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## *Introduction*

### I. THE PROBLEM OF ANONYMITY

**A**NONYMOUS WRITING IS both an old and a new phenomenon. Before the Renaissance most writing was anonymous; many of the early poems in anthologies are ascribed to ‘Anon’. The medieval *auctor* (the term from which the word ‘author’ derives) was generally little more than a scribe, transcribing earlier texts. The name of the writer was irrelevant to the readers of a text, so it was immaterial that generally he was anonymous.<sup>1</sup> The identification or naming of authors has been associated with the development of printing, and then subsequently with the role of copyright in ascribing property rights to them and the birth of the Romantic Author as a heroic figure at the end of the eighteenth century.<sup>2</sup> But even then a high proportion of novels were anonymous; between 1770 and 1800 over 70 per cent of novels were published without a named author, and during the 1820s the proportion rose to nearly 80 per cent.<sup>3</sup> There has certainly been a marked decline in anonymous writing in the late nineteenth and twentieth centuries, though some notable writers in this period have always, or sometimes, used pseudonyms (see section IV of this chapter and chapter 2, section II), among them George Orwell (the pseudonym of Eric Blair), Sylvia Plath and Doris Lessing.

The Internet is responsible for the revival of anonymous writing and indeed for many of the problems now associated with it. Many blogs are written under a pseudonym, though often the identity of the author is well known, as with Paul Staines, the author of the Guido Fawkes political blog. Comments on websites are frequently posted anonymously, as are communications on some social media (see chapter 6, sections I and II). Anonymity on the Net creates real difficulties for the victims of cyber-bullying and hate speech, or for those who wish to secure redress for a defamatory allegation; these issues are considered in chapter 6, sections II and III. Put simply, it may

<sup>1</sup> A Bennett, *The Author* (London, Routledge, 2005) 38–43.

<sup>2</sup> *Ibid* 44–54, and ch 3.

<sup>3</sup> The figures are taken from J Raven, ‘The Anonymous Novel in Britain and Ireland 1750–1830’ in RJ Griffin (ed), *The Faces of Anonymity: Anonymous and Pseudonymous Publication from the Sixteenth to the Nineteenth Century* (Basingstoke, Palgrave Macmillan, 2003) 145.

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be very difficult to identify the perpetrator of a damaging communication and take legal proceedings against him.

This is the central problem of anonymity: how to reconcile the interest of a writer in protecting his identity from public disclosure with the need for responsibility and accountability to injured readers. The problem is most acute when the reader, or his family, wants legal redress, for example, through a prosecution for the dissemination of hate speech or for harassment, or by bringing a civil action for libel or infringement of privacy. But anonymous writing may give rise to more general outrage on the part of readers who feel they have been deceived by the use of a pseudonym. In 1987, an Anglican vicar, Rev. Toby Forward, wrote a book of short stories under the name, Rahila Khan. Some of them depicted the lives of young Asian women. The author identified herself as a married woman with two daughters. When the publisher, Virago, discovered the use of the Rahila Khan pseudonym, the book was withdrawn and all copies were pulped; as a publisher of books by women, it felt it had been deceived, and that a hoax had been perpetrated on the Asian community.<sup>4</sup> There are comparable episodes in the United States; for example, the outrage felt when novels apparently written by members of minority ethnic groups turned out to have been authored by elderly white writers, or, in one instance, by an avowed segregationist.<sup>5</sup>

Perhaps the best recent example of the problem occurred with the publication of *Primary Colors* ‘by Anonymous’ in 1996, a fictional account of a Presidential election campaign, which was widely understood to be about Clinton’s successful bid for the Presidency in 1992.<sup>6</sup> There was general indignation when it was discovered that the book was written by Joe Klein, a columnist for *Newsweek*, perhaps because he had denied in broadcast interviews that he had written it—though it was common practice in the nineteenth century for writers to disavow authorship publicly when disclosure of the fact would be embarrassing to them.<sup>7</sup>

This book explores in a number of different contexts how the problem of anonymous writing might be resolved. The law may play some part in this resolution, though it is very doubtful whether it can provide a satisfactory answer in every situation. As chapter 2 shows, there is an enormous variety of anonymous writing: in novels and other literature, in literary reviews, in political writing, in the peer review of academic and scientific articles, and in graffiti. There may be a strong case for disclosure of the author’s

<sup>4</sup> The episode is fully discussed by Mullan, 114–18; also see K Miller, *Authors* (Oxford, OUP, 1989) 183–85. Toby Forward has subsequently written books for children under his own name.

<sup>5</sup> See the instances discussed by L Heyman, ‘The Birth of the Authornym: Authorship, Pseudonymity, and Trademark Law’ (2005) 80 *Notre Dame Law Review* 1377, 1400–1.

<sup>6</sup> Mullan, 30–36.

<sup>7</sup> See in particular the case of Sir Walter Scott, discussed in chapter 2, section II.

identity in some contexts, because the arguments for legal accountability in these circumstances, for example, financial journalism, are very persuasive and the arguments for anonymity are relatively weak. In other contexts, for example, the writing of fiction, the case for anonymity may be much stronger, outweighing the case for the disclosure of an author's identity.

An important legal question is whether a right to anonymity should be recognised as an aspect of the right to freedom of speech (or expression). A constitutional free speech right to anonymity has been upheld by the United States Supreme Court in its landmark ruling in *McIntyre v Ohio Elections Commission*,<sup>8</sup> chapter 3 discusses that decision and the case for recognising a free speech right to anonymity. Sweden also upholds this right under its Freedom of the Press Act and (so far as broadcasting and film are concerned) the Fundamental Law on Freedom of Expression.<sup>9</sup> The South Korean Constitutional Court struck down a law in effect requiring Internet users to register under their real name as incompatible with freedom of expression.<sup>10</sup> In contrast, the Constitution of Brazil expressly forbids anonymous communication.<sup>11</sup> Insofar as the law does recognise a right to anonymity as an aspect of freedom of speech, it creates a strong presumption against disclosure of a writer's identity, perhaps at the cost of any accountability for the harm resulting from the anonymous speech.

English law does not recognise a *right* to anonymous speech, though there is no legal requirement to identify the author of printed material. Anonymous communications are, as already noted, very common on the Internet and for that matter on the broadcasting media, while a number of authors write under pseudonym. There is, therefore, a *freedom* to speak and write anonymously, but it is not a constitutional right, as it is in the United States (see chapter 4). On the other hand, English law does recognise a publisher's privilege not to reveal its sources, if they prefer to remain anonymous, so in this way it does indirectly protect anonymous communications (see chapter 5). The special problems created by anonymity on the Internet are discussed in chapter 6. Although the 'virtues' of anonymous speech are particularly attractive for Net users, the ease of anonymity in this context makes it susceptible to abuse which may cause real harm to its victims. Chapter 7 contrasts the treatment of anonymous speech with the solutions applied to voting and the financing of election campaigns. All liberal democracies

<sup>8</sup> 514 US 334 (1995).

<sup>9</sup> Freedom of the Press Act 1949, ch 3, and the Fundamental Law on Freedom of Expression 1991, ch 2.

<sup>10</sup> Decision of 23 August 2012, reported in *New York Times*, 24 August 2012, and discussed in JA Martin and AL Fargo, 'Anonymity as a Legal Right: Where and Why It Matters' (2015) 16 *North Carolina Journal of Law and Technology* 311, 359–60.

<sup>11</sup> Brazil Constitution 1988, art 5, IV: 'manifestation of thought is free, but anonymity is forbidden'.

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provide for the secret ballot, under which votes are cast anonymously; on the other hand, they usually require the disclosure of donations to political parties and contributions to campaign funds. The reasons for these different rules are explored in this final chapter.

### II. VIRTUES AND VICES OF ANONYMITY

There are a number of reasons why a writer may prefer to publish anonymously or, more usually, under a pseudonym. These reasons are discussed briefly in this section, though some particular cases of anonymous writing are considered more fully in chapter 2. He or she might consider it improper, or incompatible with their position, say, at court or in society to write under their own name. Women authors in the eighteenth and nineteenth centuries frequently published anonymously, using terms such as ‘By a Lady’ or ‘By the Author of ...’ on the title page.<sup>12</sup> This disguise might be assumed for reasons of modesty, or from a sense that it was inappropriate for a woman to publish her work. These reasons might be coupled with other objectives; George Eliot used that name initially to give her novels, in particular her first, *Scenes of Clerical Life*, greater authority than they would probably have enjoyed if they had appeared under her real name, Mary Anne (or Marian) Evans. Like the Brontë sisters, she wished her books to be judged on their merits, quite apart from the name of the author.<sup>13</sup> Later when her identity became widely known, her pseudonym seems to have been kept on as a public disguise or mask, ‘a kind of proclamation’ of her separate identity as a distinguished novelist.<sup>14</sup>

Another reason for anonymity or the use of a pseudonym is to preserve privacy for the author. A well-known case is that of Charles Dodgson, who was almost pathologically shy of publicity attaching to him from his authorship as Lewis Carroll of *Alice in Wonderland* and *Alice through the Looking Glass*.<sup>15</sup> (His leading biographer suggests that Dodgson was also worried that the *Alice* books would damage his standing as the author of mathematical works.)<sup>16</sup> Anonymity has enabled a poet to write more candidly about private feelings of grief (Tennyson’s *In Memoriam*);<sup>17</sup> a writer to explore

<sup>12</sup> Mullan, 57–75 and ch 3.

<sup>13</sup> Ibid 103–5. See the letter of GH Lewes to Barbara Bodichon, quoted in K Hughes, *George Eliot* (London, Fourth Estate, 1998) 311: ‘the object of anonymity was to get the book judged on its own merits, and not prejudged as the work of a woman’.

<sup>14</sup> Mullan, 108.

<sup>15</sup> Ibid 41–46; Ciuraru, ch 3; MN Cohen, *Lewis Carroll* (London, Macmillan, 1995) 295–97.

<sup>16</sup> Ibid 298.

<sup>17</sup> In fact most reviewers and many others identified Tennyson as the author, but he never allowed an edition of the poem to appear with his name on the title page during his lifetime: RB Martin, *Tennyson: The Unquiet Mind* (Oxford, OUP, 1980) 341. Also see Mullan, 274–79.

family tensions and religious doubts (Edmund Gosse's *Father and Sons*);<sup>18</sup> and a lesbian crime writer to reveal her sexuality (Patricia Highsmith's *The Price of Salt* written under the *nom de plume*, Claire Morgan, and later published under her own name as *Carol*).<sup>19</sup> As John Mullan explains in his book on anonymity, one important reason for the decline of anonymous writing in the last 100 years has been the erosion of reticence; writers have become part of celebrity culture.<sup>20</sup> But even today some writers adopt a pseudonym to preserve their privacy and prevent the media from inquiring into their life. For example, the author of the acclaimed Neapolitan novels writes as Elena Ferrante, a pseudonym, and declines invitations to speak at conferences or accept literary prizes.<sup>21</sup>

Another important reason for anonymity is a writer's desire to avoid social ostracism, detention or criminal prosecution for expressing unpopular or illegal opinions. Under the disguise of anonymity he feels freer to make trouble, to question religion, to protest against harsh treatment by the police or prison authorities, or to advocate insurrection. Much controversial writing in the seventeenth century was published anonymously, including works by Andrew Marvell and John Locke's *Two Treatises on Government*, as were Jonathan Swift's satires in the early years of the eighteenth century<sup>22</sup> (see chapter 2, sections V and VI). This justification for anonymity, like the privacy reasons considered in the previous paragraph, now has little force for established writers. But the fear of social and legal sanctions explains why the faces of many interviewees on television (immigrants, asylum-seekers, or the neighbours of people murdered or bullied on housing estates) are pixelated in order to hide their identity. Further, such an apprehension may provide a reason, in addition to a general sense of mischief, and the distinctive Internet culture (see chapter 6, section 1(B)), why many bloggers prefer to communicate with an alias, rather than under their own name.

Finally, writers may opt for anonymity or the use of a *nom de plume* out of a desire for their work to be assessed purely on its merits without consideration being given to the gender or established standing of the author. As mentioned already, Charlotte Brontë and George Eliot did not want their gender to be taken into account. Other writers, for example, Anthony Trollope and Doris Lessing, have written one or two novels anonymously or under another name in order to see how they were received by the public, who would then not be reading them just because they came from the pen of a well-established author (see further, chapter 2, section II). Locke justified his anonymous authorship of *Two Tracts on Government* because

<sup>18</sup> Ibid 280–85.

<sup>19</sup> Ciuraru, ch 15.

<sup>20</sup> Mullan, 286–87.

<sup>21</sup> J Wood, 'Women on the Verge', *New Yorker*, 21 January 2013, available at [www.newyorker.com/magazine/2013/01/21/women-on-the-verge](http://www.newyorker.com/magazine/2013/01/21/women-on-the-verge).

<sup>22</sup> Mullan, ch 5.

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he wanted readers only to consider the arguments in the book, and not the identity of the author.<sup>23</sup>

It is, however, unclear whether this justification can always be claimed as a virtue of anonymity. In some circumstances, particularly in the cases of political judgements or economic forecasts, readers will usually want to know the identity of the writer in order to make an assessment of his credibility: have his predictions generally been correct and consequently would it be right to accept them in this case? Anonymity deprives readers of this information, so it could be regarded as a vice rather than a virtue. Readers might even make the argument that they have a free speech right to know the author of the views or judgments which they have been invited to consider: for further consideration of this argument, see chapter 3, section III. Much the same point may sometimes apply to works of fiction. Rev. Toby Forward justified his use of a pseudonym with the argument that it enabled him to write more creatively; as a white clergyman he could not write stories about the experiences and feelings of an Asian girl.<sup>24</sup> But the *nom de plume*, Rahila Khan, gave the stories a credibility they were not entitled to, and will almost certainly have deceived many readers.

The main drawback, or vice, of anonymous writing is, therefore, that it enables mendacity and deception. An anonymous writer can make false claims about his product or about a political or commercial rival with less fear of detection (and legal proceedings) than someone making the same statements under his real name. Anonymity also lends itself to cyber-smears and bullying, hate speech and defamation on the Internet (see chapter 6). As Scalia J put it in his dissenting judgment in the *McIntyre* case, anonymous speech 'facilitates wrong by eliminating accountability, which is ordinarily the very purpose of the anonymity'.<sup>25</sup> He added that it also coarsens public debate.

The virtues and vices of anonymity cannot easily be assessed, and weighed against each other, divorced from the context of the particular type of writing. The justifications for the practice have appeared very persuasive for some types of writing, for example, poetry and novels, at particular periods of history, but may have less force now. The argument for signed, rather than anonymous, writing is particularly strong in the case of political and economic journalism, because accountability is more important in this context than it is, say, for fiction. Signed literary reviewing is now usual; anonymous reviewing has been abandoned in the twentieth century, largely because it enabled abusive reviews and because readers are entitled to know who the author is (see chapter 2, section III), though it survives in *The Economist* (see chapter 2, section IV(B)).

<sup>23</sup> Ibid 164.

<sup>24</sup> *London Review of Books*, 4 February 1988.

<sup>25</sup> *McIntyre* (n 8) 385.

An important point to consider in evaluating the virtues and vices of anonymity is that it may be possible to remove, or at least reduce, some of the latter when an intermediary takes responsibility for the anonymous work, whether it is a book, a newspaper or journal article, a broadcast or an Internet communication.<sup>26</sup> Normally a book or journal publisher knows the real name of an author who uses a *nom de plume*, though occasionally the author's identity may be concealed even from the publisher and is known only to his agent and a few personal friends, as with the Toby Forward stories; see also the Doris Lessing episode discussed in chapter 2, section II. Readers of the book (or journal article) will know that the writer has an established reputation, or some credibility, with the publisher (or journal editor), although they themselves are in no position to assess it. Moreover, if a reader has been deceived or defamed, he may be able to take proceedings against the publisher to secure disclosure of the author's identity, or alternatively take proceedings, say, in defamation against the publisher. Publishers then act as what may be termed 'responsible intermediaries', as do newspaper editors. Broadcasters also act as responsible intermediaries when they interview, say, an asylum-seeker on the conditions under which he is detained. He speaks anonymously (his face is pixelated and an actor's voice is used) but the interviewer knows his identity and in effect vouches for his credibility as a genuine asylum-seeker. Newspaper and other journalists should act as responsible intermediaries when they report stories given them by anonymous sources. The journalists can check whether the source is reliable, though the public cannot: for further discussion, see chapter 5, section III.

It is much less clear how far Internet intermediaries can play the same role in reducing the risks attendant on anonymous communication. Internet Service Providers (ISPs), services providing platforms for bloggers, and social media carry far too much traffic for them to check the identity of the millions of people using their services, though some social media have required users to register with their real name (see chapter 6, sections I and II). It is much more difficult for them than it is for the traditional mass media to act as responsible intermediaries. While printers and publishers were frequently held liable for defamatory and other illegal publications from the sixteenth to the nineteenth centuries (see chapter 4, section II), ISPs and website operators enjoy considerable immunity from comparable liability, largely because their exposure to liability would inhibit freedom of communication on the Net. But much communication on the Net is anonymous and there are obvious difficulties in holding anonymous authors accountable; see chapter 6, sections III(C) and (D) for further discussion of this problem.

<sup>26</sup> See S Levmore, 'The Anonymity Tool' (1996) 144 *University of Pennsylvania Law Review* 2191, 2199–202 for the idea that responsible intermediaries make anonymity more acceptable.

These difficulties perhaps make anonymity on the Net more troubling than it is in other contexts.

### III. THE DEATH OF THE AUTHOR?

In a well-known essay written in 1967, Roland Barthes announced the death of the author.<sup>27</sup> The importance which had been attached to the personality of the author could be attributed to a number of historical factors: the personal faith emphasised by the Reformation, rationalism and capitalist ideology. This focus detracted from the primacy of understanding language and the text. It is for readers to make sense of the text, itself a 'tissue of quotations drawn from the innumerable centres of culture',<sup>28</sup> without recourse to nonsensical questions about the identity or intentions of the author. It is language which speaks, not the author.<sup>29</sup> Elena Ferrante has expressed a similar sentiment: 'I believe that books, once they are written, have no need of their authors'.<sup>30</sup> On this perspective, it would be a matter of indifference whether a text—novel, poem or other work—was signed by an identified (or identifiable) author or was anonymous.

A different, and richer, perspective is offered by another French writer. Michel Foucault, echoing Samuel Beckett, asked: 'What does it matter who is speaking?'.<sup>31</sup> It is not enough to affirm, as Barthes had done, that the author has disappeared or is dead. Literary and other works are identified as written by an author, generally named, but sometimes anonymous. The author, whose name is part of the text, should be distinguished from the person who wrote the work. An author's name permits readers to group together various texts and differentiate them from others, so permitting literary discourse and interpretation. To take a simple example, we can consider the works of Shakespeare together and use our understanding of one play, or poem, to shed light on another, without forming a view on the separate question whether they were actually written by William Shakespeare of Stratford, or the Earl of Oxford, or another candidate for their authorship. The author's name serves what Foucault terms 'author-functions' with a number of general characteristics.<sup>32</sup> One of them is linked to various juridical and institutional systems which determine who owns the text, or copyright, and who is responsible for transgressions. Another characteristic is

<sup>27</sup> 'The Death of the Author' in *Image Music Text* (Essays selected and translated by S Heath, London, Fontana, 1977) 142.

<sup>28</sup> *Ibid* 146.

<sup>29</sup> Bennett, *The Author* (n 1) 11–13.

<sup>30</sup> Quoted in Wood, 'Women on the Verge' (n 21).

<sup>31</sup> 'What is an Author?' in JV Harari (ed), *Textual Strategies: Perspectives in Post-Structural Criticism* (London, Methuen, 1980) 141.

<sup>32</sup> *Ibid* 148–53.

that the function need not refer simply to one real individual: it may be just as wrong to equate the author and the real writer, as it would be to equate the author with the narrator of a novel.

What is the significance, if any, of this literary theory for understanding and resolving the anonymity problem? One point is that Foucault's 'author function' is perfectly compatible with anonymous writing, at least if the text is entitled, 'By the Author of ...'. Readers can then easily group the text with other works by the same writer. The author-function does not require use of the name of the actual writer, or indeed any name at all.<sup>33</sup> A writer chooses to write with his (or her) real name, to use a *nom de plume*, or to remain completely anonymous (as with *Primary Colors*).<sup>34</sup> These can all be labelled 'authornyms', the term used by Laura Heyman in a significant law review article.<sup>35</sup> She argues that an authornym is essentially a branding choice: a statement made to the reading public which enables it to make easy, informed choices what to read, rather than have the cost and trouble of searching for something of the same quality as the book it has enjoyed. 'An authornym ... is the statement of authorship offered to the consuming public—in other words, the author's trade mark.'<sup>36</sup> On this perspective, as in Foucault's essay, anonymous writing or the use of a pseudonym is essentially no different from the more conventional use of an author's real name.

Foucault's conclusion that it is a matter of indifference who is speaking has been questioned by literary theorists.<sup>37</sup> But the anonymity problem outlined in section I of this chapter, is not a question of literary theory. It may be right to interpret literary texts without inquiring into the author's intentions, his biography or psychology, but the anonymity problem is how to reconcile or balance the writer's freedom not to disclose his real name with his responsibility (moral and legal) to his readers. The choice of a pseudonym may be regarded as a branding exercise, as apparently it was by Samuel Clemens when he registered Mark Twain as a trade mark.<sup>38</sup> But when he challenged (unsuccessfully) the publication of a number of his works, then in the public domain, for infringement of copyright and for dilution of his trade mark, he brought the proceedings in his own name.<sup>39</sup> He was prepared to remove his disguise, such as it was. Equally, the identity of anonymous authors, or those using a *nom de plume*, should usually be disclosed, when they are involved in defamation or other legal proceedings (see chapter 6,

<sup>33</sup> Griffin, 'Introduction' in *The Faces of Anonymity* (n 3) 9–10.

<sup>34</sup> In *Paratexts: Thresholds of Interpretation* (JE Lewin (trans), Cambridge, CUP, 1987) 39–40, G Genette wrote: 'After all to sign a work with one's real name is a choice like any other, and nothing authorises us to regard this choice as insignificant'.

<sup>35</sup> 'The Birth of the Authornym' (n 5).

<sup>36</sup> *Ibid* 1381.

<sup>37</sup> See DW Foster, 'In the Name of the Author' (2002) 33 *New Literary History* 375.

<sup>38</sup> Ciuraru, 88–89.

<sup>39</sup> *Clemens v Belford Clark and Co*, 14 F728 (CC ND Ill, 1883), discussed by Heyman, 'The Birth of the Authornym' (n 5) 1433–34.

section III(C)). The death of the author, it is suggested, has little significance for the resolution of the problem of anonymity.

#### IV. PSEUDONYMS

Hitherto terms such as ‘anonymous writing’ and the ‘use of a pseudonym’ have been used interchangeably, as if there are no distinctions between them. But does the adoption of a *nom de plume* differ from pure anonymity? Pseudonymity is on one view merely a subset of anonymity. A restriction on anonymous writing would certainly cover the use of a *nom de plume*; both devices are almost always used to conceal the identity of the writer, and they make it more difficult for readers to secure redress if they consider they have been harmed by a publication.<sup>40</sup> Pure anonymity and the use of a pseudonym both protect the author’s privacy. Both devices should be distinguished from autobiographical fiction, where writers use incidents from their own life as the basis for a novel, but transform them in order to conceal the link.<sup>41</sup> This distinction is not always drawn properly. Two biographies of Siegfried Sassoon suggest that *Memoirs of a Fox-Hunting Man* was published anonymously,<sup>42</sup> in fact it was issued under Sassoon’s name, but the memoirs were narrated by ‘George Sherston’, to spare Sassoon’s family and friends any embarrassment.<sup>43</sup>

There is a difference between pure anonymity and the use of a pseudonym. The latter enables an author to develop a separate writing identity, particularly when it is used over a period of time for a number of novels or other works. Such an identity might be adopted for a variety of psychological and literary reasons. Often women writers have felt more comfortable when their work is published under a masculine *nom de plume*. The adoption by men of a woman’s name has been much less common, although in the eighteenth century some well known works were published anonymously, but as if written by a woman, notably Defoe’s *Moll Flanders* and Richardson’s *Pamela*.<sup>44</sup> Authors may be too inhibited to write under their

<sup>40</sup> DG Post, ‘Pooling Intellectual Capital: Thoughts on Anonymity, Pseudonymity, and Limited Liability in Cyberspace’ (1996) *University of Chicago Legal Forum* 138, 154.

<sup>41</sup> Two classic examples of this genre are Tolstoy’s *Childhood, Boyhood, Youth*, and Proust’s *Remembrance of Things Past*. Another more recent case is Sylvia Plath’s *The Bell Jar*, exploring the central character’s mental breakdown and her troubled relationship with her mother: see Ciuraru, ch 10. It was also written under a *nom de plume*, Victoria Lucas, so it is both autobiographical fiction and a pseudonymous work.

<sup>42</sup> JS Roberts, *Siegfried Sassoon* (London, Richard Cohen Books, 1999) 224; M Egremont, *Siegfried Sassoon* (London, Picador, 2005) 328–29.

<sup>43</sup> The review in the *New Statesman* of 10 November 1928 begins: ‘It is a pity that Mr Sassoon has acknowledged the authorship of this book; it would have been amusing to watch the efforts to fix it on different people’.

<sup>44</sup> Mullan, ch 4.

own name; an extreme example is the manic depressive American writer, Alice B. Sheldon, who adopted the name, James Tiptree, Jr, for her science fiction stories, after coming across Wilkin & Son jam, made in Tiptree, a village in Essex.<sup>45</sup> More commonly, a *nom de plume* may be used out of playfulness, or simply because a writer takes a dislike to his name; George Orwell was used partly because the writer disliked his real name, Eric Blair (see chapter 2, section II). Similar reasons operate in the case of Internet communication (see chapter 6, section I(B)).

A pseudonym also enables established writers to use a separate author name for a different genre of their work, distinguishing, say, detective stories from more literary writing. The process can work the other way; Georges Simenon in his early years wrote about 190 pulp novels between 1924 and 1931 under a variety of pen names before publishing more serious works, including the Maigret detective novels, under his own name.<sup>46</sup> Academics may prefer to write thrillers under a pseudonym, perhaps in the belief that the use of their real name would weaken their standing as serious scholars.<sup>47</sup> JK Rowling has written a number of thrillers as 'Robert Galbraith', as she has been keen to adopt a different literary persona for this genre, even though they sold less well before her authorship was revealed.<sup>48</sup> On the other hand, John Banville writes mystery stories as 'John Banville writing as Benjamin Black'; there is no attempt to conceal his authorship. The use of the *nom de plume* merely distinguishes the mystery stories from the author's other more literary work. This enables what has been termed a separate 'reputational capital' to be built up as an asset associated with the particular pseudonym.<sup>49</sup> A very good (or bad) detective novel written under a *nom de plume* would not affect the standing of the novelist's other work, let alone the author's general reputation.

Pseudonyms may therefore perform a distinctive role in the assessment of an author's literary reputation. It is less clear that they have, or should have, any impact on the anonymity problem: how to balance an author's freedom to publish without the use of his or her real name and the readers' interest in redress when they are outraged by a publication or consider that it has defamed them. The use of a pseudonym may indeed itself deceive readers, insofar as it suggests, explicitly or implicitly, that the story was written by

<sup>45</sup> Ciuraru, 252–53.

<sup>46</sup> P Assouline, *Simenon* (J Rothschild (trans), London, Chatto & Windus, 1997) 64–68 states that at least 17 *noms de plume* were used: P Marnham, *The Man who Wasn't Maigret* (London, Bloomsbury, 1992) 110, puts the figure at 24.

<sup>47</sup> JIM Stewart, Professor of English at Oxford University wrote a number of detective novels under the name, Michael Innes. Professor C Heilbrun, Columbia University, wrote mystery stories under the name, Amanda Cross, keeping her authorship secret to protect her academic reputation.

<sup>48</sup> See [www.theguardian.com/books/2013/jul/24/jk-rowling-robert-galbraith-harry-potter](http://www.theguardian.com/books/2013/jul/24/jk-rowling-robert-galbraith-harry-potter).

<sup>49</sup> Post, 'Pooling Intellectual Capital' (n 40) 152.

a member of a particular ethnic or religious community, when it was in fact been written by an outsider—as in the Toby Forward/Rahila Khan episode mentioned earlier in this chapter. Insofar as the law does have a role in resolving the anonymity problem, whether this arises in the context of literature, political writing or in the social media and other types of Internet communication, the fact that the writer has used a *nom de plume*, rather than writing wholly anonymously, would seem to be immaterial.

## V. ANONYMITY AND PRIVACY

In *Author of a Blog v Times Newspapers*,<sup>50</sup> one of the few English cases to discuss a right to anonymity, an unsuccessful argument was made that an anonymous blogger's privacy would be infringed when *The Times* proposed to publish an article identifying him: the significance of this case is fully discussed in chapter 4, section III. Anonymity is indeed often considered to be an aspect of privacy. In an early book on the right to privacy, Alan Westin contended that anonymity represents the desire of individuals to be free from identification and surveillance even when they are out in public or engaged in public activity.<sup>51</sup> Most of us prefer not to be photographed, or reported on in the media, when we are out in the streets, sunbathing on a beach, or using a public facility such as a library or a tourist information office. We prefer to remain anonymous in these situations, and this should be regarded as one of the aspects or 'states' of individual privacy. And it can be said that anonymity supports personal privacy, in that without it effective privacy protection might be reduced: see the discussion in chapter 6, section I of the relationship between anonymity and privacy in the context of Internet communication.

A right to speak anonymously may to some extent be explained in terms of privacy. Westin argued that the right to engage in political expression anonymously, which was first protected by the US Supreme Court in a 1960 decision, is a privacy interest, although the word 'privacy' was not used in that ruling.<sup>52</sup> The Court did use the word in its later decision in *McIntyre*, when it recognised that the motive for anonymity may be 'merely ... a desire to preserve as much of one's privacy as possible', so it is possible to interpret the case as one involving personal privacy, as well as freedom of speech.<sup>53</sup> But *McIntyre* is really a free speech case. It was argued

<sup>50</sup> [2009] EMLR 22.

<sup>51</sup> *Privacy and Freedom* (London, Bodley Head, 1967) 31–32.

<sup>52</sup> *Talley v California*, 362 US 60 (1960).

<sup>53</sup> L Tien, 'Who's Afraid of Anonymous Speech? *McIntyre and the Internet*' (1996) 75 *Oregon Law Review* 117, 173, interpreting *McIntyre v Ohio Elections Commission*, 514 US 334, 342 (1995).

successfully that a right to speak and write anonymously was protected by the First Amendment guarantee of freedom of speech (see further chapter 3, section II). A concern for personal privacy may underlie the choice to write anonymously or under a *nom de plume*, as it did most famously for Lewis Carroll, but it is another matter to conclude that it justifies a privacy right to communicate ideas anonymously.

The difficulty with basing a right to communicate anonymously on a privacy right is that, as Eady J said in the *Author of a Blog* case,<sup>54</sup> blogging, and presumably any form of public communication, is essentially a *public* activity; the speaker intends to contribute to public debate and influence others, so it seems hard to conclude that he has a reasonable expectation of privacy in these circumstances. It may be that Eady J did not do justice to the privacy arguments when he dismissed the blogger's application for an injunction in this case,<sup>55</sup> but that is not the concern of this book. It is concerned with the free speech arguments for anonymity.

The free speech arguments for anonymous communication are quite different from those which might justify recognition of a privacy right to communicate anonymously. Moreover, a privacy right to communicate anonymously might be invoked in circumstances which have relatively little to do with freedom of speech. When people answer questions in a census, public survey or election poll, it is promised or understood that their identity will not be disclosed, so they might then have a privacy or anonymity right to stop revelation of their identity. In these circumstances, unlike that of blogging, the people questioned are not really acting as speakers who are keen to communicate their views to the general public. Of course privacy concerns do frequently underlie public anonymous communications, as the Supreme Court recognised in *McIntyre*. Nor is there any incompatibility between the free speech and privacy arguments for a freedom or right to communicate anonymously. In the absence of privacy, including a state of anonymity, some people will feel constrained to remain silent, and there will be less speech. But that is primarily a free speech argument; it will be considered at length in chapter 3 of this book.

<sup>54</sup> *Author of a Blog* (n 50) para 11.

<sup>55</sup> This is the argument of K Hughes, 'No Reasonable Expectation of Anonymity?' [2010] 2 *Journal of Media Law* 169.