

Why copyright and how to get beyond?

An historical reappraisal of literary and artistic property from Augustin-Charles Renouard to Henry Carey

(Abstract, 400 words)

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A quick historical examination of the key moments in the development of copyright reveals how much this property has been challenged and questioned by legal scholars, philosophers and economists. Part of this controversial aspect of copyright law is rooted in the very nature of its philosophical foundations disputed by the utilitarian paradigm on one side, and the deontological paradigm on the other side. Indeed, copyright can either be seen as a mean for increasing the total utility of the society in incentivizing artists to create, or as a fundamental right of the human being in protecting its creative labor from others (copy, alteration etc.).

The debate is even more complex as there is no clear consensus within each competing paradigm for supporting intellectual property. The aim of this paper is to clarify such complexity by going back to discussions occurring during the nineteenth century, which is one of the key moments in the legal development of copyright both in Europe and in United-States.

In France Augustin-Charles Renouard has been one of the most influential thinkers on this matter and is still recognized today as one of the legal fathers of the French legal conception of *droits d'auteur* (rights of author). Informed by law philosophy but also economics, Renouard rejects the concept of literary property while defending payment for authors both motivated by deontological and utilitarian reasons. In United-States, Henry Charles Carey has expressed a similar position in his *Letters on international Copyright* (1853) though his influence was certainly less substantial compared to Renouard in France.

This parallel between the position of Renouard and Carey on copyright is perhaps not completely accidental. Indeed, the reputation and the audience of Renouard was not limited to

Europe, but has also impacted significantly the debate in United-State, thanks to an article summarizing the main ideas of his *Traité des droits d'auteur* published in the *American Jurist* in 1840 (2002). Everton (2011) relates that the Congress knew the theory of Renouard in 1840 thanks to the senator William C. Preston, who read a letter from the jurist and historian Francis Lieber criticizing the position of Renouard against the concept of literary property.

However, in the light of this potential filiation between these two authors in the copyright debate, this paper aims to analyze their respective arguments in showing how they can contribute to bring a new perspective to the current issues about intellectual property.