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## COMMENT

### Could Shakespeare Think Like a Lawyer? How Inheritance Law Issues in *Hamlet* May Shed Light on the Authorship Question

*Shakespeare couldn't have written Shakespeare's works, for the reason that the man who wrote them was limitlessly familiar with the laws, and the law-courts, and law-proceedings, and lawyer-talk, and lawyer-ways—and if Shakespeare was possessed of the infinitely-divided star-dust that constituted this vast wealth, how did he get it, and where, and when? . . . [A] man can't handle glibly and easily and comfortably and successfully the argot of a trade at which he has not personally served. He will make mistakes; he will not, and cannot, get the trade-phrasings precisely and exactly right; and the moment he departs, by even a shade, from a common trade-form, the reader who has served that trade will know the writer hasn't.*

—Mark Twain<sup>1</sup>

*[Q]uestions that were raised by such skeptics as Mark Twain, Walt Whitman, Henry James, John Galsworthy, and Sigmund Freud still intrigue those mavericks who are persuaded that William Shakespeare is a pseudonym for an exceptionally well-educated person of noble birth who was close to the English throne.*

—Justice John Paul Stevens<sup>2</sup>

*[Shakespeare] seems almost to have thought in legal phrases—the commonest of legal expressions were ever at the end of his pen in description or illustration.*

—Lord Penzance<sup>3</sup>

#### INTRODUCTION

If the author of the plays and poems attributed to William Shakespeare was as well versed in the law as Mark Twain asserts, then it is

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1. MARK TWAIN, IS SHAKESPEARE DEAD? 14-16 (1909).

2. John Paul Stevens, *The Shakespeare Canon of Statutory Construction*, 140 U. PA. L. REV. 1373, 1374-75 (1992) (citations omitted).

3. JAMES PLAISTED WILDE, BARON PENZANCE, THE BACON-SHAKESPEARE CONTROVERSY 85-86 (1902), quoted in Mark Andre Alexander, *Shakespeare's Knowledge of Law: A Journey through the History of the Argument*, 4 OXFORDIAN 51, 82 (2001).

unlikely that he could have been the Stratford glover's son to whom an entire tourist industry is dedicated in his hometown. Shakespeare's frequent use of the law and of legal terms in his plays is well documented. Whether his legal terms are always used correctly has been a matter of dispute. In order to shed light on the authorship question, we must not only examine how accurately legal *terms* are used in the plays, but also how accurately and deeply legal *issues* are developed. It is one thing for an author to portray a trial scene or to insert a legal phrase into a play now and then; a person untrained in the law could easily confer with a lawyer to ensure that he is not making mistakes about the law. But to write a play in which the entire plot is informed by complex and subtle legal issues is another matter altogether. This requires not only the vocabulary of a lawyer, but his way of thinking as well. The authorship controversy needs, not only analysis of passages, but also analysis of plots. Recent research on inheritance law in *Hamlet* reveals that the author of that play had a precise and extensive knowledge of inheritance law and that this knowledge informs many aspects of the plot and the interrelationships of characters. Whether this revelation means that the play's author meets the test of being able to think like a lawyer is the subject of this Comment.

Part I of this Comment gives an overview of the authorship controversy and demonstrates why the controversy persists. It explains problems with the Stratford theory and summarizes the arguments for three alternative candidates: Francis Bacon, Christopher Marlowe, and the Earl of Oxford.

Part II discusses Shakespeare's general use of the law in his works, summarizing the arguments regarding his accuracy and analyzing the scope of his usage of legal terms. It concludes that some of Shakespeare's uses of legal terms and imagery could have been written by a person without formal legal training, but that many other uses are indicative of an author with a sophisticated legal education.

Part III explores inheritance law issues in *Hamlet* and shows that the author's legal knowledge is deeply and subtly woven into the plot. It also shows that the author of *Hamlet* was familiar with some obscure legal texts written in the arcane language known as Law French and inscribed in a style of handwriting that was used mainly by law clerks.

## I. THE AUTHORSHIP CONTROVERSY

When I studied Shakespeare in college, any texts that even mentioned that there was a dispute as to the authorship of the plays dismissed the issue as the ravings of snobs who believed that a low-born person could not have written works of such genius. Most of the ortho-

dox Stratfordians—those who believe the man from Stratford wrote the plays—simply refuse to confront the controversy or to consider any evidence that goes against their theory.<sup>4</sup> Louis B. Wright, former Director of the Folger Shakespeare Library, is typical:

[I]t is incredible that anyone should be so naïve or ignorant as to doubt the reality of Shakespeare as the author of the plays that bear his name. Yet so much nonsense has been written about other “candidates” for the plays that it is well to remind readers that no credible evidence that would stand up in a court of law has ever been adduced to prove either that Shakespeare did not write his plays or that anyone else wrote them. All the theories . . . are mere conjectures spun from the active imaginations of persons who confuse hypothesis and conjecture with evidence. . . . The anti-Shakespeareans base their arguments upon a few simple premises, all of them false. These false premises are that Shakespeare was an unlettered yokel without any schooling, that nothing is known about Shakespeare, and that only a noble lord or the equivalent in background could have written the plays. The facts are that more is known about Shakespeare than about most dramatists of his day, that he had a very good education, acquired in the Stratford Grammar School, that the plays show no evidence of profound book learning, and that the knowledge of kings and courts evident in the plays is no greater than any intelligent young man could have picked up at second hand.<sup>5</sup>

When I read these words in my undergraduate days, I took Wright’s certainty for truth and scoffed at any mention of alternate theories to the authorship question. Now that I have been seduced into considering the other theories, I see glaring errors in Wright’s statement. For example, there is no documentation whatsoever that Shakespeare “had a very good education, acquired in the Stratford Grammar School.”<sup>6</sup> He *may* have had such an education, and I am much more amenable to the possibility than many Shakespeare skeptics, but it is certainly not a fact that would stand up in a court of law.<sup>7</sup> For Wright to assert this so baldly is to, in his own words, “confuse hypothesis and conjecture with evidence.”<sup>8</sup> The additional “facts” he cites, namely, that “more is known about Shakespeare than about most dramatists of his day, . . . that the plays show no evidence of profound book learning, and that the knowl-

4. See, e.g., Alfred Harbage, *Shakespeare’s Audience: Modern Appraisals*, in *SHAKESPEARE: MODERN ESSAYS IN CRITICISM* 3, 16 (Leonard F. Dean ed., 1967).

5. Louis B. Wright, *Introduction to WILLIAM SHAKESPEARE, THE TRAGEDY OF RICHARD THE THIRD*, at xxxii-xxxiii (Louis B. Wright & Virginia A. LaMar eds., 1960).

6. *Id.*

7. See JOSEPH SOBRAN, *ALIAS SHAKESPEARE: SOLVING THE GREATEST LITERARY MYSTERY OF ALL TIME* 21 (1997).

8. Wright, *supra* note 5, at xxxiii.

edge of kings and courts evident in the plays is no greater than any intelligent young man could have picked up at second hand,"<sup>9</sup> are not facts, but matters of complex judgment on which reasonable people may disagree. For many years, however, wary of being labeled naïve and ignorant, I overlooked the holes in Wright's argument.

To be sure, the smell of the crank has sometimes befouled the Shakespeare heretic. Some absurd notions have been propounded, such as the theory that the real author was Daniel Defoe, although he was born in 1629, several years *after* most of the plays were published.<sup>10</sup> Some theorists have played endless word games trying to show that one word or another in the plays or poems is a cryptographic clue to the author's identity.<sup>11</sup> In the 1940s, Percy Allen came to the conclusion that the plays were a collaborative effort among Shakespeare, Francis Bacon, and the Earl of Oxford.<sup>12</sup> His research method would seem exemplary: he went straight to the parties involved and interrogated them himself—by holding a séance!<sup>13</sup> It is easy for the orthodox Stratfordian to make the whole issue seem the province of quacks by giving a few examples of the sillier theories on the authorship question. But the more I have delved into the subject, the more I have come to believe that we cannot ignore the substantial amount of circumstantial evidence that points away from Stratford. Ad hominem attacks on Shakespeare heretics as snobs cannot conceal the tenuousness of the link between the Stratford man and the plays. And the inanities among the heretics do not invalidate the thoughtful insights and original research that have come from many of them.

At this stage in my study of the authorship issue, I find that there is no conclusive evidence linking any one candidate to the authorship of the plays, only scattered bits of concrete evidence upon which we must make inferences about who is the most likely author. At this time, I think the advocates for Edward de Vere, the seventeenth Earl of Oxford,<sup>14</sup> have made the most cogent case for their man, but that could change. New evidence could point more strongly to Shakespeare or to some other candidate. But even if the anti-Stratfordians are eventually proved wrong, their persistent questioning of the Stratford theory will have done a great service to the causes of independent thinking and literary truth. The Stratfordians should not be allowed to assert their theo-

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9. *Id.*

10. SOBRAN, *supra* note 7, at 3.

11. See SIR EDWIN DURNING-LAWRENCE, BACON IS SHAKESPEARE 23 (1910).

12. SOBRAN, *supra* note 7, at 3-4.

13. *Id.*

14. *Id.* at 106.

ries without challenge when those theories are often based on no more hard evidence than anyone else's.

### A. *The Stratfordian Presumption*

Why *shouldn't* we believe that the plays of William Shakespeare were written by, well, William Shakespeare? If I buy *Romeo and Juliet* at a bookstore, it says "by William Shakespeare" on the cover, doesn't it? There is a strong presumption that when a book is printed and sold as the work of a certain author, it is actually the work of that author. When I buy a copy of *The Old Man and the Sea*, which says on the front, "by Ernest Hemingway," I presume that a man named Ernest Hemingway wrote the book. This presumption serves us well most of the time, but it has its exceptions. It will let us down in the case of pseudonyms, such as books by "Mark Twain," "Lewis Carroll," or "George Eliot." It will also let us down in the case of a hoax, as in the 1970s Howard Hughes "autobiography" actually written by Clifford Irving with no participation at all by Hughes.<sup>15</sup> Additionally, it tells us only part of the story when a ghostwriter is involved. Could it be that "William Shakespeare" was a pen name, or that his apparent authorship of the plays was an elaborate hoax, or that the plays were actually "ghosted" by someone else?

Wright says, "no credible evidence that would stand up in a court of law has ever been adduced to prove either that Shakespeare did not write his plays or that anyone else wrote them."<sup>16</sup> Let me ask the question that Wright ignores: What credible evidence that would stand up in a court of law has ever been adduced to prove that Shakespeare *did* write the plays? And let me ask an even more basic question: To whom exactly are we referring when we say "Shakespeare"?

It is a documented fact that on April 26, 1564, an infant named William "Shakspere" (note the spelling), the son of John Shakspere, was christened in the town of Stratford, England.<sup>17</sup> Nothing further about his

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15. In 1972 writer Clifford Irving was sent to prison and ordered to pay back \$765,000 to his publishers when it was determined that his "authorized" biography of reclusive billionaire Howard Hughes was a fake. In 1971 Irving claimed he had tapes, letters, and manuscripts from Hughes, and that Hughes had authorized him to write a biography. Hughes, who had not been heard from publicly in over a decade, held a telephone conference to denounce Irving. Irving stood by his story, but experts said the voice they had heard was indeed Hughes', and the handwritten documents were deemed fakes. Irving, his wife Edith and collaborator Richard Suskind were all convicted for their part in the hoax, and Irving spent 14 months in federal prison. Since jail, Irving has been a successful novelist.

<http://www.who2.com/cliffordirving.html>.

16. Wright, *supra* note 5, at xxxii.

17. SOBRAN, *supra* note 7, at 21.

life is documented until, when he was eighteen, his name appeared in a diocesan register of betrothals, showing that on November 27, 1582, "wm Shaxpere" and a woman identified as "Anna whately de Temple graffton" were licensed to marry.<sup>18</sup> The following day, the register recorded the marriage bond of "willm Shagspere" and "Anne hathwey of Stratford."<sup>19</sup> Perhaps the clerk had confused two different families in the first record.<sup>20</sup> Actual documentation about his life shows that he spent some time in London as well as in Stratford, that he liked to sue his neighbors for small amounts of money, that he may have done some acting and invested in a theatre company, and that he was fairly prosperous, by Stratford standards, at the time of his death in 1616.<sup>21</sup> None of the documents concerning him that were produced during his lifetime describes him as a poet or playwright, though he is sometimes described as a "gentleman."<sup>22</sup> Note that his name is spelled several different ways in the various documents.<sup>23</sup> It is possible to make too much of the spelling variations, since Elizabethan spelling standards were much looser than today's and spelling variations were quite acceptable; but spelling was *phonetic*.<sup>24</sup> Only one of the thirty or so spellings of the name in Stratford documents about the Shakspere family (the registration of his daughter Susanna's christening) spells the name with a long "a" in the first syllable; all the others have the short "a."<sup>25</sup> All of the six extant copies of Shakspere's signature spell the first syllable with a short "a."<sup>26</sup> This indicates that the Stratford man pronounced the first syllable of his name as "shack," while the first syllable of the name of the author of the plays and poems would have been pronounced "shake."<sup>27</sup> For the purposes of this Comment, I will follow the heretics' custom and refer to this gentleman of Stratford as "Mr. Shakspere" or "Shakspere." I will refer to the author of *Hamlet*, *King Lear*, and *Othello*, and so on, whoever he may turn out to be, as "Shakespeare."

In 1593, a narrative poem entitled *Venus and Adonis* was published as the work of "William Shake-Speare"<sup>28</sup> (again, note the spelling). The

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18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* at 21-24; see also Tom Bethell, *The Case for Oxford*, ATLANTIC, Oct. 1991, at 45, 48.

22. SOBRAN, *supra* note 7, at 24.

23. *Id.* at 21.

24. Richard Bentley, *Elizabethan Whodunit: Supplementary Notes*, in SHAKESPEARE CROSS-EXAMINATION 58, 60 (Tappan Gregory ed., 1961) [hereinafter Bentley, *Supplementary Notes*].

25. *Id.*

26. *Id.*

27. See *id.*

28. Richard Bentley, *Elizabethan Whodunit: Who Was "William Shake-Speare"?*, in SHAKESPEARE CROSS-EXAMINATION, *supra* note 24, at 1, 5 [hereinafter Bentley, *Who Was?*].

next year, another poem, *The Rape of Lucrece*, was published as Shakespeare's.<sup>29</sup> Beginning in 1598, plays began to be published under that name, though some of them had already been performed or published anonymously.<sup>30</sup> Sometimes the name was hyphenated as "Shake-Speare," sometimes not, but usually the letters were the same and the "a" was long. The two narrative poems were dedicated to Henry Wriothesely, the Earl of Southampton.<sup>31</sup> None of these publications, nor any contemporary reference, states that Shakespeare is from Stratford or identifies him in any way with Mr. Shakspere.<sup>32</sup> During Shakspere's life there is a complete disjunction, except for the similarity in names, between the Stratford man and the author of the plays.<sup>33</sup> If the Stratford man was the author of the plays, why did he never, during his lifetime, conform the spelling of his name to the spelling that was consistently being used in association with his writings?<sup>34</sup> The link was finally made in 1623, seven years after Shakspere's death, with the publication of the First Folio.<sup>35</sup> There, thirty-six plays were collected, many of them never before published, as the works of William Shakespeare, who, according to one of the dedicatory poems, had a monument in Stratford.<sup>36</sup> This was the first time the Stratford man was ever identified as Shakespeare.<sup>37</sup> The First Folio contains a portrait of the author which seems unlikely to have been drawn from life, as Martin Droeshout, the artist, was only fifteen when Shakspere died.<sup>38</sup> Many anti-Stratfordians condemn the portrait's cartoonish style as evidence that it is a picture of a mythical person rather than of a real human being.<sup>39</sup> I am inclined, however, to ascribe the portrait's crudeness to the artist's limitations and to his lack of a live subject.

Earlier I asked what evidence could be adduced to prove that Shakspere wrote the plays. When the authorship question was taken up in the

29. *Id.*

30. SOBRAN, *supra* note 7, at 38.

31. Bentley, *Who Was?*, *supra* note 28, at 5.

32. *Id.* at 4.

33. Bentley, *Supplementary Notes*, *supra* note 24, at 70.

34. RICHARD F. WHALEN, SHAKESPEARE—WHO WAS HE? THE OXFORD CHALLENGE TO THE BARD OF AVON 34 (1994).

35. SOBRAN, *supra* note 7, at 10.

36. L. Digges, *To the Memorie of the Deceased Authour Maister W. Shakespeare*, in THE RIVERSIDE SHAKESPEARE 71 (G. Blakemore Evans et al. eds., 1974). Whalen points out that the Earl of Oxford spent the last decade of his life in a house near a London suburb called Stratford (not to be confused with Stratford-on-Avon) and that Oxford had an estate on the River Avon, making him just as suitable a candidate for the "sweet swan of Avon." WHALEN, *supra* note 34, at 56-57.

37. Bentley, *Supplementary Notes*, *supra* note 24, at 70.

38. DURNING-LAWRENCE, *supra* note 11, at 23.

39. Bentley, *Supplementary Notes*, *supra* note 24, at 70.



*American Bar Association Journal* in the early 1960s in a series of articles by lawyers, William W. Clary argued that the First Folio (along with allegedly corroborating evidence in Shakspere's will) was documentary proof of the Stratford man's authorship.<sup>40</sup> The First Folio is the primary evidence. If it fails, then the Stratfordians have almost nothing left to support their claim that Shakspere was Shakespeare.

How good is this evidence? Clary notes that Shakspere's fellow actors, John Heminge and Henry Condell, wrote in the dedicatory address to the First Folio that they had collected the works of their good friend for publication.<sup>41</sup> One of the links between these two actors and Shakspere is that Shakspere's will leaves small bequests to Heminge and Condell so that they may buy rings.<sup>42</sup> Clary ignores the issue of the authenticity of the bequests in the will, which are interlined (i.e., squeezed in between previously written lines in the document) and apparently in another hand from that of the original writer.<sup>43</sup> Clary's argument that Heminge and Condell were not lying about the authorship of the plays is a simple, "Why should they?"<sup>44</sup>

Let's go back to the strong presumption that when a book cover states that the book is written by a certain author, it is written by that author. The presumption is much more reliable in today's publishing industry than it was in that of the Elizabethan Age. In those days, intellectual property was not highly protected, publishers often took liberties with an author's work, and name-stealing and misrepresentation were more common than they are today.<sup>45</sup> In fact, between 1595 and 1608, the following plays were published under the name of William Shakespeare: *Lochrine*, *Sir John Oldcastle*, *The True Chronicle History of Thomas Lord Cromwell*, *The London Prodigal*, *The Puritan*, and *A Yorkshire Tragedy*.<sup>46</sup> But today, conservative Shakespeare scholars who support the Stratford theory of authorship reject the idea, on external and internal grounds, that these plays were written by the person who wrote *Hamlet*, *King Lear*, and *Macbeth*.<sup>47</sup> This suggests that the name on the title page is far from conclusive in determining the authorship of an

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40. William W. Clary, *The Case for the Defense: De Vere et al. v. Shakespeare*, in SHAKESPEARE CROSS-EXAMINATION, *supra* note 24, at 25, 25-26.

41. *Id.* at 26.

42. *Id.*

43. Bentley, *Supplementary Notes*, *supra* note 24, at 74.

44. Clary, *supra* note 40, at 26.

45. See GEORGE GREENWOOD, THE SHAKESPEARE PROBLEM RESTATED 298-306 (1908). While there was no statutory copyright in Elizabethan England, there were some common law rights regarding intellectual property. See also generally Robert Detobel, *Authorial Rights in Shakespeare's Time*, 4 OXFORDIAN 5 (2001).

46. CALVIN HOFFMAN, THE MURDER OF THE MAN WHO WAS SHAKESPEARE 20 (1960).

47. *Id.* at 20-21.

Elizabethan work.<sup>48</sup>

Furthermore, the prefatory material in the First Folio contains so much internal inconsistency and disingenuousness that it casts doubt on the integrity of the whole enterprise. In the dedication to the Earls of Pembroke and Montgomery (I will say more about these gentlemen when we discuss other candidates for the authorship), Heminge and Condell say, in part:

We have but collected them [the plays], and done an office to the dead to procure his Orphans, Guardians: without ambition either of self-profit, or fame: only to keep the memory of so worthy a Friend, & Fellow alive, as was our Shakespeare, by humble offer of his Plays, to your most noble patronage.<sup>49</sup>

Calvin Hoffman convincingly demonstrates that the entire dedication, which goes on for many more lines, is a clever paraphrase of Pliny's Latin classic, *Natural History*.<sup>50</sup> He doubts that Heminge and Condell, former actors who were at that time a grocer and a publican (tavern keeper), respectively, could have written such a learned parody as this.<sup>51</sup> After completing their dedication to the two earls, Heminge and Condell address the reader:

It had been a thing, we confess, worthy to have been wished, that the author himself had lived to have set forth and overseen his own writings; but since it hath been ordained otherwise, and he by death departed from that right, we pray you do not envy his friends the office of their care and pain to have collected and published them; and so to have published them, as where, before, you were abused with diverse stolen and surreptitious copies, maimed and deformed by the frauds and stealths of injurious impostors that exposed them; even those are now offered to your view cured and perfect of their limbs, and all the rest absolute in their numbers as he conceived them; who, as he was a happy imitator of Nature, was a most gentle expresser of it.

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48. I am inclined to compare authorial rights in Elizabethan days to the customs of today's film industry, where several writers may contribute to a screenplay but only some receive credit for it. Usually, the studio buys a screenplay and if it wants to rewrite or edit it, it may do so. Today's film industry is likely to treat a screenplay as a commodity to be bought, used, or sold, rather than the sacred expression of its author. See GREENWOOD, *supra* note 45, at 306.

49. HOFFMAN, *supra* note 46, at 177.

50. *Id.* at 179-81.

51. *Id.* Compare, for example, this passage from Heminge and Condell: "Country hands reach forth milk, cream, fruits, or what they have: and many Nations (we have heard) that had not gums & incense obtained their requests with a leavened cake. It was no fault to approach their Gods by what means they could," with this passage from Pliny: "But the country people, and indeed, some whole nations offer milk to the Gods, and those who cannot procure frankincense substitute in its place salted cakes, for the Gods are satisfied when they are worshipped by everyone to the best of his ability." *Id.* at 180.

His mind and hand went together; and what he thought, he uttered with that easiness that we have scarce received from him a blot in his papers.<sup>52</sup>

The two actors' claim that the plays are now "cured and perfect of their limbs, and all the rest absolute in their numbers as he conceived them"<sup>53</sup> is wildly untrue.<sup>54</sup> The First Folio contains so many patent mistakes and inconsistencies that scholars have spent centuries cataloguing them and suggesting emendations.<sup>55</sup>

After Heminge and Connell's dedications comes a laudatory poem about Shakespeare written by Ben Jonson, the poet and playwright, which says, in part:

To draw no envy (Shakespeare) on thy name,  
 Am I thus ample to thy Book, and Fame:  
 While I confess thy writings to be such,  
 As neither Man, nor Muse, can praise too much . . . .  
 I, therefore, will begin. Soul of the Age!  
 The applause! delight! the wonder of our Stage!  
 My Shakespeare, rise: I will not lodge thee by  
 Chaucer, or Spenser, or bid Beaumont lie  
 A little further, to make thee a room:  
 Thou art a monument, without a tomb,  
 And art alive still, while thy Book doth live,  
 And we have wits to read, and praise to give.<sup>56</sup>

Such praise, which continues for many more lines, is surprising coming from Jonson, who was openly scornful of his rival's output during his life.<sup>57</sup> "[T]he Players have often mentioned it as an honour to Shakespeare" wrote Jonson in *Timber: or, Discoveries Made Upon Men and Matters*, "that in his writing, (whatsoever he penn'd) hee never blotted out line. My answer hath beene, would he had blotted a thousand."<sup>58</sup> This and other comments made by Jonson about Shakespeare give us reason to doubt Jonson's sincerity.<sup>59</sup> In addition, Jonson was for twenty years a frequent writer of dedications and eulogies, for which he was well paid.<sup>60</sup> Stratfordians have taken Jonson's participation in the First Folio as evidence of its genuineness, but Jonson was merely a mercenary

52. *Id.* at 182.

53. *Id.*

54. Bentley, *Supplementary Notes*, *supra* note 24, at 71.

55. *Id.* at 70-72.

56. HOFFMAN, *supra* note 46, at 189-90.

57. Bentley, *Supplementary Notes*, *supra* note 24, at 74-75.

58. *Id.* at 74.

59. *Id.* at 74-75.

60. HOFFMAN, *supra* note 46, at 192.

who would write anything for money.<sup>61</sup> Besides, Jonson was a master of double entendres. When he says that neither man nor muse can praise Shakespeare's works "too much," is he saying: (1) Shakespeare's works are so great that even the most extravagant praise is deserved; or (2) Shakespeare's works are so ordinary that no one can really give them much praise? Jonson was probably well aware of the possible readings and intended them both. As Jonson would have known if Shakespeare and Shakspeare were not the same person, this may have been his way of praising the true author while subtly lampooning the pretender.

Sobran argues that the First Folio, particularly through the Jonson poem, attempts to create an image of Shakespeare as a "self-made rustic."<sup>62</sup> This characterization would have been necessary to equate Shakespeare with Shakspeare:

Jonson implies that [Shakespeare] had "small Latin and less Greek," yet Shakespeare uses nearly four hundred classical names in his works and shows familiarity with many Latin authors. In fact, *Venus [and Adonis]* and [*The Rape of*] *Lucrece* (neither of which is included or even mentioned in the Folio) are taken directly from classical sources; neither has ever been accused of erring in the slightest in its treatment of ancient history and myth.

Before Jonson, Shakespeare was known as a supremely *urbane* poet. Virtually every contemporary tribute praises him as "honey-tongued" or "mellifluous." Meres himself avers that "the Muses would speak with Shakespeare's fine-filed phrase, if they would speak English." It is in the Folio that we see a subtle attempt to wrench Shakespeare's image, to make him not a polished gentleman-poet but a popular actor-playwright . . .<sup>63</sup>

Jonson's tribute is followed by three more poems—by Hugh Holland, L. Digges, and "J.M." (thought to be James Mabbe).<sup>64</sup> The Digges poem contains the only reference to Stratford: "And Time dissolves thy Stratford Monument,"<sup>65</sup> thus making the connection between "Shakespeare" and "Shakspeare" complete. It is also around this time that a monument containing a bust, supposedly of Shakspeare, appeared in the church in Stratford.<sup>66</sup>

We see in the First Folio the first attempts to identify Shakespeare as the Stratford actor and to redefine Shakespeare as an unlearned child of nature. Wright claims, "the plays show no evidence of profound book

61. *Id.*

62. SOBRAN, *supra* note 7, at 39.

63. *Id.* at 39-40.

64. HOFFMAN, *supra* note 46, at 194-95.

65. *Id.* at 194.

66. See GREENWOOD, *supra* note 45, at 236-60.

learning.”<sup>67</sup> But Shakespeare’s works show a deep knowledge of many subjects, particularly, as we shall see, of the law. Possible reasons why someone may have wanted to perpetrate such a hoax will appear when we examine the cases for other candidates for the authorship.

It is not merely the lack of solidity of the First Folio as evidence, but also the inadequacy of Shakspere as the author of the plays that makes the Stratford theory so unsatisfying to many readers. Ralph Waldo Emerson wrote that he could not “marry” Shakspere’s life to Shakespeare’s work.<sup>68</sup> It is often the reading of the orthodox biographies of Shakspere that make one the most skeptical—why is there nothing in them to prove that Shakspere wrote any plays?<sup>69</sup> Eminent skeptics of the Stratford theory include Oliver Wendell Holmes,<sup>70</sup> Henry James, Walt Whitman, John Galsworthy, Sigmund Freud, Sir John Gielgud, Orson Welles, Mark Twain,<sup>71</sup> Samuel Taylor Coleridge, Lord Tennyson, and Samuel Johnson.<sup>72</sup> The problem is not that we know so little about Shakspere. Wright is correct that we know more about him than we do about many playwrights of his time.<sup>73</sup> What is disturbing is that what we know gives no hint that this man was a great playwright and poet, or even that he had any degree of wit, intelligence, or grace. All the documents relating to his life reveal nothing but the most ordinary, humdrum human being imaginable. The problem is not, as Wright puts it, that

[m]ost anti-Shakespeareans are naïve and betray an obvious snobbery. The author of their favorite plays, they imply, must have had a college diploma framed and hung on his study wall like the one in their dentist’s office, and obviously, so great a writer must have had a title or some equally significant evidence of exalted social background. They forget that genius has a way of cropping up in unexpected places and that none of the great creative writers of the world got his inspiration in a college or university course.<sup>74</sup>

Wright could not be further off the mark, and this statement is a prime example of the unfortunate tendency of some Stratfordians simply to dismiss the skeptics as snobs. I do not claim that Shakespeare had to have a college degree or a title, or that genius cannot be “low-born.” I

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67. Wright, *supra* note 5, at xxxiii.

68. Bethell, *supra* note 21, at 48.

69. See DIANA PRICE, *SHAKESPEARE’S UNORTHODOX BIOGRAPHY: NEW EVIDENCE OF AN AUTHORSHIP PROBLEM*, at xiii-xiv (2001).

70. Bentley, *Who Was?*, *supra* note 28, at 8.

71. SOBRAN, *supra* note 7, at 5.

72. Arthur E. Briggs, *Did Shaxper Write Shakespeare?*, in *SHAKESPEARE CROSS-EXAMINATION*, *supra* note 24, at 93, 94.

73. Bethell, *supra* note 21.

74. Wright, *supra* note 5, at xxxiii.

do not dispute the genius of Christopher Marlowe, a cobbler's son.<sup>75</sup> I recognize that many a nobleman was a perfect ninny who couldn't have written a decent poem or play to save his doublet. I simply marvel at the wide range of knowledge apparent in the plays and wonder how Shakspeare, even if he did have a basic grammar school education, could have mastered so much. I, for one, would be profoundly relieved to discover evidence that the Stratford upstart was the true genius. This would sit much better with my libertarian, anti-aristocratic prejudices, with my natural tendency to root for the underdog. But I have to admit that the evidence on behalf of Shakspeare is weak, while the body of at least circumstantial evidence on behalf of Oxford is impressive. Until the Stratfordians come up with more compelling evidence, I cannot endorse their candidate.

The brilliant poet John Milton, who lived shortly after Shakespeare, was surely one of the most educated, cultivated, and literate men of his day. Studies of his works reveal a vocabulary of over 8,000 words.<sup>76</sup> But Shakespeare, supposedly the son of a Stratford glover, had a vocabulary of 15,000 words.<sup>77</sup> Whoever wrote Shakespeare's plays must have been widely read. But we have scant evidence that John Shakspeare's household contained any books, which were extremely rare in those days and most of which were expensive, and it seems likely that John Shakspeare, although he was a town official, was unable to write his own name.<sup>78</sup> Stratford had no public library where William might have checked out books to satisfy his thirst for learning.<sup>79</sup> None of the documented evidence concerning Shakspeare that appears during his life suggests that he was a poet or a playwright,<sup>80</sup> or even that he was particularly intelligent. Mark Twain delighted in repeating the lines that Shakspeare wrote for his own tombstone:

Good friend, for Jesus' sake forbear  
To dig the dust enclosed here:  
Blest be the man that spares these stones,  
And curst be he that moves my bones.<sup>81</sup>

We are asked to believe that the man who wrote these words was the same man who wrote:

To be, or not to be, that is the question:  
Whether 'tis nobler in the mind to suffer

75. HOFFMAN, *supra* note 46, at 37.

76. Bentley, *Who Was?*, *supra* note 28, at 6.

77. *Id.*

78. GREENWOOD, *supra* note 45, at 6-7.

79. *Id.* at 55 n.1.

80. SOBRAN, *supra* note 7, at 24.

81. *Id.* at 28.

The slings and arrows of outrageous fortune,  
 Or to take arms against a sea of troubles,  
 And by opposing, end them. To die, to sleep—  
 No more, and by a sleep to say we end  
 The heart-ache and the thousand natural shocks  
 That flesh is heir to; 'tis a consummation  
 Devoutly to be wished.<sup>82</sup>

Could the author of these lines from *Hamlet* have had nothing more to say about his own demise than the trite, primitive verse written by Mr. Shakspeare? Even if the great poet had chosen, as a last joke, to memorialize himself with doggerel, would “Good friend, for Jesus’ sake forbear”<sup>83</sup> have been the result? Does it have any of the fingerprints of the man who wrote, “To be, or not to be”?<sup>84</sup> For many of us, the discrepancy is too much to stomach. No wonder we long for other Shakespeares.

Unfortunately, most Stratfordians do not even bother to argue that Shakspeare was Shakespeare; like Wright, they simply dismiss all skeptics as being naïve and ignorant. Irvin Leigh Matus, author of *Shakespeare, In Fact*,<sup>85</sup> deserves credit, though, for confronting the skeptics’ arguments and attempting to rebut them. Nevertheless, I do not find him ultimately convincing. He scores a few points refuting Oxfordian Charlton Ogburn’s speculation that the student lists from the Stratford grammar school of Shakspeare’s day were made to disappear because they would have revealed that Shakspeare was never enrolled there.<sup>86</sup> Matus’s research shows that most schools did not keep records of students’ names until the eighteenth century.<sup>87</sup>

But while Matus is adept at poking holes in a few of the flimsier anti-Stratfordian theories, he does not, to my mind, relieve the doubts about the Stratford man, nor convincingly explain away the many coincidences pointing toward the Earl of Oxford. His argument has problems with relevance (in the evidentiary sense), for he often wastes his impressive research on issues that do not advance our understanding of the authorship question in either direction. Matus spends seven pages, for example, arguing that Oxford was no great shakes as a soldier.<sup>88</sup> Yet the Oxford theory of authorship does not depend on

82. WILLIAM SHAKESPEARE, *HAMLET* act 3, sc. 1, lines 55-63, in *THE RIVERSIDE SHAKESPEARE*, *supra* note 36 [hereinafter *HAMLET*].

83. SOBRAN, *supra* note 7, at 24.

84. *HAMLET*, *supra* note 82, at act 3, sc. 1, line 55.

85. IRVIN LEIGH MATUS, *SHAKESPEARE, IN FACT* (1994).

86. CHARLTON OGBURN, *THE MYSTERIOUS WILLIAM SHAKESPEARE: THE MYTH AND THE REALITY* 123 (1984).

87. MATUS, *supra* note 85, at 32-33.

88. *Id.* at 241-47.

Oxford's having been a great soldier. The plays do not suggest that they were written by a person with the military knowledge of a Wellington, but they do suggest an author with at least some military experience.<sup>89</sup> We know that Oxford had some; we don't know of Shakspeare having had any.<sup>90</sup>

Matus's ultimate argument is a passionate plea that the plays were written to be *performed*, not just read, and that this argues for their having been written by a man of the stage (namely, Shakspeare).<sup>91</sup> I am rather weary of this false distinction between Shakespeare the literary genius and Shakespeare the man of the theatre. It is a cliché to say the plays were written for the stage; *of course*, they were written for the stage—they're plays. And they play very well and have achieved great popularity. But one can gain additional levels of understanding of them through reading, research, reflection, and study—there are untold volumes of Shakespeare scholarship and criticism to attest to that. Was Shakespeare a cerebral, scholarly poet who wrote for the elite, or a popular playwright who wrote for the masses? Clearly, he was both. Besides, there is at least as much evidence linking Oxford to theatrical activity<sup>92</sup> as there is linking Shakspeare, for whom the record is rather thin.<sup>93</sup>

Matus's thesis, stated in his first chapter, is instructive:

If I cannot offer incontrovertible proof of [the Stratford man's] authorship, the smoking pen if you will, I did not find either that the evidence which is supposed to undermine his authorship, any more than the evidence that alleges to show another to be the more likely author, stands up to investigation.<sup>94</sup>

This statement merely means that if one begins with the presumption that Shakspeare wrote the plays, we do not have enough evidence to disprove this theory or to prove any other. For the reasons cited above regarding the weakness of the First Folio as proof of Shakspeare's authorship, I cannot accept that presumption. I believe the authorship question is still open and that much work remains to be done in this area. Recently, for example, a ground-breaking five hundred-page doctoral dissertation by Roger A. Stritmatter discussed Oxford's life as reflected in the plays and analyzed parallels between the works of Shakespeare

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89. It is difficult for me to believe, for example, that *Henry V* was written by someone who had never taken part in a military campaign.

90. MATUS, *supra* note 85, at 241.

91. *Id.* at 287-88.

92. WHALEN, *supra* note 34, at 76.

93. *See id.* at 10-11, 133-36.

94. MATUS, *supra* note 85, at 13.



and verses Oxford marked in his copy of the Geneva Bible.<sup>95</sup>

In addition, Diana Price's recent *Shakespeare's Unorthodox Biography: New Evidence of an Authorship Problem*,<sup>96</sup> in my view meticulously demolishes the Stratfordian presumption. Price argues persuasively that the historical record shows Mr. Shakspere of Stratford to have been a money-lender,<sup>97</sup> a play broker,<sup>98</sup> a sometime actor,<sup>99</sup> and a shrewd businessman who would have been quite willing to exploit the similarity between his own name and the published pseudonym.<sup>100</sup> Price points out that "[n]o one has yet found any personal records left by Shakspere or by anybody else during his lifetime that would link him to the occupation of writing."<sup>101</sup> Lest an opponent respond that this may be true of many other Elizabethan writers, Price demonstrates that it is not. She documents the literary paper trails left by such well-known Elizabethan writers as Ben Jonson, Christopher Marlowe, and Edmund Spenser, as well as by such obscurities as John Marston, Anthony Mundy, and Thomas Lodge.<sup>102</sup> Even the humblest of these left contemporary evidence of his profession as a writer.<sup>103</sup> While Price concentrates on tearing the Stratfordian presumption to shreds, she does not put forth a candidate of her own for the authorship laurel. Nevertheless, she does hypothesize that the author of the plays was most likely a courtier.<sup>104</sup>

The Stratford theory, as articulated by Matus, depends on the notion that the plays could have been written by a person who started with a basic grammar school education, acquired some additional knowledge through his own study, but had, as Wright puts it, "no . . . profound book learning."<sup>105</sup> I will attempt to show that Shakespeare's understanding of the law is so subtle and profound that Stratfordians have a great deal of work to do in explaining how their candidate acquired such knowledge.

### B. *The Case for Bacon*

For many years, Sir Francis Bacon (1561-1626) was the default

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95. William S. Niederkom, *A Historic Whodunit: If Shakespeare Didn't, Who Did?*, N.Y. TIMES, Feb. 10, 2002, at 7.

96. PRICE, *supra* note 69.

97. *Id.* at 102-03.

98. *Id.* at 101.

99. *Id.* at 41-42.

100. *Id.* at xv.

101. *Id.* at 5.

102. *Id.* at 301-13.

103. *Id.*

104. *Id.* at xv.

105. Wright, *supra* note 5, at xxxiii.

choice of the anti-Stratfordians as the man who wrote Shakespeare's plays.<sup>106</sup> He had all the qualifications that the Stratford man didn't have: education, breadth of learning, legal knowledge (he studied law at Gray's Inn), familiarity with the workings of the royal court, and demonstrated literary ability.<sup>107</sup> Baconians point to parallels between lines in Bacon's notebooks, *The Promus of Formularies and Elegancies*, and lines in Shakespeare's plays.<sup>108</sup> For example:

All is not gold that glisters [Promus 477]  
All that glisters is not gold [Merchant of Venice]

Mineral wits strong poisons [Promus 81]  
Doth like a poisonous mineral gnaw my inwards. [Othello]

Black will take no other hue [Promus 174]  
Coal black is better than another hue  
In that it scorns to take another hue. [Titus Andronicus]

[L]ove must creep where it cannot go.

[letter from Bacon to King James]

[L]ove/ Will creep in service where it cannot go.

[Two Gentlemen of Verona]<sup>109</sup>

The comparisons go far beyond these few examples, but they show a similarity of thought and expression.<sup>110</sup> Either they are the work of one man, or one man was copying the other.<sup>111</sup> Bacon's notebook is dated 1594.<sup>112</sup>

Ben Jonson, the perpetrator of the hoax known as the First Folio, was closely associated with Bacon at the time the First Folio was published in 1623.<sup>113</sup> In addition, the Earls of Pembroke and Montgomery, the dedicatees of the First Folio, were colleagues of Bacon's on the Council of the Virginia Company.<sup>114</sup> Did Bacon fear that he would be in trouble if he were named as the author of the plays? Some of the plays, notably *Richard II*, seemed to countenance overthrow of a monarch.<sup>115</sup> Besides, in that era it was considered beneath a nobleman to be an author of plays.<sup>116</sup> For these reasons, Bacon, who was still alive in

106. Bentley, *Who Was?*, *supra* note 28, at 7-8.

107. *Id.*

108. Martin Pares, *Francis Bacon and the Knights of the Helmet*, in SHAKESPEARE CROSS-EXAMINATION, *supra* note 24, at 79, 86-87.

109. *Id.* at 87.

110. *Id.*

111. *Id.*

112. *Id.* at 87-88.

113. *Id.* at 83.

114. *Id.* at 80.

115. SOBRAN, *supra* note 7, at 138.

116. *Id.* at 132, 134-35.

1623, might have wanted to ensure that someone other than himself was given credit (or blame) for the plays. Could Jonson, Pembroke, and Montgomery have conspired with him to pass the works off as someone else's? But it seems odd to me that the meticulous Bacon would not have taken more care to see that the plays in the First Folio were properly edited.

Baconian theory has gotten a bad name over the years because of the propensity of some Baconians to dwell on cryptograms.<sup>117</sup> Words and phrases in the plays of Shakespeare, they say, can be unscrambled to reveal that Bacon is the author.<sup>118</sup> Sir Edwin Durning-Lawrence, for example, argues that the monstrously long word, "honorificabilitudinitatibus"<sup>119</sup> from *Love's Labor's Lost*, can be rearranged to spell, "hi ludi f. baconis nati tuiti orbi," which is Latin for "These plays, F. Bacon's offspring, are preserved for the world."<sup>120</sup> Many students of the authorship question have, for some reason, failed to find this revelation dispositive.

Perhaps more daunting to the Baconian theory is the difficulty many readers have in reconciling Bacon's style with Shakespeare's. James M. Beck, once Solicitor General of the United States, illustrates the contrast between the two men by citing their writings on the subject of theatre.<sup>121</sup> Bacon writes, in *Masques and Triumphs*:

Let the scenes abound with light, specially coloured and varied; and let the masquers, or any other, that are to come down from the scene, have some motions upon the scene itself before their coming down; for it draws the eye strangely, and makes it with great pleasure to desire to see that it cannot perfectly discern. Let the songs be loud and cheerful, and not chirpings or pulings. Let the music likewise be sharp and loud and well placed.<sup>122</sup>

Compare this to Hamlet's advice to the actors:

Speak the speech, I pray you, as I pronounc'd it to you, trippingly on the tongue, but if you mouth it, as many of our players do, I had as live the town-crier spoke my lines. Nor do not saw the air too much with your hand, thus, but use all gently, for in the very torrent, tempest, and, as I may say, whirlwind of your passion, you must acquire

117. Niederkorn, *supra* note 95, at 7.

118. *Id.*

119. WILLIAM SHAKESPEARE, *LOVE'S LABOR'S LOST* act 5, sc. 1, line 40, in *THE RIVERSIDE SHAKESPEARE*, *supra* note 36 [hereinafter *LOVE'S LABOR'S LOST*]. Dative (or ablative) plural of a medieval Latin word meaning "the state of being loaded with honors." *THE RIVERSIDE SHAKESPEARE*, *supra* note 36, at 200.

120. DURNING-LAWRENCE, *supra* note 11, at 84-93.

121. James M. Beck, *Foreword* to DUNBAR PLUNKETT BARTON, *LINKS BETWEEN SHAKESPEARE AND THE LAW*, at xxxiii (1929).

122. *Id.*

and beget a temperance that may give it smoothness.<sup>123</sup>

Granted, Beck is comparing an essay to a play, yet it is still difficult to conceive that the same man wrote both passages. As Sobran says: "Nothing about the somber and inflexible Bacon suggests the Shakespearean capacity for a wide variety of moods, let alone the creation of a great diversity of characters; what Bacon has in gravity he lacks in quicksilver."<sup>124</sup> Furthermore, word analyses, as opposed to cryptograms, show, for what they are worth, that a great many words used by Bacon are not used by Shakespeare, and vice versa.<sup>125</sup> Thus, it is difficult to find a common style between the two men.

### C. *The Case for Marlowe*

Christopher Marlowe (1564-1593) is surely a more appealing candidate than Bacon for the role of Shakespeare. As the author of such plays as *Tamburlaine*, *Dr. Faustus*, *The Jew of Malta*, *Edward II*, and *The Tragedy of Dido*, Marlowe was an acknowledged great playwright before his untimely death at the age of twenty-nine.<sup>126</sup> As the author of the line "Was this the face that launch'd a thousand ships?"<sup>127</sup> (*Dr. Faustus*), he had the poetic gifts that we look for in our Shakespeare. Many lines in Marlowe's works bear a great similarity to lines in Shakespeare's. For example:

These arms of mine shall be thy Sepulchre.<sup>128</sup>

[Marlowe's *Jew of Malta*]

These arms of mine shall be thy winding sheet;  
My heart, sweet boy, shall be thy sepulchre.<sup>129</sup>

[Shakespeare's *Henry VI, Part II*]

By shallow rivers, to whose falls  
Melodious birds sing madrigals.  
And I will make thee beds of roses,  
And a thousand fragrant posies.<sup>130</sup>

[Marlowe's *Passionate Shepherd*]

To shallow rivers, to whose falls  
Melodious birds sing madrigals:  
There will we make our beds of roses

123. HAMLET, *supra* note 82, at act 3, sc. 2, lines 1-8.

124. SOBRAN, *supra* note 7, at 104.

125. *Id.* at 105-06.

126. Benjamin Wham, "Marlowe's Mighty Line": Was Marlowe Murdered at Twenty-nine?, in SHAKESPEARE CROSS-EXAMINATION, *supra* note 24, at 98.

127. *Id.* at 100.

128. *Id.*

129. *Id.*

130. *Id.*

And a thousand fragrant posies.<sup>131</sup>

[Shakespeare's *Merry Wives of Windsor*]

But are these instances of one writer influencing another, or are they mere plagiarism? If Marlowe and Shakespeare were the same person, was Marlowe aware of how often he was repeating himself? Marlowe is widely held by critics to be the playwright who most influenced Shakespeare, and the similarities are so strong that some Shakespeare plays (*Titus Andronicus* and *Richard III*, for example) are thought to be wholly or partially the work of Marlowe, even by critics who don't accept the theory that he is the main author of the canon.<sup>132</sup>

In 1900, Dr. Thomas Corwin Mendenhall, after an analysis of the works of Shakespeare, Bacon, and Marlowe, based on the length of words used, frequency of use, and other factors, declared that "Christopher Marlowe agrees with Shakespeare about as well as Shakespeare agrees with himself."<sup>133</sup>

Furthermore, Marlowe was bright enough that he received a scholarship to Cambridge, where he would have had the access to books and learning that seem missing from Shakspeare's life.<sup>134</sup> There he would have mingled with people from a higher stratum of society than the one to which he was born; we know that Marlowe had a patron and friend (and perhaps a lover) in Thomas Walsingham, a wealthy nobleman.<sup>135</sup> If Marlowe was Shakespeare, this would explain his apparent familiarity with the ways of the court.

The Marlowe theory has only one problem: Marlowe was murdered in 1593, before any of the works of Shakespeare were published.<sup>136</sup> The explanation given by Marlovian Calvin Hoffman, however, is that Marlowe was *not* actually murdered in 1593.<sup>137</sup> Marlowe, the theory goes, had gotten himself into trouble with the Privy Council due to his outspoken atheism and, perhaps, his homosexuality.<sup>138</sup> The Privy Council ordered Marlowe's arrest on May 18, 1593.<sup>139</sup> Marlowe and his lover, Thomas Walsingham, then concocted a plot to save Marlowe's life by faking his death.<sup>140</sup> They first sneaked Marlowe out of the country; next, Walsingham arranged to have some of his henchman select a stranger, most likely a sailor, in the village of Deptford, just outside of

131. *Id.*

132. HOFFMAN, *supra* note 46, at 132-36.

133. Wham, *supra* note 126, at 99-100.

134. Bentley, *Who Was?*, *supra* note 28, at 9.

135. *Id.*

136. Wham, *supra* note 126, at 98-99.

137. HOFFMAN, *supra* note 46, at 50-104.

138. *Id.* at 52-64.

139. *Id.* at 63-64.

140. *Id.* at 65-66.

London.<sup>141</sup> These henchmen murdered the stranger, passed his body off as that of Marlowe, and claimed that Marlowe had attacked them and that they had killed him in self-defense.<sup>142</sup> Walsingham arranged for the Queen's Coroner, who conducted the inquest, to go along with the identification of the corpse as that of Marlowe and to support the self-defense theory so that the thugs would be pardoned.<sup>143</sup> A rumor that he was killed in a tavern brawl over an argument about the "reckoning," or bill, came to be believed.<sup>144</sup>

Once he was safely out of the country, according to Hoffman, Marlowe continued to write plays and poems, which he sent to Walsingham, who arranged for them to be published under the pseudonym of William Shakespeare.<sup>145</sup> In fact, Shakespeare's first published work, the poem *Venus and Adonis*, appeared four months after Marlowe's alleged death.<sup>146</sup> Hoffman claims that the sonnets, which are dedicated to "Mr. W.H." are addressed to Walsingham (the name was sometimes spelled, "WalsingHam").<sup>147</sup> This would explain the homoerotic overtones in the sonnets from the poet to the young man.<sup>148</sup>

But I wonder why, if Marlowe actually wrote the plays, was it still necessary to keep his authorship a secret in 1623, when the First Folio was published? If he had actually died by that time, why not reveal him as the true author? Even if Marlowe *were* still alive (not highly probable, since Marlowe would have been 59 in 1623 and life expectancy in those days was around forty—probably even less for hot-headed young playwrights), would political circumstances still require his anonymity, thirty years later?<sup>149</sup>

While Hoffman's theory of Marlowe's staged death would make a marvelous film script,<sup>150</sup> there is just no evidence to support it.<sup>151</sup> Nevertheless, it is not inherently inconsistent with many of the facts that we know. Perhaps we will yet uncover evidence that will show us that Hoffman is right and that Marlowe was Shakespeare.

141. *Id.* at 93-98.

142. *Id.* at 97-100.

143. *Id.* at 93-98.

144. *Id.* at 71-72.

145. *Id.* at 101-04.

146. *Id.* at 100.

147. *Id.* at 116-17.

148. *Id.* at 108-17.

149. For an excellent account of Marlowe's death that supports the theory that Marlowe was murdered in Deptford in 1593, see generally CHARLES NICHOLL, *THE RECKONING: THE MURDER OF CHRISTOPHER MARLOWE* (1992).

150. A recent documentary film, *Much Ado About Something*, looks at the Marlowe theory. See Anne Dobbs, *Film Review: Much Ado About Something Explores Marlowe's Case for Authorship*, 38:1 SHAKESPEARE OXFORD NEWSL. 20 (Winter 2002).

151. NICHOLL, *supra* note 149, at 344.

D. *The Case for Oxford*

During the twentieth century, Edward de Vere (1550-1604), the seventeenth Earl of Oxford, became the favorite candidate among the anti-Stratfordians as the man who wrote Shakespeare's plays.<sup>152</sup> De Vere is known to have written poetry as a young man, but then, apparently, to have stopped.<sup>153</sup> Consider the following poem:

Who taught thee first to sigh, alas, my heart?  
 Who taught thy tongue the woeful words of plaint?  
 Who filled your eyes with tears of bitter smart?  
 Who gave thee grief and made thy joys so faint?  
 Who first did paint with colours pale thy face?  
 Who first did break thy sleeps of quiet rest?  
 Above the rest in court who gave thee grace?  
 Who made thee strive in virtue to be best?  
 In constant truth to bide so firm and sure,  
 To scorn the world regarding but thy friend?  
 With patient mind each passion to endure,  
 In one desire to settle to thy end?  
 Love then thy choice wherein such faith doth bind,  
 As nought but death may ever change thy mind.<sup>154</sup>

This sonnet, by de Vere, would fit in quite easily with the sonnets of Shakespeare. To be sure, it is not as polished as Shakespeare's sonnets, but it is an early work. The end-stopped lines and the unvarying meter, which give it a singsong quality, are signs of technical immaturity. Some poems known to be written by de Vere may have been composed when he was as young as sixteen.<sup>155</sup> The final couplet is as strong as many a couplet from the Shakespeare sonnets. What is striking to me, however, is the similarity between the viewpoint of the author of this poem and that of the author of the Shakespeare sonnets. To my ear, it is the same voice speaking. Note that the rhyme scheme is exactly the one employed in most of the Shakespeare sonnets. Oxford's uncle, Henry Howard, the Earl of Surrey, had developed this sonnet form; he also introduced blank verse (unrhymed iambic pentameter), the form used predominantly throughout Shakespeare's plays, into the English language.<sup>156</sup> Some of de Vere's early poetry employs the unusual stanza form that Shakespeare uses in *Venus and Adonis*.<sup>157</sup> Another of Oxford's uncles, Arthur Golding, translated Ovid's *Metamorphoses*—a

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152. SOBRAN, *supra* note 7, at 106.

153. *Id.* at 231.

154. *Id.* at 259.

155. Bethell, *supra* note 21, at 53.

156. SOBRAN, *supra* note 7, at 109.

157. WHALEN, *supra* note 34, at 68.

translation which Ezra Pound called, "the most beautiful book in the language."<sup>158</sup> Ovid is considered a major source for Shakespeare.<sup>159</sup>

Oxford's persona is entirely different from that of the placid Stratford man. Though he was considered brilliant, he was constantly getting himself into trouble; he killed a cook when he was seventeen, perhaps in self-defense.<sup>160</sup> As the next Earl of Oxford, de Vere went to university at (where else?) Cambridge,<sup>161</sup> actually beginning there at age nine and receiving his degree at age fourteen (the usual age for beginning studies at university would have been about thirteen in those days).<sup>162</sup> His father, who had kept a troupe of actors, died when Edward was twelve years old.<sup>163</sup> De Vere then became the ward of William Cecil, Lord Burghley, who was Elizabeth's Lord Treasurer and the most powerful man in England.<sup>164</sup> De Vere himself was a poet and a patron of the arts.<sup>165</sup> He was involved in theatrical productions; he took over the Earl of Warwick's acting troupe in 1580, and in 1583 he leased Blackfriars Theatre for a company of players.<sup>166</sup> He studied law in London at Gray's Inn, which was known for its amateur theatricals.<sup>167</sup> He became a favorite of Queen Elizabeth; he served in the military and traveled to the continent, notably to France and to Italy.<sup>168</sup>

Here, again, we have a candidate who has all the qualifications to be the author of Shakespeare's works. He would have had the education (both legal and otherwise) reflected in the plays. He would have had the experience of court life and military life that inform Shakespeare's works. We know he had a basic literary talent and was a lover of the arts and music. But the same qualifications probably belonged to a great many noblemen of that era, including Bacon and a host of other earls. What sets Oxford apart is that so many details of his life seem to have been raw materials for the works of Shakespeare. To be sure, almost every Shakespeare plot is derived from some other writer's story,<sup>169</sup> but Shakespeare fleshes out each one with incisive characterization and telling detail. Much of the detail seems to have come from Oxford's life.

The character of Polonius in *Hamlet*, for example, is greatly

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158. SOBRAN, *supra* note 7, at 111.

159. *Id.*

160. *Id.*

161. *Id.* at 110.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.* at 112-15.

166. Bethell, *supra* note 21, at 53.

167. WHALEN, *supra* note 34, at 73.

168. SOBRAN, *supra* note 7, at 108-18.

169. See THE RIVERSIDE SHAKESPEARE, *supra* note 36, at 48-56.



enlarged compared to that character's counterpart in the story by Francois de Belleforest from which the play is adapted.<sup>170</sup> As long ago as 1869, before the theory of Oxford's authorship was first suggested, George Russell French pointed out the similarities between Polonius and Lord Burghley, Oxford's guardian.<sup>171</sup> The name "Polonius" may have come from two of Burghley's nicknames, "Polus" and "Pondus."<sup>172</sup> In the first quarto edition of the play, the character's name was "Corambis"—perhaps a pun on Burghley's Latin motto, "Cor unum, via una" ("One heart, one way").<sup>173</sup> Lord Burghley wrote out a set of rules for his son that includes maxims such as, "Towards thy superiors be humble yet generous; with thine equals familiar yet respective."<sup>174</sup> As Polonius says to Laertes, "Be thou familiar, but by no means vulgar."<sup>175</sup> Burghley's precepts were not published until 1618, when Mr. Shakspeare of Stratford was dead.<sup>176</sup> The scene in which Polonius sets Reynaldo to spy on his son Laertes increases the similarity to Burghley, who maintained a network of spies.<sup>177</sup> Polonius asks Reynaldo to find out how Laertes is behaving by seeking out his acquaintances and suggesting that Laertes is accustomed to "drinking, fencing, swearing, quarrelling," or "falling out at tennis."<sup>178</sup> When Burghley's son, Thomas Cecil, went to Paris, Burghley found out through his spies of Thomas's "inordinate love of . . . dice and cards."<sup>179</sup> The reference to tennis may originate from a quarrel on a tennis court between Oxford and Sir Philip Sidney.<sup>180</sup> How could Shakspeare have gotten a copy of Burghley's manuscript before its publication? How could he have known of Burghley's spy network unless he was closely associated with Burghley, as Oxford was?

But the coincidences between Oxford's life and aspects of Shakespeare's works do not end there. Both Hamlet and Oxford have been compared to Castiglione's model of the Renaissance man in *The Courtier*.<sup>181</sup> Oxford wrote a Latin introduction to a translation of this book when he was twenty-one.<sup>182</sup> In 1573, Oxford wrote a preface to an

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170. Bethell, *supra* note 21, at 45.

171. *Id.*

172. WHALEN, *supra* note 34, at 109.

173. *Id.*

174. Bethell, *supra* note 21, at 45.

175. *Id.* at 45-46; *see also* HAMLET, *supra* note 82, at act 1, sc. 3, line 61.

176. Bethell, *supra* note 21, at 45-46.

177. SOBRAN, *supra* note 7, at 112.

178. Bethell, *supra* note 21, at 46.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

English translation of *Cardanus Comfort*, a book of consoling advice which likely influenced Hamlet's "To be or not to be" soliloquy ("What should we account of death to be resembled to anything better than a sleep. . . . We are assured not only to sleep, but also to die.").<sup>183</sup> Like Hamlet, Oxford fought in sea battles and was captured by pirates on his way to England.<sup>184</sup> Oxford visited the French court in the mid-1570s, and *Love's Labor's Lost* shows familiarity with events in the French court at that time.<sup>185</sup> In Italy, Oxford borrowed five hundred crowns from Baptista Nigrone and received an additional loan from Pasquino Spinola.<sup>186</sup> In *The Taming of the Shrew*, Kate's father is named Baptista Minola—a combination of the two men's names—and his "crowns" are often mentioned.<sup>187</sup>

The Gad's Hill robbery in *Henry IV, Part I*, in which Prince Hal first assists and then tricks Falstaff and a gang of rogues, takes place on the same stretch of highway where three of Oxford's men, and perhaps Oxford himself, played a similar practical joke on two of Oxford's former servants.<sup>188</sup> Like Antonio in *Merchant of Venice*, who posts a bond with Shylock for three thousand ducats, in hopes that three returning merchant ships will enable him to repay the debt, Oxford pledged his bond for three thousand pounds to invest in three voyages seeking a northwest passage to the riches of the Orient.<sup>189</sup> The shares were sold by a London merchant named Michael Lok.<sup>190</sup> Like Antonio's ships, Oxford's ships never came in.<sup>191</sup> Perhaps Lok's name (combined with "shy," which can mean disreputable or shady) was the inspiration for the name "Shylock," a name for which scholars have found no other precedent.<sup>192</sup>

Shakespeare's sonnets, which are thought to be dedicated to the Earl of Southampton,<sup>193</sup> spend many lines urging the addressee of the

183. *Id.*

184. *Id.*

185. *Id.* at 58.

186. *Id.*

187. *Id.*

188. WHALEN, *supra* note 34, at 103-04.

189. *Id.* at 106-07.

190. *Id.* at 107.

191. *Id.*

192. *Id.*

193. The sonnets are dedicated to "Mr. W.H." WILLIAM SHAKESPEARE, SONNETS, in THE RIVERSIDE SHAKESPEARE, *supra* note 36, at 1749. Southampton's three biographers believe this refers to him. Bethell, *supra* note 21, at 53. Southampton's name was actually Henry Wriothesley, so the assumption must be that his initials are reversed in the dedication (perhaps to conceal his identity). *Venus and Adonis* and *The Rape of Lucrece*, however, are expressly dedicated to "Henry Wriothesley." WILLIAM SHAKESPEARE, VENUS AND ADONIS AND THE RAPE OF LUCRECE, in THE RIVERSIDE SHAKESPEARE, *supra* note 36, at 1705, 1722.

sonnets to marry.<sup>194</sup> Southampton was at one time engaged to Oxford's daughter but resisted marrying her; both Oxford and Burghley unsuccessfully pressured Southampton to go through with the marriage.<sup>195</sup> The familiar tone that the author of the sonnets takes towards its object, not to mention the homoerotic subtext, would have been wholly inappropriate for a commoner such as Shakspere to assume towards a nobleman such as Southampton.<sup>196</sup> When seen as coming from an older nobleman such as Oxford, however, the sonnets make more sense.<sup>197</sup> Some of these parallels between Oxford's life and Shakespeare's works, taken individually, may seem trivial; but they are too numerous (these are but a sample; Sobran spends two chapters on them<sup>198</sup>) to explain away as coincidence. Taken together, they present cumulative circumstantial evidence for Oxford's authorship. Proponents of Shakspere are hard pressed to come up with more than a few faint parallels between their candidate's life and his purported works.

Why, if Oxford wrote the plays of Shakespeare, would he have kept the fact a secret?<sup>199</sup> In these days, when Shakespeare is revered as one of the great geniuses of all time, it is difficult to comprehend the Elizabethan moral sense, which viewed theatrical writing as a pastime unworthy of a nobleman.<sup>200</sup> But in those days, it was considered indecent for a

194. SOBRAN, *supra* note 7, at 197.

195. Bethell, *supra* note 21, at 53.

196. A recent review of a new edition of Shakespeare's sonnets cautions against overemphasizing the homoerotic implications of the sonnets, saying, "In a period when sodomy was a capital offense, even if homoerotic affection was a deep element in literary and personal life, one needs to be very careful in arguing that Shakespeare authorised the publication of homoerotic poems dedicated to a member of the English nobility." Colin Burrow, *quoted in* Grace Tiffany, *A Review of a Review of Two Reviews of the Sonnets*, 50 SHAKESPEARE NEWSL. 91 (Fall 2000). This comment is a prime example of distorting one's literary criticism of the sonnets in order to make the works "fit" the life of Mr. Shakspere. If one thinks of the sonnets as written by Oxford to Southampton, they no longer seem an act of insolence. The sonnets were private love poems from an older nobleman to a younger one. They were not authorized to be published during the author's lifetime; in fact, they were published in 1609, five years after Oxford's death. SOBRAN, *supra* note 7, at 197. The sonnets were reissued in 1640 with many of the masculine pronouns converted to feminine to hide their homoerotic nature. John Hamill, *Book Review: Sexual Shakespeare by Michael Keevak*, 38:1 SHAKESPEARE OXFORD NEWSL. 7 (Winter 2002). When they were restored to their original format in a 1780 reprinting, many people were shocked to learn that the poems were addressed to a man. *Id.*

197. SOBRAN, *supra* note 7, at 197-98.

198. *Id.* at 181-204.

199. Another question is, *how* did Oxford keep it secret? Sobran suggests that knowledge of the authorship was probably well known and talked about in certain circles, but that it would have been forbidden to publish the fact. SOBRAN, *supra* note 7, at 209-10. Those were days of heavy censorship, when one had to obtain a license before publishing. *Id.* at 210. And Lord Burghley would have had the motive *and* the power to squelch any unwelcome revelations in print. WHALEN, *supra* note 34, at 116. Whalen notes that censorship in those days was enforced by such means as torture, mutilation, branding, and imprisonment. *Id.*

200. SOBRAN, *supra* note 7, at 210.

woman to appear on the stage, a notion that seems completely foreign to us today. In 1589, George Puttenham wrote in the *Arte of English Poesie*:

Among the nobility or gentry . . . it is so come to pass that they have no courage to write and if they have are loath to be known of their skill. So as I know very many notable gentlemen in the Court that have written commendably, and suppressed it again, or else suffered it to be published without their own names to it: as if it were a discredit for a gentleman to seem learned.<sup>201</sup>

Puttenham also noted: “[There are] Noblemen and Gentlemen of Her Majesty’s own servants, who have written excellently well as it would appear if their doings could be found out and made public with the rest, of which number is first that noble gentleman Edward Earl of Oxford.”<sup>202</sup>

Oxford may have had reasons more specific to himself to want to keep the authorship from being public. Lord Burghley, who was not a great lover of the arts, probably just barely tolerated his ward’s play writing. He would probably have been even less amused were Oxford’s authorship to become well known, making the connection between Burghley and Polonius more apparent. But why would Oxford have chosen the name “Shake-speare”? The poet, Gabriel Harvey, said of Oxford, “thy countenance shakes spears,”<sup>203</sup> which may account for the choice of pen name.<sup>204</sup>

Even after Oxford’s death in 1604,<sup>205</sup> some people may have had a vested interest in maintaining the fiction that Oxford was not Shakespeare. Southampton, who may have been deeply embarrassed by the publication of homoerotic love sonnets apparently addressed to him (the sonnets were published in 1609), would have wanted to stifle the Shakespeare-Oxford connection.<sup>206</sup> If Shakespeare were actually some nondescript commoner rather than a close friend and peer of Southampton’s, as Oxford was, then the sonnets would be seen as mere “abstract” poetry and not be deemed the expression of anyone’s actual desires.<sup>207</sup>

201. *Id.* at 134.

202. *Id.*

203. Bentley, *Who Was?*, *supra* note 28, at 13-14.

204. The Oxford family crest depicts a lion shaking a spear, *id.* at 12, though it is uncertain whether this crest had been adopted during de Vere’s lifetime. Even if the crest were adopted after Oxford died, this fact would not rule out a connection between the crest and the name “Shakespeare”; it could mean that the crest was adopted after de Vere’s death as a subtle tribute to his authorship of the plays written under the name of Shakespeare. Francis Bacon was a member of the Order of the Helmet, dedicated to Pallas Athene, the Shaker of the Spear; therefore, “Shakespeare” would be a fitting pen name for Bacon as well. Pares, *supra* note 108, at 86.

205. Bentley, *Who Was?*, *supra* note 28, at 14.

206. SOBRAN, *supra* note 7, at 219.

207. *Id.*

Oxford's family would also have wanted to squelch the family connection to the sonnets and their palpable homoeroticism.<sup>208</sup> The Oxford family name had already been blemished by a serious homosexual scandal when the ninth Earl of Oxford had been the lover of Richard II, helping to precipitate that king's downfall.<sup>209</sup> (Note that this earl and his role are never mentioned in Shakespeare's *Richard II*.<sup>210</sup>)

When the First Folio was published in 1623, the dedicatees, as mentioned, were the Earls of Pembroke and Montgomery.<sup>211</sup> Since the publication of the First Folio was a major financial undertaking,<sup>212</sup> it may be that these two lords helped finance it. The two actors, Heminge and Condell, could not have done so,<sup>213</sup> and someone had to pay Ben Jonson. If the First Folio was really a misdirection aimed at saving the Oxford family honor from the disgrace of another homosexual scandal, why would Pembroke and Montgomery have gotten involved? The answer is that they were family. Montgomery was Oxford's son-in-law.<sup>214</sup> Pembroke, Montgomery's brother, had once sought the hand of one of Oxford's daughters.<sup>215</sup> Clary asks, regarding Heminge and Condell, "Did Heminge, Condell lie? . . . Why should they?"<sup>216</sup> The simple answer that comes to my mind is: money. Why shouldn't Heminge and Condell have been paid for their services, just as Jonson was probably paid? Pembroke and Montgomery (and perhaps Southampton) could have easily seen to it that the two former actors' pockets were lined. After the First Folio, Shakespeare would be remembered as a playwright born to a Stratford glover (the First Folio did not contain or mention Shakespeare's sonnets or narrative poems), a rustic, self-taught, natural genius.<sup>217</sup>

Admittedly, the Oxford theory takes documented facts and builds conjectures and inferences upon them.<sup>218</sup> But so does the Stratford the-

208. *Id.*

209. *Id.* at 109.

210. *Id.*

211. *Id.* at 219.

212. HOFFMAN, *supra* note 46, at 174.

213. *See id.* at 179.

214. SOBRAN, *supra* note 7, at 219.

215. *Id.*

216. Clary, *supra* note 40, at 26.

217. SOBRAN, *supra* note 7, at 39-40.

218. Anti-Oxfordians have maintained that the main problem with the Oxford theory is the date of his death (1604), as some of the plays are thought to have been written after 1604. *Id.* at 143. This issue is beyond the scope of this study, but I consider Sobran's analysis, *id.* at 143-62, persuasive. In a nutshell, most of the conventional dating of the plays starts with the assumption that Mr. Shaksper wrote them and tries to fit the dates of the plays around his life (1564-1616). *Id.* at 148. If one begins the dating process by disregarding the Stratfordian presumption, however, no obstacles to Oxford's authorship emerge. For example, the mention of a shipwreck in Bermuda in *The Tempest*, long thought to refer to a 1609 incident, may just as easily refer to a

ory, and so does every other theory about the authorship. So far, the debate on the subject has been carried on in the vigorous adversarial tradition of Anglo-American common law. Each faction seems fortified against denial and relentlessly defends its particular hero against all attackers. The controversy has invoked the terminology of religious zealotry. The anti-Stratfordians are called “unorthodox,” “skeptics,” “heretics”; those anti-Stratfordians who have not yet settled on a single candidate other than Shakespeare are called “agnostics.” The Stratfordians are notoriously dismissive of heretics and appeal to the “authority” of their orthodox scholars as if they were high priests. The Shakespeare Oxford Society (of which I am a member, I hasten to add, in the interest of full disclosure) is dedicated to the establishment of Edward de Vere as the true author of the works of Shakespeare. Yet I would hope that my fellow Oxfordians and I would graciously accept any conclusive evidence of someone else’s authorship, if such should ever be found. While strong adherence to their single viewpoints by various parties may, as the adversary system has shown, ultimately lead to truth, we must not lose sight of the fact that it is the truth of the matter—who really wrote the plays and poems?—that we are all seeking, not the satisfaction of having backed the “right” horse in the race.

## II. THE LAW IN SHAKESPEARE’S WORKS

In 1778, Edmund Malone, an early editor of Shakespeare and a lawyer himself, was perhaps the first to comment on the frequency of the use of legal terms in the plays.<sup>219</sup> Two years later, he remarked that

[Shakespeare’s] knowledge and application of legal terms, seems to me not merely such as might have been acquired by casual observation of his all-comprehending mind; it has the appearance of technical skill; and he is so fond of displaying it on all occasions, that there is, I think, some ground for supposing that he was early initiated in at

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1593 Bermuda shipwreck which, by the way, involved a ship in which Oxford may have invested. Bethell, *supra* note 21, at 46-47. Note, also, that in the dedication to the SONNETS, published in 1609, Shakespeare was described as our “ever-living” poet. SOBMAN, *supra* note 7, at 145. Immortality is not usually ascribed to one who is still living, but to one who is dead. *Id.*; see also David Roper, *The Peacham Chronogram: Compelling Evidence Dates Titus Andronicus to 1575*, 37:3 SHAKESPEARE OXFORD NEWSL. 1 (Fall 2001) (dating *Titus Andronicus* to 1575, the year during which Shakespeare would have been only eleven, while Oxford would have been twenty-five); Ramón Jiménez, “*Rebellion Broachéd on His Sword*”: *New Evidence of an Early Date for Henry V*, 37:3 SHAKESPEARE OXFORD NEWSL. 8, 11, 21 (Fall 2001) (dating *Henry V* to the winter of 1583-1584, rather than to the commonly accepted year of 1599).

219. Mark Andre Alexander, *Shakespeare’s “Bad Law”: A Journey through the History of the Arguments*, 35:4 SHAKESPEARE OXFORD NEWSL. 1, 19 (Winter 2000) [hereinafter Alexander, *Bad Law*].

least the forms of law.<sup>220</sup>

The relevance of Shakespeare's legal knowledge to the authorship question should be obvious. The more comprehensive and sophisticated Shakespeare's legal knowledge is shown to be, the more difficult it becomes for the Stratfordians to explain how William Shakspeare could have acquired this knowledge. The theory that he was a law clerk at one time would only partially explain it, and, besides, no one has uncovered any external evidence that he served in such a capacity.<sup>221</sup> If he had, it is odd, indeed, that no document witnessed and signed by him as a law clerk has ever turned up, despite the ransacking of village archives by ardent Stratfordians in search of it.<sup>222</sup> Mark Twain goes so far as to say:

[I]f I were required to superintend a Bacon-Shakespeare controversy, I would narrow the matter down to a single question . . . *Was the author of Shakespeare's Works a lawyer?*—a lawyer deeply read and of limitless experience? I would put aside the guesses, and surmises, and perhapses, and might-have-beens, and could-have-beens, and must-have-beens, and we-are-justified-in-presumings, and the rest of those vague spectres and shadows and indefinitenesses, and stand or fall, win or lose, by the verdict rendered by the jury upon that single question.<sup>223</sup>

Unlike Twain, I doubt that the question of Shakespeare's legal knowledge will prove dispositive of the authorship question. One of the few things that we do know about William Shakspeare of Stratford is that he was no stranger to the courtroom. His father was party to nearly fifty lawsuits during his life, and William was also of a litigious nature.<sup>224</sup> Being involved in so many lawsuits is bound to give one some familiarity with the workings of the law and with legal terms. Anti-Stratfordians respond that the provincial fortnightly court in Stratford can hardly have been demonstrating the practice of law at such a high level that it would

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220. EDMUND MALONE, *THE LIFE OF WILLIAM SHAKESPEARE*, at II, 107-09, *quoted in* Alexander, *Bad Law*, *supra* note 219, at 13.

221. The Folger Shakespeare Library in Washington, D.C. houses a copy of William Lambarde's *Archaionomia* [*Ancient Laws*], printed in 1568, which contains a signature, purportedly that of Shakspeare, on the title page. *See* W. NICHOLAS KNIGHT, *SHAKESPEARE'S HIDDEN LIFE: SHAKESPEARE AT THE LAW 1585-1595*, at 125 (1973). If authenticated, this would be a tantalizing arrow in the Stratfordians' quiver—physical evidence that Shakspeare actually owned a book, and a law book, at that. But, alas, there is no consensus, even among Stratfordians, that the signature is genuine, and few Stratfordians ever mention the signature in their arguments. *See* Diana Price's cogent summary of the issue at <http://www.shakespeareauthorship.com/resources/Archaionomia.asp>.

222. GREENWOOD, *supra* note 45, at 378; *see also* SOBRAN, *supra* note 7, at 222.

223. TWAIN, *supra* note 1, at 76-77.

224. WILLIAM C. DEVECMON, *IN RE SHAKESPEARE'S "LEGAL ACQUIREMENTS": NOTES BY AN UNBELIEVER THEREIN 2-3* (1899).

give anyone a refined understanding of the law.<sup>225</sup> But the fact that Shakspere did have some exposure to the law leaves anti-Stratfordians with a heavy burden of proof—they must demonstrate that Shakespeare's knowledge of the law was at the level of a sophisticated practitioner (don't forget that both Bacon and Oxford were trained in law at Gray's Inn<sup>226</sup>), not merely that of an interested amateur. They must show that Shakespeare's legal knowledge is greater than one could have acquired by being a spectator at a country courthouse or by taking part in some mundane lawsuits. The stronger the evidence for Shakespeare's having had the kind of training that enabled him to think like a lawyer, the stronger will be the case against Mr. Shakspere's having been the author of the works. Such evidence, alone, will probably not be enough to settle the authorship question, but it will greatly bolster the anti-Stratfordian argument.

#### A. Accuracy of Shakespeare's Legal Usage

To give credence to the idea that Shakespeare must have been a trained lawyer, one must show that his use of legal terms is highly accurate. One doesn't have to prove that it is absolutely flawless, however, since even highly trained lawyers make mistakes now and then.<sup>227</sup> The debate among lawyers over the accuracy of Shakespeare's legal knowledge goes back almost 150 years.<sup>228</sup> In 1858, William Rushton published *Shakespeare a Lawyer*, and in 1859, John Campbell, Lord Chief Justice in 1850 and later elevated to the office of Lord Chancellor, published *Shakespeare's Legal Acquirements Considered*.<sup>229</sup> Campbell's eminent position assured that his words would be taken seriously.<sup>230</sup> He is often quoted for his opinion of Shakespeare's legal terms:

I am amazed, not only by their number, but by the accuracy and propriety with which they are uniformly introduced. There is nothing so dangerous as for one not of the craft to tamper with our free-masonry. . . . While Novelists and Dramatists are constantly making mistakes as to the law of marriage, of wills, and of inheritance,—to Shakespeare's law, lavishly as he propounds it, there can neither be demurrer, nor bill of exceptions, nor writ of error.<sup>231</sup>

Senator C.K. Davis followed up with *The Law in Shakespeare* in 1883,

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225. GREENWOOD, *supra* note 45, at 397.

226. Bentley, *Who Was?*, *supra* note 28, at 7, 13.

227. WILLIAM RUSHTON, *SHAKESPEARE'S LEGAL MAXIMS* 11 (1907).

228. Alexander, *Bad Law*, *supra* note 219, at 9.

229. *Id.*

230. *Id.*

231. JOHN LORD CAMPBELL, *SHAKESPEARE'S LEGAL ACQUIREMENTS CONSIDERED* 132-34 (1859).



citing 312 examples of legal references in Shakespeare's works and noting that "this legal learning is accurately sustained in many passages with cumulative and progressive application. The word employed becomes suggestive of other words, or of a legal principle, and these are at once used so fully that their powers are exhausted."<sup>232</sup>

In 1899, William Devecmon attempted to counter these praises with *In Re Shakespeare's "Legal Acquirements": Notes by an Unbeliever Therein*, a reply to Campbell's book.<sup>233</sup> He cites fourteen (only fourteen!) of what he considers "gross errors" in Shakespeare's use of the law.<sup>234</sup> Devecmon, however, has no sense of metaphor or dramatic situation and often criticizes legal usage in Shakespeare plays as if he were reading a legal memorandum. He does not understand that a dramatist may not want to have a character speaking with lawyer-like precision when that character would not have been trained in the law.<sup>235</sup> For example, Queen Elizabeth in *Richard III* says, "Tell me what state, what dignity, what honor/Canst thou demise to any child of mine?"<sup>236</sup> Devecmon merely comments, "Dignities and honors could not be demised,"<sup>237</sup> citing *Comyn's Digest*. Sir George Greenwood, in refuting Devecmon's argument, asks:

What is it that . . . *Comyn's Digest* really tells us? That "a dignity or nobility cannot be aliened or transferred to another." Not a very unreasonable proposition! If the king grants a title or "dignity" to a subject, it is natural enough that the grantee should not have the power to assign it away to another . . . or to put it up to auction. . . . [But it] was possible for Richard to "demise" such dignities or honours, inasmuch as he was king, and even a subject could make a grant of such things "with the king's licence."<sup>238</sup>

Devecmon next applies his legal skills to this passage from *Love's Labor's Lost*:

You three, Berowne, Dumaine, and Longaville,  
Have sworn for three years' term to live with me,  
My fellow scholars, and to keep those statutes  
That are recorded in this schedule here.  
Your oaths are pass'd, and now subscribe your names . . . ."<sup>239</sup>

Devecmon says, "The word 'statutes' is here used to mean simply arti-

232. C.K. DAVIS, *THE LAW IN SHAKESPEARE* 16 (1883).

233. DEVECMON, *supra* note 224.

234. Alexander, *Shakespeare's Knowledge of Law*, *supra* note 3, at 69.

235. *Id.* at 68.

236. WILLIAM SHAKESPEARE, *RICHARD III* act 4, sc. 4, lines 246-48, in *THE RIVERSIDE SHAKESPEARE*, *supra* note 36.

237. DEVECMON, *supra* note 224, at 33.

238. GREENWOOD, *supra* note 45, at 399-401.

239. *LOVE'S LABOR'S LOST*, *supra* note 119, at act 1, sc. 1, lines 15-19.

cles of agreement. It has no such meaning in law. A statute is an act of the legislature of a country."<sup>240</sup>

Greenwood points out, however, that "statutes" in the above passage does not merely mean "articles of agreement," but "ordinances," as in the "statutes" of a college or school.<sup>241</sup> He adds that "it is used [in this sense] in the Authorised Version of the Bible (1611), as in Psalm CIX.8, 'I will keep thy statutes.'"<sup>242</sup> Indeed, while *Black's Law Dictionary* defines "statute" as "[a] law passed by a legislative body,"<sup>243</sup> *Webster's Third Unabridged Dictionary* begins by defining it more generally as "something laid down or declared as fixed or established."<sup>244</sup> There is nothing wrong, then, from a legal standpoint or otherwise, with Shakespeare's use of the word.

One by one, Greenwood and other writers refute Devecmon's fourteen examples of Shakespeare's errors.<sup>245</sup> Most of Devecmon's followers merely repeated his examples.<sup>246</sup> I will give one last example of a Shakespeare error suggested by other writers than Devecmon. Clarkson and Warren, in their 1942 book, *The Law of Property in Shakespeare and the Elizabethan Drama*,<sup>247</sup> accuse Shakespeare of not understanding the difference between "heir apparent" and "heir presumptive."<sup>248</sup> The succession of an heir apparent, such as the eldest son of a king, depended only on the son's outliving the king.<sup>249</sup> An heir presumptive, such as a brother to a king, on the other hand, could lose his place in the line of succession through the birth of a child to the king.<sup>250</sup> In *Henry VI, Part II*, Cardinal Beaufort says of Humphrey, Duke of Gloucester, "Consider, lords, he is the next of blood/And heir apparent to the English crown."<sup>251</sup> But Humphrey was Henry VI's uncle, not his son, and would therefore have been heir presumptive, not heir apparent.<sup>252</sup> Apparently, Shakespeare is caught here making a bush league error. But Mark Alexander demonstrates that the distinction between heirs appar-

240. DEVECMON, *supra* note 224, at 39.

241. GREENWOOD, *supra* note 45, at 403-04.

242. *Id.* at 404.

243. BLACK'S LAW DICTIONARY 1420 (7th ed. 1999).

244. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (UNABRIDGED) 2230 (1993).

245. Alexander, *Bad Law*, *supra* note 219, at 9-13.

246. *Id.* at 12.

247. I have been unable to obtain a copy of Clarkson and Warren's book. My summary of their argument is taken from Alexander, *id.* at 12-13.

248. *Id.* at 12.

249. *Id.* at 12-13.

250. *Id.*

251. WILLIAM SHAKESPEARE, THE SECOND PART OF KING HENRY THE SIXTH act 1, sc. 1, lines 151-52, in THE RIVERSIDE SHAKESPEARE, *supra* note 36.

252. Alexander, *Bad Law*, *supra* note 219, at 12-13.

ent and presumptive did not exist when *Henry VI* was written.<sup>253</sup> The *Oxford English Dictionary* shows that the first public use of “presumptive” occurred in 1609; the phrase “heir presumptive” did not appear until 1628, five years after the First Folio was published.<sup>254</sup> Henslowe records that *Henry VI* was performed in 1592.<sup>255</sup> Alexander argues persuasively that “no critic of Shakespeare’s ‘bad law’ has yet given a single valid example.”<sup>256</sup> While proof of a few legal errors would not be fatal to the thesis that Shakespeare was well versed in the law, his critics have been unconvincing in attempting to show that even one error exists.

### B. *Scope of Shakespeare’s Legal Knowledge*

To prove that the author of Shakespeare’s works had sophisticated legal training, however, one needs more than mere proof of legal accuracy. An amateur in the law can always consult a professional to make sure that his trial scenes and legal terms are accurate. Writers of books with themes about law or crime do this often. Mark Twain did it himself when he wrote *Pudd’nhead Wilson*; in order to ensure that the legal matters in the novel were accurate, Twain showed his work to a lawyer.<sup>257</sup> If William Shakspeare was the author of the plays, could he not have done the same? Couldn’t he have met highly trained lawyers when he lived in London? Or is Shakespeare’s use of law so ingrained in his writings that it could only have come from someone who was totally familiar and at home with legal thinking, someone to whom legal knowledge was second nature? To answer this question, I believe it is necessary to examine, not just the many times that Shakespeare uses law, but the many *ways* in which he uses it.

Writers such as Rushton, Campbell, and Davis have already done a great deal of the work of cataloguing Shakespeare’s legalisms. I have attempted to build on their work by analyzing the different ways in which law appears in Shakespeare’s works and to ask whether such usage would indicate professional legal knowledge on the part of the author. I have divided Shakespeare’s legal usage into seven categories, which may overlap to some degree:

- (1) Law or justice as an overarching theme;
- (2) Depictions of trial scenes, pleas, and other legal proceedings;
- (3) Extended metaphors using explicit legal terms;
- (4) Metaphors using implied legal concepts;

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253. *Id.* at 13.

254. *Id.*

255. THE RIVERSIDE SHAKESPEARE, *supra* note 36, at 587.

256. Alexander, *Bad Law*, *supra* note 219, at 13.

257. DANIEL J. KORNSTEIN, KILL ALL THE LAWYERS? SHAKESPEARE’S LEGAL APPEAL 231-32 (1994).

- (5) Gratuitous use of quasi-legal terms;
- (6) Paraphrases of Latin legal maxims; and
- (7) Legal issues as a pervasive subtext.

I will give an example or two of each, though there are many more.<sup>258</sup> Let us examine each of these seven forms of legal influence on Shakespeare's writings and see, for each one, whether it helps us answer the question of whether Shakespeare was a trained professional at the law or merely an interested amateur.

#### 1. LAW OR JUSTICE AS AN OVERARCHING THEME

In this category, *Measure for Measure* is the prime example. Here, the main themes concern the purpose of the law and the administration of justice. The play examines what should happen when laws that have long gone unenforced are revived, it questions the relationship between crime and punishment, and it considers the nature of justice. In Shakespeare's time, every felony except petty larceny was capitally punished, so that a person who had committed a felony had nothing to lose by committing other crimes if they would help him escape.<sup>259</sup> *Measure for Measure* may be seen as a plea for a more rational and merciful approach to criminal justice.<sup>260</sup> *Merchant of Venice*, with Shylock's "pound of flesh" contract<sup>261</sup> and Portia's "quality of mercy" speech,<sup>262</sup> also sounds themes of justice and mercy, though they are not as pervasive as in *Measure for Measure*. Does this mean that the author of these plays had to be a highly trained legal practitioner? I don't think so. Anyone who has an informed citizen's basic awareness of government and legal structure might have strong ideas about crime, punishment, justice, or mercy and might wish to express those ideas in a play. To do so hardly requires extensive legal knowledge.

#### 2. DEPICTIONS OF TRIAL SCENES, PLEAS, AND OTHER LEGAL PROCEEDINGS

The trial scene in *Merchant of Venice* is the most famous; over twenty Shakespeare plays contain trials or mock trials of some kind.<sup>263</sup>

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258. See generally RUSHTON, *supra* note 227; CAMPBELL, *supra* note 231; DAVIS, *supra* note 232; see also generally DUNBAR PLUNKETT BARTON, *LINKS BETWEEN SHAKESPEARE AND THE LAW* (1929); GEORGE GREENWOOD, *SHAKESPEARE'S LAW* (1920); FRANKLIN FISKE HEARD, *SHAKESPEARE AS A LAWYER* (1883); GEORGE W. KEETON, *SHAKESPEARE AND HIS LEGAL PROBLEMS* (1930); O. HOOD PHILLIPS, *SHAKESPEARE AND THE LAWYERS* (1972).

259. KEETON, *supra* note 258, at 91.

260. *Id.*

261. WILLIAM SHAKESPEARE, *MERCHANT OF VENICE* act 1, sc. 3, lines 144-51, in *THE RIVERSIDE SHAKESPEARE*, *supra* note 36.

262. *Id.* at act 4, sc. 1, lines 184-205.

263. KORNSTEIN, *supra* note 257, at xii.

What does this wealth of courtroom drama tell us about the writer's legal skills? It shows that the writer had a keen interest in legal proceedings, but it doesn't prove him an expert. This is an area where the amateur may lack detailed knowledge but where he may, as Twain did, consult a professional attorney in order to avoid mistakes.

### 3. EXTENDED METAPHORS USING EXPLICIT LEGAL TERMS

Consider *Sonnet 46*:

Mine eye and heart are at a mortal war,  
 How to divide the *conquest* of thy sight:  
 Mine eye my heart [thy] picture's sight would *bar*,  
 My heart mine eye the freedom of that right.  
 My heart doth *plead* that thou in him dost lie  
 (A closet never pierc'd with crystal eyes),  
 But the *defendant* doth that *plea* deny,  
 And says in him [thy] fair appearance lies.  
 To [*'cide*] this title is *impanelled*  
 A *quest* of thoughts, all *tenants* to the heart,  
 And by their *verdict* is determined  
 The clear eye's *moiety* and the dear heart's part—  
     As thus: mine eye's *due* is [thy] outward part,  
     And my heart's *right* [thy] inward love of heart.<sup>264</sup>

Lord Campbell commented that:

this sonnet . . . is so intensely legal in its language and imagery, that without a considerable knowledge of English forensic procedure it cannot be fully understood. A lover being supposed to have made a *conquest* of [*i.e.* to have gained by *purchase*] his mistress, his EYE and his HEART, holding as *joint-tenants*, have a contest as to how she is to be partitioned between them,—each moiety then to be held in severalty. There are regular Pleadings in the suit, the HEART being represented as Plaintiff and the EYE as Defendant. At last issue is joined on what the one affirms and the other denies. Now a jury [in the nature of an inquest] is to be impannelled to '*cide* [*decide*] and by their verdict to apportion between the litigating parties the subject matter to be divided. The jury fortunately are unanimous, and after due deliberation find for the EYE in respect of the lady's outward form, and for the HEART in respect of her inward love.

Surely Sonnet XLVI. smells as potently of the attorney's office as any of the stanzas penned by Lord Kenyon while an attorney's clerk in Wales.<sup>265</sup>

The sonnets are replete with metaphors such as this, where legal

264. SHAKESPEARE, SONNET 46, in THE RIVERSIDE SHAKESPEARE, *supra* note 36 (emphases added).

265. CAMPBELL, *supra* note 231, at 126-27 (alteration in original).

terms are used to create complex allegories on the nature of love or loyalty or duty or old age.<sup>266</sup>

From *The Merry Wives of Windsor* comes the speech (spoken about Falstaff), “The spirit of wantonness is sure scar’d out of him. If the devil have him not in fee-simple, with fine and recovery, he will never, I think, in the way of waste, attempt us again.”<sup>267</sup> A tenant in fee simple is one who holds lands to himself and to his heirs forever.<sup>268</sup> Fine and recovery was a legal fiction used from the twelfth to the nineteenth centuries for the conveying of land and barring of estates tail.<sup>269</sup> Waste is “permanent harm to real property committed by a tenant . . . to the prejudice of the heir, the reversioner, or the remainderman.”<sup>270</sup> Falstaff has been scared away, and unless the devil has him absolutely without any chance of redemption, he will not try to seduce the merry wives again.<sup>271</sup> Here, the terms of property law are used metaphorically to describe a scene that is not actually about property law at all.

It seems that writing such metaphors would be easiest for one who has studied law so thoroughly that legal terms spring easily to mind, almost as second nature. Learning law is much like learning a second language. It has its own “terms of art,” which students of law learn to master and speak with fluency. Still, the ability to use explicit legal terms to create extended metaphors does not seem out of the reach of a diligent amateur. *Sonnet 46* does not actually use esoteric legal terms or concepts; many of its legal terms are commonly known even today.

#### 4. METAPHORS USING IMPLIED LEGAL CONCEPTS

In *Merry Wives of Windsor*, Falstaff asks, “Of what quality was your love, then?”<sup>272</sup> Ford replies: “Like a fair house built upon another man’s ground; so that I have lost my edifice by mistaking the place where I erected it.”<sup>273</sup> This is a demonstration of the common law principles that *cujus est solum, ejus est usque ad coelum* (whoever owns the soil owns up to the sky)<sup>274</sup> and *quiequid plantatur solo solo cedit* (whatever is affixed to the soil belongs to the soil).<sup>275</sup> The average per-

266. SOBRAN, *supra* note 7, at 201.

267. WILLIAM SHAKESPEARE, *THE MERRY WIVES OF WINDSOR* act 4, sc. 2, lines 209-12, in *THE RIVERSIDE SHAKESPEARE*, *supra* note 36 [hereinafter *THE MERRY WIVES OF WINDSOR*].

268. DAVIS, *supra* note 232, at 66.

269. BLACK’S LAW DICTIONARY 646 (7th ed. 1999).

270. *Id.* at 1584.

271. DONALD F. LYBARGER, *SHAKESPEARE AND THE LAW: WAS THE BARD ADMITTED TO THE BAR?* 9 (reprinted from the *Cleveland Bar Journal*, Mar. 1965).

272. *THE MERRY WIVES OF WINDSOR*, *supra* note 267, at act 2, sc. 2, line 214.

273. *Id.* at lines 215-17.

274. CAMPBELL, *supra* note 231, at 40.

275. RUSHTON, *supra* note 227, at 23.

son might think that if one mistakenly builds a house on another's land, thinking the land is his own, he would be entitled to recover his building materials once he discovers the mistake.<sup>276</sup> Shakespeare here shows his awareness of the fact that once the building is attached to the soil, it becomes part of the soil and belongs to whoever rightfully owns that piece of land.<sup>277</sup> This differs from the examples of extended metaphors using explicit legal terms in that no specifically legal terms or maxims are used in the lines. But the whole metaphor depends for its existence upon the understanding of a particular legal principle.

Writing such metaphors might be possible for the legal amateur, but it requires a subtlety that points more in the direction of a full-fledged professional. In the *Merry Wives* metaphor, the writer impliedly compares a man's love to a house, but the comparison makes sense only because the writer understands the legal principle underlying it. It is difficult for me to imagine that Mr. Shakspeare, if he were the author, went to a lawyer and asked for a legal principle that would symbolize a man's love. It seems more likely that the writer was searching about for a way of describing a man's love and, already knowing of the legal principle that what is affixed to the soil belongs to the owner of the soil, seized upon this metaphor. The legal principle is so organic to the metaphor that it must have grown out of the author's knowledge rather than his research. As Mark Alexander says, "Shakespeare must have this kind of knowledge imprinted at the cellular level to access it so seemingly effortlessly in such a context. And how does one acquire such imprinting? Through training, through associations, through years of study."<sup>278</sup>

##### 5. GRATUITOUS USE OF QUASI-LEGAL TERMS

Often Shakespeare uses a term that has both a legal connotation and a non-legal meaning (I will refer to such terms as "quasi-legal"), when he could have used a strictly non-legal term. For example:

And summer's *lease* hath all too short a date.

[*Sonnet 18*]

Her *pleading* hath deserved a *greater fee*.

[*Venus and Adonis*]

Hath *served a dumb arrest* upon his tongue.

[*Rape of Lucrece*]

When to the *sessions of sweet silent thought*

276. CAMPBELL, *supra* note 231, at 39-40.

277. RUSHTON, *supra* note 227, at 23.

278. Alexander, *Shakespeare's Knowledge of Law*, *supra* note 3, at 105.

I *summon up* remembrance of things past . . .

[*Sonnet 30*]<sup>279</sup>

In these contexts, the words do not necessarily strike one at first for their legal meaning, as they are often used in ordinary speech to refer to non-legal matters. But considering their legal connotations may add a dimension to their meanings. In the lines from *Sonnet 30*, for example, the fact that the terms “sessions” and “summon” can invoke courtroom images may lend a sense of foreboding to the sonnet as a whole. In fact, the poem has several other words that may have a meaning in law or in accounting as well as a non-legal one. Here is the entire poem:

When to the *sessions* of sweet silent thought  
 I *summon up* remembrance of things past,  
 I sigh the lack of many a thing I sought,  
 And with old woes new wail my dear time's *waste*;  
 Then can I drown an eye (unus'd to flow)  
 For precious friends hid in death's dateless night,  
 And weep afresh love's long since *cancell'd* woe,  
 And moan th' *expense* of many a vanish'd sight;  
 Then can I grieve at *grievances* foregone,  
 And heavily from woe to woe tell o'er  
 The sad *account* of fore-bemoaned moan,  
 Which I new *pay* as if not paid before:

But if the while I think on thee, dear friend,  
 All *losses* are *restor'd*, and sorrows end.<sup>280</sup>

Compare this sonnet to *Sonnet 46*, quoted earlier, where the use of legal terms is obvious. One cannot read through it without noticing words like “defendant,” “plea,” and “verdict,” that signal the courtroom metaphor. Here, in *Sonnet 30*, however, the legal language is more subdued, and one could easily read the sonnet without being consciously aware that it contains legal imagery.

Here, I think the subtlety of the usage indicates an author who knows the law so well and is so comfortable in speaking the language of law that quasi-legal words come to his mind with little effort. As the creative process is partially a process of subconscious inspiration, he may not have even realized the legal connotations of some of the words as he wrote them. As Lord Penzance wrote in 1902:

At every turn and point at which [Shakespeare] required a metaphor, simile, or illustration, his mind ever turned to the law. He seems almost to have thought in legal phrases—the commonest of legal expressions were ever at the end of his pen in description or illustra-

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279. The examples are suggested by CAMPBELL, *supra* note 231, at 124.

280. WILLIAM SHAKESPEARE, SONNET 30, in THE RIVERSIDE SHAKESPEARE, note 36 (emphases added).



tion. That he should have descanted in lawyer language when he had a forensic subject in hand, such as Shylock's bond, was to be expected. *But the knowledge of law in "Shakespeare" was exhibited in a far different manner: it protruded itself on all occasions, appropriate or inappropriate, and mingled itself with strains of thought widely divergent from forensic subjects.*<sup>281</sup>

## 6. PARAPHRASES OF LATIN LEGAL MAXIMS

Anglo-American common law has a long tradition of legal maxims in Latin. Rather than quote the Latin phrases, Shakespeare often paraphrases them in English in his plays.<sup>282</sup> For example:

To offend and judge are distinct offices,  
And of opposed natures. [Merchant of Venice]  
*Nemo debet esse judex in suâ propriâ causâ.*  
(No one ought to be a judge in his own cause.)<sup>283</sup>

[F]ather and mother is man and wife;  
Man and wife is one flesh.<sup>284</sup> [Hamlet]  
*Vir et uxor sunt quasi unica persona, quia caro una, et sanguis unus.*  
(Man and wife are one person, because they are one flesh and blood.)<sup>285</sup>

The law hath not been dead, though it hath slept.<sup>286</sup>  
[Measure for Measure]  
*Dormiunt aliquando leges, moriuntur nunquam.*  
(The laws sometimes sleep, they never die.)<sup>287</sup>

We must not rend our subjects from our laws  
And stick them in our will.<sup>288</sup> [Henry VIII]  
*Judex bonus nihil et arbitrio suo faciat, nec proposito domesticæ voluntatis sed justa leges et jura pronunciet.*  
(Neither have judges power to judge according to that which they think fit, but that which out of the laws they know to be right and consonant to law.)<sup>289</sup>

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281. PENZANCE, *supra* note 3, at 85-86, quoted in Alexander, *Shakespeare's Knowledge of Law*, *supra* note 3, at 82 (emphasis added by Alexander).

282. RUSHTON, *supra* note 227, at 9.

283. *Id.* at 14.

284. HAMLET, *supra* note 82, at act 4, sc. 3, lines 50-52.

285. RUSHTON, *supra* note 227, at 21-22.

286. WILLIAM SHAKESPEARE, MEASURE FOR MEASURE act 2, sc. 2, line 90, in THE RIVERSIDE SHAKESPEARE, *supra* note 36.

287. RUSHTON, *supra* note 227, at 25.

288. WILLIAM SHAKESPEARE, HENRY VIII act 1, sc. 2, lines 93-94, in THE RIVERSIDE SHAKESPEARE, *supra* note 36.

289. RUSHTON, *supra* note 227, at 56.

What in the world should make me now deceive,  
 Since I must lose the use of all deceit?  
 Why should I then be false, since it is true  
 That I must die here and live hence by truth?<sup>290</sup> [King John]  
*Nemo præsumentur esse immemor suæ æternæ salutis, et maxime in  
 articulo mortis.*  
 (No one is presumed to be unmindful of his eternal welfare, and espe-  
 cially at the point of death.)<sup>291</sup>

The last maxim is, of course, the rationale behind the “dying declaration” exception to the hearsay rule. The quoted phrases strongly suggest that whoever wrote Shakespeare’s plays was familiar with legal terms and could translate Latin.<sup>292</sup> This points toward a trained professional. These examples suggest that Shakespeare knew the law, knew Latin, and understood legal principles so well that he was able to apply them to the “facts” of dramatic situations without being rote. This is what law schools mean when they say that they teach students to “think like lawyers”—that the students learn to apply rules to particular fact situations that don’t always fit neatly under the rule. Shakespeare’s paraphrases of the Latin maxims are not mechanical, but show an understanding of the purposes of the rules.

#### 7. LEGAL ISSUES AS A PERVASIVE SUBTEXT

By this phrase, I mean that a legal issue or principle informs the entire plot, even though the issue may be mentioned only occasionally or obliquely. This is the hallmark of the consummate professional. To use law in this way, a writer has to know the law so well that he conforms the story to its contours, even though he refrains from emphasizing to his audience that such principles are shaping his plot. The best example of this is the use of inheritance laws in *Hamlet*. As this is a complex subject, I will defer discussion of it to the next section of this study.

While working in a law office or frequenting the courts of law may give a person some familiarity with legal terms and with legal writing, it does not teach one what advanced legal training teaches—how to spot issues in complex fact patterns, how to apply rules of law to factual situations, how to understand arguments on both sides of a case, how to “think like a lawyer.” What we must ask about Shakespeare is this: did he merely have the familiarity of one who has hovered about courtrooms and law offices, or had he developed the kinds of thought patterns associated with the legal mind, the sort that would have grown from formal

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290. WILLIAM SHAKESPEARE, KING JOHN act 5, sc. 4, lines 26-29, in THE RIVERSIDE SHAKESPEARE, *supra* note 36.

291. RUSHTON, *supra* note 227, at 59.

292. *Id.* at 9.

legal education, defined by Alexander as “serious, long-term, and applied study of law, legal history, and legal philosophy while participating in associations and interactions with other students or masters of law, whether in one of the Inns of Court or in some other environment saturated with legal conversation”<sup>293</sup>

In the year 2000, the Athlone Press published *Shakespeare’s Legal Language: A Dictionary*, containing over 400 pages of detailed discussion of Shakespeare’s legal terms and concepts and listing approximately 1600 references.<sup>294</sup> As the authors state,

the overall impression given by this Dictionary may well contradict frequently reiterated claims that Shakespeare’s interest in law was at best superficial, and that Shakespeare exploited legal ideas, circumstances, and language with no regard for any factor aside from ‘poetic’ effect. It is our view, derived from cumulative evidence, that on the contrary Shakespeare shows a quite precise and mainly serious interest in the capacity of legal language to convey matters of social, moral, and intellectual substance.<sup>295</sup>

### III. LEGAL ISSUES IN *HAMLET*

Laurence Olivier, the great actor, said of Shakespeare’s *Hamlet*: Hamlet is pound for pound, in my opinion, the greatest play ever written. . . . Every time you read a line it can be a new discovery. You can play it and play it as many times as the opportunity occurs and still not get to the bottom of its box of wonders. It can trick you round false corners and into culs-de-sac, or take you by the seat of your pants and hurl you across the stars.<sup>296</sup>

A recent article by J. Anthony Burton, *An Unrecognized Theme in Hamlet: Lost Inheritance and Claudius’s Marriage to Gertrude*,<sup>297</sup> shows that, despite the millions of words that have been written about this play, we still may not have plumbed the depths of its box of wonders.

#### A. *Inheritance Law in Hamlet*

Early in the play, Prince Hamlet arrives home in Denmark because his father, King Hamlet, has died, and his mother, Gertrude, has married Claudius, King Hamlet’s brother.<sup>298</sup> Claudius has also gotten himself

293. Alexander, *Shakespeare’s Knowledge of Law*, *supra* note 3, at 55.

294. *Id.* at 111.

295. B.J. SOKOL & MARY SOKOL, *SHAKESPEARE’S LEGAL LANGUAGE: A DICTIONARY* 3 (2000).

296. LAURENCE OLIVIER, *ON ACTING* 76-77 (1986).

297. J. Anthony Burton, *An Unrecognized Theme in Hamlet: Lost Inheritance and Claudius’s Marriage to Gertrude*, 50 *SHAKESPEARE NEWSL.* 71 (Fall 2000, Winter 2000/2001).

298. *HAMLET*, *supra* note 82, at act 1, sc. 2.

elected king, a position that by right should have gone to Hamlet, as the late king's eldest son.<sup>299</sup> Claudius introduces Gertrude as, "Th' imperial jointress to this warlike state."<sup>300</sup> A jointress is a person who has a jointure,<sup>301</sup> and a jointure is a form of joint ownership, usually an arrangement connected to marriage for the woman's protection in widowhood.<sup>302</sup> Thus, Claudius has worked out some kind of arrangement so that he may control Gertrude's inheritance during his life, but she would be protected if he should predecease her.<sup>303</sup> A jointure agreement could create a real threat to the inheritance prospects of the heirs of a widow's late husband.<sup>304</sup> Gertrude's "o'erhasty" marriage to Claudius has actually created an obstacle to Hamlet's ultimately inheriting his father's estate.<sup>305</sup> Note that when we say "estate," we are not merely talking about who would inherit the late king's crown, but who would get his lands, possessions, and wealth. These did not necessarily go along with the crown. Claudius, as a second son, probably had very little wealth of his own and may have depended on his brother's generosity for subsistence when that brother was alive.<sup>306</sup> By marrying Gertrude, Claudius has ensured that he will have wealth as well as power.<sup>307</sup>

The terms of the jointure agreement are not spelled out, but it would probably have included a waiver of Gertrude's rights of dower and a settlement for her benefit.<sup>308</sup> "Dower" refers to the right of a wife, upon her husband's death, to a life estate in one-third of the land that he owned in fee simple (i.e., outright).<sup>309</sup> ("Dower" should not be confused with "dowry," which is the money, goods, or property that a woman brings to her husband in marriage.<sup>310</sup>) The Magna Carta states:

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299. *Id.* at act 5, sc. 2.

300. *Id.* at act 1, sc. 2, line 9.

301. BLACK'S LAW DICTIONARY 843 (7th ed. 1999).

302. Burton, *supra* note 297, at 71, 82 n.7.

303. *Id.* at 76.

304. *Id.* at 71.

305. It may be objected that we are speaking here of English law, which, obviously, did not apply in Denmark, where the play is set. See HAMLET, *supra* note 82, at act 1, sc. 1. Shakespeare's plays almost always apply English law, no matter the actual setting, probably for two reasons: (1) English law would be more accessible to his audience; and (2) English law is what English lawyers were taught. It is a quirk of English legal training that law was not taught at the universities, but in London at the Inns of Court. See MARY ANN GLENDON ET AL., COMPARATIVE LEGAL TRADITIONS 369-72 (1985). There, the English kings had set up a central court system, which applied English statutes and feudal customs and followed its own precedents. *Id.* at 270. On the Continent, in contrast, law was taught at the universities with an emphasis on Roman Law. *Id.* at 123.

306. Burton, *supra* note 297, at 76.

307. *Id.*

308. *Id.*

309. BLACK'S LAW DICTIONARY 507 (7th ed. 1999).

310. *Id.* at 508.

A widow, after the death of her husband, shall immediately, and without difficulty have her marriage [portion] and her inheritance; nor shall she give any thing for her dower, or for her marriage [portion], or for her inheritance, which her husband and she held at the day of his death: and she may remain in her husband's house forty days after his death, within which time her dower will be assigned.<sup>311</sup>

By Elizabethan times, the dower was understood to consist of a life interest in one third of all inheritable property held by the husband at any time during the marriage.<sup>312</sup> Thus Gertrude had a right to one third of her late husband's estate; at his death she was in possession of his entire estate. Within a forty-day period (called the "quarantine," from the Italian word *quaranta*, or forty<sup>313</sup>) after her husband's death, one third of his estate (not to include the castle<sup>314</sup>) would be assigned to her. In the normal course of events, Hamlet, the eldest son, would have then gotten the other two thirds.<sup>315</sup> But something happened before the forty-day period was over: Gertrude married Claudius. As Hamlet says:

and yet, within a month—  
 Let me not think on't! Frailty, thy name is woman!  
 A little month, or ere those shoes were old  
 With which she followed my poor father's body . . . .  
 Within a month . . .  
 She married—O most wicked speed . . . .<sup>316</sup>

Hamlet keeps repeating the fact that it was only a month. Because Gertrude has allowed Claudius to take possession before the expiration of her quarantine, Claudius, who now, as king, is holding court at Elsinore, has legal control over Gertrude's holdings, namely, the as-yet-undivided estate of King Hamlet.<sup>317</sup> Claudius's self-serving maneuvers depend on the fact that, legally, husband and wife were one.<sup>318</sup> Thus, there is more than just a clever joke in this exchange between Hamlet and Claudius:

*Hamlet* [to Claudius]. Farewell, dear mother.  
*King*. Thy loving father, Hamlet.  
*Hamlet*. My mother: father and mother is man and wife, man and wife is one flesh—so, my mother.<sup>319</sup>

Hamlet makes several comments that show that it is the loss of his

311. MAGNA CARTA, cl. 7 (1215).

312. Burton, *supra* note 297, at 78.

313. BLACK'S LAW DICTIONARY 1255 (7th ed. 1999).

314. Burton, *supra* note 297, at 78.

315. *Id.*

316. HAMLET, *supra* note 82, at act 1, sc. 2, lines 145-48, 153, 156.

317. Burton, *supra* note 297, at 78.

318. *Id.* at 104.

319. HAMLET, *supra* note 82, at act 4, sc. 4, lines 49-52.

estate, not his crown, that rankles most.<sup>320</sup> He is now, in effect, out in the cold as if he were a second son who must depend upon an older brother for subsistence.<sup>321</sup> “Beggar that I am,” he says, “I am even poor in thanks.”<sup>322</sup> When the king asks “How fares our cousin Hamlet?”<sup>323</sup> he answers, “Excellent, i’ faith, of the chameleon’s dish: I eat the air, promise-crammed. You cannot feed capons so.”<sup>324</sup> This is a reference to the proverb, “A man cannot live on air like a chameleon.”<sup>325</sup> Hamlet has been living on air since he lost his inheritance.

But isn’t Gertrude’s interest in the estate as a whole merely a possessory interest, not an ownership interest? Wouldn’t Hamlet’s interest be an ownership interest that would trump Gertrude’s? While this may seem valid by modern theory, in Elizabethan times the only reasonably effective property actions were ones in which the plaintiff could prove his possession was wrongfully interfered with<sup>326</sup>; because Hamlet never took *possession*, he couldn’t argue that interference with his possession had occurred. The law allowed a wealthy widow to choose the object of her protection and her benevolence.<sup>327</sup> Though her remarriage ends Gertrude’s quarantine, it does not remove a king who is fully in possession of the property.<sup>328</sup>

There is a further complication. If Gertrude were to bear a child, particularly a son, Hamlet would be permanently disinherited.<sup>329</sup> This is the subtext of the closet scene in which Hamlet implores Gertrude not to let Claudius tempt her to his bed.<sup>330</sup> In modern Freudian terms, could this scene be viewed as an indication of Hamlet’s Oedipal complex and his revulsion towards sex (seen also in his disdain for Ophelia, whom he once loved)? But Hamlet does not seem repulsed by the thought of his mother in coital embrace with her first husband (“Why, she would hang on him/As if increase of appetite had grown/By what it fed on.”<sup>331</sup>) He has a very practical reason for not wanting Gertrude and Claudius to have sex—the birth of a possible heir who would displace Hamlet.<sup>332</sup> Operating in Claudius’s favor would be the institution of “tenancy by

320. Burton, *supra* note 297, at 103.

321. *Id.*

322. HAMLET, *supra* note 82, at act 2, sc. 2, line 272.

323. *Id.* at act 3, sc. 2, line 92.

324. *Id.* at act 3, sc. 2, lines 93-95.

325. R.W. DENT, SHAKESPEARE’S PROVERBIAL LANGUAGE 501, *cited in* Burton, *supra* note 297, at 103.

326. Burton, *supra* note 297, at 82.

327. *Id.* at 106.

328. *Id.* at 78.

329. *Id.* at 103.

330. *Id.*

331. HAMLET, *supra* note 82, at act 1, sc. 2, lines 142-44.

332. Burton, *supra* note 297, at 103.

the curtesy."<sup>333</sup> This provided that when a man married a woman who had an estate of inheritance, as soon as she bore him a child capable of inheriting her estate, the husband became a life tenant.<sup>334</sup> Once Gertrude understands from Hamlet that Claudius killed her first husband, she realizes the implications.<sup>335</sup> Claudius has cajoled her into disinheriting her son by marrying during her quarantine.<sup>336</sup> If she were to die without bearing Claudius a son, Hamlet would still have a claim to both the crown and his father's estate.<sup>337</sup> But if Gertrude bears Claudius a son, that son will be seen as the heir apparent; Hamlet will be permanently disinherited; Claudius will be a life tenant, with or without Gertrude; and she will then be expendable.<sup>338</sup> She agrees so readily to forsake Claudius's bed because her own life may depend on her not bearing him a son.<sup>339</sup>

### B. Hales v. Pettit

It has been recognized since 1773 that part of the exchange in *Hamlet* between the two gravediggers who are preparing a burial plot for Ophelia is a parody of the famous English case *Hales v. Pettit*.<sup>340</sup> The conversation goes like this:

*2nd Clo[wn]*. The crowner [coroner] hath sate on her, and finds it Christian burial.

*1st Clo.* How can that be, unless she drown'd herself in her own defense?

*2nd Clo.* Why, 'tis found so.

*1st Clo.* It must be [*se offendendo*], it cannot be else. For here lies the point: if I drown myself wittingly, it argues an act, and an act hath three branches—it is to act, to do, to perform; [argal], she drown'd herself wittingly.

*2nd Clo.* Nay, but hear you, goodman delver—

*1st Clo.* Give me leave. Here lies the water; good. Here stands the man; good. If the man go to this water and drown himself, it is, will he, nill he, he goes, mark you that. But if the water come to him and drown him, he drowns not himself; argal, he that is not guilty of his own death shortens not his own life.

*2nd Clo.* But is this law?

*1st Clo.* Ay, marry, is't—crowner's quest law.<sup>341</sup>

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333. *Id.*

334. *Id.*

335. *Id.*

336. *Id.*

337. *Id.*

338. *Id.*

339. *Id.*

340. *Id.* at 71.

341. *HAMLET*, *supra* note 82, at act 5, sc. 1, lines 4-22.

The gravedigger says, “se offendendo” when he means “se defendendo” (in self-defense) and “argal” when he means “ergo” (therefore).<sup>342</sup> *Hales v. Pettit* revolved around the suicide of Judge James Hales, who had drowned himself in 1554.<sup>343</sup> The coroner returned a verdict of *felo de se* (suicide).<sup>344</sup> At the time of his death, Hales and his wife Margaret jointly possessed a lease for years of an estate in Kent.<sup>345</sup> The suicide verdict meant that his lands were forfeit to the crown, and they were given to Cyriac Pettit, who took possession of them.<sup>346</sup> Dame Margaret sued Pettit to recover the lands.<sup>347</sup> Her attorneys argued, ingeniously, that Sir James could not have killed himself in his lifetime: “[h]e cannot be *felo de se* till the death is fully consummate, and the death precedes the felony and the forfeiture.”<sup>348</sup> In other words, his act of jumping in the river was not suicide at the time he did it because no one had died from it at that moment. It did not become suicide until he died. But at the exact moment of his death, the estate vested in his wife by right of survivorship.<sup>349</sup> His attainder (the extinguishing of his rights for his committing of a felony<sup>350</sup>) did not occur until *after* his death. Cyriac Pettit’s counsel countered that an act has three parts: the imagination, the resolution, and the execution (the doing), and that the “*doing of the act* is the greatest in the judgment of our law, and it is in effect the whole.”<sup>351</sup> The gravedigger’s saying that “an act hath three branches—it is to act, to do, to perform” is his garbled misstatement of the defense counsel’s argument that an act has three parts—the imagination, the resolution, and the execution.<sup>352</sup>

The court found for Pettit, holding that the forfeiture related back to the act done by Sir James.<sup>353</sup> As the court put it:

Sir James Hales was dead, and how came he to his death? by drowning; and who drowned him? Sir James Hales; and when did he drown him? in his lifetime. So that Sir James Hales, being alive, caused Sir James Hales to die; and the act of the living man was the death of the dead man. He therefore committed felony in his lifetime, although there was no possibility of the forfeiture being found in his lifetime,

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342. THE RIVERSIDE SHAKESPEARE, *supra* note 36, at 178.

343. CAMPBELL, *supra* note 231, at 106-07.

344. *Id.* at 105.

345. *Id.* at 105-06.

346. *Id.* at 106.

347. *Id.*

348. CAMPBELL, *supra* note 231, at 106-07.

349. GREENWOOD, *supra* note 45, at 415.

350. BLACK’S LAW DICTIONARY 123 (7th ed. 1999).

351. CAMPBELL, *supra* note 231, at 107-08.

352. GREENWOOD, *supra* note 45, at 416.

353. CAMPBELL, *supra* note 231, at 108.



for until his death there was no cause of forfeiture.<sup>354</sup>

There is an additional holding to *Hales v. Pettit*, and this did not become apparent until Sir James Dyer's lost notebooks were published by the Selden Society in 1994.<sup>355</sup> Sir James Dyer was the chief judge sitting on the *Hales* case, and his notebooks are the earliest known circuit court notes kept by a judge.<sup>356</sup> The court reasoned that whatever property right the widow acquired at the moment of Hales's death, it arose at the same moment as the forfeiture to the crown in response to Hales's suicide.<sup>357</sup> And where there are simultaneous claims by the monarch and a subject, guess who wins? The monarch, of course.<sup>358</sup> As Dyer summarized it, "the queen's title shall be preferred, since it is the older, and by reason of prerogative, which is public, whereas the subject's title is particular. No priority in chattels shall prevail against the king . . . ."<sup>359</sup>

What does this have to do with Hamlet and his lost inheritance? Claudius became king *before* he married Gertrude (this is a crucial point, as we shall see).<sup>360</sup> Gertrude's marriage automatically ended her quarantine.<sup>361</sup> The ending of the quarantine activated Hamlet's claim to possession of his father's estate.<sup>362</sup> So, the marriage *simultaneously* did two things: (1) it gave Claudius legal control over all Gertrude possessed, based on the terms of the jointure agreement they had worked out; and (2) it ended the quarantine, activating Hamlet's claim to the same properties.<sup>363</sup> So, both Claudius's and Hamlet's claims to the estate arose at the same instant. And where there are simultaneous claims by the *monarch* (this is why it is crucial that Claudius became king before he married Gertrude) and a subject, who wins? The answer is in *Hales v. Pettit*.

### C. *The Lawyer's Skull*

Shortly after the two gravediggers have had their colloquy, Hamlet and Horatio appear. When one of the gravediggers tosses a skull out of the grave, Hamlet picks it up and muses upon it:

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354. *Id.* at 108-09.

355. Burton, *supra* note 297, at 71.

356. *Id.*

357. *Id.* at 78.

358. *Id.*

359. *Hales v. Petyt* (1562), in 1 REPORTS FROM THE LOST NOTEBOOKS OF SIR JAMES DYER 72, 75 (J.H. Baker ed., 1994). The relevant holding in *Hales*, in Law French, reads, "*Sembell que le titell la royne sera prefer, eo que est plus anciant et per reason de prerogative, que est publick, et le titell le subjecte est particulier, et null priority in chatteles prevalera vers le roy.*" *Id.*

360. Burton, *supra* note 297, at 78.

361. *Id.*

362. *Id.*

363. *Id.* at 82 (emphasis added).

Why may not that be the skull of a lawyer? Where be his *quiddities* now, his *quillities*, his *cases*, his *tenures*, and his *tricks*? . . . Hum! This fellow might be in 's time a great buyer of land, with his *statutes*, his *recognizances*, his *finances*, his *double vouchers*, his *recoveries*. [Is this the fine of his *finances* and the recovery of his *recoveries*,] to have his fine pate full of fine dirt? Will [his] *vouchers* vouch him no more of his *purchases*, and [double ones too], than the length and breadth of a pair of *indentures*? The very *conveyances* of his lands will scarcely lie in this box, and must th' inheritor himself have no more, ha?<sup>364</sup>

While this might appear to be a barrage of random legal jargon,<sup>365</sup> mostly taken from the law of property, Burton reveals that there is actually method to this madness. The legal terms in this passage all describe elements of collusive lawsuits and legal proceedings used to defeat the rights of heirs and to allow owners of entailed estates (estates which could only pass down a family line through one's descendants) to sell their property to others.<sup>366</sup> "Quiddities" are subtleties; "quillities" are evasions.<sup>367</sup> Burton explains the rest as follows:

[A] *fine* ("final concord") ended a lawsuit in which the defendant defaulted by prearrangement; it was "final" because it concluded the rights of all interested persons, and not just the parties to the action. The legal record of the *fine* was an *indenture*. The *recovery* (or common recovery, because its most frequent use was in collusive actions) was more expensive and more secure: it required a law suit to proceed through all its stages . . . upon pleadings which made ownership turn on the existence of a supposed warranty of title by a judgment-proof third party (usually the court bailiff) who was brought in as a witness by a *voucher*, but always failed to appear and testify. When there were multiple entails, fictitious witnesses were vouched in for each one; a *double voucher* added a second layer of protection . . . [a] *recognizance* was a judicial acknowledgement of debt; and although not a lawsuit, it also lent itself to collusive misuse by placing a priority lien on the lands of the person giving it without requiring any proof that the obligation existed. A *statute* was similar, except that the acknowledgement of debt was not made in a court but before a mayor or chief magistrate. Hamlet's reference to *cases* and *tricks* embraces the entire arsenal of devices for leaving the inheritor with

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364. HAMLET, *supra* note 82, at act 5, sc. 1, lines 98-100, 103-12 (emphases added) (alteration in original).

365. ARTHUR UNDERHILL, SHAKESPEARE'S ENGLAND (1916), cited in Alexander, *Bad Law*, *supra* note 219, at 11-12. Underhill thought Shakespeare's knowledge of law was "neither profound nor accurate." *Id.* at 11.

366. Burton, *supra* note 297, at 104.

367. KORNSTEIN, *supra* note 257, at 100.

nothing at all.<sup>368</sup>

Alexander provides even deeper analysis of the line, “Is this the fine of his fines and the recovery of his recoveries, to have his fine pate full of fine dirt?”:

The four meanings of “fine” here are worth explicating. The *fine* of his *fines* means the *final result* (Latin *fine* as in “the end”) of his *fines* (the legal term for an action leading to an agreement). Shakespeare then plays those meanings into “fine pate full of fine dirt” (a handsome head full of finely powdered dirt). But [there is] an even deeper pun. Over 100 years earlier in *Shakespeare a Lawyer*, Rushton pointed out that the *final fine* could also mean “the end,” and that “his fine pate is filled, not with fine dirt, but with the last dirt that will ever occupy it, leaving a satirical inference to be drawn, that even in his lifetime his head was filled with dirt.”<sup>369</sup>

Thus, the spate of legal terms in the graveyard scene is not just a sudden display of tenuously related legal terms. It is an expression of Hamlet’s bitterness at the legal shenanigans that have robbed him of his inheritance. Thematically, it is deeply interwoven with the entire inheritance subtext.

#### D. *Implications of Hamlet Analysis on the Authorship Question*

In the end, what does Burton’s analysis of *Hamlet* tell us about the authorship question? Unfortunately, it does not settle the issue, but it is relevant evidence; that is, it may push us at least a little bit further in one direction or another in the search for the truth. I think Burton’s analysis moves us further from the Stratford theory and closer to those theories that suggest that someone with advanced legal training wrote Shakespeare’s works. First of all, it uses what I described earlier as “legal principles as pervasive subtext.” We can see that inheritance law profoundly affects the actions of Hamlet, Claudius, and Gertrude. But the clues in the play are so subtle that it has taken over two hundred years of Shakespeare criticism<sup>370</sup> for someone to point this out. It took someone with an understanding of the inheritance laws of Shakespeare’s time to discern the utter consistency of the characters’ actions in regard to that law. “From the earliest appearances of Hamlet, Claudius, and Gertrude, Shakespeare arranged the fact pattern to put *Hales v. Pettit* in the mind of anyone with legal training.”<sup>371</sup> In my view, Shakespeare’s use of law is here at its most sophisticated. He has melded it so seamlessly into the

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368. Burton, *supra* note 297, at 104 (emphases added).

369. Alexander, *Shakespeare’s Knowledge of Law*, *supra* note 3, at 103.

370. In saying two hundred years, I am dating back to the time in the late 1700s when Shakespeare criticism began in earnest. See SOBRAN, *supra* note 7, at 48.

371. Burton, *supra* note 297, at 82.

plot that it makes up an organic whole. It infuses the plot, it informs the characters, it is pervasive and subtle, yet it shapes the whole picture.

Furthermore, the use of inheritance law in *Hamlet* bespeaks a level of expertise that is not consonant with merely an intelligent amateur. The holding in *Hales* that a monarch's claim was superior to a subject's did not appear in Sir James Dyer's notebooks when they were first published in 1585-1586; to know of it, one would have had to read Dyer's manuscripts, written in Law French, an archaic form of Norman-English, and inscribed in law hand, a rare style of writing used by law clerks and few others even back then.<sup>372</sup> Dyer's manuscript notes were widely circulated, borrowed, copied, and queried,<sup>373</sup> but only someone who could read law hand could have understood them. While there are legal allusions in *Hamlet* regarding property that would have been points of common knowledge to landowners and litigants, there are technical subtleties that only lawyers would be able to understand.<sup>374</sup> "Who else, after all," says Burton, "but lawyers and law students would appreciate the Gravedigger's parody of legal reasoning in a forty-year-old decision written in the corrupted version of Norman-English known as Law French?"<sup>375</sup> Burton does not expressly write with an eye to the authorship controversy, and his article is published in a Stratfordian newsletter; but his analysis is difficult to reconcile with the First Folio image of the rustic Shakespeare, who had "small Latin and less Greek," according to Ben Jonson<sup>376</sup> and whose plays "show no evidence of profound book learning," according to Wright.<sup>377</sup> Small Latin, less Greek, but apparently a great deal of Law French, which no Stratfordian has yet claimed was taught in the Stratford grammar school.

#### CONCLUSION

The writer of Shakespeare's works had to have a highly sophisticated, deeply ingrained understanding of the law. He could think law and speak law. If the Stratfordians wish to persist in claiming that William Shakspeare wrote the works of Shakespeare, then they must answer Mark Twain's conundrum:

[T]he man who wrote [the plays] was limitlessly familiar with the laws, and the law-courts, and law-proceedings, and lawyer-talk, and lawyer-ways—and if Shakespeare was possessed of the infinitely-divided star-dust that constituted this vast wealth, *how* did he get it,

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372. *Id.* at 71.

373. *Id.* at 82 n.15.

374. *Id.* at 71.

375. *Id.*

376. HOFFMAN, *supra* note 46, at 190.

377. Wright, *supra* note 5, at xxxiii.

and *where*, and *when*?<sup>378</sup>

In the longstanding authorship controversy, no camp has at this point achieved definitive proof of its theory of authorship. The Stratfordians have not proved William Shakspeare wrote the plays, but neither has this theory been disproved. The same can be said for the cases for Bacon, Marlowe, and Oxford. All these theories are based partly on fact, partly on conjecture. All we can do at any time is look at the available evidence and calculate which theory has the highest ratio of fact to conjecture in its support. Meanwhile, we must continue to accumulate evidence, both external and internal. By external evidence, I mean such documents as stationers' registers, payments of royalties, contemporary letters (no letter by William Shakspeare—if he wrote one—has ever been found) that might indicate who was the author of the plays. Intensive searches through attics, castles, and village archives occasionally turn up new pieces of evidence.

But what if there is no more external evidence that can settle the matter? Perhaps it has all been lost or destroyed by this time. Then we may have to rely solely on internal evidence. By that I mean we must study the works for evidence about the person who wrote them. Understanding the depth of Shakespeare's legal knowledge, as revealed in his works, helps us figure out who he actually might have been. Burton's article is an example of the direction in which we must proceed. His deep understanding of Elizabethan property law and his thorough analysis of the text allow him to uncover the hitherto unseen legal foundations of the plot and give us new insights into the most commented-upon play in history as well as clues to the identity of its most elusive author.

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378. TWAIN, *supra* note 1, at 14-15.

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