

Final Report: Professional Development Grant

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I gave a paper – "Dickens, Invention, and Literary Property in the 1850s – at the 11th annual Dickens symposium at Queen's University in Belfast, Northern Ireland. The conference took place August 11-14, 2006. The paper, which appears below, has since been accepted for publication and will appear in *Dickens Quarterly* in March 2007.

Dickens, Invention, and Literary Property in the 1850s

In *Patent Inventions: Intellectual Property and the Victorian Novel*, published by Oxford University Press in 2004, Clare Pettitt argues at length that Charles Dickens believed in an identity of interests between mechanical inventors and literary artists and that he "clearly sees" patent reform and copyright reform "as parallel, and this link becomes manifest in the novel he started to write in 1855, *Little Dorrit*" (188). She gives particular emphasis to the representation of the mechanical engineer Daniel Doyce, which, in her view, expresses many of Dickens's "own anxieties about authorship and intellectual property" (140) and which serves as a "model of his own creativity" (193). She argues further that Dickens was "keen to conserve the construction of the individual inventor despite all the evidence that invention was no longer a solitary or neglected pursuit" (140). Pettitt is not alone in this conflation of the mechanical inventor with the literary artist. In an otherwise exemplary article on the professionalization of literature during the nineteenth century, Robert Patten suggests, "it may be to such characters [as Doyce] . . . that we should turn for an image of the artist working in and for society in Victorian literature" (29). So, too, Peter Garrett in *The Victorian Multiplot Novel* identifies the author with the inventor.

But an article in *Household Words*, published only two years before *Little Dorrit*, argues that mechanical invention and literary creativity are two very different

modes of production, and thus should be treated differently by the law. In the words of Henry Morley, the author of the piece, and one of Dickens's most trusted correspondents, "Between the copyright of a book and the patent of an invention there exists not so much as the bond of a remote cousinship" ("Patent Wrongs" 7.233). It is inconceivable that Dickens would have allowed such a categorical statement to appear, about a subject so dear to his heart, and to his pocketbook, without his approval. Indeed, its testy and defensive quality bespeaks what Mary Poovey has referred to as the essentially "contested" nature of "writing, and specifically the representation of writing" at mid-century (*Uneven Developments* 105). It is this contestation, as manifested in the debate over copyright reform, which this article will explore.

In the view of *Household Words*, the distinction between literary and mechanical invention is a simple but important one: the writer is more closely bound to his creation than the mechanical inventor, whose work may well have proceeded by way of successive stages over a number of years, and have been influenced by the contributions of many other people. A writer has a natural right to property in his literary work, a right denied to a mechanical inventor who uses his intellect to obtain "something external to himself" that may well be profitable even without a patent (233). The argument expressed in "Patent Wrongs" is a direct riposte to Thackeray who had himself equated mechanical labor with literary invention: "Don't we see daily ruined inventors," he asked rhetorically in *The English Humorists of the Eighteenth Century* (1853). "If these suffer, who is the author, that he should be exempt?" (qtd. in Pettitt 161). In Thackeray's view, the market alone would establish the "honest value" of a literary work (Pettitt 162). *Household Words*, on the other hand, argued that the market alone was insufficient. Something else was needed: copyright protection.

This distinction between literary creativity and mechanical innovation rests on a particular understanding of the role of the literary artist in society. It draws on the deterministic arguments of the patent abolitionists of the early 1850s, abolitionists such as Isambard Kingdom Brunel who insisted in 1851 that "the most useful and novel inventions and improvements of the present day are mere progressive steps in a highly wrought and highly advanced system, suggested by, and dependent on, other

previous steps, their whole value and the means of their applications probably dependent on the success of some or many other inventions, some old, some new" (492). Henry Morley resorts to the same metaphor in "Patent Wrongs," albeit more tentatively: "Improvements are suggested in each art or manufacture as it grows; they are steps of progress, and we are not quite sure that the first man who climbs a step should hold it for a number of years as his own" (233).

Brunel and Morley, in turn, borrow heavily from Thomas Noon Talfourd, the Whig M.P., who between 1832 and 1842 introduced legislation to extend the term of copyright from the existing 28 years or the life of the author to the life of the author plus 60 years. It was during these debates that those in favor of reform argued that authors were in a unique position because they possessed a special property—a product of their own individual minds—that should be treated specially by the law. Many of the best writers, it was argued, those who wrote for posterity and not for immediate gain, might only develop a large readership after their deaths, only after the current term of copyright had expired. In contrast, those who argued against the extension of the copyright term—a collection of radical freetraders, utilitarians, and political economists—insisted that literary property was no different than other forms of property and that the writer deserved no special treatment. For them, printed material should be treated like a mechanical invention: it deserved protection, but because of the monopolistic tendencies of such protection, any term had to be of a very limited duration (Vanden Bossche). Any longer term would, it was thought, increase the cost of books and serve as a "tax on knowledge." Thus, the conflation of literary invention and mechanical invention, copyrights and patents, was a crucial rhetorical move for those who opposed Talfourd and the extension of the copyright term. The radical Thomas Wakley, for instance, wanted to know "why a distinction was made between the mere bookwright and the producer of other inventions?" (*Hansard*, 6 April 1842, 11.1378). For Wakley, a writer is diminished to a "mere bookwright," a maker of books akin to a craftsman, the demystified producer of material property like any other.

Talfourd countered such arguments by insisting, in 1838, that, despite some "points of similarity" between mechanical and literary invention, "there are grounds of

essential and obvious distinction." For instance, if a mechanical invention "were not hit on this year by one, [it] would probably be discovered the next by another; but who will suggest that if Shakspeare [sic] had not written "Lear", or Richardson "Clarissa", other poets and novelists would have invented them?" (qtd. in Pettitt 63). Notably, Dickens was one of a number of contemporary writers who were signatories to a petition, presented on 27 February 1839, in support of Talfourd's bill, and he warmly praised Talfourd in his dedication to *The Pickwick Papers* for "the inestimable services" that he had rendered the literature of his country, and his fellow authors, "by securing to them and their descendants a permanent interest in the copyright of their works" (xxii). Dickens also used *Nicholas Nickleby*, his novel written during the early years of the copyright debates, to ridicule the idea that the extension of the copyright term was "an insurmountable bar to the defusion of literature among the people," and "that those who wrote for posterity should be content to be rewarded by the approbation of posterity" (198-99).

My point is this: Dickens would have resisted any facile association between copyrights and patents because it would have placed him in an untenable position: it would have rhetorically aligned him with those whom he opposed, the critics of copyright reform, and undermined one of the main arguments for the extension of the copyright term. With this in mind, Henry Morley's exasperation and defensiveness become more understandable. To repeat: "Between the copyright of a book and the patent of an invention there exists not so much as the bond of a remote cousinship" (HW 7.233).

As if to reinforce this distinction, *Household Words* and *All the Year Round* typically underscore the collaborative nature of mechanical invention, and its long gestation period. In 1851, *Household Words* remarked of the invention of the telegraph: "This was long work. Watching, deep study, thousands of experiments, suggestions, and reasonings; numberless plans and models—not of one man, or of two, but of thinkers in many countries, in many generations—" (Hunt 2.241). The same is true, as well, of the screw propeller (Capper 8.181-84), which is developed incrementally by a host of inventors: Mr. Lyttleton; Mr. J. P. Smith; "a Swedish officer" named Ericsson; and "Mr. Griffiths." Even Paxton's Crystal Palace was ultimately the product of centuries of labor: "there have been many

steps of progress, some faint and many wholly obscured. . . . If Science had not been at work in every direction for the last fifty years—Political as well as Chemical and Mechanical Science—the four hundred tons of sheet-glass could not have been produced" (Knight 3.121). In 1860, *All the Year Round* made a similar claim about the steam engine and the railway: "Nothing is perfected in a moment . . . steam and railroads have had their times of gradual development like the rest. They have not sprung up in a night, nor grown to their perfection in a generation" ("A Cornish Giant" 3.393). This point is reasserted in 1866: "The idea of railroads, though not of locomotives, is very old" ("Not Quite a Man," AYR 16.65). Indeed, both of Dickens's journals took great pleasure in tracing the provenance of mechanical inventions to some far distant period. "It is so long ago as 1602," we discover, "that Mr. Beaumont, of Newcastle, first laid down wooden rails for carriage traffic" ("A Cornish Giant," AYR 3.393). They also felt the need to restore to prominence those visionaries who had been largely overlooked by history, such inventors as Richard Trevithick, who died in poverty in 1833, and such early railway enthusiasts as Thomas Gray, of Nottingham, who envisioned, in the early 1820s, a railway system covering the whole of England, who also died in poverty "at an early age" ("Not Quite a Man," AYR 16.64). Despite having patented the high-pressure steam engine, Trevithick "has had no stature, no monument, no biography, and his name his hardly known even by vague report, to people to whom Watt, Stephenson, and Brunel are household words," this despite the fact that, in the words of a contemporary observer, "he had undoubtedly contributed more to the physical progress of mankind than any other individual of the present century" ("A Cornish Giant," AYR 3.396). The practical difficulty of apportioning credit, and reward, in matters of mechanical innovation is illustrated by the case of Thomas Gray and Robert Stephenson. According to *All the Year Round*,

Truly, when Mr. [Samuel] Smiles says that Stephenson was the creator of the railway system, and not Gray, we must answer yes, exactly as the builder of St. Paul's was the creator of it, and not Sir Christopher Wren. The builder creates practically what the architect has created before. Gray and Stephenson have each his peculiar and substantive merits. The one worked out practically and unconsciously to himself

what the other had planned, demonstrated, and energetically recommended to the nation through a course of years. ("Not Quite a Man" 16.65)

It is surely significant that Dickens says that Daniel Doyce "perfects an invention" and that he "brought it to perfection" (100), implying that he is the last in a collaborative chain, which is not at all the way Dickens saw himself; and that one of Doyce's stated reasons for not pursuing his invention, at this time, is that, as he tells Arthur Clennam, "It will be heard of, one day. I can put it by" (432). And, indeed, in the end, Doyce is right: it is heard of, and he does financially prosper, despite the Circumlocution Office and without any evident form of protection. The point seems to be that, sooner or later, useful inventions will find their way into the world, though not necessarily in Britain.

In contrast to the collaborative nature of mechanical invention, "Patent Wrongs" insists that literary invention depends on the unique personality and identity of the writer—which is manifested in his expressive style or "utterance," "which could by no possibility whatever have arisen out of any other mind." It is this individual style, in turn, which brands the literary work as the writer's "property," more closely held by the writer "than even the shilling in his purse, or the ring on his hand" (HW 7.233). In Morley's view, owning this unique "utterance"—the individual form of self-expression—is the only way a writer "can receive payment" (7.233). This distinction between literary creativity, which depends on the individual expressiveness of the writer, and mechanical invention, which depends on the combined labor of many persons over successive generations, was common in the early 1850s, especially among legal experts. A patent attorney named William Hindmarch, for instance, argued in 1851,

A work of the imagination, whether in literature or the fine arts . . . is actually created by its author, and he gives to the world that which in all probability never would be produced by any other mind. But he who invents a new practical manufacturing art, although the art may be of greater utility than any product of the imagination, does but find out that which had previous existence, in the same way as travelers discover new countries or places.

(*Observations on the Defects of the Patent Laws*, qtd. in Coulter 81)

Put simply, for Hindmarch, and for many others, literary artists create, and patentees discover. As Mark Rose points out, in his discussion of the copyright debates of the eighteenth century, the effect of such arguments "was to . . . mystify and valorize" true authorship (119), this at the same time that, to quote Terry Eagleton, "the artist is becoming debased to a petty commodity producer" (qtd. in Rose 120). In Rose's view, this distinction between literature and machines, between copyrights and patents, reflects a "need to find a transcendent signifier, a category beyond the economic to warrant and ground the circulation of literary commodities" (128). Dickens, in this instance at least, was hewing to romantic ideas of creativity and originality at the very time that such ideas were being called into question by modern technologies of mass production, of copying and imitation, the kind of technologies so visibly on display at the Great Exhibition of 1851.

Dickens's evident insistence on a distinction between patents and copyrights is also influenced, almost certainly, by his strong opposition to utilitarianism. During the debates over copyright reform in the late 1830s and early 1840s, it was the philosophical radicals who were generally opposed to the extension of copyright because, as Chris R. Vanden Bossche remarks, they "were convinced that a better society could be achieved through the access to knowledge provided by the free trade in print works." They saw greater merit in mechanical inventions, which had an obvious use value, than in works of literature, whose only real use, they believed, was to communicate factual knowledge. This privileging of factual knowledge meant, in turn, that they valued those forms of writing that were the most machine-like, namely, as Vanden Bossche has remarked, "compendia of received knowledge" such as "the encyclopedia, school book, dictionary, or book of mathematical tables." In contrast, supporters of copyright reform argued that more was at stake than the promulgation of "useful" knowledge, narrowly defined. They argued for a broader and more generous definition of literary value, one that took into account the ability of literary works to develop each reader's imagination, which they insisted was useful to "the nation as a whole" (Vanden Bossche). Given Dickens's dislike of the Utilitarian privileging of "fact,

fact, fact," and his own satirical representation of machine-like and instrumental ways of thinking in *Hard Times*, he would have been naturally wary of identifying literary creativity with mechanical invention.

There is one final point to consider. The main focus of the article "Patent Wrongs" is on the abolition of patents, a question much in the news in 1853, and not on the issue of copyrights, which is only raised tangentially. What is striking, as I have pointed out elsewhereⁱ, is that *Household Words* is willing to consider seriously the abolition of patents, only three years after Dickens published his own defense of patent reform, "A Poor Man's Tale of a Patent." But this seeming contraction becomes clearer if we keep two things in mind. First, as Maureen Coulter has suggested, the Patent Law Amendment Act of 1852, which streamlined the process of taking out a patent, "satisfied a number of the individuals and groups who had previously been critical of the patent system . . ." (41). What it did not do, however, was address the fundamental theoretical objections to patents as a whole, which were gaining increased prominence in the early- to mid-1850s. That *Household Words* could seriously entertain the idea of abolition is not, necessarily, a contradiction of its earlier stance on patent reform. One of the most outspoken of the patent abolitionists, J. L. Ricardo, himself could even positively cite Dickens's "A Poor Man's Tale of a Patent" (as showing the corruption of the entire patent system) in his argument opposing the imposition of patents (Coulter 66)ⁱⁱ. Second, and perhaps most importantly, Dickens's apparent sympathy for the abolition of patents would have been largely determined by his attitudes toward the literary profession and toward copyright reform (this is why, after all, the two are yoked together in this article). In effect, the two issues operate in inverse relationship. As Christine MacLeod points out, the supporters and beneficiaries of the patent laws, "had to profess the uniqueness of that achievement [of mechanical invention]: they had to argue that without the creative abilities of a particular inventor the invention would never have been made, or, at the least, would have been long delayed" (140). They had to draw an analogy, in other words, between patents and literary copyright, the very analogy that copyright reformers had rejected. This explains why another *Household Words* piece, also written in the spring of 1853, and also by Henry Morley (this time

with W. H. Wills), could praise Fox Talbot for relinquishing his exclusive rights to his famous "sun pictures": "That patent in certain respects very much obstructed the advance of photography in this country and great credit is due to Mr. Talbot for having recently and voluntarily abandoned his exclusive rights. . . . By so doing he acted in the spirit of a liberal art born in our own days . . . " (7.57). It is hard to imagine a similar article praising a writer for giving up his or her "exclusive rights" to a work of literature.

One needs to be careful not to overstate the case. Although he privileges literary invention over mechanical invention, Henry Morley admits, "The inventor of a machine, or the discoverer of a fact . . . uses intellect, frequently, indeed, of a very high, and sometimes of the highest order" (7.233). *Household Words* and *All the Year Round* were second-to-none in recognizing the value of mechanical invention. Richard H. Horne's comment in "A Time for All Things" is typical: "the great works of a Brunel, a Babbage, and a Stephenson . . . justly place England at the head of all those, of whatever country, who have contributed to the engineering works of this most engineering age" (2.615-17). And certainly, like many other mid-Victorian periodicals, both of Dickens's magazines represented inventors as iconic figures: they demonstrated the virtues of self-help, and sustained application, theoretical intelligence merged with practical know-how; they stimulated the imagination and changed the fabric of contemporary life. And, as Talfourd conceded in the 1830s, there are inevitably some "points of similarity" between mechanical and literary invention. Of course, we are to sympathize with Doyce's plight, and admire his sagacity and practical ingenuity (though presumably not his pessimism and lack of resilience). And, of course, his steadiness and application might serve a literary artist well. But it is also important to recognize that Dickens and his magazine insisted—vehemently—on the fundamental distinction between mechanical and literary invention. As James R. Kincaid argued nearly forty years ago, "Doyce is not only too limited to represent the creative mind; he is, in many ways, its antithesis. He is merely clear; he is not joyous, resilient, imaginative, or, in any real sense, creative" (199). Dickens's main interest, and the thrust of his satire, lies elsewhere: with events specific to the period in which he began the

novel, the mid-1850s, and particularly with the controversy surrounding the Crimean War. What fundamentally mattered was not the patent law, or some supposed analogy between the mechanical inventor and literary artist, but a much more immediate issue: the failure of Great Britain to make use of its wealth of material inventions at a time of national crisis.

¹ See "Dickens, Patent Reform, and the Inventor: Daniel Doyce and the Question of Topicality." *Dickens Quarterly*. 9 (December 1992): 158-69.

² A later article (21 February 1857), this written by George Dodd, described a visit to the Patent Office Reading Room in Chancery Lane, characterizing the room as "one improvement in the state of the [Patent] law", noting that 'it does not sever us from contact with routine and red-tape, but it renders those unpopular symbols less obstructive and annoying than before.' As for the question of abolition, Dodd is non-committal: the final paragraph begins, "Let the controversy for and against patents take what turn it may . . ." ("A Room Near Chancery Lane" 15.192).

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