acquires no other title, nor does he acquire any sort of interest in the future products of the author's brain. But the author loses all control of his property, and its profit to him may depend upon his continuing to make over his books to the same publisher. In this continuance he is liable to the temptation to work for a market, instead of following the free impulses of his own genius. As to any special book, the publisher is the sole judge whether to push it or to let it sink into the stagnation of unadvertised goods.

The situation is full of complications. Theoretically it is the interest of both parties to sell as many books as possible. But the author has an interest in one book, the publisher in a hundred. And it is natural and reasonable that the man who risks his money should be the judge of the policy best for his whole establishment. I cannot but think that this situation would be on a juster footing all round if the author returned to the old practice of limiting the use of his property by the publisher. I say this in full recognition of the fact that the publishers might be unwilling to make temporary investments, or to take risks. What then? Fewer books might be published. Less vanity might be gratified. Less money might be risked in experiments upon the public, and more might be made by distributing good literature. Would the public be injured? It is an idea already discredited that the world owes a living to everybody who thinks he can write, and it is a superstition already fading that capital which exploits

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literature as a trade acquires any special privileges.

The present international copyright, which primarily concerns itself with the manufacture of books, rests upon an unintelligible protective tariff basis. It should rest primarily upon an acknowledgment of the author's right of property in his own work, the same universal right that he has in any other personal property. The author's international copyright should be no more hampered by restrictions and encumbrances than his national copyright. Whatever regulations the government may make for the protection of manufactures, or trade industries, or for purposes of revenue on importations, they should not be confounded with the author's right of property. They have no business in an international copyright act, agreement, or treaty. The United States copyright for native authors contains no manufacturing restrictions. All we ask is that foreign authors shall enjoy the same privileges we have under our law, and that foreign nations shall give our authors the privileges of their local copyright laws. I do not know any American author of any standing who has ever asked or desired protection against foreign authors.

This subject is so important that I may be permitted to enlarge upon it, in order to make clear suggestions already made, and to array again arguments more or less familiar. I do this in the view of bringing before the institute work worthy of its best efforts, which if successful will entitle this body to the gratitude and respect of the country. I refer to the speedy revision of our confused and wholly inadequate American copyright laws, and later on to a readjustment of our international relations.

In the first place let me bring to your attention what is, to the vast body of authors, a subject of vital interest, which it is not too much to say has never received that treatment from authors themselves which its importance demands. I refer to the property of authors in their productions. In this brief space and time I cannot enter fully upon this great subject, but must be content to offer certain suggestions for your consideration.

The property of an author in the product of his mental labor ought to be as absolute and unlimited as his property in the product of his physical labor. It seems to me idle to say that the two kinds of labor products are so dissimilar that the ownership cannot be protected by like laws. In this age of enlightenment such a proposition is absurd. The history of copyright law seems to show that the treatment of property in brain product has been based on this erroneous idea. To steal the paper on which an author has put his brain work into visible, tangible form is in all lands a crime, larceny, but to steal the brain work is not a crime. The utmost extent to which our enlightened American legislators, at almost the end of the nineteenth century, have gone in protecting products of the brain has been to give the author power to sue in civil courts, at large expense, the offender who has taken and sold his property.

And what gross absurdity is the copyright law which limits even this poor defense of author's property to a brief term of years, after the expiration of which he or his children and heirs have no defense, no recognized property whatever in his products.

And for some inexplicable reason this term of years in which he may be said to own his property is divided into two terms, so that at the end of the first he is compelled to re-assert his ownership by renewing his copyright, or he must lose all ownership at the end of the short term.

It is manifest to all honest minds that if an author is entitled to own his work for a term of years, it is equally the duty of his government to make that ownership perpetual. He can own and protect and leave to his children and his children's children by will the manuscript paper on which he has written, and he should have equal right to leave to them that mental product which constitutes the true money value of his labor. It is unnecessary to say that the mental product is always as easy to be identified as the physical product. Its identification is absolutely certain to the intelligence of judges and juries. And it is apparent that the interests of assignees, who are commonly publishers, are equal with those of authors, in making absolute and perpetual this property in which both are dealers.

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Another consideration follows here. Why should the ownership of a bushel of wheat, a piece of silk goods, a watch, or a handkerchief in the possession of an American carried or sent to England, or brought thence to this country, be absolute and unlimited, while the ownership of his own products as an author or as a purchaser from an author is made dependent on his nationality? Why should the property of the manufacturer of cloths, carpets, satins, and any and every description of goods, be able to send his products all over the world, subject only to the tariff laws of the various countries, while the author (alone of all known producers) is forbidden to do so? The existing law of our country says to the foreign author, "You can have property in your book only if you manufacture it into salable form in this country." What would be said of the wisdom or wild folly of a law which sought to protect other American industries by forbidding the importation of all foreign manufactures?

No question of tariff protection is here involved. What duty shall be imposed upon foreign products or foreign manufactures is a question of political economy. The wrong against which authors should protest is in annexing to their terms of ownership of their property a protective tariff revision. For, be it observed, this is a subject of abstract justice, moral right, and it matters nothing whether the author be American, English, German, French, Hindoo, or Chinese,—and it is very certain that when America shall enact a simple, just, copyright law, giving to every human being the same protection of law to his property in his mental products as in the work of his hands, every civilized nation on earth will follow the noble example.

As it now stands, authors who annually produce the raw material for manufacturing purposes to an amount in value of millions, supporting vast populations of people, authors whose mental produce rivals and exceeds in commercial value many of the great staple products of our fields, are the only producers who have no distinct property in their products, who are not protected in holding on to the feeble tenure the law gives them, and whose quasi-property in their works, flimsy as it is, is limited to a few years, and cannot with certainty be handed down to their children. It will be said, it is said, that it is impossible for the author to obtain an acknowledgment of absolute right of property in his brain work. In our civilization we have not yet arrived at this state of justice. It may be so. Indeed some authors have declared that this justice would be against public policy. I trust they are sustained by the lofty thought that in this view they are rising above the petty realm of literature into the broad field of statesmanship.

But I think there will be a general agreement that in the needed revisal of our local copyright law we can attain some measure of justice. Some of the most obvious hardships can be removed. There is no reason why an author should pay for the privilege of a long life by the loss of his copyrights, and that his old age should be embittered by poverty because he cannot have the results of the labor of his vigorous years. There is no reason why if he dies young he should leave those dependent on him without support, for the public has really no more right to appropriate his book than it would have to take his house from his widow and children. His income at best is small after he has divided with the publishers.

No, there can certainly be no valid argument against extending the copyright of the author to his own lifetime, with the addition of forty or fifty years for the benefit of his heirs. I will not leave this portion of the topic without saying that a perfectly harmonious relation between authors and publishers is most earnestly to be desired, nor without the frank acknowledgment that, in literary tradition and in the present experience, many of the most noble friendships and the most generous and helpful relations have subsisted, as they ought always to subsist, between the producers and the distributors of literature, especially when the publisher has a love for literature, and the author is a reasonable being and takes pains to inform himself about the publishing business.

One aspect of the publishing business which has become increasingly prominent during the last fifteen years cannot be overlooked, for it is certain to affect seriously the production of literature as to quality, and its distribution. Capital has discovered that literature is a product out of which money can be made, in the same way that it can be made in cotton, wheat, or iron. Never before in history has so much money been invested in publishing, with the single purpose of creating and supplying the market with manufactured goods. Never before has there been such an appeal to the reading public, or such a study of its tastes, or supposed tastes, wants, likes

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and dislikes, coupled also with the same shrewd anxiety to ascertain a future demand that governs the purveyors of spring and fall styles in millinery and dressmaking. Not only the contents of the books and periodicals, but the covers, must be made to catch the fleeting fancy. Will the public next season wear its hose dotted or striped?

Another branch of this activity is the so-called syndicating of the author's products in the control of one salesman, in which good work and inferior work are coupled together at a common selling price and in common notoriety. This insures a wider distribution, but what is its effect upon the quality of literature? Is it your observation that the writer for a syndicate, on solicitation for a price or an order for a certain kind of work, produces as good quality as when he works independently, uninfluenced by the spirit of commercialism? The question is a serious one for the future of literature.

The consolidation of capital in great publishing establishments has its advantages and its disadvantages. It increases vastly the yearly output of books. The presses must be kept running, printers, papermakers, and machinists are interested in this. The maw of the press must be fed. The capital must earn its money. One advantage of this is that when new and usable material is not forthcoming, the "standards" and the best literature must be reproduced in countless editions, and the best literature is broadcast over the world at prices to suit all purses, even the leanest. The disadvantage is that products, in the eagerness of competition for a market, are accepted which are of a character to harm and not help the development of the contemporary mind in moral and intellectual strength. The public expresses its fear of this in the phrase it has invented—"the spawn of the press." The author who writes simply to supply this press, and in constant view of a market, is certain to deteriorate in his quality, nay more, as a beginner he is satisfied if he can produce something that will sell without regard to its quality. Is it extravagant to speak of a tendency to make the author merely an adjunct of the publishing house? Take as an illustration the publications in books and magazines relating to the late Spanish-American war. How many of them were ordered to meet a supposed market, and how many of them were the spontaneous and natural productions of writers who had something to say? I am not quarreling, you see, with the newspapers who do this sort of thing; I am speaking of the tendency of what we have been accustomed to call literature to take on the transient and hasty character of the newspaper.

In another respect, in method if not in quality, this literature approaches the newspaper. It is the habit of some publishing houses, not of all, let me distinctly say, to seek always notoriety, not to nurse and keep before the public mind the best that has been evolved from time to time, but to offer always something new. The year's flooring is threshed off and the floor swept to make room for a fresh batch. Effort eventually ceases for the old and approved, and is concentrated on experiments. This is like the conduct of a newspaper. It is assumed that the public must be startled all the time.

I speak of this freely because I think it as bad policy for the publisher as it is harmful to the public of readers. The same effort used to introduce a novelty will be much better remunerated by pushing the sale of an acknowledged good piece of literature.

Literature depends, like every other product bought by the people, upon advertising, and it needs much effort usually to arrest the attention of our hurrying public upon what it would most enjoy if it were brought to its knowledge.

It would not be easy to fix the limit in this vast country to the circulation of a good book if it were properly kept before the public. Day by day, year by year, new readers are coming forward with curiosity and intellectual wants. The generation that now is should not be deprived of the best in the last generation. Nay more, one publication, in any form, reaches only a comparatively small portion of the public that would be interested in it. A novel, for instance, may have a large circulation in a magazine; it may then appear in a book; it may reach other readers serially again in the columns of a newspaper; it may be offered again in all the by-ways by subscription, and yet not nearly exhaust its legitimate running power. This is not a supposition but a fact proved by trial. Nor is it to be wondered at, when we consider that we have an unequalled homogeneous population with a similar

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common-school education. In looking over publishers' lists I am constantly coming across good books out of print, which are practically unknown to this generation, and yet are more profitable, truer to life and character, more entertaining and amusing, than most of those fresh from the press month by month.

Of the effect upon the literary product of writing to order, in obedience to a merely commercial instinct, I need not enlarge to a company of authors, any more than to a company of artists I need to enlarge upon the effect of a like commercial instinct upon art.

I am aware that the evolution of literature or art in any period, in relation to the literature and art of the world, cannot be accurately judged by contemporaries and participants, nor can it be predicted. But I have great expectations of the product of both in this country, and I am sure that both will be affected by the conduct of persons now living. It is for this reason that I have spoken.