American Women Authors and Literary Property, 1822–1869

Through an exploration of women authors' engagements with copyright and married women's property laws, *American Women Authors and Literary Property, 1822–1869* revises nineteenth-century American literary history, making women's authorship and copyright law central. Using case studies of five popular fiction writers – Catharine Sedgwick, Harriet Beecher Stowe, Fanny Fern, Augusta Evans, and Mary Virginia Terhune – Homestead shows how the convergence of copyright and coverture both fostered and constrained white women's agency as authors. Women authors exploited their status as nonproprietary subjects to advantage by adapting themselves to a literary market in which unauthorized reprinting was the norm and to a copyright law that privileged readers' access to literature over authors' property rights. Homestead's inclusion of the Confederacy in this work sheds light on the centrality of copyright to nineteenth-century American nationalisms and on the strikingly different construction of author-reader relations under U.S. and Confederate copyright laws.

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Preface: "Imperfect Title"

In 1830, a Congressional committee recommended the extension of the term of copyright protection in the United States, and in its report the committee reasons, "If labor and effort in producing what before was not possessed or known will give title, then the literary man has title, perfect and absolute, and should have his reward."[1] To have "perfect title" to property is to have an ownership right that cannot be challenged. This 1830 Congressional report was one of very few during the middle years of the nineteenth century to issue such a ringing endorsement of authorial proprietorship, however. Instead, Congress adopted the logic of copyright opponents, who criticized such natural rights arguments for the expansion of copyright, arguing instead that the primary purpose of the copyright law was to serve the interests of readers and publishers. Following this logic, Congress rebuffed repeated attempts to amend the law so that authors who were not citizens or residents of the United States could claim the protection of the U.S. law for their works. Not until 60 years after the passage of the 1831 Copyright Act (extending the term of protection for American authors) did Congress pass an international copyright law at least partially recognizing by statute what the 1830 Congressional report considered natural and inevitable. Although the American "literary *man*" deserved (according to copyright advocates) a perfect title to his literary productions, his title, not recognized in other countries and devalued on the American market, remained "imperfect."

If the relationship of the claim of the literary *man* to his literary property was imperfect, then what are we to make of the relationship of literary *women* to this regime of property, especially considering the notably successful exploitation of the American literary market by American women authors in the nineteenth century? In legal decisions and in the copyright debates, judges, Congressmen, authors, and publishers drew on the discourses of paternity, commerce, and landed property to define and create the legal rights of authors under copyright, and all of these discourses brought with them their own gendered values and expectations, reinforcing the ambiguous status of women as authors. How could a woman be an author under copyright when copyright advocates claimed for the author status as or equivalent to a father, a farmer working his fields, a professional

1 House Committee on the Judiciary, *Copyright*, 21st Cong., 2nd sess., 10 Dec. 1830, H. Rep. 210, 2.

man selling his services, a tradesman selling his labor, or a businessman trading his goods in the marketplace? Such questions presuppose, however, that nineteenth-century American men who wrote had precisely the same relationship to their literary property as did fathers to their children, farmers to their fields, professional men and tradesmen to their services and labors, and merchants to their goods. Instead, when copyright advocates used these analogies, they inevitably revealed the gap between what they believed the law *should* do for authors and what it *did* do. For most of the century, copyright advocates failed in their attempts to fully invest the author with the legal rights to which they claimed authors as male citizens of the republic were entitled.

Women (and especially married women) also could not claim many of the rights of citizens. Most notably, under the common law doctrine of coverture, married women could not own property. Thus for much of the nineteenth century, both married women under coverture and authors under copyright could possess property and the fruits of their labors imperfectly or not at all. Nineteenth-century copyright advocates argued that the copyright law's failure to grant authors full proprietary status discouraged them from producing, but women authors, doubly distanced from authorial proprietorship, were not discouraged from producing, nor were their works excluded from the market. Instead, I argue, the convergence of literary property laws and married women's property laws, of copyright and coverture, was productive for the women (mostly white and middle class, and mostly married) whose successes transformed the terrain of the American literary marketplace.

Drawing on and contributing to scholarship in literary, legal, cultural, and book history and using a variety of nineteenth-century sources, I reconstruct in this book the engagements of Catharine Maria Sedgwick, Harriet Beecher Stowe, Fanny Fern, Mary Virginia Terhune, and Augusta Jane Evans with the law and with competing visions of the possibilities and limitations of American authorship articulated in the copyright debates. These case studies document women authors' efforts to expand the proprietary reach of both women and authors, but even when their efforts failed to achieve the desired results, they did not stop writing. As nonproprietary subjects, women adapted themselves to a literary market in which unauthorized reprinting was the norm, making the most of their "imperfect" proprietary status of American authorship and working astutely within the constraints imposed by a law that privileged readers' access to literature over authors' property rights.[2]

2 I adapt Meredith McGill's helpful restatement of my argument: "In her dissertation . . . Melissa Homestead argues that as nonproprietary subjects women more easily adapted themselves to unauthorized reprinting." *American Literature and the Culture of Reprinting, 1834–1853* (Philadelphia: University of Pennsylvania Press, 2003), 286n.

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A portion of Chapter 4 appeared in the *New England Quarterly* as "'Every Body Sees the Theft': Fanny Fern and Literary Proprietorship in Antebellum America," 74, no. 2 (2001): 210–31, and is reproduced with the permission of the copyright holder, *New England Quartlery*. An earlier version of Chapter 3 appeared in *Prospects: An Annual Journal of American Cultural Studies* as "'When I Can Read My Title Clear': Harriet Beecher Stowe and the *Stowe v. Thomas* Copyright Infringement Case," 27 (2002): 201–45, and is reproduced with the permission of the copyright holder, Cambridge University Press. A small snippet of Chapter 1 appeared as part of "Behind the Veil?: Sedgwick and Anonymous Publication," in *Catharine Maria Sedgwick: Critical Perspectives*, ed. Lucinda L. Damon-Bach and Victoria Clements (Boston: Northeastern University Press, 2002), 19–35, and is reproduced with the permission of the copyright holder, Northeastern University Press.

The Nineteenth-Century American Women Writers Study Group has been a crucial resource since I first attended a meeting in 1997. Our reading and discussion of women's texts and the historical and theoretical issues impinging on them have enriched and complicated my approach to this project. Particularly important was a 1999 meeting facilitated by Laura Hanft Korobkin and Elizabeth Maddock Dillon focusing on the topic of "women and property," the secondary readings for which crucially shifted my thinking on gender and property.

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When I was hired as a paralegal in the Intellectual Property Group at the Philadelphia law firm of Dechert, Price & Rhoads in 1990, I am sure that partner Glenn A. Gundersen did not intend to train me for a return to my abandoned doctoral study to become a hybrid scholar of law and literature, but he did in spite of himself. I outlasted associate Thomas H. Speranza (now of Kleinbard, Bell & Brecker), but when I began this project with a seminar paper on *Stowe v. Thomas* in 1994, he graciously took phone calls from me about such arcane matters as the distinctions between forms of legal remedies for copyright infringement.

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