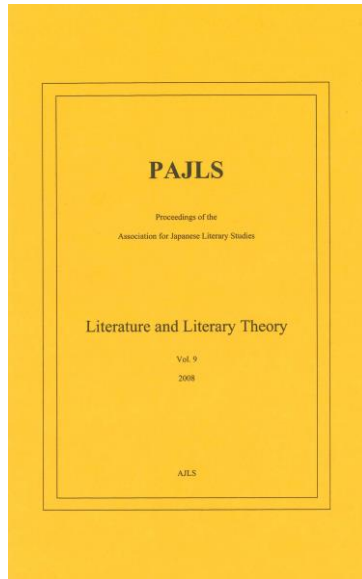


# “Owning Up To Sōseki: The Theory of Literature vs. the Theory of Copyright”

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## Owning Up To Sōseki: The Theory of Literature vs. the Theory of Copyright

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*Somehow I managed to get into Preparatory School, but I liked nothing better than to laze around and hardly studied. Mizuno Rentarō, the current president of the Academy of Art Masaki Naohiko, and Haga Yaichi were all in my class, but they were serious students, unlike the lazybones I hung out with, and given this difference we had little contact and went our separate ways. I suppose they looked down on us lazybones as good-for-nothings, while we saw little reason to consort with fellows who seemed interested only in their exam scores, and so, taking pride in on our merry-making, we avoided all work.*

Natsume Sōseki<sup>1</sup>

If, like me, you are an English speaker who first learned the Japanese language as an adult, after the physical habits of reading infiltrated your body as second nature, you will often find yourself making a silly mistake. When you pick up a Japanese book, you open it from the wrong side. When you read a Japanese book this way (for example, Sōseki's *Bungakuron*) the first thing you encounter is the copyright notice, just as when you open an English book—except, of course, you are looking at the back matter of the Japanese book, rather than its front matter. This mistake provides an apt metaphor for what I will do here: read *Bungakuron* (Theory of Literature, 1907) backward, starting from the copyright notice. It is a kind of trespass on the work, a form of poaching, but as I will argue, it is not only consistent with Sōseki's theory, it might also help us link *Bungakuron* meaningfully to issues that concern us today.

This paper is part of an ongoing project to rethink Sōseki's works in terms of modern discourses and ideologies of property. Elsewhere, I have looked at how Sōseki's fiction, which frequently revolves around questions of possession, inheritance, and theft, probes the gaps and contradictions of modern norms for property, as well as how at times it seems to imagine alternative models for owning and sharing. Here, I will focus on the rise of modern intellectual property law in late Meiji. More specifically, I will compare the theory of literature that Sōseki expounded in *Bungakuron*, based on lectures he delivered at Tokyo Imperial University in 1903-5, with the theory of copyright that was being expounded in a series of lectures delivered at the same time (1905) across town at Hōsei University by his old classmate, Mizuno Rentarō (1868-1949). To what extent did Sōseki's theory converge or diverge from Mizuno's attempt to explain how a literary work could be properly owned?

When we examine the copyright notice in the first edition of *Bungakuron*, several items call attention to themselves. The author is listed as "Natsume Kinnosuke," which in 1907 had

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<sup>1</sup> From "Rakudai," a transcript of Sōseki's reminiscences about his schooldays first published in *Chūgaku bungei* (June 20, 1906); reprinted in Natsume Sōseki, *Sōseki zenshū*, vol. 25 (Tokyo: Iwanami shoten, 1996), 161-166. Hereafter abbreviated as SZ in citations. This passage appears on 163. Translations from Japanese-language sources are my own, except where noted. Translations by others for which no publication data is cited are from Natsume Sōseki, *Theory of Literature and Other Critical Writings*, Michael K. Bourdaghs, Atsuko Ueda, and Joseph A. Murphy, eds. (New York: Columbia University Press, 2009).

been Sōseki's legal name for less than twenty years, following his formal return to the Natsume family registry in 1888: when he enrolled at the Preparatory School as Mizuno's classmate, his name was still Shiobara Kinnosuke. "Natsume Kinnosuke" is also the name by which he signs the *Bungakuron* Preface, although when that Preface was previously published in the *Yomiuri* newspaper, the author's name was given as "Natsume Sōseki."<sup>2</sup> Likewise, in the *Bungakuron* first edition, the author listed on the title page and spine are "Natsume Sōseki," but the author listed on the first page of the body of the work, after the table of contents, is once again "Natsume Kinnosuke": there seem to be two authors here. Returning to the copyright notice itself, we find a prohibition against reproduction announced by four Chinese characters distributed across the four corners of a text box containing the publication data. Inside that box, we find the imprint of two legal seals, one small and red reading "Natsume," the other larger and purple belonging to the publishing house, Ōkura Shoten. In other words, we find the equivalent of two signatures claiming ownership privileges over this publication.

In sum, a logic of bifurcation seems to shape this work and its ownership. Moreover, if we probe further into *Bungakuron*, the issue of authorship becomes even more complex, because Sōseki acknowledges in the Preface that he did not actually write much of the manuscript.

I had planned to continue work on this lecture series for a third academic year, but a variety of circumstances intervened to prevent that. Nor was I able to carry out my intention to rewrite the lectures I had already delivered in order to revise the sections that I found unsatisfactory or lacking. The lecture notes sat untouched at the bottom of my workbasket for roughly two years, until I submitted them for publication in response to a publisher's request.

Even after I agreed to publish them I was completely preoccupied with various personal matters and could not find the time even to produce a clean copy of my old lecture notes. In the end, I was forced to entrust all preparations of the manuscript—including the arrangement of the notes into chapters and the editing of the table of contents—to my friend, Nakagawa Yoshitarō. Nakagawa in fact attended part of the lecture course, is of wide learning and fine character, and of all the people I know seemed the most suitable for the task of bringing order to my notes. I am deeply grateful for his kindness. I hope that his name will be remembered for as long as this book continues to exist. If not for his good offices, there is little hope that in my present situation I could have brought this book to publication. In future days, when Nakagawa has had the chance to establish his name in literary circles, I suspect that the world will remember this book in association with his name.<sup>3</sup>

In other words, behind the Sōseki/Kinnosuke divide, there lies yet another author, Nakagawa Yoshitarō, who at some level can also claim authorship of *Bungakuron*. We should note moreover that much of the actual text of *Bungakuron* belongs to neither man: an unusually large proportion of the work consists of extended quotations from literary and critical works by others, not all of which were in the public domain at the time *Bungakuron* was published.

It is an old move in Sōseki studies to distinguish between two persona, Kinnosuke and Sōseki. Given the logic of bifurcation that structures his theory of literature—and, as we will see

<sup>2</sup> SZ, vol. 14 (Tokyo: Iwanami shoten, 1995), 708.

<sup>3</sup> SZ, vol. 14, 11-12.

below, Mizuno Rentarō's theory of copyright—it seems useful for me to adopt this convention here. I will distinguish between Kinnosuke as the legal person who owns the copyrights and the income that they produce, and Sōseki as the aesthetic and theoretical position worked out in a series of texts that bear that signature. Typically in first editions of his works, Sōseki's name appears on the cover and title page, while Kinnosuke's name appears on the copyright notice. As this suggests, the distinction between the two personae is unstable: each requires the other as its precondition.

Under the terms of late Meiji law, Kinnosuke was the copyright owner of *Bungakuron*. This jibed with the terms of his 1907 contract with the *Asahi* newspaper, which paid him a generous monthly retainer of 200 yen plus twice-annual bonuses, requiring him to serialize his novels initially in the *Asahi*, but allowing him to retain ownership of the copyrights over those works for the purposes of subsequent book publication, and allowing him to negotiate freely with any publishing house over terms for bringing out his nonfiction works—including *Bungakuron*.<sup>4</sup> Part of the story here, then, is how well Kinnosuke exploited the new systems of copyright and royalty that were replacing the old system of manuscript fees paid to authors on a flat per-page basis.<sup>5</sup> The rapid expansion of commercial newspapers and mass magazines in the Meiji 30s, the appearance of a modern advertising industry, and the slowly increasing prestige of writing as a profession were both preconditions and results of this transformation. The phrase "pure literature" (*jun bungaku*) as Sōseki uses it in the Preface to *Bungakuron* primarily distinguishes literature in the narrow sense (fiction, poetry, etc.) from literature in the broad sense (writing and scholarship in general), but from the Meiji 30s that phrase increasingly also began to signify literature that possessed elite aesthetic value in contrast to commercial mass literature (*taishū bungaku*).<sup>6</sup>

Other writers could only envy the way Kinnosuke turned to his advantage the new system for literary intellectual property. During this period, the image of the starving genius writer, whose very poverty bespoke a heroic refusal to compromise with the market, became a fixture of public imagination. The suicide of Kawakami Bizan in 1908, for example, prompted the *Asahi* newspaper to run a story with the sub-headline, "The problem of writers' livelihood and society" that traced through his scant manuscript fees and compared them to his living expenses.<sup>7</sup> In this treacherous new environment, one characterized by what Asaoka Kunio calls a "delicate balance" between writers and publishers, Kinnosuke made out pretty well.<sup>8</sup> It is estimated that Kinnosuke's total lifetime earnings from royalties alone were in the range of 25,000-27,000 yen. In the year 1906, between salary, manuscript fees, and royalties, he earned approximately 4,944 yen.<sup>9</sup> By contrast, Shimazaki Tōson was paid only 25 yen in manuscript fees for his first poetry anthology, and his publishing contract transferred the copyright for that work to the Shunyōdō publishing house.<sup>10</sup> Moreover, in the years he wrote his debut novel *Hakai*, Tōson had a

<sup>4</sup> Komori Yōichi, *'Yuragi' no Nihon bungaku* (Tokyo: NHK Books, 1998), 62-69, and Komori Yōichi, *Sōseki o yominaosu* (Tokyo: Chikuma shobō, 1995), 110-132.

<sup>5</sup> Nakayama Hiroaki, "Shōsetsu no shihon ron," *Bungei to hihyō*, vol. 7, no. 10 (October 1994), 67-80.

<sup>6</sup> SZ, vol. 14, 11.

<sup>7</sup> On Kawakami's suicide and its portrayal in the media, including lengthy quotations from the June 17, 1907 Tokyo *Asahi* newspaper article, see Igari Akira, "Kawakami Bizan no shi: Meiji bunshi no keizai seikatsu," *Nihon kindai bungaku*, no. 12 (May 1970), 89-101.

<sup>8</sup> Asaoka Kunio, "Meijiki shuppansha to chosha no derikeeto baransu," *Kokubungaku*, vol. 49, no. 6 (May 2004), 50-59. I thank Ted Mack for bringing Asaoka's work to my attention.

<sup>9</sup> Nakayama, "Shōsetsu no shihon ron," 70.

<sup>10</sup> Asaoka, "Meijiki shuppansha to chosha no derikeeto baransu," 51-52.

monthly income of only 15 yen, a salary so low that his family members suffered from malnutrition.<sup>11</sup> Seemingly unable to work the new royalty and copyright system to his benefit, he relied on private patrons and finally resorted to self-publication of his novels in order secure his livelihood. Tōson in 1925 looked back with envy at Kinnosuke's ability to work the new system, even as he was careful to deny any pecuniary desires on Sōseki's part:

As an author, Sōseki was known for having especially high royalty rates. The royalties Sōseki earned from his writings reached twenty percent or more of the recommended price for his books. That Sōseki, who by nature was indifferent to questions of money, was able to make such strong demands was probably a matter of pride. Moreover, only an author such as Sōseki, who had so many readers, could have made such a demand.<sup>12</sup>

The system that Kinnosuke exploited so successfully was also underwritten by the development of a new legal regime for managing intellectual property. Following the breakdown during the Tenpō era (1830-1844) of the publishing guild system that had regulated copyright practices in Tokugawa Japan, the Civilization and Enlightenment movement of the 1870s and 80s saw numerous calls for a copyright system that would situate Japan at the leading edge of the intellectual property systems being developed primarily in the West. Fukuzawa Yukichi, himself a frequent victim of pirated editions, wrote in 1873, "If exclusive rights for sales are not returned to the author, no one will expend the effort needed to compose works. If no works are made public, we will lose the path along which we can progress toward Enlightenment."<sup>13</sup> Following the issuance of the first Meiji Publication Regulations (*shuppan jōrei*) in 1875, early versions of copyright laws recognizing specific rights for authors were promulgated in 1887 (*hanken jōrei*) and 1893 (*hankenhō*). As Atsuko Sakaki has argued, these early copyright laws helped construct modern notions of literature and authorship, such as we find in the successful 1889 lawsuit filed by the Hakubundō publishing firm and Shiba Shirō (penname: Tōkai Sanshi) against Hattori Bushō and his publisher for a work that infringed too closely on Shiba's political novel, *Kajin no kigū* (Chance Encounters with Beautiful Women).<sup>14</sup> This process culminated in 1899 with Japan's signing onto the Berne Convention for the Protection of Literary and Artistic Works (1886, revised 1896) and the promulgation of the new 1899 copyright law (*chosaku kenhō*), the text of which was authored primarily by Mizuno. Although amended several times, this law would remain the basis of Japanese copyright until 1970.<sup>15</sup>

This development of copyright was part of a broader process of the modernization of Japan's property law system. Operating under a widely shared worldview that took systems of property ownership as a yardstick for measuring the degree of civilization attained by a given society, the Meiji state aggressively reformed the legal infrastructure of the Japanese economy. These efforts culminated in the promulgation of the Meiji Civil Code in 1898, a measure which

<sup>11</sup> Senuma Shigeki, *Shimazaki Tōson: Sono shōgai to sakuhin* (Tokyo: Hanawa shobō, 1953), 57.

<sup>12</sup> Shimazaki Tōson, "Chosaku to shuppan" (1925); reprinted in Shimazaki Tōson, *Tōson zenshū*, vol. 13 (Tokyo: Chikuma shobō, 1967), 70-77. This passage appears on 76.

<sup>13</sup> Quoted in Kurata Yoshihiro, *Chosakuken shiwa* (Tokyo: Senninsha, 1980), 10.

<sup>14</sup> Atsuko Sakaki, "Kajin no kigū: The Meiji Political Novel and the Boundaries of Literature," *Monumenta Nipponica*, vol. 55, no. 1 (Spring 2000), 83-108.

<sup>15</sup> Asaoka, "Meijiki shuppansha to chosha no derikecto baransu," 54.

helped prod the Western powers to abolish the Unequal Treaties and accept Japan as a modern world power. The enactment of the new copyright law in 1899 and Japan's signing onto the Berne Convention in the same year were in many ways the capstone in this effort. I should note that Mizuno Rentarō, author of the new copyright law, would participate in the implementation of modern property regimes in Japan in other capacities, as well. From 1919-1922, he would serve as second-in-command for the Governor General in colonial Korea (*Chōson sōtokufu seimu sōkan*), where he became an architect of the so-called Cultural Policy, designed to mollify Korean resistance to the disruptions that Japanese rule had provoked, in large measure due to the Land Cadastral Survey, an attempt to modernize colonial taxation systems by rationalizing land ownership systems. Subsequently, from 1924-7, Mizuno would serve as Home Minister, where his duties included supervising the reconstruction of Tokyo following the 1923 Kantō Earthquake.

Here, though, the relevant phase of Mizuno's career is his earlier work as a legal scholar. In his 1905 lecture series, he taught the first university course on copyright law ever offered in Japan.<sup>16</sup> As I've noted, a logic of bifurcation seems to run through *Bungakuron*. A similar formal pattern marks the theory of copyright that Mizuno offers up in his lecture course. Modern copyright is best considered a "composite right" (sometimes given in *katakana* transcription, sometimes as *konsei kenri*), he argues, a sometimes messy combination of two distinct kinds of rights: property rights and intellectual rights:

As I will explain below, I consider copyright to be not a unified right in the manner of property and similar rights, but rather a composite right. That is to say, while in one aspect it consists of rights that take as their object the creative thought of a person, in another aspect it consists of an ordinary property right.<sup>17</sup>

Each of the two aspects is a necessary condition for understanding copyright, yet neither on its own is sufficient to explain the range of rights and duties that we find in modern copyright law.

These two aspects are reflected respectively in two Japanese terms frequently used as translations for "copyright": *hanken* and *chosakuken*, although Mizuno himself does not distinguish the terms in this way. He begins his exploration historically, tracing the rise of copyright back to ancient Roman legal codes. The narrative he presents is explicitly progressive, providing an instance of the use of developing property systems as a yardstick for measuring the degree of civilization attained by a given society. It also claims universal validity: "If we examine this, we see that the development of copyright always follows the identical form of development, whether in Orient or Occident, in ancient times or today."<sup>18</sup> Societies that fail to develop copyright systems will be trapped at an early uncivilized stage and rendered unable to progress beyond it.<sup>19</sup> Looking at classical Rome and Greece, Mizuno finds elements foreshadowing copyright, but not copyright itself. It is only with the rise of modern technologies of reproduction that copyright per se begins to emerge in 15<sup>th</sup> century Europe. Here, though, it arose primarily as *hanken*: that is, in the form of a limited monopoly granted to

<sup>16</sup> Mizuno Rentarō, *Chosakuken hō, Mizuno Rentarō chosakuken shirūzu*, vol. 4 (Tokyo: Mizuno Rentarō chosakuken ronbun kankō kai, 1974), 1-156. The text of various Japanese copyright laws and international copyright treaties is also included.

<sup>17</sup> Mizuno, *Chosakuken hō*, 24

<sup>18</sup> Mizuno, *Chosakuken hō*, 9.

<sup>19</sup> Mizuno, *Chosakuken hō*, 27.

publishers to insure that they would recoup expenses incurred in the preparation and dissemination of works that were of public benefit. Only works that the state deemed worthy were offered protection. Mizuno refers to this historical stage in copyright as one characterized by a doctrine of “patent-ism” (*tokken shugi*).

The second stage is characterized by what Mizuno calls “rights-ism” (*kēri shugi*). *Hanken* gives way to, or rather is supplemented by, *chosakuken*: here, the grounds for copyright protection shift to the creative mental labor of the author who produces the work. As the product of intangible labor, the work emerges as something inherently owned by that author: under modern copyright systems, protection is extended to all works that are expressions of mental labor, not just to those works that the state deems beneficial. The third and final stage in Mizuno’s historical narrative is the globalization of copyright: through a series of first bilateral and then subsequently multilateral international treaties, copyright protection expands from being national to being global in scope, as represented by the Berne convention.

Mizuno surveys existent scholarly views on the basis for modern copyright. There are four basic hypotheses as to the grounds for copyright protection, he argues.<sup>20</sup>

i). Protection of original creator (*sōsakusha hogo shugi*). This view stresses the prior claim of the original creator of a given work against subsequent imitators; the basis for this recognition lies in the fact that a work is grounded in its creator’s original thought and produced through his or her own intellectual efforts and hence should be protected from imitation by others.

ii). Labor Theory of Value (*rōryokusetsu*; Mizuno also cites the German *Arbeittheorie*). This view grounds copyright not in the moment of original creation, but in the intellectual labor expended by the author in the creation of the work. The author borrows his/her materials from society, but through the labor expended to transform them into a work, s/he makes them his/her own.<sup>21</sup>

iii). Compensation Theory (*hōshūsetsu*). Taking as its assumption the public benefit that accrues from the publication of scholarly and artistic works, this view grounds copyright in the need to insure that authors will be compensated for their works so that they will continue to produce them.

iv). Personality Theory (*Personalitättheorie*; *jinkakusetsu*). This view bases copyright on the need to protect the integral person of the author: works are an external expression of this unique personality, and unauthorized reproductions of that work hence amount to an infringement on the very person of the author.

<sup>20</sup> Mizuno, *Chosakuken hō*, 13-24.

<sup>21</sup> Sōseki himself seems to question this view in an 1890 letter to Masaoka Shiki (italicized words here are given in English in the original Japanese text): “Because prose is an idea which is expressed by means of words on paper, I see idea as the Essence of prose. The way of arranging the words is without doubt an element; but it is not as important as the idea, which is the essence. In order to create what in economics is called wealth, you need raw material and labor. Labor does no more than modify the raw material. If there is no raw material to begin with, no matter how skilled the labor, there is no use from the start; in the same way, if in the first place you don’t have an idea, the words’ arrangement is completely useless.” Quoted in Kamei Hideo, *Transformations of Sensibility: The Phenomenology of Meiji Literature* (Ann Arbor: University of Michigan Center for Japanese Studies Publications, 2002), 245; translation by Antonia Saxon.

Mizuno provides a critical summary of each theory, noting in the case of each actually existing copyright laws for which that theory is unable to provide adequate explanation. Each theory is useful to a degree, he concludes, but none is sufficient on its own to fully explain the range of existing copyright practices.

Mizuno then proceeds to unpack the complexities of the composite right that is copyright. It includes elements that make it a kind of property right, and yet unlike other property rights, it mainly concerns the question of controlling the reproduction of what is owned. This derives from the fact that copyright is also a kind of “intellectual right” (*chinōken*; *droit intellectuel*), a new kind of right not found in ancient Roman law but that has become increasingly important under conditions of modernity, in particular the rise of technologies of reproduction.<sup>22</sup> This new intellectual right derives from the notion of personality. “The thought of a person can only be known by that person and is not something that can ever be known by another person.”<sup>23</sup> Accordingly, this right remains with the original author even after the property rights of a copyright are transferred to a new owner. If you own a house, you may modify it at will, but if you own the copyright to a work produced by another, you are not free to reproduce that work in altered form—e.g., to change the text or publish it under your own name.

In sum, Mizuno argues that copyright is an aggregate of two distinct rights, neither of which is adequate on its own to explain the existing legal practice. A pirated edition of a work, for example, infringes only on the property rights of the author, but not on his/her intellectual rights, while a redacted edition of a work on which copyright is expired infringes only on the intellectual rights of the author, not on his/her property rights. The property right aspect of copyright expires after a limited period, while the intellectual right aspect of copyright is permanent. Moreover, various kinds of works such as translations and edited anthologies fall at different locations in the field opened up between the two categories.

This insistence on the complexity of copyright is perhaps the most striking feature of Mizuno’s theory. To bring his discussion closer to Sōseki, I should note that Mizuno argues that copyright only applies to those expressions belonging to the categories of scientific or artistic “work”: written texts, paintings, sculptures, musical scores and the like. Other sorts of original products such as inventions or designs are protected not by copyright, but rather by patents and/or trademarks. Two conditions must be met for something to qualify legally as a work. First, it must be the product of original mental or spiritual labor (*seishinteki ryōryoku*): the product of original mental labor is automatically granted copyright, even without official registration, while something that is not the produce of such labor can never qualify for copyright.<sup>24</sup> Secondly, the product expressing this original thought must belong either to the domains of science (*Wissenschaft*) or of art (*Kunst*). It must take as its aim, that is, either truth or beauty.<sup>25</sup> This section seems to contradict a point that Mizuno stresses elsewhere: that modern copyright is distinguished by the automatic extension of copyright protection to all material expressions of original mental labor, regardless of content—in contrast to the earlier period, in which only works deemed beneficial by the state enjoyed such protection.

<sup>22</sup> Mizuno, *Chosakuken hō*, 34-37. Elsewhere, Mizuno describes the distinction as being one between pecuniary rights (*kinsenteki kenri*) and rights to intellectual preservation (*shisō ijiken*) or intangible moral right (*mukeiteki kenri*). See 89-94.

<sup>23</sup> Mizuno, *Chosakuken hō*, 45-47.

<sup>24</sup> Mizuno, *Chosakuken hō*, 66-69.

<sup>25</sup> Mizuno, *Chosakuken hō*, 76-77.



Mizuno's realm of works qualified to enjoy copyright protection overlaps precisely with the domains of experience that Sōseki takes up in his *Bungakuron*: scientific works that aim at truth and artistic works, specifically literary ones, that aim for beauty. For Mizuno, the two realms are equivalent: both deserve copyright protection because both originate with creative mental labor carried out by a unique person and because there is a public benefit to be had in encouraging the production of such works. By contrast, Sōseki's theory largely revolves around the task of distinguishing between the two realms, scientific and literary. He seems to operate from the assumption that only after we have carefully defined what distinguishes the literary from the scientific can we then draw a useful transversal linkage between the two domains, to create a scientific theory of literature.

As Joseph Murphy and others have argued, Sōseki's theory decenters the author from the privileged position in literature, foreshadowing reader-response theory.<sup>26</sup> This is not to say that Sōseki ignores the author—Yuko Iida's essay in this volume demonstrates otherwise. We find, for example, many passages in *Bungakuron* where Sōseki makes clear value judgments about the relative quality of various writers. Moreover, in his explication of the varieties of *f*, Sōseki notes that we must consider not only the *f* that arises in the reader's mind, but also that in the mind of the author—and of the characters depicted.<sup>27</sup> Nonetheless, the *F+f* formula by which Sōseki expounds the nature of literary experience or "substance" is, as his examples repeatedly demonstrate, primarily a description of what goes on in the reader's mind. Literature begins not with the producer here, but with the consumer, and the author sits explicitly at the mercy of his or her readers and their social situation:

To take an example close at hand from our own country, the focus of contemporary consciousness during the time of the Restoration forty-some years ago consisted of the three concepts of 'expel the barbarian' (*jōi*), 'support the government' (*sabaku*), and 'duty to the Emperor' (*kinmō*). Let's say hypothetically that there was a man in that period who surpassed Shakespeare in expressive power, still, this period-level *F* would have no room to accommodate such a person. Even if a second Matthew Arnold were to appear to elucidate the principles of *Sweetness and Light* (a famous essay advocating literature in education), he would probably be unable to move any of his listeners. The consciousness of the age would not allow for this. That not even a great sage or genius can defy the force of an age (*ikioi*) exemplifies the principle of the focus of consciousness *F* of a given age.<sup>28</sup>

Sōseki argues that this historicity also means that literary tastes are constantly shifting, so that someday perhaps even Shakespeare will be forgotten.<sup>29</sup> Unlike scientific truth, which is permanent and universal, literary truth is historical and relative. The author's right to intellectual integrity that is so central to Mizuno's theory of copyright is sidestepped in Sōseki's theory—both at the level of content and form, given the ruthless way in which Sōseki cuts up the works he cites in order to reduce them to the disconnected passages he quotes.

<sup>26</sup> Joseph A. Murphy, *Metaphorical Circuit: Negotiations Between Literature and Science in 20<sup>th</sup> Century Japan* (Ithaca: Cornell University East Asia Program, 2004), 24-54.

<sup>27</sup> *SZ*, vol. 14, 147.

<sup>28</sup> *SZ*, vol. 14, 33; translation by Joseph Murphy.

<sup>29</sup> *SZ*, vol. 14, 261.

Again, it is not that the author has no role to play in Sōseki's theory. Book Three of *Bungakuron*, for example, is largely devoted to distinguishing the stance of a literary author from that of a scientist: whereas the scientist dissects objects to produce ever finer distinctions in search of the "how" of the phenomenon, the novelists grasps things as wholes, seeking their "what" in a manner that will have a large emotional resonance on the reader. Moreover, a literary author is one who relates to the world primarily through the faculty of emotions, rather than intellect or will. This is a question Sōseki would develop at greater length in the 1908 lecture, "The Stance of an Author" (*Sōsakuka no taido*). But in that work, Sōseki insists on the hybrid (or, to use Mizuno's phrase, the composite) nature of literary works, as well as of their authors:

To take another example, here we have a man. He goes to school. At this time, we must regard him as one member of the faculty. Next he takes up a writing brush. Here, we properly recognize him as taking his place among the ranks of authors. Next he returns home. Now we must classify him as husband or parent. This is a single person, yes, yet he has the character of being woven together out of a variety of types. A work is of the same nature.<sup>30</sup>

The author, then, is not a single unified point of origin, the "personality" of Mizuno's theory, but rather a point of intersection of multiple lines. Atsuko Sakaki captures this view of authorship well: "Literary composition as practiced among men of letters in premodern Japan rested on a shared reading knowledge and the acceptance of the inseparability of one text from those that preceded and followed it. A work became 'literary' because of its indebtedness to other texts," not because of its creation by a single unique author."<sup>31</sup>

What distinguishes an author considered great, then, is not some eternal quality inherent to the author's person, but rather a particularly good match between the author's stance and the shared worldview of a specific historical and cultural community. As Sōseki would argue in the 1907 lecture, "The Philosophical Foundations of the Literary Arts" (*Bungei no tetsugakuteki kiso*):

When highly developed ideals and flawless technique come together, the literary arts reach a kind of perfection. (Therefore, it is in fact logical to interpret literary perfection as something that varies from age to age). When literary art achieves perfection, those who come into contact with it will find themselves falling into perfect correspondence (*kangenteki kanka*) with it—if the times are right for this. This perfect correspondence is the ultimate endowment that the literary arts can bestow upon us. The times are right for this when the ideal manifested within a work of literary perfection is in agreement with our own ideal, or again when our own ideal finds itself being pulled along by the work toward something new, something deeper or more extensive, and thereby undergoes a moment of awakening, a moment of enlightenment.<sup>32</sup>

<sup>30</sup> *SZ*, vol. 16, 175.

<sup>31</sup> Sakaki, "*Kajin no kigū*," 103.

<sup>32</sup> *SZ*, vol. 16 (Tokyo: Iwanami shoten, 1995), 130-131. In *Bungakuron* itself, Sōseki tends to use the term "fascination" or "bewitchment" (*genwaku*) to describe this phenomenon whereby by readers surrender themselves to the work.

The ideal expressed through the works then harmonizes with that found in the reader's world, allowing the reader the pleasure of losing him- or herself in the world of the work. But a reader from a different time or culture will be unable to achieve this correspondence with the work, because this second reader is out of synch with the author's stance. Neither reader is especially correct or mistaken here: success or failure to achieve correspondence is a result of historical contingency.

This relates to another crucial difference between Sōseki's and Mizuno's theories. Mizuno places the historical development of copyright law on a teleological historical continuum that progresses toward higher and higher degrees of Civilization. As Mark Anderson argues elsewhere in this volume, Sōseki's theory is not entirely free from this implicitly imperialistic framework. Sōseki accepts the validity of evolutionary frameworks in many domains of human experience, including those of sense perception and scientific knowledge. In his discussion of religion and supernatural phenomenon in Book One of *Bungakuron*, for example, Sōseki deploys a teleological narrative of historical forms of religious belief, progressing from the worship of natural objects to heroes to idols to the Christian god, even as he places himself outside, or perhaps beyond, this lineage.<sup>33</sup> But in the distinct sphere of literature, Sōseki explicitly rejects teleology: literary tastes undergo historical fluctuation, but that change is in no way linear, developmental, nor necessary. There is constant shifting in the focal point F of our shared collective consciousness toward literature, he argues, due to the discomfort caused by the boredom or stress (*ken'en*) that arises when any given focal point stays fixed in place too long. But we should not make the mistake of believing that the resulting fluctuations follow some sort of progressive linear development.<sup>34</sup>

Here, genius enters into Sōseki's formula. But here again this Romantic notion is put to different use from what we find in Mizuno. In Book Five of *Bungakuron*, Sōseki defines a genius as one who remains out of step with the flow of shared taste in his or her day. This is primarily because of some obsessive fixation, an almost pathological quality that knocks the person out of synchronicity with their shared historical moment. This quality either causes that person always to uncover the same feature in any given phenomenon—for instance, s/he sees triangles everywhere s/he looks—or else it causes the person to stick with a certain focal point of consciousness, exploring its depths and ramifications to uncover new dimensions even after the rest of society has moved on past that focal point.

They say, for example, that Titian could distinguish a hundred colors where the average man saw only one. This is the fruit of specialized training. It is one of the most glorious examples. But there are also geniuses who have nothing to offer the world and who can only flaunt the disgrace of the genius and the ugliness of the freak. There are businessmen whose only genius lies in making a profit. There are genius thieves and genius conmen. There are geniuses at abusing financial power, who seek only to use their power to harass the poor and the weak. These are the noxious and irredeemable geniuses. Not only do they lack the virtues and good deeds that might compensate for their odiousness, their goal is to spread poison in society.<sup>35</sup>

<sup>33</sup> SZ, vol. 14, 122-127.

<sup>34</sup> SZ, vol. 14, 449-453.

<sup>35</sup> SZ, vol. 14, 434; translation by James Keith Vincent.

Genius for Sōseki is neither an entirely desirable quality, nor is it a specifically literary or scientific quality. Its importance as a concept comes not in its ability to guarantee the value of a literary work, but rather as a point of impedance or deflection that can redirect in unanticipated directions the unfolding flow of shared literary taste.

For Sōseki, in sum, the meaning and value of a literary work are not *properties* that belong to that text or to its author, but rather temporary outcomes of the fluid processes that occur when a reader's consciousness turns its focus to the text. This view in turn allows Sōseki to challenge the authority of, for example, English literary critics. Since taste is relative, the literary criticism of a Japanese, even of an English poem, is as valid as that of an Englishman—a position he would expound again in his 1914 lecture, "My Individualism" (*Watakushi no kojinslugi*). Sōseki's stance here is that of a kind of raider, the obsessive collector who poaches on the cultural properties of another civilization, ignoring all prior claims of ownership or authenticity as he hauls his booty back to Japan and places it on exhibition at Tokyo Imperial University. As Atsuko Ueda has argued, Sōseki's theory of literature challenged dominant narratives of national literary history that were taking shape in late Meiji by severing literary texts from the home-ground that Social Darwinist thought claimed provided their only authentic explanatory key.<sup>36</sup>

In fact, the whole experience of literature that Sōseki theorizes here parallels the notion of reading as poaching that Michel de Certeau describes in his *The Practice of Everyday Life*. I should note here that I am clumsily pirating ideas Thomas LaMarre has developed in an important article on *Bungakuron*.<sup>37</sup> For de Certeau, as for Sōseki, the reader confronts the spatial grid of a written text and translates it into time. We know whether the text is a literary one only retroactively, through the quality of this temporal experience of reading. This is a special kind of theft: the reader "insinuates into another person's text the ruses of pleasure and appropriation: he poaches on it, is transported into it, pluralizes himself in it like the internal rumblings of one's body. . . . A different world (the reader's) slips in the author's place."<sup>38</sup> What Sōseki calls "perfect correspondence" is what de Certeau describes as the nomadic experience a reader undergoes as he (or she) loses him- or herself in the text, "oscillating in a nowhere between what he invents and what changes him."<sup>39</sup> We know we are in the domain of literature when this experience generates something beyond the denoted meaning of the text. In Sōseki's theory, this excess is marked by *f*.

The connections between Sōseki's and Mizuno's theories are also relevant to recent developments in intellectual property. As we have seen, Sōseki's (F+f) formula situates *f* as the attribute that distinguishes the experience specific to literature. This *f* holds down multiple meanings: it refers to emotions, but also to the temporal fringes of perception—the advancing and receding edges of the wave of consciousness. It is simultaneously the location of poetic language and tropes, and it is the site of connotation, as opposed to the denotation proper that is carried out by *F*. As such, *f* is highly fluid and changeable, a relation whose qualities differ from

<sup>36</sup> Atsuko Ueda, "Bungakuron and 'Literature' in the Making," *Japan Forum*, vol. 20, no. 1 (2008), 25-46.

<sup>37</sup> Thomas LaMarre, "Expanded Empiricism: Natsume Sōseki with William James," *Japan Forum*, vol. 20, no. 1 (2008), 47-77.

<sup>38</sup> Michel de Certeau, *The Practice of Everyday Life*, Steven Rendall trans. (Berkeley: University of California Press, 1984), xxi.

<sup>39</sup> de Certeau, *Practice of Everyday Life*, 173.

reader to reader, culture to culture, and moment to moment. In a sense, it does not belong to the text itself.

To whom, then, does *f* belong? The answer in Sōseki is ambiguous: *f* is produced on multiple levels in the every-changing interaction between author, written text, and readers. Connotations are not properties of texts, but rather qualities arising out of contingent experiences in which specific readers encounter specific texts at a specific place and time. As one recent scholar of intellectual property puts it,

. . . some words have core definitions (definitions that can be found in a dictionary), and a set of connotations that depend on their history, derivation, and identification with users. These peripheral meanings are often highly individualized to the speaker, the listener, and possibly to the method by which they interact or perceive one another. When such words are used, they become infused with the listener's own frame of reference. The result is that the expression as perceived can have much greater impact on the recipient's thinking than the words that were actually transmitted.<sup>40</sup>

One recent tendency in intellectual property law is the expansion of ownership rights beyond denoted meaning to include connotations. This has not so much been a feature of copyright *per se* as of other forms of intellectual property, especially trademark and publicity rights.<sup>41</sup> While the author may be dead in literary theory, he continues to walk around as a kind of undead zombie in the legal codes of intellectual property, where he is increasingly permitted to claim as his own the "surplus value" produced by consumers in their creative engagements with such cultural signs as trademarks, even in cases where there is no possibility that such uses might produce confusion about the source of goods.<sup>42</sup> As Rosemary Coombe argues,

The trademark owner is invested with authorship and paternity; seen to invest 'sweat of the brow' to 'create' value in a mark, he is then legitimately able to 'reap what he has sown.' The imaginations of consumers become the field in which the owner sows his seed—a receptive and nurturing space for parturition—but consumers are not acknowledged as active and generative agents in the procreation of meaning. The generation of new, alternative, or negative connotations are ignored, denied, or prohibited because patrilineal rights of property are recognized as exclusive: no joint custody arrangements will be countenanced.<sup>43</sup>

In this gendered insistence on subordinating reproduction to production, consumers are banned from engaging in parodic uses of trademarked symbols that might damage the goodwill that is

<sup>40</sup> Rochelle Cooper, "Expressive Genericity: Trademarks as Language in the Pepsi Generation," *Notre Dame Law Review*, no. 65 (1990), 397-424. This passage appears on 413-414.

<sup>41</sup> Mizuno, incidentally, describes in his lectures an early form of publicity right: copyrights for photographs usually belong with the photographer, he notes, but in the case of a commissioned photographic portrait, the copyright (and therefore the right to control reproduction of the image) lies with the depicted person who commissioned the photograph. Mizuno, *Chosakuken hō*, 81.

<sup>42</sup> Cooper, "Expressive Genericity," 402-403.

<sup>43</sup> Rosemary J. Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation and the Law* (Durham: Duke University Press, 1998), 71.

believed to inhere in those marks, a goodwill that is defined as a form of property belonging to the trademark holder.<sup>44</sup> Likewise, creative adaptations of intellectual properties—for example, the common abbreviation of McDonalds to Mickey-D's or the invention of neologisms such as McMansions using the prefix "Mc"—are increasingly defined as secondary connotations that belong to the owner of the trademark. As Coombe argues, this tendency toward privatization threatens "to deprive us of the optimal *cultural* conditions for dialogic practice."<sup>45</sup> In terms of Sōseki's theory, moreover, this blurring of the distinction in legal status between denotation and connotation, the absorption of the reader's f into the author's F, means not so much the death of the author but the erasure of literature as a distinct realm of human experience.

While the grounds for such extension of copyright and trademark principles lie with an increasingly inflated Romantic ideology of the author as assumed source for all potential denoted and connoted meanings of a work, in actual practice, these new legal codes mean that authorship is being redefined "in order to establish capital's right to ownership" of the work; "the 'original' moment here is thus that of investment. . . ."<sup>46</sup> If we recall Mizuno's distinction between the early patent-form of copyright, granted to certain worthy publications in earlier historical periods to insure that publishers could recover their investments in bringing out those works, on the one hand, and the later form that grounded copyright in the personality and the creative mental labor of the author, it seems that the older patent-like form of *hanken* is returning to predominance even as the ideologies through which it is justified remain those of *chosakuken* or author-as-origin. In other words, capital increasingly takes on the rights of personality.

Sōseki's own afterlife becomes tangled up in this tendency. While Kinnosuke's copyrights expired in 1946, thirty years after his death, Sōseki's works have subsequently emerged as one frontier in the expansion of intellectual property claims. In 1979, Readers Digest Japan announced that it was bringing out an edition of reproductions of the first editions of Natsume Sōseki's works. At that point, several parties requested court injunctions to halt the project, claiming that the new series infringed on their property rights. The Museum of Modern Japanese Literature (Nihon Kindai Bungakukan) and the Horupu Shuppan publishing house, for example, claimed that the new series was in fact a reproduction of a reproduction series they had published in 1975 and that the new publications hence infringed on their copyright as editors of that series. This was detected because some of the distortions of printed characters that were a result of the earlier reproduction process also showed up in the later reproduction series.<sup>47</sup> At an emergency meeting, the board of directors of the Museum of Modern Japanese Literature (including a number of prominent literary scholars) resolved to pursue all measures to prevent what it saw as an infringement of its copyright, issuing a statement describing its action as "an important measure for fending off an immoral [*akutoku*] business practice," with some members describing the proposed series as a "fraudulent" practice, a charge that Readers Digest Japan

<sup>44</sup> On the gendering of the power relations involved in translation, including those revolving around questions of intellectual property, see Lori Chamberlain, "Gender and the Metaphors of Translation," *Signs: Journal of Women in Culture and Society*, vol. 13, no. 3 (1988), 454-472. I thank Brett de Bary for calling Chamberlain's work to my attention.

<sup>45</sup> Coombe, *Cultural Life of Intellectual Properties*, 69.

<sup>46</sup> Celia Lury, *Cultural Rights: Technology, Legality and Personality* (London: Routledge, 1993), 35. See also Coombe, *Cultural Life of Intellectual Properties*, 283.

<sup>47</sup> "Riidaazu-sha no Sōseki shohan fukkokuken: Bungakukan-han o ichibu fukusei," *Asahi shinbun*, March 1, 1979, 22.

rejected even as it acknowledged its use of the previous reproduction series.<sup>48</sup> Essentially, the plaintiffs here were claiming that distortions of form introduced through the process of reproduction themselves constituted an expression of authorial creation.

Another complaint against Readers Digest Japan was filed by Tsuda Seifū, designer of the first-edition book covers for two of Sōseki's novels. She asserted that the series would infringe her intellectual property rights in that design. Readers Digest Japan had in fact unilaterally sent her a payment of 40,000 yen in an attempt to compensate her for this, but she had refused it.<sup>49</sup> Shortly thereafter, the Iwanami and Shunyōdō publishing houses, original publishers of the first editions of Sōseki's works, also filed suits asserting that the proposed new reproduction series violated their intellectual property rights. The various cases were settled out of court a few months later, with Readers Digest Japan agreeing to recognize a "right of reproduction" (*fukkokuken*) that was held by original publishing houses such as Iwanami and promising that it would no longer market reproductions without first obtaining the permission of the owners of this new intellectual property right. The court, in accepting this resolution, provided the first legal recognition of this right in Japanese law.<sup>50</sup> The incident was a crucial stage in the development of the principle that the typesetting of a book itself was an act of creative mental labor, and that there was therefore a legitimate intellectual property right (*hanmenken*) held by a publisher in the physical form of a book, even after authorial copyright had expired.<sup>51</sup>

Multiple historical ironies emerge here. The Romantic ideology of authorship is being mobilized to protect not the integrity of authorial creation, but rather to maximize return on corporate investment. As Martha Woodmansee notes, the ideologies of literature and authorship that underwrote the development of modern copyright in eighteenth and nineteenth century Europe developed in response to the growing commercialization of literature and the frustrations of elite writers at their inability to make a satisfactory impact on the expanded readership.<sup>52</sup> They argued that writers had to be protected from the need to please an increasingly mass readership, advocating copyright protection as a means for allowing writers the freedom to pursue artistic creation without having to curry the favor of the market. Under this new doctrine, it was assumed "that the effects of a work of art on an audience are irrelevant to its value. Now a function of purely internal relationships, the value of art is intrinsic."<sup>53</sup> This doctrine, which stressed the value of a literary work as arising solely from the mind of its author, was developed to protect authors from the market and the commercialization of literature, but today the same ideology is being invoked to protect the commercial interests of the publishing house.

Sōseki's theory rejects the Romantic ideology of literature and authorship that underwrote copyright law. The defining feature of literature was *f*, which emerges through the experience of the reader, even as it cannot be said to belong to the reader. Nonetheless, Kinosuke asserted on the copyright page of *Bungakuron* legal ownership over the work in

<sup>48</sup> "Kindai Bungakukan mo teiso e: Rii-Dai-Sha Sōseki fukkokuban Rijikai de kyōkō hōshin," *Asahi shinbun*, March 4, 1979, 22.

<sup>49</sup> "Sōseki fukkokbon ni 'matta': Tōkyō chisai Sōtei mudan shiyō naranu," *Asahi shinbun*, March 3, 1979, 10.

<sup>50</sup> "Hanmoto ni 'fukkokoku-ken': Sōseki shohanbon sawagi, wakai," *Asahi shinbun*, September 1, 1979, 22.

<sup>51</sup> On this controversy and its relation to developing intellectual property law, see Komatsu Michio, *Chōsakuken to henshūsha, chosaku kenkyūkai shirīzu* no. 7 (Tokyo: Kyōkasho kyōkai, Kyōkasho kenkyū sentaa, and Kyōgaku tosho kyōkai, 1984).

<sup>52</sup> Martha Woodmansee, *The Author, Art, and the Market: Rereading the History of Aesthetics* (New York: Columbia University Press, 1994), esp. 25-31.

<sup>53</sup> Woodmansee, *The Author, Art, and the Market*, 18.

which this theory was asserted. Yet as I noted at the beginning, the Ōkura Shoten publishing house also asserted its proprietary rights on the same page, and it is the latter that are enjoying an increased domain today, even as Kinnosuke's legal proprietary rights have expired. It is a situation that would have perplexed both Kinnosuke and Sōseki. It would also have struck Mizuno Rentarō as atavistic, a retreat backward down the progressive teleology of civilization that he valued so highly.

A legalized robbery is taking place: the village commons is again being foreclosed. But those of us who would join the Village Green Preservation Society also have some tools at our disposal, tools that we can poach from Sōseki's theory. Kinnosuke is dead, his copyrights expired, but Sōseki's texts have entered into their afterlife, where they provide moving targets for poachers, grave-robbers, and shameless translators. Poaching is not, as Brian Massumi reminds us, a matter of subtraction, but rather of addition, and as LaMarre argues, it is addition—the 'plus' symbol that lies at the heart of (F+f)—that serves as the pivot in Sōseki's theory.<sup>54</sup> If certain entities claim legal ownership over proliferating connotations, the f's that we generate through our experiences of literature, and if the courts validate that robbery, we should protest the injustice, but we should also keep poaching in our everyday practice, by which we "produce without capitalizing."<sup>55</sup> Sōseki's theory offers us an inexhaustible gift, a kind of potlatch that survives even under the conditions of a modern market economy.<sup>56</sup>

<sup>54</sup> Brian Massumi, *Parables for the Virtual: Movement, Affect, Sensation* (Durham: Duke University Press, 2002), 19-21; and LaMarre, "Expanded Empiricism," 59.

<sup>55</sup> de Certeau, *Practice of Everyday Life*, xx.

<sup>56</sup> de Certeau, *Practice of Everyday Life*, xx and 27.