

CHAPTER I

*The ancient and the modern: approaching plagiarism
 in Latin literature*

A letter in 60 BCE from Cicero to Atticus opens with a literary topic and a joke (*Att.* 2.1.1):

Kal. Iun. eunti mihi Antium et gladiatores M. Metelli cupide relinquenti venit obviam tuus puer. is mihi litteras abs te et commentarium consulatus mei Graece scriptum reddidit. in quo laetatus sum me aliquanto ante de isdem rebus Graece item scriptum librum L. Cossinio ad te perferendum dedisse; nam si ego tuum ante legissem, furatum me abs te esse diceres.

On the Kalends of June: Your boy met me as I was going to Antium, eager to leave the gladiators of Marcus Metellus behind me. He gave me a letter from you and your sketch in Greek of my consulship. When I read it, I was happy that I had given my piece, on the same topic and also written in Greek, to Lucius Cossinius to take to you. For if I had read yours first, you would be charging me with stealing from you.¹

When he facetiously remarks *nam si ego tuum ante legissem, furatum me abs te esse diceres*, Cicero demonstrates his familiarity with what we today call plagiarism. Both Atticus and Cicero had written sketches (*commentarij*) in Greek on Cicero's consulship; and Cicero suggests that the similarities between the works could have given Atticus reason to accuse his friend of stealing (*furari*) from him, if Cicero had not anticipated Atticus in sending his own account.² Implicit is the idea that the theft would have been a matter of deliberately passing off another's text as one's own in order to win credit for having produced it – a way of thinking consistent with modern

¹ All translations are my own, unless otherwise indicated.

² Cicero goes on to observe, though, that the sketches were in fact dissimilar, as Atticus' was a bit rough while Cicero dressed his up with rhetorical ornament (*Att.* 2.1.1). This shows all the more that the opening of the letter was jocular. After mentioning plagiarism, Cicero continues in a light vein, distinguishing between his and Atticus' texts in order to deprecate humorously how elaborate his own treatment was (and the reference to Atticus' roughness exaggerates to bring out the point).

definitions of plagiarizing.³ Cicero supposes that, given the closeness between the Greek sketches, Atticus might have concluded that his friend had wrongfully assumed authorship of what Atticus had, in fact, produced by repeating him while presenting himself as the originator of the work. The joke rests upon a mutual understanding that a person could stigmatize textual similarities as evidence of such fraudulent reuse.

A passage in Cicero's *Brutus* shows him again thinking of plagiarism. Drawing an analogy between Cato the Elder's oratory (his principal subject) and early Latin poetry, Cicero discusses the poets Naevius and Ennius (*Brut.* 75–6):

Tamen illius, quem in vatibus et Faunis adnumerat Ennius, bellum Punicum quasi Myronis opus delectat.⁴ sit Ennius sane, ut est certe, perfectior; qui si illum, ut simulat, contemneret, non omnia bella persequens primum illud Punicum acerrimum bellum reliquisset. "scripsere," inquit, "alii rem vorsibus" – et luculente quidem scripserunt, etiam si minus quam tu polite. nec vero tibi aliter videri debet, qui a Naevio vel sumpsisti multa, si fateris, vel, si negas, surripuisti.

Still, the *Bellum Punicum* of that one [Naevius], whom Ennius places among the primitive singers and Fauns, delights like the works of Myron. Grant that Ennius is more polished, as he surely is. But if he really disdained Naevius, as he pretends, he would not have omitted the very bitter first Punic War, while otherwise going through all our wars. "Others have treated the subject in poetry," he says. And indeed, they have written excellently, even if in a less refined way than you. Nor should it seem any different to you, who have borrowed much from Naevius, if you admit to your debts, or have stolen much from him, if you deny them.

Cicero's approach is to defend Naevius as an admirable author and, by extension, to advocate for the equally archaic Cato the Elder.⁵ To that end, he contends that the gap in quality between Naevius and Ennius is narrower than it might seem, and that Ennius' polemical stance toward Naevius should not disguise how he respected and depended upon that predecessor. In Cicero's formulation, the debts to Naevius amount either to legitimate imitation (*sumere*) or to stealing (*surripere*). The difference lies in whether Ennius admits to borrowing from his model or tries to hide his activities. In offering the second alternative, Cicero conceptualizes textual reuse in terms that, again, match up with our contemporary understanding of plagiarism. Ennius would engage in an activity that is distinct from *imitatio* and that involves the intent

³ For several modern definitions of plagiarism, upon which I rely here, see St. Onge 1988: 52–8. Ricks 2002: 220 is also an influence.

⁴ One of Cicero's other comparanda to oratory had been sculpture; and he mentions Myron as an example of more primitive but still excellent work (*Brut.* 70).

⁵ Hinds 1998: 63–8 is insightful on Cicero's purposes.

to deceive readers, so that they consider him the originating author of what he took from another.⁶ This would be to connive to lay exclusive claim to producing the “many things” (*multa*) that he drew from Naevius, so that he won authorial credit he did not deserve.

As this book will demonstrate, several other classical Latin authors join with Cicero in showing that the history of plagiarism extends back to ancient Rome. To be clear, by “plagiarism” I mean the culpable reuse of earlier texts, customarily described in terms of stealing, in which a person wins false credit by presenting another’s work as his own.⁷ Nearly all the sources limit plagiarism to literary compositions and understand it to consist in misappropriating wholly or in part others’ work: it is not ideas and content in themselves that the plagiarist steals but a predecessor’s particular expression of ideas and content.⁸ The evidence stretches from the second century BCE through late antiquity and spans a range of forms, from poetry to history, declamation, and technical and other specialist treatises.⁹ Plagiarism joins with forgery as a recognized mode of falsifying authorship in ancient Rome. But there is a fundamental difference between them that justifies examining plagiarism on its own: the forger presents his own work under another’s name, while the plagiarist presents another’s work under his own name.¹⁰ This makes plagiarism analogous to identity

⁶ I echo Ricks 2002: 220.

⁷ Ricks 2002: 240 discusses well and succinctly the central role that winning fraudulent credit plays in plagiarism.

⁸ In *De fin.* 5.74, Cicero has M. Pupius Piso accuse the Stoics of acting like thieves (*fures*) and taking their ideas from the Peripatetics but then modifying the philosophical terms in order to pass off the material as their own. This is clearly to plagiarize: but Cicero is the only Latin source I have discovered who discusses the plagiarism of ideas.

⁹ My expository language here echoes that of Ker 2004: 210. I thus use the terms “literature” and “literary” broadly. This is common in Classical Studies, as Janson 1964: 10 notes. Conte 1994: 4 is worth citing too: “Yet we all know that between literary and nonliterary texts there is a wide band of intermediate forms, and indeed it is a particular feature of ancient culture that it does not make sharp distinctions between these categories.” Gunderson 2003: 5 discusses the application of the word “literature” to one of the forms I examine, declamation.

¹⁰ To begin his discussion of the *Eclogues*, which follows upon his biography of Virgil, the fourth-century CE Aelius Donatus groups examples of forgery and of plagiarism together under the term ψευδεπίγραφα (*VSD* 48; see the conclusion to this book [p. 210]). But this is the sole instance I have found where a Roman source so conflates the two. Anyway, Donatus fails to take into account the clear differences between them, differences that permit me to focus upon plagiarism alone. Speyer 1971: 29, Dutton 1998: 507–10, and Saint-Amour 2003: 100 call attention to the same differences between forgery and plagiarism that I do. For more on forgery (including its relation to “imposture”), see Syme 1972: 3–17. Irene Peirano’s book on Roman pseudepigrapha, which is forthcoming from Cambridge at the time of this writing, deserves mention as well. I should add here that I also distinguish plagiarism from piracy, i.e., the circulation of a text without the author’s permission, but with the author’s name attached. Ancient references to that practice include Symmachus, *Ep.* 1.31 (which I will examine below) and 1.32; Cicero, *Att.* 3.12.2 and 13.21.4 and *De or.* 1.94; Quintilian, *Inst. praef.* 7–8 and 3.6.68; and Julius Solinus, *praef.* 1–7. De la Durantaye 2007: 60–5 examines this subject.

theft. Plagiarists create second, false lives for preexisting texts and, in the process, acquire (or try to acquire) fraudulent identities as the authors of that material.

Even as the ancient concept of literary theft has significant similarities to the modern one, so that we can reasonably apply the term “plagiarism” to it,¹¹ writing about its Roman history naturally requires historicizing it, i.e., situating the evidence for it in its particular historical and textual settings. To do this is to work to avoid anachronism and to make room for discovering the features of plagiarism in Rome that differ from those that we give it today. A study that explores those cultural differences and examines the distinctly Roman contours of the practice, as this one will do, reveals a literary concept that is both familiar and distant, both like and unlike the modern idea it anticipates.

It needs to be said here at the outset that no clear and verifiable cases of plagiarism survive from Latin antiquity. Rather, the phenomenon exists for us through its representation in texts; and I am much less concerned with what our sources suggest about the actual pursuit of plagiarism in Rome than I am with how they depicted that pursuit. Most of the evidence breaks down into accusations and denials of plagiarism, a situation reflected in the organization of this book. I have no interest myself in formulating arguments for whether or not a Latin writer stole from a predecessor. The purpose is, instead, to recover the Roman cultural content of plagiarism by examining closely the charges and defenses that individual authors and/or the people they quote formulate.

The accusations and denials of plagiarism allow us to explore what constituted cases of plagiarism in Latin antiquity. What kinds and examples of repetition stood as theft? How do the sources conceptualize and identify the activity, both in itself and in contrast to legitimate modes of reuse? It would be wrong to think that we can arrive at how the Romans understood plagiarism, i.e., that we can ignore the historical specificity and the rhetorical interests of the individual texts in which the subject appears and can instead generalize in broad strokes. What I do maintain is that we can recover how individual Romans understood and represented plagiarizing in particular cultural and literary contexts, as well as how they wanted or expected their audiences to think about it. Because several of the sources attribute the same or similar traits to plagiarism, moreover, it is possible to identify consistent ways of defining it in Latin culture, even as we stop short of baggy generalizations. To do this is to show that plagiarism was a

¹¹ See also n. 28.

coherent and fully realized concept across different texts and periods in ancient Rome.

To reconstruct the history of plagiarism in ancient Rome, it is also vital to recognize that it was a pragmatic phenomenon, just as it is today.¹² By this I mean two things. One is that plagiarism was understood to accomplish something for its practitioners, namely, to win them credit they did not deserve. A concern will be to investigate how, according to our sources, stealing authorial credit benefited specific plagiarists, or, put differently, to look into what they gained from the credit they stole. The other thing I mean by “pragmatic” is that individuals constructed plagiarism through acts of reception, particularly in the form of accusations and denials, in order to do things practically and rhetorically with it. Plagiarism stands not simply as a literary concept but as a tool of communication in a range of historical settings and in a range of texts. To explore these sociorhetorical dimensions of plagiarism in Rome is to see how accusations and denials of it operated in specific Latin literary communities; to discover how authors fitted its representation to certain genres and to the wider rhetorical aims of texts; and to identify ways that individuals used it to project ideas about themselves, other authors and works, and literature and literary criticism more broadly.

An examination of plagiarism in Latin literature not only adds to the recent scholarship in other disciplines on the history of the idea, but it also fills a gap in classical studies.¹³ While overviews (often brief) of the topic exist within larger books or in articles, and while scholars have treated individual authors and passages, there is no book-length examination covering plagiarism in ancient Rome across time and literary genre.¹⁴ To be comprehensive, I follow up this introductory chapter, in which I establish general parameters for examining plagiarism in ancient Rome, by taking a case-study approach and devoting each subsequent chapter to a particular author or set of related texts. My aim is to deal with the significant sources on plagiarism and the significant issues around it, with emphases on its conceptualization and its pragmatics. The book does not have a chronological arc, for the simple reason that the treatment of plagiarism does not

¹² My understanding of the pragmatics of plagiarism derives from Randall 2001: esp. vii–viii.

¹³ Several titles I have been citing, Randall 2001, Macfarlane 2007, Mazzeo 2007, and Hall 2008, illustrate the recent interest in the history of plagiarism. See, too, Ricks 2002: 225–32 on the history of the idea and scholarship on that history.

¹⁴ Examples of work on plagiarism in Latin antiquity are Ziegler, 1950; Hosius 1913: 176–93; Kroll 1964: 144–50; Russell 1979: 11–12; and Breitzigheimer 2005: 150–3. Mülke 2008: 194–200, meanwhile, deals with some references to plagiarism among Latin Christian writers. I limit this study to the classical tradition, for the sake of coherence and manageability.

develop in a particular thread over time.¹⁵ In the course of the study, I offer readings of a broad array of individual passages and texts, investigate issues in the reception of individual authors, and explore broader topics in Latin literary culture. These include the circulation of texts, both oral and written; the nature of literary property; notions of authorship and authorial identity; the working lives of writers; and the theory and practice of imitation. This last subject has been dominant in Latin literary studies for decades now. My book deals with it because understanding plagiarism in its Roman context requires explaining how it could have existed alongside the cultural norm of *imitatio*. Crucial to that undertaking are the sources who, like Cicero, contrast those two forms of textual reuse. They not only demonstrate that conceptual space was made in ancient Rome for borrowings that lay outside of and, indeed, were opposed to imitation, but they also offer glimpses into the criteria that Latin critics used to differentiate between *imitatio* and *furtum*.

PLAGIARISM FROM GREECE TO ROME

The history of plagiarism stretches back in classical antiquity not just to Rome, but to Greece as well.¹⁶ Κλοπή, “theft,” commonly designated the practice of culpably passing off others’ ideas and textual material as one’s own in Greek culture, with the related words κλέπτης, “thief,” and κλέπτειν, “to steal,” also prevalent. Several other terms, including ὑφαίρεισθαι, “to steal,” ὑφαίρεσις, “theft,” and ληστής, “thief,” also appear; and neutral words like μετοτιθέναι (often “to adopt” or “to change for one’s own”) and μεταφέρειν (often “to transfer” or “to translate”) could acquire a negative coloring through context and signify “to plagiarize.”¹⁷ A wide range of evidence reveals Greek authors accusing their counterparts of plagiarizing or relating that they themselves had been the targets of such allegations. The material spans Old and New Comedy, Hellenistic poetry, rhetoric, philosophy, history, and scholarly/technical writing. In addition, we hear of critics, and particularly grammarians, from the Hellenistic Age into the imperial period who charge writers with plagiarism: the accusations function as literary criticism and as tools of personal attack. An important source for this development is the third- and early fourth-century CE

¹⁵ The chapters in Part II, however, do proceed in chronological order. This is for ease of organization, not because I want to make an argument about how anything developed over time.

¹⁶ On plagiarism in the Greek context, see Stemmlinger 1912 – whose title, *Das Plagiat in der griechischen Literatur*, mine echoes – Ziegler 1950, and Roscalla 2006: 69–102.

¹⁷ Ziegler 1950 covers thoroughly the Greek terms for plagiarism/plagiarizing.

Porphry. In a passage from the φιλόλογος ἀκρόασις, which survives through Eusebius (*Pr. Ev.* 464a–468b), Porphyry presents a fictionalized symposium in which his interlocutors, led by the grammarian Apollonius, discuss many examples of κλοπαί-literature. These works made the case that certain authors, Herodotus and Menander conspicuous among them, were plagiarists and laid out the parallels to prove the point.¹⁸ It is uncertain how much of the fictional content reflects real conversations with which Porphyry was familiar or in which he participated. But whatever the historical foundations of the passage, Porphyry appears to advocate through it a particular type of community behavior, in which symposiasts demonstrate their culture and learning by dealing with the subject of literary κλοπαί.¹⁹ The model conversation that Porphyry constructs preserves a significant amount of evidence for plagiarism hunting in Greek culture that would otherwise be lost to us.

It is *prima facie* evident that the concept of plagiarism migrated from the Greek world to Latin literature, in yet another expression of Horace's famous dictum: *Graecia capta ferum victorem cepit* (captured Greece captured its rude conqueror [*Ep.* 2.1.156]). The channels through which this movement occurred cannot be known for certain. We might speculate, however, that with the growth of Roman literary culture in the late third and very early second centuries BCE, in which Greek influence was paramount, Romans grew familiar with the idea of κλοπή and adopted it to apply to their own texts. To be more precise, it is possible that Latin comic poets originally imported the concept. References to it first appear in the prologues to Terence's comedies in the 160s BCE, in passages describing plagiarism accusations made against him by his rivals.²⁰ This development could well stem from Greek Old Comedy, whose playwrights likewise leveled plagiarism charges against one another as "ritualized insults" and sources of comic entertainment, but may well respond to other sources as well.²¹

¹⁸ Stemplinger 1912: 40–57 gives the text and analyzes its content.

¹⁹ I echo W. Johnson 2009: 329, on the construction of a reading community in Aulus Gellius. Eusebius, meanwhile, cites Porphyry as part of a Christian polemic against Greek culture. To follow A. Johnson 2006: 130–2, the point was to stigmatize that culture by showing how it had produced nothing of value of its own, particularly in the area of philosophy. This is to lay the ground for the argument that Greek literature and philosophy stole much from Jewish writings: Eusebius demonstrates the Greek propensity for stealing to make more plausible the idea that they took the concepts of monotheism and other philosophical ideas from the Hebrews.

²⁰ See chapter 4 on Terence.

²¹ I quote Heath 1990: 152, on plagiarism allegations in Greek Old Comedy. Poets in Middle and New Comedy also appear to have accused one another of being plagiarists. Sharrock 2009: 77–83 explores different antecedents that Terence might have looked to when dealing with (and, Sharrock believes, fabricating) the plagiarism charges lodged against him.

What became of the concept of plagiarism once it had arrived in Latin literature has received less attention than has the Greek history of the subject.²² This is one of the reasons that I focus on the Roman side of things (while referring to Greek precedents and parallels where relevant). Another reason to limit my study as I do is to give myself sufficient room to deal thoroughly, and so adequately, with the Latin existence of plagiarism, with the features it took on and the varied roles it played in different Roman texts and cultural settings. To build upon an earlier point, plagiarism enjoyed a long life in ancient Rome. After Terence, references to it reached their peak from the last years of the republic through the first century CE, but they still appear sporadically into late antiquity up to the sixth-century Venantius Fortunatus, the so-called last Latin poet of the ancient world.²³ A notable late example is Macrobius' fifth-century CE *Saturnalia*, where the interlocutor Rufius Albinus defends Virgil against those who might call him a plagiarist (*Sat.* 6.1.2–6).²⁴ Macrobius takes his material from an earlier tract that probably dates to the first century CE, when books documenting Virgil's *furta*, or showing that he had plagiarized, were noteworthy enough to attract the attention of the important critic Asconius Pedianus. According to the Suetonian–Donatan biography of the poet (*VSD* 46), Asconius felt compelled to answer the accusers in his work “against the detractors of Virgil” (*contra obtrectatores Vergili*).²⁵ It seems clear that the detractors' method of stigmatizing Virgil had its roots in κλοπή-literature, and thus that the charges against Virgil are a vivid example of how Greek approaches to plagiarism were reborn in Rome.²⁶

Like ancient Greek, Latin does not have a separate word for plagiarism. *Furtum* is the most prevalent term,²⁷ just as κλοπή is in Greek, though “to plagiarize” is more often *surripere*, “to steal,” than *furari*. English gets its

²² See Heath 1990: 143–58 and the texts cited in n. 16 for examinations of plagiarism in the Greek context.

²³ The Fortunatus passage is *Carm.* 3.18.13–16, to the bishop Bertram of Bordeaux. Fortunatus is playfully exaggerating when he tells Bertram that he has detected *carmine de veteri furta novella* (new thefts from an old poem [3.18.14]) in Bertram's work; but the point is that the concept of plagiarism, i.e., of culpably passing off another's work as one's own so as to win credit for it, is still operative.

²⁴ I examine in detail this passage in chapter 6.

²⁵ See chapter 6, p. 178 and pp. 205–6, on *VSD* 44–6.

²⁶ Cameron 2004: 85 calls attention to the link between this method of criticizing Virgil and “the extensive Hellenistic polemical literature on plagiarism.”

²⁷ Whether *furtum* was the *terminus technicus* for plagiarism, as Mülke 2008: 195 n. 602 believes, is uncertain; it could have instead been just a common word for it, without being recognized as the technical term. The important point, however, is that Romans used *furtum* (and other words) to render literary reuse culpable, by describing it as theft. The task is then to figure out what exactly they meant by this as well as what they were doing rhetorically with their discussions.

word for the transgression, meanwhile, ultimately from Martial, who uses *plagiarius*, “kidnapper (of free citizens, children, or slaves)” to describe a literary thief (*Ep.* 1.52.9), rather than the more common *fur*.²⁸ This is an example of the broader descriptive vocabulary that develops around plagiarism. Others are the fourth-century CE poet Ausonius’ use of Laverna, “goddess of thieves,” for a plagiarist (*Epist.* 13.104 [Green]),²⁹ and Macrobius’ of *alieni usurpatio*, a legal term for the theft of property, as a metaphor for plagiarism (*Sat.* 6.1.2).³⁰ Less vividly, authors sometimes have no term for “theft” or “stealing” and refer to plagiarism through the use of possessive adjectives, with the idea that a person is presenting another’s work *pro suo*, “as his own.”³¹ Context determines the content, as it does when the verbs *sumere* and *transferre* designate plagiarizing, even though they commonly signify “to imitate” and “to translate.”³² The absence of a distinct word for plagiarism does not imply that the Romans any more than the Greeks lacked the concept of it, which corresponds to ours in ways that allow us to use the modern term for it. On the contrary, the evidence shows Latin sources, like their Greek counterparts, expanding the semantic range of existing words to signify the act of winning illegitimate credit by presenting another’s work as one’s own – a practice that they understood as a distinct form of stealing.³³

²⁸ For insights into the figure of the *plagiarius* in Roman society, see the *Lex Fabia de plagiariis* (Ulpian, *Coll.* 14.2–3, and Justinian, *Inst.* 4.18.10, with Cicero, *Pro Rab.* 8) and Spahlinger 2004: 482–3. As Howell 1980: 230 relates, the next author after Martial to use *plagiarius* to describe a person who steals textual material is the fifteenth-century Lorenzo Valla, who took the term from Martial when accusing someone of plagiarizing his work in the preface to book 2 of his *Elegantiarum latinae linguae*. The word “plagiarism,” along with “plagiary,” was then introduced into English in the early seventeenth century: the first attested use of it is by Bishop Richard Montagu, in 1621.

²⁹ The second-century BCE satirist Lucilius might also use Laverna in this way, although the fragmentary nature of the evidence makes it difficult to tell (and ghostwriting-for-hire is another plausible subject): *Musas si vendis Lavernae* (if you sell your Muses to Laverna [fr. 549]).

³⁰ Horace (*Ep.* 1.3.18–20) provides another well-known image for plagiarism, that of “stolen feathers.” I will return to this passage below.

³¹ This is common in Martial: see *Ep.* 1.29, 1.38, and 2.10, as well as 1.52.1–3, 1.53.1–3 and 11–12, and 10.100.1 for a mix of possessives to play on the idea of how the plagiarist mixes the ownership of texts. See also Seneca the Elder, *Con.* 1 *praef.* 10.

³² See VSD 46 (for *sumere*) and Seneca the Elder, *Con.* 9.1.13 (for *transferre*). These terms thus function like our “take” sometimes does, as well as like the Greek neutral terms identified above.

³³ The observations of Greenwood 1998: 280 on Latin terms for “gossip” are applicable here: “The Latin language . . . takes advantage of the availability of other words whose meanings are flexible, versatile, and wide-ranging enough to be able to relay the sense conveyed by the English terms appropriately in a given context.” See also Garland 2006: 5–6 on how Roman antiquity did not have a word for celebrity but was still familiar with our notion of the concept and “the extroverted attention-seeking which frequently nurtures it.” In connection with the Latin words *furtum* and the like, it might be useful to consider by way of comparison how we in English use the word “piracy” in the literary context.

PLAGIARISM BEFORE COPYRIGHT AND CAPITALISM

The word *furtum* and related terms for theft and stealing give plagiarism an air of criminality. But this just worked to stigmatize the act as a wrongful one and to make it vividly culpable. In fact, to plagiarize in ancient Rome was never to break the law. This is because Latin antiquity lacked copyright or any law giving an author statutory right over his work's copying, circulation, and adaptation.³⁴

It remains the case today in the United States and elsewhere that no law criminalizes plagiarism.³⁵ In civil law, meanwhile, a plagiarist can be prosecuted for copyright infringement. But the two offenses are still distinct – “there are cases of plagiarism that do not constitute copyright infringement, and vice versa”³⁶ – and only on rare occasions is an accused plagiarist brought to civil court. (This means that the penalties for plagiarism are customarily informal social stigmas or formally sanctioned, institutionally enforced but still extralegal punishments like firings and suspensions.)³⁷ In addition, the identification of plagiarism usually has nothing to do with the copyright status of the original. Rather, it hinges upon how and for what purposes the alleged plagiarist has reused his source. The defining issues are textual-aesthetic and moral: plagiarism is fundamentally a matter of staying too close to a model and of personal dishonesty, in that the plagiarist tries to hide a model in order to trick an audience into giving him credit for writing something he did not.³⁸

The distance between plagiarism and copyright undercuts the claim made by some that the former could exist as a recognized transgression only with the advent of the latter, which critics commonly identify with the

³⁴ The only Roman law dealing with textual ownership has to do with the possession of the material text. The law states that what someone has written on paper or parchment belongs to the person who owns the paper or parchment (Gaius 2.77; see, too, *Dig.* 41). This does not mean, of course, that the content comes to belong to the owner of the material text; and see n. 59.

³⁵ From what I understand, plagiarism is a criminal offense in Germany, over and apart from copyright infringement. In 2010, moreover, an Argentinian politician, Gerónimo Vargas Aignasse, proposed a law making plagiarism a crime punishable by three to eight years in prison. But in a turn of events that makes the proposal seem like performance art, much of the language of the bill was plagiarized from Wikipedia.

³⁶ S. Green 2002: 200. Posner 2007: 12–17 is useful on the relationship between plagiarism and copyright. See as well Lindey 1952: 2; Goldstein 1994: 12; Randall 2001: 76; and Saint-Amour 2003: 19. Another relevant discussion is Ricks 2002: 223–6, who on p. 223 quotes Goldstein 1994: 12: “Plagiarism, which many people think has to do with copyright, is not in fact a legal doctrine.”

³⁷ S. Green 2002: 195–200 identifies and discusses these penalties.

³⁸ Macfarlane 2007: 44 notes that plagiarism “is both an ethical infringement, and an aesthetic one.”