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# CURRENT BOOKS

REVIEWS OF NEW AND NOTEWORTHY NONFICTION

## Word Crimes and Misdemeanors

*Reviewed by Wendy Kaminer*

PLAGIARISM, LIKE INFIDELITY, IS A habit that few defend but many indulge. You can discern its frequency and covert acceptability in the ready excuses offered by and on behalf of eminent writers and professors periodically caught copying the work of less eminent writers or research assistants. Consider the group of famous novelists who rushed to defend British writer Ian McEwan for borrowing sentences from a memoir by the late Lucilla Andrews in his best-selling novel *Atonement*. McEwan and his advocates stressed that he had acknowledged a general debt to Andrews, and they asserted that fiction writers have creative license to borrow and embellish, especially when writing historical fiction. That principle is not terribly controversial, but it may not apply in this case. As *Slate* media columnist Jack Schafer suggested, while McEwan said he creatively embellished, others might fairly say he copied.

Nonfiction writers and scholars charged with plagiarism are less likely to claim a license to copy than to cop to a lesser offense, such as disorganization. They

acknowledge the inadvertent omission of footnotes and quotation marks, or blame their own inadequate notes for leading them to mistake other people's words for their own, while vigorously denying that any of these "mistakes" might constitute plagiarism. This effectively defines plagiarism to exclude even gross or implausible acts of negligence, especially when committed by established writers or scholars presumed by their friends to have no need to plagiarize. As Harvard constitutional law professor Laurence Tribe asserted in defense of historian Doris Kearns Goodwin after the first revelation of her borrowings in 2002 (others followed), Goodwin had merely been "sloppy with her sources in a minuscule part of her truly extraordinary body of work a decade and a half ago." A few years later, Tribe himself was exposed as a borrower; he apologized, blaming his "well-meaning effort" to write a book for a lay audience that was free of footnotes.

In *The Little Book of Plagiarism*, Richard

### THE LITTLE BOOK OF PLAGIARISM.

By Richard A. Posner.  
Pantheon.  
116 pp. \$10.95

Posner observes that plagiarism is not “especially heinous” but “embarrassingly second rate,” which partly explains why officially first-rate writers caught copying seem to regard plagiarism as a crime that other people commit. Posner, a federal appellate court judge, lecturer at the University of Chicago Law School, and author of an impressive array of big books as well as little ones, offers an idiosyncratic primer on plagiarism and intellectual property, combining bytes of history, law, and cultural analysis in an essay of about 100 pages. The book’s conclusion seems rushed and perfunctory, but this is an otherwise enjoyable “Cook’s tour.”

Posner locates the modern concept of plagiarism at least partly in the development of a market for “expressive works,” which supplanted the private patronage of writers and other artists, and carefully distinguishes plagiarism from allusion and “creative imitation,” as practiced by Shakespeare, claimed by McEwan, and increasingly limited by copyright law. (As Posner explains, copyright infringement, unlike plagiarism, can include borrowings that are openly acknowledged: If you reprinted this book review in its entirety, with attribution but without my permission, you would not be guilty of plagiarism, but you would violate my copyright.)

Posner’s approach is typically dispassionate. He notes that his analysis reflects his long-standing interest in intellectual property, as a judge and an academic, conspicuously omitting any reference to his interests or experiences as a writer. (Have they had no effect on his views?) He acknowledges that victims of plagiarism sometimes suffer significant “competitive harm,” and observes that “attribution is important to creators of intellectual work even when there is no direct financial benefit.” But he centers his definition of plagiarism on harm to the consumer, not the creator, asserting that copying becomes plagiarism when the reader relies on the plagiarist’s deceit: “The reader has to *care* about being deceived about authorial identity in order for the deceit to cross the line to fraud and thus constitute plagiarism.”

This rather narrow definition of plagiarism—which some creators of intellectual property might well contest—exempts the many judges who sign their names to opinions written by law clerks. Most readers of judicial opinions, says Posner, realize that they are written by clerks, who understand that they are hired to draft opinions. Laypeople who believe falsely that judges write their own opinions do not rely on that belief and would not “change their behavior” if it were dispelled. Besides, law values predictability, not originality. So while there may be “an element of deceit” in ghostwritten legal opinions, Posner suggests that there’s no real harm in them.

It’s hard to argue with this proposition, unless perhaps you’re Richard Posner. In his astute 1988 *New Republic* article “The Culture of Plagiarism,” Ari Posner (reportedly no relation) revealed that Judge Posner, “who says he writes his own opinions, believes that overreliance on clerks is insidious. The process of writing itself, he argues, ‘often brings to light mistakes, omissions, inconsistencies that in spoken language one doesn’t notice’ and might actually lead a judge to change his mind. And law clerks are ‘young and timid writers who write in a very bureaucratic style, who downplay policy considerations and tend to rely very heavily on footnotes, citations, and appeals to authority.’”

As Posner’s shifting perspective on the authorship of judicial opinions shows, plagiarism is a slippery subject, partly because it’s difficult to quantify the underlying harm of appropriation. Today, thanks in part to technology, appropriation is apt to be seen as a virtue as much as a vice: In the music world, sampling is considered an art (though in court it may be deemed a copyright violation). Technology facilitates the detection of plagiarism with new software programs, Posner notes, but it also facilitates plagiarism, obviously. You can appropriate someone else’s sentences without even bothering to retype them.

As plagiarism becomes easier to commit and



**Creative defense:** When his novel *Atonement*'s not-so-novel sentences came to light last year, Ian McEwan said he had nothing to atone for.

more common, it is likely to become more respectable, or at least less embarrassing. The mantra that information, including the individualized expression of ideas, should be free and universally accessible partly reflects the fact that so much material on the Internet *is* free and universally accessible. Appropriating it doesn't necessarily feel like stealing, especially to members of the digital generation. Posner correctly regards digitization as a threat to plagiarists, but the culture it helps shape may also prove to be their best defense. Plagiarism is still regarded as "the capital intellectual crime" by most writers, teachers, and scholars, Posner writes, but you have to wonder if plagiarism's severest critics tend to be of a certain age.

Its defenders may share an ideology, Posner suggests, characterizing "the Left" as "soft on plagiarism" because its theorists are hard on individualist notions of authorship. But the musings of the obscure postmodernists whom Posner cites don't support generalizations about the appropriative proclivities of the Left, which is hardly monolithic. Ethics are not generally functions of particular political ideol-

ogies anyway. Left and right, people lie, steal, and cheat with varying degrees of guilt or self-righteousness.

Apolitical popular culture nurtures plagiarism much more than any political theory. The marketplace often rewards imitation more than originality, as the proliferation of movie sequels attests. "The desire to be original and the desire to be successful are not wholly compatible," Posner acknowledges. High school students whose college application essays are "edited" or partly drafted by writing coaches, as well as authors who assemble rather than write their own books, might agree. But Posner also asserts, "Ours is a time and place in which market forces favor originality and in which a robust concept of plagiarism backs up the market valuation."

In other words, the market favors originality, except when it doesn't. Posner favors creativity. In his view, an original work has no inherent aesthetic value; it might simply be "unimaginative hack work." But the effort to create, or to imagine, an original work has value, regardless of the result. Creativity, imagination, and the quest for

originality are not so easily divorced. Students are apt to learn more from “D” papers they struggle to write than any “A” paper they purchase, or steal.

They might also learn to appreciate the intimate proprietary relationship between writers and their own carefully chosen words. Plagiarism is a parasitic offense, whether or not it’s intentionally or even tangibly harmful. Unlike

imitation (properly acknowledged), it is not a form of flattery, any more than stalking is an expression of respectful admiration. Why does plagiarism generate such hostility? It is essentially a hostile act—of impersonation, not homage.

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## A Warhorse of a Different Color

*Reviewed by Andrew J. Bacevich*

NEARLY TWO DECADES AGO, FRANCIS Fukuyama undertook to describe the nature of politics after “the end of history.” Now British general Sir Rupert Smith has set himself a similar task: to define the role of arms and armies now that war is obsolete. According to Smith, a new military paradigm has emerged, and *The Utility of Force* is his effort to identify and distill its essence.

Though Smith served for 40 years as an officer in the British army, the biographical note appended to *The Utility of Force* carefully avoids identifying him as a soldier. Instead, it describes him as “one of the most senior international practitioners in the use of force.” This nebulous characterization is a tip-off to both the virtues and the defects of the book as a whole. In his assessments of the present-day role of military officers and the complex nature of contemporary armed conflict, Smith argues with considerable effectiveness that old verities about war and warriors no longer stand up to careful scrutiny. But the new verities he offers in their place do more to obfuscate than to clarify.

*The Utility of Force* defies easy categorization. Smith laces his account with references to personal experiences in Africa, Northern Ireland, the Balkans, and the Persian Gulf (he commanded the UK Armored Division during Operation Desert Storm), but the result is not

really a memoir. Neither does the book qualify as history, though its first third recounts the evolution of war since the French Revolution. Instead, it is a lengthy—and at times repetitive—meditation on the ambiguous and shifting relationship between armed force and politics in our times.

### THE UTILITY OF FORCE:

The Art of War in the Modern World.

By Rupert Smith. Knopf. 448 pp. \$30

The opening sentence makes the essential point: “War no longer exists.” Conflicts and confrontations persist, but the traditional conception of war as a collision of armies in which one side emerges victorious is no longer meaningful. Of this Smith is quite certain. The old model, which he describes as “interstate industrial war,” had “ceased to be a practical proposition with the invention of the atomic bomb.” During the decades that followed the bombing of Hiroshima, a host of conflicts in places ranging from French Indochina to the West Bank illustrated its limits. America’s defeat in Vietnam was only the most prominent example. Time and again, attempts by machine-age armies to impose their will on irregular forces supported by a sympathetic population failed. Smith himself commanded the United Nations Protection Force in Bosnia throughout 1995, and left persuaded that the old paradigm of war was