

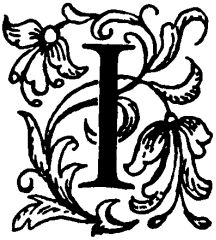
# SHAKESPEARE'S KNOWLEDGE OF LAW

A journey through the history of the argument

Mark Andre Alexander \_\_\_\_\_ ©

Why may not that be the skull of a lawyer? Where be his quiddities now,  
his quilletts, his cases, his tenures, and his tricks? why does he suffer this rude  
knave, now, to knock him about the sconce with a dirty shovel, and will not  
tell him of his action of battery? Humph!

*Hamlet: Act V Scene 2*



IN 1996 I acquired a copy of Sir George Greenwood's 1908 book, *The Shakespeare Problem Restated*.<sup>1</sup> I was surprised at the clarity and force of his arguments. The chapter on "Shakespeare as a Lawyer" struck me as particularly well argued, even though much of the argument was based on authority. A noted barrister and Member of Parliament, Greenwood claimed that Shakespeare's plays and poems "supply ample evidence that their author . . . had a very extensive and accurate knowledge of law" (371). He then cites several noted lawyers and judges, many of whom do not concern themselves with the authorship debate. He quotes Lord Campbell: "While novelists and dramatists are constantly making mistakes as to the laws of marriage, of wills and inheritance, to Shakespeare's law, lavishly as he expounds it, there can neither be demurrer, nor bill of exceptions, nor writ of error" (371). Edmond Malone: "His knowledge of legal terms is not merely such as might be acquired by casual observation of even his all-comprehending mind" (373). And Richard Grant White: "No dramatist of the time . . . used legal phrases with Shakespeare's readiness and exactness . . . legal phrases flow from his pen as part of his vocabulary, and parcel of his thought" (373). I was impressed that this judge and these lawyers used penetrating qualitative statements rather than mere quantitative ones.

## Searching for Refutations

Greenwood goes on to argue compellingly against those who claim that Shakespeare made mistakes in his use of legal terms. Finding his arguments persuasive, I was curious about how Greenwood may have been refuted. I knew that Mark Twain had been so taken with

Greenwood's book and the argument that Shakespeare had to have had formal legal training, that he had written in *Is Shakespeare Dead?*, "If I had under my superintendence a controversy appointed to decide whether Shakespeare wrote Shakespeare or not, I believe I would place before the debaters only the one question, *Was Shakespeare ever a practicing lawyer?* and leave everything else out" (66). I assumed that there would be a rich history of thoughtful refutations, especially since someone with the stature of Twain had advanced the proposition with such resolve. So I went in search of counter arguments.

I first turned to Samuel Schoenbaum's *Shakespeare's Lives*. I recalled that he had explored many of the lives of people behind the authorship debate and had singled out Twain for ridicule. But to my dismay, Schoenbaum dwells on personality (not surprising given the title of the book) and avoids substantive arguments. He never mentions Twain's remarks on Shakespeare's law, though he does mention that Twain read Greenwood's book, "in which the talented attorney showed the plays to be the work of a talented attorney" (410). When Schoenbaum mentions Shakespeare's legal knowledge, it is only to ridicule Lord Campbell (260-1, 332-3), not to supply arguments and evidence. Apparently, Schoenbaum both respected Greenwood and chose not to grapple with his arguments directly.

I next turned to Ian Wilson's *Shakespeare: The Evidence*. Wilson's treatment of Twain consists solely of: "Even Mark Twain and Sigmund Freud became sucked into such Baconian fervour" (15). In fact, much of the nineteenth century controversy over Shakespeare's knowledge of law might never have arisen had not those opposed to the theory that Sir Francis Bacon was the author of the Shakespeare canon been forced to deal with Shakespeare's knowledge of the law, Bacon having been one of the leading jurists of his time.

Wilson ignores Greenwood entirely, but he does mention that some believe Shakespeare may have been a lawyer, or at least employed as an attorney's clerk. Then with startling logic Wilson states:

But this sort of clue-searching from the plays has more than a few dangers. . . . Other authors have had Shakespeare conscripted into the civil guard when the Armada threatened in 1588. According to canoeing expert William Bliss he ran away from home in 1577 when he was just thirteen to sail around the world on Sir Francis Drake's famous voyage on the *Golden Hind*. This is apparently proved by a reference

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in *As You Like It* to “remainder biscuit,” a variety purportedly carried only on very long voyages. On the grounds of Shakespeare’s plays’ extraordinary political insights, former government minister Enoch Powell has insisted that Shakespeare must either have been very close to politics or been a politician himself. Overall, civil servant Sir Edmund Chambers’s advice is safest: “it’s no use guessing.” (60-1)

Wilson’s argument that argument is pointless, that we could only be reduced to “guessing” about Shakespeare’s legal knowledge, struck me as astonishing in its absurdity and telling in its avoidance of Greenwood. I began to suspect that such avoidance was not accidental.

I next turned to Irvin Leigh Matus’s *Shakespeare, IN FACT*, a book written primarily to refute Oxfordians. Strangely, Matus makes no mention of Twain, and mentions Greenwood only in the context of copyright. However, Matus does present “facts” intended to dispose of any notions that Shakespeare had a formal legal education or that he used legal terms accurately. The passage is worth quoting in full:

What, then, of his use of legal terms? Shakespeare toys with these with the jaunty familiarity of an irreverent lawyer. The question of his legal knowledge has been most recently [sic] tackled by O. Hood Phillips, a jurist, legal scholar and educator, in *Shakespeare and the Lawyers*. In the chapter, “Did Shakespeare have a Legal Training?” he gathered and summarized the varying opinions that have been handed down. The most reliable assessment of the dramatist’s knowledge of law, in his opinion, is that of P.S. Clarkson and C.T. Warren, “whose reading of Elizabethan drama revealed that about half of Shakespeare’s fellows employed on the average more legalisms than he did, and some of them a great many more. Most of them also exceed Shakespeare in the detail and complexity of their legal problems and allusions, and with few exceptions display a degree of accuracy at least no lower than his.”

Clarkson and Warren’s verdict is that Shakespeare’s references “must be explained on some grounds other than that he was a lawyer, or an apprentice, or a student of the law.” What separates him from the others is his knack for making legal terms serve his drama, in the opinion of Justice Dunbar Plunket Barton. “Where Shakespeare’s legal allusions surpassed those of his contemporaries,” he said, “. . . was in their quality and their aptness rather than in their quantity or technicality.” (272)

Though he advances an implied argument that Shakespeare is guilty of “bad law” by using legal terms inaccurately, Matus speaks *ex cathedra*, failing to give examples and merely relying on the authority of Mr. Phillips. Indeed, that authority is secondhand since Mr. Hood Phillips in his book does no more than present the authority of Messrs. Clarkson and Warren, while quoting none of their examples (159-161, 191).<sup>2</sup>

*The Law of Property* seems to have impressed others as well. In *The Elizabethan Review*,

the co-editor of the Internet's "Shakespeare Authorship Page," David Kathman, Ph.D., claimed that "Paul Clarkson and Clyde Warren, in an exhaustive study of legalisms in the work of seventeen Elizabethan dramatists (*The Law of Property in Shakespeare and Elizabethan Drama*), found that Shakespeare was average at best in the number and accuracy of his legal allusions" (22). The concept of "average accuracy" is found nowhere in the source text.<sup>3</sup> On the Internet newsgroup *humanities.lit.authors.shakespeare*, I asked Dr. Kathman "What can [you] possibly mean by 'average accuracy'? It's rather an impenetrable concept, but it sure seems to imply less than perfect accuracy. And why introduce the term *accuracy* anyway, if there is no attempt to assert or imply less than 100% accuracy?" He responded: "What I meant was that these other dramatists were generally accurate in their use of legal terms, just as Shakespeare was. I'm not sure why this is such an 'impenetrable concept.'"<sup>4</sup> He was telling me that "average accuracy" means "generally accurate," which, of course, simply begs the question.

I found this pattern of ignoring Greenwood—or mentioning him without revealing his legal arguments—rather fascinating. As I began acquiring Greenwood's works, as well as the works of other writers on Shakespeare and the law, I found that not only was Greenwood one of only a handful of eloquent, discriminating, and razor-edged writers on Shakespeare's law, he was also a devastating opponent in a debate. Much of his later writings are responses to his critics, and in almost all cases he effectively and methodically destroys their credibility. I began to see why Charlton Ogburn, Jr. would write, "One crossed swords with Sir George at one's peril" (298).

Two things became readily apparent as I examined closely the history of this argument on Shakespeare's knowledge of law: that 1) A whole segment of the debate has been ignored, that between Sir George Greenwood and his major critic, J.M. Robertson; one that spans almost twelve years (from 1905 to 1916) and comprises some the best arguments favoring Shakespeare's formal education in law; and 2) Much of the argument against Shakespeare's formal legal education rests upon William Devocmon's 1899 monograph *IN RE Shakespeare's "Legal Acquirements,"* J.M. Robertson's 1913 book *The Baconian Heresy*, Arthur Underhill's 1916 essay "Law" in *Shakespeare's England*, Sir Dunbar Plunket Barton's 1929 book *Links Between Shakespeare and the Law*, and Clarkson and Warren's 1942 book *The Law of Property in Shakespeare*. This essay examines that lost debate, the claims made in these books, and the grounds for supposing a legal education for the writer Shakespeare.

### Methods of Argument

Let me state clearly that I do not claim to prove that Shakespeare had a formal legal education. Instead, I claim that the argument favoring a formal legal education is signifi-

cantly stronger than the argument against a formal legal education. This distinction is important, and the critical principle it embodies illuminates the differing methods of argument that lawyers and academics bring to bear on this debate. By "formal legal education" I mean a 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.

For simplicity's sake I note two classes of advocates: on the one hand, advocates of absolutism who take a position, claim that it stands by default, and then advise that only absolute and convincing proof of the contrary will dissuade them from their position; and on the other, advocates of relative merits who take no initial stand, weigh the relative strengths of competing arguments, and acknowledge when, in terms of reason and evidence, one argument or position is stronger than another, even when the stronger argument stands against the position they happen to favor.

In examining the history of this debate, I have found advocates on both sides deserving of each appellation. The advocates of absolutism, when standing by a weaker position, tend to ignore those arguments that expose their own weaknesses and whenever possible, shift the focus to minor points that are only marginally relevant to the argument itself. Such tactics include simply "forgetting" to mention the strongest of an opponent's arguments, piling one red herring on another (overemphasizing lists of trivial data, for example), discrediting circumstantial data (since each item can be isolated and dismissed as coincidence, without taking into account a mass of "coincidences" that tell a compelling story), and, when pressed too hard, a tactic I call *the Satan Maneuver*.

#### The Satan Maneuver

This ploy came to my attention some years ago while watching a televised interview of an evangelical minister. The minister claimed that the earth was created 6,000 years ago. The interviewer asked about the discoveries of fossils that were undoubtedly millions of years old; how could the minister account for those age-old fossils? The minister replied simply, "Satan put them there." The interviewer was stumped, of course. The minister had played an ace from a different deck. It didn't matter to him that to all extents and purposes the game, i.e. the interview—insofar as it was something to take seriously—was ended at that point. In fact, that may have been his intention. The Satan Maneuver is a more or less face-saving way of putting a stop to a discussion that is not going the way the maneuverer wants it to go.

Unfortunately the Satan Maneuver appears frequently in Shakespeare studies. When confronted with internal evidence that Shakespeare may have had a high-level education, whether in law or the classics, a scholar will produce a rabbit out of his or her hat by falling

back on Shakespeare's genius, which is, like Satan, a phenomenon of no known source or established dimension. For example, A.L. Rowse in his *Shakespeare The Man* explains Shakespeare's comprehensive and wide-ranging experience with classical and contemporary literature and history thus: "He had a marvellous capacity from the outset for making a little go a long way; his real historical reading came later—he was very much a reading man, and he read quickly" (28).

How he has grasped Shakespeare's "marvellous capacity" or knows his reading ability, Rowse does not say. But his meaning is clear; Shakespeare gleaned his incredible wealth of knowledge by having a capacious mind that magically (through the mystery of *genius*) grasped knowledge quickly and easily. British Shakespearean scholar Allardyce Nicoll makes a similar claim in his book *Shakespeare*: "In the wonder of his genius he was able to grasp in lightning speed what could be attained only after dull years of work by ordinary minds" (68). Thus can scholars magically explain away the need for education and leisure that ordinary common sense would argue was required for this writer's immense erudition and the aristocratic nature of his themes and settings. By introducing such statements, scholars cut short arguments in favor of a university education or the kind of experience and leisure that only the nobility had access to in Shakespeare's day. The forum of reason, argument, and evidence dissolves. Genius in the form of a superhuman mind and memory explains all, the magical ability to immediately and photographically apprehend everything, sans education, sans experience, merely from reading a few translations or conversing with travellers.

#### Evidence and reason

All participants who intend to argue in a forum based on evidence and reason must avoid any form of Satan Maneuver and be called to account when they do. Any worthwhile discussion of Shakespeare's "genius" must be conducted outside the magical specter of his superhuman aptitudes, or of any supposed education, work or travel experience unsupported by the kind of ordinary documentation we would expect to see from this period. Moving through this history of the arguments, we will take note of any such tactics of avoidance.

There is probably more published material on Shakespeare and the Law than on any other topic of Shakespeare studies. In summarizing it, should we stick to a strict chronology? Do we choose a particular argument and trace its history? Do we choose instead a pair of debaters and trace their back-and-forth arguments? We feel that a combination of these will best serve the argument. First we need to identify the early advocates of both sides of the argument: William Rushton, Lord Campbell, and their critics up through 1898. From 1899 through 1920, the arguments over Shakespeare's supposed misuse of legal terms bring to the fore William Devocmon's major critique of Lord Campbell, as well as works by Underhill,

Robertson, and Clarkson and Warren. Next we will examine closely the debate between Sir George Greenwood and J.M. Robertson, which lasted from 1905 through 1920, before considering the “selective-amnesia decades,” 1929 to 1994, during which skeptics characteristically avoided dealing with the most important aspects of the argument. Hopefully by then we will have a fairly clear idea of the phases through which the argument has gone up to now.

### The Early Advocates

Readers relying solely on Mr. Matus's “facts” would remain unaware of the nearly 200-year history of arguments over Shakespeare's legal knowledge in over thirty-five books and numerous articles. The nineteenth century saw a Golden Age of books supporting the proposition that Shakespeare possessed an extensive and unerring knowledge of the law.

Table One: The Golden Age of Shakespeare's Law

|       |                      |   |
|-------|----------------------|---|
| 1778  | Edmond Malone        | “Essay on the Chronological Order of Shakespeare's Plays” |
| 1780  | Edmond Malone        | <i>Life of William Shakespeare</i>                        |
| 1830  | <i>Anonymous</i>     | “Shakspeare a Lawyer,” <i>The Legal Observer</i>          |
| 1858  | William Rushton      | <i>Shakespeare a Lawyer</i>                               |
| 1859  | Lord Campbell        | <i>Shakespeare's Legal Acquirements</i>                   |
| 1859  | William Rushton      | <i>Shakespeare's Legal Maxims</i>                         |
| *1863 | R.F. Fuller          | “Shakspere as a Lawyer,” <i>Upper Canada Law Journal</i>  |
| 1865  | Richard G. White     | <i>William Shakespeare Attorney at Law</i>                |
| 1865  | Richard G. White     | <i>Memoirs of the Life of Shakespeare</i>                 |
| 1869  | William Rushton      | <i>Shakespeare's Testamentary Language</i>                |
| 1870  | William Rushton      | <i>Shakespeare Illustrated by the Lex Scripta</i>         |
| *1877 | George Wilkes        | <i>Shakespeare from an American Point of View</i>         |
| 1883  | Franklin Fiske Heard | <i>Shakespeare as a Lawyer</i>                            |
| 1883  | Cushman K. Davis     | <i>The Law in Shakespeare</i>                             |
| 1885  | R.S. Guernsey        | <i>Ecclesiastical Law in Hamlet</i>                       |
| 1897  | Edward James Castle  | <i>Shakespeare, Bacon, Jonson &amp; Greene</i>            |
| *1899 | William Devecmon     | <i>IN RE Shakespeare's 'Legal Acquirements'</i>           |

\* writers skeptical of Shakespeare's knowledge of law.

The first mention appears to have been made by the lawyer and Shakespeare editor Edmond Malone in his 1778 “Essay on the Chronological Order of Shakespeare's Plays,” in a footnote to *Hamlet*. Two years later in his “Prolegomena” to *The Life of William Shakespeare*, he states 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 least the forms of law” (2: 107-9).

It seems that by 1830 the idea had taken root, since in November of that year, a law journal published an anonymous article entitled “Shakspeare a Lawyer,” in which the writer makes reference to a number of authorities who support various notions of how Shakespeare came by his legal knowledge. Although the writer is critical of a number of theories, he himself finds the internal evidence persuasive:

The question of Shakespeare’s connexion with the law must, after all, be decided by the internal evidence afforded by his writings; and in them we find the author recurring continually to the language of the law. He uses it with minute propriety, and like a man accustomed to it. The passages which might be produced to prove this are almost innumerable, and those which have been brought forward are neither few nor inconclusive. (*Legal Observer* 1:28)

But it was not until 1858-1859 that the idea began to flourish, after the publication of two books, William L. Rushton’s *Shakespeare a Lawyer* and Lord Chief Justice John Campbell’s *Shakespeare’s Legal Acquirements Considered*.

#### William Rushton

Rushton opens his work with his main propositions and addresses potential objections, and with an implied awareness of the Satan Maneuver:

The works of William Shakespeare contain a remarkable quantity of law terms, whose significances are naturally unknown to the generality of readers. Some of the admirers of our great dramatist may assert that the universality of his genius, the strength, vigour, and magnitude of his intellectual faculties and powers of investigation, enabled him to acquire a more profound knowledge of a greater variety of subjects than ever yet seems to have been possessed by the same individual, and that the legal knowledge he has displayed in the correct use of law terms is not more remarkable than his intimate acquaintance with human nature, and accurate observation of the habits and customs of mankind, or than the knowledge of seamanship, and the correct use of nautical terms he has displayed in *The Tempest*. To attempt to account for the frequent occurrence and correct use of law terms in Shakespeare’s works, by attributing to him knowledge of a great variety of subjects, is not satisfactory; for, Shakespeare’s knowledge, it is generally admitted, was more intuitive than acquired,



consisting more in an extensive and profound intimacy with human nature, with the animal and inanimate world—which he has displayed with a truthfulness and inanimate power, and sublimity unapproached, if not unapproachable, rather than in a familiarity with the writings of authors and science in general—and if that master mind could possibly have possessed double the unequalled genius which exalted him far above the generality of his fellow creatures, he would not have been able to use and apply law terms of a purely technical character in the manner appearing in his compositions, without considerable knowledge of that abstruse and mighty science, the law of England. Nor will it be satisfactory to state that the legal knowledge he has displayed in the correct use of law terms affords no more evidence of his having been a lawyer than the correct use of nautical terms and the knowledge of seamanship are peculiar to *The Tempest*—those phrases are not of frequent occurrence, and that knowledge is not displayed in any other portion of his works. Moreover, if it can be proved, as there seems reason to believe, that the principles and practice of the law of real property were more generally understood by unprofessional people in Shakespeare's time than at the present day, that circumstance will not satisfactorily account for all Shakespeare's legal knowledge, because his works contain passages displaying not merely a knowledge of the principles and practice of the law of real property, but also of the common law, and of the criminal law, and a thorough intimacy with the exact letter of the Statute Law. (3-5)

What follows then are forty-five pages of examples of legal terms found in the works, a discussion of their meanings, and an explanation of why they are significant. Afterwards, Rushton concludes:

. . . whether William Shakespeare was or was not a member of the legal profession, sufficient has probably been stated to prove that he had acquired a general knowledge of the laws of England. (50)

The alert reader, however, will immediately question both Rushton's propositions and the means he uses to support them. In his introduction, Rushton advances two primary propositions:

1. Quantity: Shakespeare's works contain a remarkable quantity of law terms.
2. Accuracy: Shakespeare's works display a correct use of law terms.

How does the *quantity* of legal terms make a case for more than a general knowledge of law? Rushton makes no quantitative comparisons with Shakespeare's fellow dramatists, so we are left to wonder if Shakespeare's use of legal terms is unusual. Exactly what establishes a "remarkable quantity"? Rushton's presentation is far from exhaustive, as later writers reveal.

Rushton's second proposition seems to be on firmer ground. But if Rushton is not exhaustive in his study of Shakespeare's legal terms, how do we know that Shakespeare's use is unerring? Furthermore, Rushton attributes Shakespeare's accuracy to a personal understanding of their technical meaning. But since Shakespeare used sources such as Holinshed's *Chronicles*, how do we know that Shakespeare's accuracy and correct usage is not merely that of his sources? Again, Rushton fails to make the necessary comparisons to support his propositions. Rushton also points out three possible objections that he attempts to refute:

1. Some may say his genius enabled him to acquire a more profound knowledge of law, but that cannot explain how he came "to use and apply law terms of a purely technical character."

Rushton correctly points out the possible weakness of relying on Shakespeare's "genius" (the Satan Maneuver), but he does nothing to convince us that Shakespeare's technical usage is not merely copied from his sources.

2. Some may say that "the legal knowledge he has displayed in the correct use of law terms affords no more evidence of his having been a lawyer than the correct use of nautical terms and the knowledge of seamanship are peculiar to the *Tempest*." But law terms appear far more frequently, and his knowledge of seamanship "is not displayed in any other portion of his works."

Indeed, one may be able to support a case that Shakespeare's use of law terms is unusually frequent, especially when compared to his use of other technical terminology, but Rushton still fails to compare Shakespeare's usage to his fellow dramatists, a critical blunder when arguing unusual frequency.

3. Some may say that "the principles and practice of the law of real property were more generally understood by unprofessional people in Shakespeare's time." But his works contain passages "displaying not merely a knowledge of the principles and practice of the law of real property, but also of the common law, and of the criminal law, and a thorough intimacy with the exact letter of the Statute Law."

Rushton is probably right to agree that real property had more general application and understanding among English gentlemen. And if a lesser case can be made that Shakespeare's personal knowledge and correct application of unusual technical terms in other legal branches is indeed unusual, then that may go a long way towards supporting a larger case that Shakespeare had some formal legal training. But Rushton does not adequately support the lesser case. He does not properly catalog terms apart from real property, nor does he bring in the necessary comparative data.

Spotting Rushton's weak arguments, reviewers were quick to jump on his small book. In a magazine edited by Charles Dickens, an anonymous reviewer, assuredly Dickens himself, parodies men of a particular profession who have a penchant to read into Shakespeare's use of their technical terminology indications that Shakespeare was a master or serious student of their own professions:

MY OWN private belief is that W. Shakespeare was a hydropathic doctor, as I mean to prove from his works, and display to the world in a work of considerable magnitude that has been lately sent to press. In the mean time I interest myself about the opinions of others, and have just been buying two new publications on the subject of our mutual friend. One is by a clergyman, M.M. of Corpus Christi College, Cambridge, and displays from Shakespeare's works "the vastness of his Bible lore." The other is by an able lawyer, who believes that Shakespeare was a man of his own cloth, and that, if not actually in practice as an attorney, he was a man who could have passed a stiff examination in the common, criminal, and statute law. I, myself, being a hydropathist, declare that if he were living now, and paid me a sufficient sum for the good will, I should feel more than confidence in entrusting to him my establishment and making it Shakespeare late Slush, in Brash House, Drenchmore. I need hardly observe that the very first play in our friend's works, *The Tempest*, is the story of a great water-cure worked in an exceedingly bad case by one Prospero, and we all know how much in another play the very soul of the Duke of Clarence was benefited by the bare dreaming about a cold water bath. What a fine knowledge of the efficacy of a cold douche in the excitement of mania is expressed in Lear's request, made instinctively to the descending flood of rain—as dogs when sick instinctively apply themselves to certain grasses—"Pour on, I will endure!" Undoubtedly the unfortunate gentleman who showed this knowledge of what was proper to his case, would be represented on the stage by any really subtle actor as placing his head carefully under the drip from the rood of the hovel, in order that he might the better secure a sustained stream upon the occiput." (454)

Dickens sustains his satire for another 2400 words. By the end, the reader is left in no doubt about his stand: writers like Rushton are simply projecting their own interests onto Shakespeare's plays, and seeing in them the expertise that they themselves enjoy.

Since Dickens was not a lawyer, and he successfully supplied correct legal terms in legal contexts in his own works, including *Great Expectations*, *David Copperfield*, and *Bleak House*, we can easily appreciate his impulse to mock Rushton.<sup>5</sup> Certainly, one is on very shaky ground arguing that an author must have had legal training, or shows an unusual knowledge of law and legal terms, merely because he or she is able to construct an accurate

legal situation or a compelling courtroom scene with all legal terms properly used. Good writers, with study and the help of a few professional friends, can accomplish such feats without proving themselves legal experts or having legal training.<sup>6</sup>

Rushton received good reviews as well. A decade later, a reviewer in a law journal approves of Rushton's research. By that time Rushton had published three works on Shakespeare's law, including the one reviewed, *Shakespeare's Testamentary Language*:

Mr. Rushton has proved himself an able legal commentator of the works of Shakespeare. In addition to the above little book of comparison he has contributed largely to illustrate by old authors the language used by the immortal bard in his plays and poems. In this way he has satisfactorily explained many obscure expressions of doubtful meaning, and has offered explanations and suggestions of his own for the consideration of his readers. His "Shakespeare a Lawyer," and "Shakespeare's Legal Maxims," unmistakably show that if Shakespeare was not at one time connected with the law, as has been attempted to be shown by some of his biographers, yet by some unaccountable means he acquired extensive familiarity with technical legal phraseology. Shakespeare's plays abound with instances of much more than ordinary knowledge of law terms for a civilian, and in order to use these in the way he did, his acquaintance with the written and unwritten law of his period, combined with a tolerable display of legal jargon, must have been remarkable. There is no doubt sufficient internal evidence in his plays to warrant the belief that Shakespeare must at least have served in an attorney's office, and Lord Campbell and other commentators have laboured to support this inference. (*Law Magazine and Review* 27: 162)

The reviewer refers to Chief Justice John Campbell's book, *Shakespeare's Legal Acquirements*, which came out soon after Rushton's first book.

Lord Campbell

*Shakespeare's Legal Acquirements* covers much of the same territory as *Shakespeare a Lawyer* and follows Rushton's method of citing a series of legal terms used in the plays. In fact, some reviewers—and Rushton himself—thought that Campbell plagiarized Rushton's work. But some examples obviously lend themselves to similar interpretations, and Campbell does discuss examples not mentioned by Rushton.

Campbell groups his examples by plays. In his introductory letter of some thirty pages to John Payne Collier, Campbell outlines his theory that Shakespeare was likely an attorney's clerk before going on with over eighty pages of examples of Shakespeare's knowledge of law. Then Campbell spends several pages on Shakespeare's will, positing that Shakespeare himself

drafted it. Campbell ends with a "Retrospect" of a dozen pages where he presents his uncommitted conclusions:

To conclude my summing up of the evidence under this head, I say, if Shakespeare is shown to have possessed a knowledge of law, which he might have acquired as clerk in an attorney's office in Stratford, and which he could have acquired in no other way, we are justified in believing the fact that he was a clerk in an attorney's office at Stratford, without any direct proof of the fact. Logicians and jurists allow us to infer a fact of which there is no direct proof, from facts expressly proved, if the fact to be inferred may have existed, if it be consistent with all other facts known to exist, and if facts known to exist can only be accounted for by inferring the fact to be inferred.

But, my dear Mr. Payne Collier, you must not from all this suppose that I have really become an absolute convert to your side of the question. (136-7)

Lord Campbell's book proved very influential, given his position as Chief Justice. Researchers spent years looking for legal documents that would necessarily have been signed by Shakspeare of Stratford if he had indeed been a clerk in an attorney's office. No such documents have yet been found, which, for most scholars, has laid to rest the notion that he could have held such a position.<sup>7</sup>

But Campbell's book was not a work of scholarship. He admits in his introductory letter that he had a little leisure time during his vacation, that he is limiting the frame of his research to terms that may have been used by a professional lawyer, and that he is setting out to do less than a thorough job:

In *Two Gentlemen of Verona*, *Twelfth Night*, *Julius Caesar*, *Cymbeline*, *Timon of Athens*, *The Tempest*, *King Richard II*, *King Henry V*, *King Henry VI Part I*, *King Henry VI Part III*, *King Richard III*, *King Henry VIII*, *Pericles of Tyre*, and *Titus Andronicus*—fourteen of the thirty-seven dramas generally attributed to Shakespeare—I find nothing that fairly bears upon this controversy. Of course I had only to look for expressions and allusions that must be supposed to come from one who has been a professional lawyer. Amidst the seducing beauties of sentiment and language through which I had to pick my way, I may have overlooked various specimens of the article of which I was in quest, which would have been accidentally valuable, although intrinsically worthless. (37-38)

Indeed, even in the works where he says he finds nothing that bears upon the controversy, he has, in fact, overlooked significant passages, particularly in the *Henry* plays.

Lord Campbell's book suffers from many of the same faults as Rushton's. He does not attempt to prove a thesis much more complicated than "Shakespeare used lots of legal terms

correctly, a use which therefore goes to show, given his biographical background, that he was likely an attorney's clerk in Stratford." He does show how Shakespeare uses terms from many courts and categories of law; i.e., the Court of Exchequer (49), the Courts of Common Law (52), the Court Leet (63), the Court of Common Pleas (66), the Court of Wards (68), Real Property Law (39), Admiralty Law (114), and with "some of the most abstruse proceedings in English jurisprudence" (44-45). And he does present examples that appear to grant Shakespeare a certain depth in the law. His first example is from *The Merry Wives of Windsor*:

Fal. Of what quality was your love, then?

Ford. 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.

Now this shows in Shakespeare a knowledge of law, not generally possessed. The unlearned would suppose that if, by mistake, a man builds a fine house on the land of another, when he discovers his error he will be permitted to remove all the materials of the structure, and particularly the marble pillars and carved chimney-pieces with which he has adorned it; but Shakespeare knew better. He was aware that, being fixed to the freehold, the absolute property in them belonged to the owner of the soil. . . . (39-40)

Despite examples such as this, Lord Campbell generated harsh criticism, much of it deserved. In fact, the best articulated critique of his work, and that of Rushton, came from a non-practicing lawyer.

Richard Grant White

In July 1859, the *Atlantic Monthly* printed a twenty-one-page article by Richard Grant White, "William Shakespeare – Attorney at Law and Solicitor in Chancery," three-fourths of which he spends castigating Lord Campbell's mistakes, stylistic errors, and generally lousy scholarship. He gives Rushton more credit for the modesty of his writing and the organization of his examples, but overall White finds both works lacking in the kinds of arguments needed to argue that Shakespeare was a practicing attorney or had some kind of legal education. Furthermore, Grant White seems to be the first writer to point out an uncomfortable truth for advocates of Shakespeare's legal training: Shakespeare's use of legal terms in his histories often mirrors their use in his source material, mainly Holinshed's *Chronicles*. Any writer who embarks on making the case for Shakespeare's legal training must avoid the error of crediting Shakespeare with legal knowledge based on passages rewritten from Holinshed.

After perusing many pages of Grant White's article, the reader would think that he does

not believe that support exists for Shakespeare's legal training, but in the latter part of the article, he delivers a surprise:

For we object not so much to the conclusion at which Lord Campbell arrives as to his mode of arriving at it. His method of investigation, which is no method at all, but the mere noting of passages in the order in which he found them in looking, through Shakespeare's works, is the rudest and least intelligent that could have been adopted . . . . (99)

Grant White then explores what he believes are "the very considerable grounds for the option that Shakespeare had more than a layman's acquaintance with the technical language of the law" (99). He makes several significant points:

First: Legal phrases frequently appear in the literature of that age and Shakespeare's use of legal terminology is remarkably pervasive and accurate even when compared to other dramatists. White explicitly denies that the mere appearance of such terminology indicates early training (as Lord Campbell and Rushton would have it). Rather, many dramatists had such training, and for many, like George Wilkins, we do not have enough biographical material to determine whether they were trained in the law. Still, Shakespeare's pervasive and accurate use of legal terminology strengthens the argument that he had such training.

Second: Direct contemporary testimony exists that at the time of Shakespeare of Stratford's arrival in England it was a common practice for lawyers to turn to writing plays. This testimony is from Nashe in the Preface to Greene's *Menaphon*: "It is a common practice nowadays, amongst a sort of shifting companions that run through every art and thrive by none, to leave the trade of Noverint whereto they were born, and busy themselves with the endeavours of art, that could scarcely Latinize their neck-verse if they should have need" (Nashe 474). The "trade of Noverint" is that of an attorney's clerk. Grant White claims that the case is further strengthened because "among all the dramatic writers of that period, whose works have survived, not one uses the phraseology of the law with the frequency, the freedom, and the correctness of Shakespeare" (102).

Third: Although the argument is made that lay people commonly attended the London courts, and that Shakespeare could have easily picked up his terminology during such proceedings, White points out that many of the law terms used by him are not normally heard at such proceedings, especially terms having to do with real property and the technical language of conveyancers. Shakespeare of Stratford's arrival in London coincides with early plays that already contain such language, "before he had had much opportunity to haunt the courts of law in London, even could he have made such legal acquirements in those schools" (103). Furthermore, with Shakespeare's arrival in London, there is no increase in the frequency of terms used in the plays, which may be expected if Shakespeare were then to acquire a greater legal vocabulary.

Finally: Grant White's strongest argument is that while Shakespeare correctly uses the technical language of many professions—physicians, actors, soldiers—primarily on special occasions, he exhibits a pervasive reliance on legal terms throughout his works, demonstrating an accuracy and propriety that transcends his contemporaries.

Must we believe, that the man, who, among all the lawyer-dramatists of his day, showed—not, be it noticed (as we are at present regarding his works) the profoundest knowledge of the great principles of law and equity, although he did that too—but the most complete mastery of the technical phrases, the jargon, of the law and of its most abstruse branch—that relating to real estate—and who used it very much the oftenest of them all, and with an air of as entire unconsciousness as if it were a part of the language of his daily life, making no mistakes that can be detected by a learned professional critic—must we believe that this man was distinguished among those play-writing lawyers, not only by his genius, but his lack of particular acquaintance with the law? (104)

Grant White concedes that there is no biographical proof that Shakspeare of Stratford worked as an attorney's clerk or studied law formally. But he expresses no doubt about the writer Shakespeare: The poems and plays demonstrate some kind of formal legal training.

#### Other Early Writers

Following Rushton and Lord Campbell came several books exploring Shakespeare's use of legal terms, and one that included a dissenting view—George Wilkes' 1877 book *Shakespeare from an American Point of View*. He is also among the early writers responding against the claim that Francis Bacon wrote the Shakespeare plays. Believing firmly that Shakspeare wrote Shakespeare, Wilkes reveals that he is not taken in by the Satan Maneuver:

Some critics, whose brows were more rainbowed than the rest, suggested that any extent of scholastic accomplished might fairly be attributed to the vivid, lambent quick-breeding conception of such a miracle of genius as was the poet of our race; but this exceptional theory made but little headway with more sober reasoners, mainly for the want of precedents that any man was ever known to have learned his letters, or attained to the art of making boots or watches by mere intuition. The fact is, that the true difficulty with this portion of the inquiry has been, that too much erudition and legal comprehension has been attributed to Shakespeare for what his law phrases indicate; or, in plainer words, they have been paraded as a great deal more than they are really worth. (72)



Thus does Wilkes lay down the central contention between the advocates: On one side, Rushton, Lord Campbell, and Grant White, who are impressed by Shakespeare's technical range, accuracy, and application. On the other, Dickens, Wilkes, and many others to come, who do not see an unusual technical range, who claim inaccuracies, and who do not see any extraordinary application of the law. Wilkes clearly lays down the means by which Shakespeare of Stratford could have acquired his legal knowledge: a) by reading elementary works of law, b) by attending the courts of record held semi-monthly in Stratford, and courts-leet and view of frankpledge held semi-annually in Stratford, c) through his experience as a property owner, d) through lawsuits. Furthermore, Wilkes claims that where Shakespeare deals with the philosophy of law—in *The Merchant of Venice*, *Comedy of Errors*, *Winter's Tale*, *Two Gentlemen of Verona*, and *Measure for Measure*—he fails in ways that should be obvious to readers. Wilkes gives one example in support, criticizing the Duke in *Two Gents* for appointing to high government posts the gang who kidnapped his daughter. However ineffective such an example serves as support, Wilkes's argument has merit, that Shakespeare had the means to learn some of the technical terms of property law.

Later writers, such as Franklin Fiske Heard and Edward J. White, offer little more than catalogs of Shakespeare legal terms, with explications of their meanings.<sup>8</sup> The best of the catalogers, Cushman K. Davis, in his 1883 book, *The Law in Shakespeare*, expands the claims for Shakespeare's knowledge of law, based on the accumulated work of cataloging and explicating hundreds of terms in his book:

We seem to have here something more than a sciolist's temerity of indulgence in the terms of an unfamiliar art. No legal solecisms will be found. The abstrusest elements of the common law are impressed into a disciplined service with every evidence of the right and knowledge of commanding. Over and over again, where such knowledge is unexampled in writers unlearned in the law, Shakespeare appears in perfect possession of it. In the law of real property, its rules of tenure and descents, its entails, its fines and recoveries, and their vouchers and double vouchers; in the procedure of the courts, the methods of bringing suits and of arrests, the nature of actions, the rules of pleading, the law of escapes, and of contempt of court; in the principles of evidence, both technical and philosophical; in the distinction between the temporal and the spiritual tribunals; in the law of attainder and forfeiture; in the requisites of a valid marriage; in the presumption of legitimacy; in the learning of the law of prerogative; in the inalienable character of the crown,—this mastership appears with surprising authority. (4-5)

Edward James Castle advances the cause of Bacon as Shakespeare in his 1897 *Shakespeare, Bacon, Jonson, and Greene*, which is poorly argued, especially in its approach to the

question of Shakespeare's legal knowledge. The only other worthwhile argument after Grant White and before 1899 is in R.S. Guernsey's small book *Ecclesiastical Law in Hamlet*, which is best addressed later in considering Shakespeare's legal mind.

The next phase of the argument, an increasing reaction against the rising tide of Baconian advocates, arrives with William C. Devecmon in 1899.

### Shakespeare's Supposed Misuse of Legal Terms

The first claim that Shakespeare erred in using legal terms appears to have been leveled in 1863 by R.F. Fuller writing in the *Upper Canada Law Journal*:

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

Here the word “date” is not accurately used; as it signifies commencement and not continuance. (95)

This claim by Fuller is a bit baffling. During the sixteenth century, *date* was known to signify *continuance*. The OED gives the following definition and examples:

4. The time during which something lasts; period, season; duration; term of life or existence. . . . 13. Chron. Eng. 972 in Ritson Met. Rom. II. 310 That the sone croune bere The fader hued is date here. . . . c1386 Chaucer Can. Yeom. Prol. & T. 858 Neuere to thryue were to long a date. . . . c1440 Lydg. Secrees 421 So to perseuere and lastyn a long date. (OED CDROM)

Even O. Hood Phillips, in *Shakespeare and the Lawyers*, points to this claim by Fuller saying “Criticism of this kind may be carping” and “Such criticism also has often been misguided” (135). After giving several examples from other critics, Phillips states, “But these criticisms ignore the supposed place and time of the action, the persons by whom and to whom the words are spoken, and the dramatic effect involved” (135).

Phillips is exactly right. When evaluating Shakespeare's work, we must keep in mind that his stance is primarily dramatic or literary. We must keep a vigilant eye out for the context in which a term is used. If the context is strictly a dramatization of a legal situation with characters supposed to be knowledgeable in law, then we may more strictly hold Shakespeare to the legal meaning rather than the conventional meaning of a word. If a legal term is misused by a comedic character, then we cannot say that the dramatist was guilty of misuse. Indeed, if it can be shown that comedic characters typically misused such terms, while the non-comedic characters, or those who should know better, correctly used such terms, that fact should strengthen the case favoring Shakespeare's legal training.

## Devecmon's "Bad Law"

In 1899, Devecmon attacked the reasoning of both Lord Campbell and Cushman Davis in his book *In Re Shakespeare's "Legal Acquirements."*<sup>9</sup> His was the first extensive argument against Shakespeare having any special training in the law. J.M. Robertson later supported these attacks without providing any examples of supposed errors. Devecmon's main argument focused on a list of fourteen "gross errors" in Shakespeare's use of legal terms. He presents a compelling proposition that he feels safe in advancing:

Though the frequent use of legal terms, with their proper technical meanings, has a cumulative effect, and tends strongly to prove a legal training; yet a very few errors in such use, if glaring and gross, would absolutely nullify that effect and proof. (33)

Since the fact of Shakespeare's complete accuracy is widely unknown, it is worth exploring all fourteen claims in detail, as well as the refutations put forward by Sir George Greenwood, in *The Shakespeare Problem Restated*, and by Homer B. Sprague, in his 1902 article "Shakespeare's Alleged Blunders in Legal Terminology" published in the *Yale Law Journal*. This examination will also reveal how easily critics can slip into common errors and narrow-mindedness.

1. Demise: *Richard III*:

Eliz. Tell me what state, what dignity, what honor  
Canst thou *demise* to any child of mine? (IV:4:247-8)<sup>10</sup>

Devecmon simply states that dignities and honors cannot be *demised* and cites Comyn's *Digest* in support. Greenwood quotes Comyn's *Digest*, which states that "a dignity or nobility cannot be aliened or transferred to another." "Not a very unreasonable proposition"! says Greenwood. "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 (perhaps for a round sum down), or to put it up to auction. Therefore the Queen is right, *prima facie* at any rate, when she suggests to Richard that he has no power to 'demise' any dignity or honour to a child of hers" (*Problem* 399-400). Greenwood goes further, pointing out that, in fact, it was possible for Richard, as king, to demise such dignities or honours. *Comyn's Digest* even states that a subject could make a grant of such things "with the king's licence." Sprague adds that even if it were a mistake, would it not be a natural one in the mouth of a queen unlearned in law? It is natural for a dramatist to "impart verisimilitude" by having ignorant characters err in their knowledge (304).

2. Replication: *Hamlet*:

Ham. Besides, to be demanded of a sponge! What *replication* should be made by the son of a king? (IV:2:11-2)

Devecmon states that the plaintiff makes his demand on the defendant, the defendant replies by a plea, and then the plaintiff's reply to this plea is a *replication*. His point is that Hamlet's role is that of a defendant, whose reply is never a replication but always a plea. Greenwood agrees that in pleading, a replication answers a reply, and is put in by the plaintiff. He goes on to cite an example where the defendant puts in a replication to the plaintiff's plea. Greenwood then says, "But the fact is that 'replication' was constantly used in ordinary parlance in the sense of 'reply.' . . . Mr. Devecmon must really try again" (401-2). Sprague quotes Glower and Chaucer to demonstrate that they used *replication* in its simple sense of "reply," demonstrating that such usage had long been practiced (305).

3. Indenture: *Pericles*:

Thal. For if a king bid a man be a villain, he is bound by the *indenture* of his oath to be one. (I:3:7-8)

Here Devecmon says that the oath of allegiance is referred to, and that use of *indenture* is entirely out of place, since one has nothing to do with the other, and since *indenture* must be a written conveyance, bargain, or contract. Greenwood passes on this one, affirming his belief that *Pericles* was not authored by Shakespeare, but this example is also easily refuted. The OED, unavailable to the literal-minded Devecmon, illustrates that before Shakespeare's time, *indenture* was already used figuratively for oral contracts and mutual agreements: "d. fig. Contract, mutual engagement. 1540 Morysine Vives' *Introd. Wysd. G. vij*, We haue by indenture of Jesu . . . that they shall lacke nothings whiche seke . . . the kyngdome of God." Oaths of allegiance are contracts in which, in exchange for the oath, the oath-taker receives the benefits generally conferred by the King to all his subjects. Furthermore, Sprague points out that Shakespeare uses *indenture* in its strict legal sense in *Hamlet* and *I Henry IV*, demonstrating that he was fully aware of its technical meaning (306).

4. Moiety: *1 Henry IV*:

Glend. Come, here's the map; shall we divide our right?

According to our threefold order ta'en?

Mort. The archdeacon hath divided it

Into three limites very equally. . . .

Hot. Methinks my *moiety*, north from Burton here,

In quantity equals not one of yours. (III:1:66-9, 91-2)

Devecmon points out that a *moiety* is a *half*, not a *third*. He fails to point out that Shakespeare does use it correctly both legally and figuratively in *All's Well That Ends Well* (III:2:66), *The Winter's Tale* (III:2:39), *Henry V* (V:2:212), *Richard III* (I:2:254, II:2:60), *Henry VIII* (I:2:12), *Antony and Cleopatra* (V:1:19), and *Cymbeline* (I:5:105). In several other plays he uses the term figuratively to mean simply a *portion* rather than a *half*. But it may be objected that in the case of *Hotspur*, the strict legal usage is called for. A close reading reveals that, in fact, *Hotspur* uses the term correctly. Devecmon and others want to yoke *Hotspur's* "moiety" reference to the tripartite division mentioned over twenty lines earlier. In fact *Hotspur* is speaking, not of his third, as compared to the other two men, but a *smaller section* of his third, which he is comparing to a *smaller section* belonging to *Mortimer* only.

If *Hotspur* were comparing his third to the two other men's, he would be speaking of the whole compared to the whole of theirs, but he is not. His land borders *Mortimer's*, and the argument centers around a portion "north from *Burton*." Shakespeare uses the legal term correctly. *Sprague* points to one translation of *Caesar's Commentaries*, "All Gaul is quartered into three halves"! to demonstrate that portions were once more flexibly used. He quotes an authority, *Moberly*: "The word 'moiety,' like 'halb' or 'half,' originally means only a part" (306). This passage reveals the danger of assuming too much regarding Shakespeare's use of legal terms. The legal form is taken directly from *Holinshed's Chronicles*. Shakespeare's sources for his histories must always be checked for legal form and terminology.

##### 5. Challenge: *Henry VIII*:

Cath. I do believe,  
Induced by potent circumstances, that  
You are my enemy, and make my *challenge*.  
You shall not be my judge. . . .  
I do refuse you for my judge. . . . (II:4:73-6)

Devecmon points out that *challenge* is applicable only to jurors, and that a judge is not subject to challenge. *Greenwood* replies:

Here the same curious idea is apparent, viz. that a dramatist cannot be a lawyer unless he makes his ladies and laymen speak in the language that a trained lawyer would employ. But, apart from this, it really seems to me no better than solemn trifling to argue from such an expression put into the Queen's mouth that the writer had no accurate knowledge of law. "Challenge" was constantly used in the sense of "objection," and even though the poet might have had the legal significance in his mind, it certainly does not argue the absence of legal training on his part that Catherine should apply, by a very natural analogy, to one of the Cardinals who were to act as judges in the case, a term which, in strict legal usage, was applicable only to a juror. (400)

Sprague also points out that Shakespeare uses *challenge* in the sense of to “claim as a right” eighteen times throughout the plays, and that it is used appropriately here in the same sense (306).

6. Well ratified by: *Hamlet*:

Hor. In which our valiant Hamlet—  
For so this side of our world esteemed him—  
Did slay this Fortinbras; who by a sealed compact,  
*Well ratified by law and heraldry,*  
Did forfeit his life. . . . (I:1:87-91)

Devecmon states that *well ratified by* means *strictly in accordance with* and is out of place here as a legalism. Once again, he is being too absolute. Devecmon thinks the term can only be used in a strict legal meaning, but he is wrong. According to the OED, by Shakespeare’s time *ratified* had a long history of meaning *confirmed* or *approved* in a non-legal context. Sprague demonstrates that Skelton in *Colin Clout*, Levins in *Manipulus Vocabulorum*, and Bacon in *Political Fables*, all used the term in this non-technical sense (307).

7. Jointress: *Hamlet*:

Claud. Therefore our sometime sister, now our queen,  
The imperial *jointress* to this warlike State. (I:2:8-9)

Devecmon sites Co. Litt. 46 to define *jointress* as “a woman who has an estate settled on her by her husband.” Referencing *Blake’s Commentaries* he states that a *jointure* was used for barring dower, and that “Gertrude could have neither a dower nor a jointure in Denmark.” But it takes little imagination to recognize that Shakespeare is using the term in a royal context that enlarges its meaning (a common Shakespearean practice, which is responsible for giving us our flexible language). The two have just married, and Shakespeare plays on the idea of that royal joining. The context also suggests irony, in that such a marriage should bar the King’s brother from the *dower* of the kingdom. Devecmon fails once again to look at the literary context, assuming that every use that appears to deviate from strict legal usage represents an error that no one trained in the law would commit. As we shall see, Clarkson and Warren criticize Devecmon for over-literalizing this speech.

8. Common/Several: *Love’s Labour’s Lost*:

Boyet. So you grant pasture for me.  
Kath. Not so, gentle beast;  
My lips no *common* are, though *several* they be. (II:1:221-223)

This passage is commonly cited as an error. Devecmon admits that Shakespeare understood that one cannot both hold a thing in common and in severalty; he believes that Shakespeare sacrifices his knowledge for a mere play on words, something that one with legal training would not do. Greenwood responds:

Common of pasture is, of course, a right of common with which lawyers are very familiar. Boyet desires a grant of pasture on Maria's lips, but she replies that there is "no common" there. This suggests the distinction between tenancy in common and "severally" or individual ownership, and Maria, bethinking her that her lips are "several," or severed one from the other, adds "though several they be." The same idea appears in *The Sonnets*:

Why should my heart think that a several plot,  
Which my heart knows the world's wide common place? (Sonnet 137)

In the play there seems, at first sight, to be some little confusion involved by the use of the word "though," for things which are "several" would naturally not be "common," but I think the explanation is to be found in a note of William Hazlitt's to *Sir John Oldcastle*, Part I, Act III, Sc. 1, where the Earl of Cambridge says:

Of late he broke into a several  
Which doth belong to me;

and the note explains "several" here as meaning "portions of common land assigned for a time to particular proprietors." Thus "severals" could be part of common lands, and so Maria might say that her lips, *though* "several" are "no common," though, even so, the conjunction seems rather forced. (417)

Sprague explains that this passage reflects a matter of taste, and that Shakespeare as a lawyer would certainly not perpetuate such puns. But for a dramatist, particularly this one, such terms *invite* punning in a scene like this. "No blunder here," states Sprague (308).

#### 9. Entail: 3 *Henry VI*:

King H. I here *entail*  
The crown to thee, and to thine heirs forever;  
Conditionally that thou here take an oath  
To cease this civil war. . . . (I:1:200-3)

Devecmon quotes Senator Davis: "The use of the word *entail* here seems to be inaccurate, for, though the use of the word *heirs* is necessary to create a fee, so the word *body* or some other words of procreation are necessary to make it a *fee tail*. A gift to a man and his heirs, male or female, is an estate *in fee simple* and not *in fee tail*." Greenwood avoids this play also,

believing that it was not Shakespeare's. Once again, we have an instance where the literal-minded lawyer assumes that only the strict legal definition was in common usage. A quick check of the OED reveals that both Davis and Devecmon err. According to the OED, *entail* was used apart from its strict legal usage: "2. transf. and fig. To bestow or confer as if by entail; to cause to descend to a designated series of possessors; to bestow as an inalienable possession." Thus, in 1513 Sir Thomas More in *Edward V*, 3 writes "The Crowne of the Realme [was] entailed to the Duke of Yorke and his Heires" (OED). Perhaps Shakespeare was following Sir Thomas in this usage of appointing an hereditary possessor, but Shakespeare uses *entail* in its stricter legal usage in *All's Well That Ends Well* (IV:3:270), showing that he understood both definitions precisely.

10. Statutes: *Love's Labour's Lost*:

King. You three, Berowne, Dumain, 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. (I:1:15-19)

Here is another supposed error commonly cited. Devecmon thinks *statutes* is misused here to mean merely *articles of agreement*, since there is no such meaning in law. According to Greenwood, Shakespeare uses *statutes* in the sense of *ordinances*, as is usual in a college (404). In this one case, Mr. Robertson, pausing in his constant assaults in *The Baconian Heresy*, explicitly agrees with Greenwood (175n).

11. On the case: *The Comedy of Errors*:

Adr. Why, man, what is the matter?  
Dro. S. I do not know the matter: he is 'rested *on the case*. (IV:2:41-2)

Devecmon points out that there are two kinds of civil actions: those growing out of breach of contract and those for the recovery of wrongs independent of a contract. *On the case* applies to the former, but the statement here applies to the latter. However, Devecmon neglects to notice that this is a comedy with comedic characters who will, like Dogberry in *Much Ado About Nothing*, mix their legal terms. Dromio is simply mixing up the usage. To cite the misuse of terms by one of his clowns as an indication of Shakespeare's ignorance is either to expose one's ignorance of Shakespeare or one's own sorry lack of humor. Sprague goes further, stating that the clown may simply be using *on the case* as in a suit or matter of law, rather than in an action of tort (309). This interpretation works well since the passage can then participate in the wordplay on *suit* in the next few lines.



12. Testament: *Henry V*:

Cant. For all the temporal lands, which men devout  
By *testament* have given to the church,  
Would they strip from us. (I:1:9-11)

Devecmon claims that *testament* is used incorrectly since it must refer to bequeathing personal property. A *will* is used for devising real estate. Greenwood responds:

“How absolute the knave is! We must speak by the card”! Must the Archbishop speak by the card too, or the writer be set down as no lawyer? But really this is but another example in support of the proposition that a little learning is a dangerous thing. “A *testament* is the true declaration of our last Will; of that wee would to be done after our death,” says the learned author of that famous old book *Termes de la Ley*. A “*testament*” includes a “*will*,” said the Court in *Fuller v. Hooper* (2 Vesey Senior 242). Nay, more, Littleton, the great and learned Littleton, uses “*testament*” as applicable to a devise of lands and tenements; and all Coke has to say about it is that “in law *most commonly* ‘ultima voluntas in scriptis’ is used where lands or tenements are devised, *testamentum* when it concerneth chattels.” But we know that “*testator*” is used of a man who has made a will, whether it be of lands or of personal property. So that again Mr. Devecmon’s attempt fails. (402)

Sprague catches Devecmon shifting ground by showing that later in his book (page 47) Devecmon states: “Will or testament (which latter word is essentially identical in meaning with ‘will’) . . .” (310).

13. To your heirs forever: *Julius Caesar*:

Ant. Moreover he hath left you all his walks,  
His private arbors, and new-planted orchards  
On this side Tiber, he hath left them you  
And to your heirs forever. (III:ii:249-252)

Again Devecmon quotes Cushman Davis, who remarks that Shakespeare did not use the appropriate legal term *devise* and instead used “to your heirs forever.” Devecmon wants to extend the remark and make it a criticism, saying, “Shakespeare nowhere uses the word in connection with a will. It was also unnecessary for Caesar’s will to have contained the expression ‘to your heirs forever’ in order to give the people a perpetual estate in the realty” (41). Although Shakespeare’s usage may be “remarked” upon, for that usage to be held out as more proof that Shakespeare did not know the legal meaning of the word *devise*, a word which he does not use, seems petty at the least. The poetry of Antony’s speech calls for Shakespeare’s

usage, not strict legal usage. Devecmon has dipped here into an extreme silliness.

14. Single bond: *Merchant of Venice*:

Shy. Go with me to a notary; seal me there  
Your *single bond*, and in a merry sport  
If you replay me not on such a day,  
In such a place, such a sum as are  
Expressed in the condition, let the forfeit  
Be nominated for an equal pound  
Of your fair flesh. . . . (I:3:140-6)

Devecmon says, "It is hardly conceivable that any lawyer, or anyone who had spent considerable time in a lawyer's office, in Shakespeare's age, could have been guilty of the egregious error of calling a bond with a collateral condition a 'single bond.'" In *Shakespeare's Law*, Greenwood quotes both the *Encyclopaedia of the Laws of England* and *Stephens Commentaries* to point out that *single bonds* include those where people are bound to pay at a certain time and place with a penalty attached in the event of failure to pay. Payment of a pound of flesh is the *penalty*, not a *condition* (24-26). In other words, Devecmon sees that Shakespeare has used the phrase "expressed in the condition" and immediately wants to translate that into a conditional bond in the legal sense. It is not. The bond is properly defined as a *single bond*. Once again, the error lies with Devecmon, not with Shakespeare.

Devecmon goes on to discuss a fifteenth error to which neither Greenwood nor Sprague respond. In his discussion of *The Merchant of Venice*, Devecmon mentions that the court awards all Shylock's property:

and all that he might afterward acquire, (for he was required to record in court a deed of gift of all he died possessed). . . . And, by the way, this deed of gift is another blunder of the law. It is a fixed principle of the common law that a man cannot convey a thing which he has not, though he afterward acquire it. Only things *in esse*, having an actual or potential existence, were subjects capable of gift or grant. (*Comyn's D*)

The response is actually given by Clarkson and Warren in their book: "It has been pointed out [by Devecmon] that such an instrument would be quite inoperative to transfer after-acquired property; only that which was *in esse* at the time the deed was delivered would pass. This observation, however, seems largely beside the point because this deed was not intended at the time of delivery to pass even the property which was *in esse*" (183).

Thus has every supposed error raised by Devecmon been roundly refuted.  
But what of the claims by other writers?

## Charles Allen's Bad Law

Charles Allen's *Notes on the Bacon-Shakespeare Question* also has a chapter on Shakespeare's bad law (VII). Allen's examination of legal terms is simplistic and denies Shakespeare the possibility of figurative usage, as does Devecmon before him. Greenwood devotes much of his book *Shakespeare's Law* to refuting Allen. Allen's methods of argument are so poor that he is censured for his errors by later writers, such as Clarkson and Warren (219). Here is a passage that reveals Allen's headache-inducing technique:

In *King John* is found the line, "As seal to this indenture of my love." "Indenture" seems to be used for assurance, or promise, or contract,—an untechnical use of the word. In *Winter's Tale*, "land-damn" apparently refers to some mode of legal punishment; but the term is unknown in the law. It has been conjectured that this term is a corruption; but it appeared in all the Folios. "Rejoin" for "adjourn," in *Coriolanus*, is believed to be unknown in legal use, though in Richardson's Dictionary instances of its use are cited for Wotton, Burton, and North's Plutarch. "Fee-grief," in *Macbeth*, is a combination which is not found elsewhere. "Crazed title," in *Midsummer's Night's Dream*, is not a legal epithet for a doubtful title. "Enfoeffed himself to popularity," in *1 King Henry IV*, is a violent and untechnical straining of the sense of the legal term. (125-126)

Enough! Suffice it to say that no later critic of Shakespeare's law is comfortable citing Allen as support.

## Arthur Underhill's "Bad Law"

In *Shakespeare's England: An Account of the Life & Manners of his Age*, Arthur Underhill lets the reader know exactly where he stands by opening the section on "Law" with the statement, "Despite Shakespeare's frequent use of legal phrases and allusions his knowledge of law was neither profound nor accurate" (I.381).<sup>11</sup> In a paper presented at the 20th Annual Shakespeare Oxford Society Conference in 1996, entitled "Recent Developments in the Case for Oxford as Shakespeare," Peter Moore deftly refutes the three instances where Underhill accuses Shakespeare of using legal terms incorrectly.<sup>12</sup>

Underhill resurrects Devecmon's claim that in *Love's Labour's Lost*, Shakespeare incorrectly uses *common* and *several* saying that the "allusion is not technically accurate, for it attributes them to the lips rather than to the right to kiss them, and uses the word *though* incorrectly, in place of *but*, which rather suggests that he considered "common" rights to be in some way *connected with*, instead of *opposed to*, "several" ones. Greenwood's response to

this “error” stands and again we note that Devecmon admitted that Shakespeare knew the difference. Moore points out that any annotated edition explains how Maria is playing on the two meanings.

Underhill cites Hamlet’s graveyard spiel on the ownership of land, wherein he dashes off close to a dozen legal terms, including *statutes and recognizances* (V:1:101-110). Underhill says: “What ‘statutes and recognizances’ had to do with the buying of land is not evident to a lawyer, and may suggest that Shakespeare’s knowledge of the law of property was neither accurate nor extensive” (1.406). Moore accurately points out that “any annotated, university-level edition of *Hamlet*, such as Arden, Oxford, or Cambridge, will explain exactly what *statutes and recognizances* had to do with buying land.”

Underhill finally turns to *All’s Well That Ends Well* where he performs what can only be described as an intentional misrepresentation in order to plant in the reader’s mind another “inaccuracy.” First, Underhill states that “the King of France insists upon his high-born ward Bertram marrying Helena, a poor physician’s daughter, who was of inferior rank to him.” He then quotes the passage where the King has Helena choose a husband (II:3:52-3). Underhill then informs us that “when Bertram, whom Helena chooses, protests, the King informs him peremptorily that

It is in us to plant thine honour where  
We please to have it grow. Check thy contempt:  
Obey our will, which travails in thy good.

Underhill skips over 100 lines to quote this passage (II:3:156-8). He then quotes a passage from Jonson’s *Bartholomew Fair*, which he says alludes “to the condition that the spouse must be of equal rank with the ward, which Shakespeare has ignored.” Yet, between the two passages that Underhill quotes, is this:

Ber. But follows it, my lord, to bring me down  
Must answer for your raising? I know her well:  
She had her breeding at my father’s charge—  
A poor physician’s daughter my wife! Disdain  
Rather corrupt me ever!

King. ’Tis only title thou disdain’st in her, the which  
I can build up. Strange it is that our bloods,  
Of colour, weight, and heat, pour’d all together,  
Would quite confound distinction, yet stands off  
In differences so mighty. (II:3:112-21)

In Peter Moore’s words: “Shakespeare was perfectly well aware of the requirement. And

Underhill knew that Shakespeare knew. One must wonder if Underhill has been intentionally deceptive" (Moore).

#### Clarkson and Warren's Bad Law

Now we finally turn to Clarkson and Warren and *The Law of Property in Shakespeare and the Elizabethan Drama*. The authors labored long and hard to cross-catalog all of the legal references to property law used by seventeen Elizabethan dramatists. What did they actually say that persuaded O. Hood Phillips, who persuaded Irvin Leigh Matus, who persuaded Dr. David Kathman, that Shakespeare "was average at best" in the accuracy of his legal allusions?

Not only do half of the dramatists employ legalisms more freely than Shakespeare, but most of them also exceed him in the detail and complexity of their legal problems and allusions, and with few exceptions display a degree of accuracy at least no lower than his. Proceeding from the general to the particular, about the same comparative average is maintained among the dramatists in their allusions to property law . . . ." (285)

Perhaps Dr. Kathman did consult the source text, since that second sentence is not quoted by Matus or Phillips.<sup>13</sup> But he misconstrues and misapplies a quantitative average as a qualitative average. The point is that Clarkson and Warren fail to demonstrate even one real error in Shakespeare's use of legal terms.

Using the index or the table of contents, a researcher would be hard-pressed to discover Shakespeare's alleged inaccuracies. One who knows the history of the debate would eventually seek out Devecmon's name in the index. Although there are only two listings, there are at least three actual mentions in the text, all criticizing Devecmon for erring in his criticism of Shakespeare.

The authors also criticize Charles Allen for erroneously pointing out errors in Shakespeare's use of legal terms (219, 224, 246). Strangely, although the authors admit a liking for Allen's book, they do not quote a single one of his "bad law" examples. Perhaps this is because they have read Greenwood's *Shakespeare's Law*, to which they make but a single reference, and that in a lowly footnote, to counter a claim of Allen's (246).<sup>14</sup>

*The Law of Property in Shakespeare and Elizabethan Drama* appears to contain only three examples of Shakespeare's inaccurate use of legal terms.<sup>15</sup> First, the authors repeat Devecmon's discovery of a "technical error" in Shakespeare's use of *entail* in *3 Henry VI* (59). They repeat Devecmon's mistake in assuming that the term has only a technical usage. Second, they cite the Host in *The Merry Wives of Windsor* (II:1:206-7) for misusing *egress* and *regress* (70). Here again we see a significant failure, whether of common sense or a sense

of humor, who can tell?

Clarkson and Warren's third error is different. It actually promises to be a significant discovery. They begin their second chapter of Part III setting the stage for a discussion of the use of the term *heir*, particularly in *heir apparent* and *heir presumptive*, noting that there is an important distinction between the two (197-9). The heir apparent's succession was contingent only upon his outliving his ancestor, such as an eldest son. This is the only circumstance that could deprive him of his inheritance. Thus, the heir apparent is in the direct line of succession. The heir presumptive, on the other hand, would be like a brother to a King, one whose succession could be displaced by the birth of a child to the King. Thus, Clarkson and Warren reveal Shakespeare's error:

Shakespeare uses the phrase 'heir apparent' incorrectly when Cardinal Beaufort says of Humphrey, Duke of Gloucester,

Consider, lords, he is the next of blood  
And *heir apparent* to the English crown. (2 *Henry VI* I:1:150-1)

Gloucester was not Henry VI's eldest son, of course, but his uncle, and therefore heir presumptive. Shakespeare did not adopt this language from Holinshed, and did not have here the excuse of metric requirements, since either word fits the iambic pentameter equally well. We have here just another example of Shakespeare's being interested not so much in correctly stating a legal proposition, as in putting into the mouth of his character words which to the laymen-groundling sounded like good law, and at any rate conveyed the desired information. This is, of course, the essence of good theatre. (199)

If this is an error, it indeed qualifies as one that a man trained in law would not commit. Clarkson and Warren then proceed to give examples of contemporary dramatists who display a knowledge of the distinction—and these examples present a problem: They contain only the concept of the distinction, not the use of the phrase *heir presumptive*. Would this not set off an alarm of warning to the authors?

A quick check of a concordance reveals that Shakespeare never used *heir presumptive* or even *presumptive*. A check of the OED reveals that the first public use of *presumptive* occurs in 1609, and that *heir presumptive* is not used until 1628. Could this mean that the term was not in use during Shakespeare's time? Yes! Under the third listing under *presumptive* the OED provides this example:

1683 *Brit. Spec.* 272 Apparent (or according to the new-coyned Distinction, Presumptive) Heir of the Crown is His Royal Highness James etc.

In other words, in the late seventeenth century, *heir apparent* was still commonly used for both distinctions while *heir presumptive* was regarded as a newly-coined term. Once again, it is the critics of Shakespeare's law who are proven to be in error, not Shakespeare.

In a passage referring to *Shakespeare's Law*, Sir Plunkett Barton states:

Some critics have gone to the opposite extreme, and have dwelt upon what they call "the bad law" in the plays of Shakespeare. He, like other dramatists, probably cared very little whether this law was strictly accurate, so long as it helped the plot or the dialogue. Sir George Greenwood, with whom this writer does not always agree, has disposed of this subject in a recent book. (149)

As Lord Campbell stated over 140 years ago, as to Shakespeare's use of legal terms "there can neither be demurrer nor bill of exceptions, nor writ of error."

#### Sir George Greenwood and the "Lost" Debate

Table Two: The Robertson/Greenwood Debates

|        |                    |   |
|--------|--------------------|---|
| * 1899 | William Devecmon   | <i>IN RE Shakespeare's "Legal Acquirements"</i>           |
| * 1900 | Charles Allen      | <i>Notes on the Bacon-Shakespeare Question</i>            |
| 1902   | H.B. Sprague       | "Shakespeare's Alleged Blunders," <i>Yale Law Journal</i> |
| 1902   | Judge Webb         | <i>The Mystery of William Shakespeare</i>                 |
| 1902   | Lord Penzance      | <i>The Bacon-Shakespeare Controversy</i>                  |
| 1904   | J. Churton Collins | <i>Studies in Shakespeare</i>                             |
| * 1905 | J.M. Robertson     | <i>Did Shakespeare Write "Titus Andronicus"?</i>          |
| 1908   | George Greenwood   | <i>The Shakespeare Problem Restated</i>                   |
| 1911   | Edward J. White    | <i>The Law in Shakespeare</i>                             |
| * 1913 | J.M. Robertson     | <i>The Baconian Heresy</i>                                |
| 1916   | George Greenwood   | <i>Is There a Shakespeare Problem?</i>                    |
| * 1916 | J.M. Robertson     | Letters in <i>The Nation</i> and <i>Literary Guide</i>    |
| 1916   | George Greenwood   | <i>Shakespeare's Law and Latin</i>                        |
| * 1916 | Arthur Underhill   | "Law," <i>Shakespeare's England</i>                       |
| 1920   | George Greenwood   | <i>Shakespeare's Law</i>                                  |

\*writers skeptical of Shakespeare's knowledge of law

Despite the efforts of Devecmon and Allen, the tide of Baconian books continued to rise, including two by distinguished Judges. Judge Webb, in his *The Mystery of William Shakespeare*, is the first to make the explicit point that "In the Plays every one of the characters talk law" (167). He then proceeds to give a couple of pages of examples. He con-

tributes little else to the argument other than this absolute generalization, which is defensible when applied to almost all major characters and a majority of minor characters.

That same year Lord Penzance's book, *The Bacon-Shakespeare Controversy*, devoted over a dozen pages to the argument, mostly quoting Lord Campbell, Grant White, and Cushman Davis, and covering similar terrain. However, Lord Penzance adds his voice to the building chorus that Shakespeare's usage indicates a solid legal mind, and is the first to clearly articulate a proposition that has yet to be acknowledged and countered:

The mode in which this knowledge was pressed into the service on all occasions to express his meaning and illustrate his thought, was quite unexampled. He seems to have had a special pleasure in his complete and ready mastership of it in all its branches. As manifested in the plays this legal knowledge and learning had therefore a special character which places it on a wholly different footing from the rest of the multifarious knowledge which is exhibited in page after page of the plays. At every turn and point at which the author 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 illustration. 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.* (85-86, emphasis added)

Lord Penzance makes a crucial distinction, later echoed by Greenwood, that fails to impress the literal-minded critics of Shakespeare's legal knowledge: the fact that Shakespeare used legal terms accurately in those places requiring accurate forensic usage should not be the base on which to build an argument supporting Shakespeare's legal training. Rather, that base would best be one of legal metaphors and similes and puns that arise in places where one does not expect forensic terminology. In other words, Shakespeare's mind exhibits the kind of training in law that comes with deep, long-term study—a mind that naturally views the world in legal metaphors. This distinction is lost on many later writers.

In 1905, J.M. Robertson, a Member of Parliament but not a lawyer, published his book *Did Shakespeare Write "Titus Andronicus"?* In a brief four-page passage with the heading "Alleged Shakespearean Legal Allusions" (nobody had ever questioned that Shakespeare's works contain legal allusions, only what may be inferred from them), Robertson criticizes a non-lawyer, Churton Collins, for merely listing in his 1904 book, *Studies in Shakespeare*, the legal terms in *Titus Andronicus*. Robertson counters that Shakespeare was not the only one who used legal terms. He then cites Devecmon's statement that Webster's *The Devil's Law*



Case displays “more legal expressions (some of them highly technical, and all correctly used) than are to be found in any single one of Shakespeare’s works” (*Titus* 54). He goes on to present his own list of legal terms in three plays by Peele—*The Arraignment of Paris*, *The Battle of Alcazar*, and *Edward I*—and in *The Spanish Tragedy*.

Robertson is right to point out that mere use of legal terms fails to prove legal training, and that other dramatists at that time used them. But he is wrong to state that “The general thesis as to Shakespeare’s legal knowledge or proclivities . . . was exhaustively dealt with . . . by Mr. Devecmon” (54). Devecmon’s treatment fell far short of exhaustive. If Robertson had known what he would trigger with his brief treatment of Shakespeare’s legal allusions, he might have skipped the entire question.

In 1908, Sir George Greenwood published his landmark 560-page *The Shakespeare Problem Restated*. The book was a landmark for two reasons. On the one hand, it was the first anti-Stratfordian book that examined the evidence of authorship dispassionately. How can this be? Because Greenwood had yet to decide on exactly who was the author. In the Preface, he indicates that “it is no part of my plan or intention to defend that theory” (vii); “I am quite free to admit that some of the extreme advocates of the ‘heresy’ have done much harm putting forward wild, ridiculous, and fantastic theories” (xv-xvi); and

I have endeavoured to avoid all fantastic theories, and although of course, a certain amount of hypothesis is unavoidable. . . my wish has been to depart as little as possible from the realm of fact, so far as we can ascertain it, and of legitimate argument founded thereon. I have made no attempt to deal with the positive side of the question. I leave it to others to say, if they can, who the great magician really was. (xviii-xix)

This stance is truly dramatic and goes far in helping to clarify the arguments surrounding the man Shakspeare and his relationship to the author Shakespeare, without the intervening distractions of more tenuous arguments positing the real author.

The book was also a landmark in its profound influence on a number of famous writers, lawyers, and other professionals, most notably Mark Twain, Sigmund Freud, and J. Thomas Looney, the author of “*Shakespeare Identified*,” who based some of the criteria he used to search for a likely author on Greenwood’s book.

In a long chapter, “Shakespeare as a Lawyer,” Greenwood finds fault with Robertson’s brief foray into the legal question. Greenwood reminds the reader of Lord Campbell’s statement warning of the danger for a layman to tamper with the lawyer’s craft: “The layman is certain to betray himself by using some expression which a lawyer would never employ” (371). After pointing to such an error made by Sir Sidney Lee, the noted Shakespearean biographer, Greenwood reveals in a footnote that Robertson had also made such an error: “I find yet another instance in Mr. J. M. Robertson’s *Did Shakespeare Write ‘Titus Andronicus’?*”

(59). Mr. Robertson writes: 'Let us formulate all the tests that the problem admits of, first putting a few necessary caveats.' No lawyer would speak of 'putting a caveat.' The legal term is to 'enter a caveat'" (372).

Robertson answers Greenwood on this,<sup>16</sup> and on Greenwood's reliance on Lord Campbell, Richard Grant White, and others as authorities, in his book, *The Baconian Heresy*, five years later. Greenwood responds to Robertson's remarkable assertions three years after that in *Is There a Shakespeare Problem?* That same year, Robertson and Greenwood exchange a series of letters in *The Literary Guide* and in *The Nation*, and some months later Greenwood publishes his side of that exchange in *Shakespeare's Law and Latin*, to which Robertson does not respond. In fact, in 1924 Robertson updates *Did Shakespeare Write "Titus Andronicus"?*, retitling it *An Introduction to the Study of the Shakespeare Canon*, leaving intact the section on "Alleged Shakespearean Legal Allusions" with additional examples and with one mention of Greenwood, while referring the reader back to *The Baconian Heresy*.

A closer examination of the debate between Robertson and Greenwood is important for two reasons: later writers, into the 1990s, directly or indirectly rely on Robertson as support for their arguments.<sup>17</sup> Furthermore, the debate itself clearly reveals the two domains of the argument that later writers fail to acknowledge—a primarily quantitative case versus a primarily qualitative case.

Because of the voluminous exchange (over 300 pages almost evenly divided between the two debaters), it's best to trace three exchanges: 1) Robertson's criticism of Lord Campbell's assertion that Shakespeare's use of *fine and recovery* in *Merry Wives of Windsor* indicates how he had the "recondite terms of law" constantly running in his head; 2) Robertson's criticism of Grant White's assertion that Shakespeare's use of the legal term *purchase* is remarkable; and 3) Robertson's criticism of Greenwood's assertion that Webster's *The Devil's Law Case* "shows no knowledge of law whatever on the part of its author." I quote extensively so that the reader can get a sense of the manner in which both men apply reason.

### Fine and Recovery

In *The Baconian Heresy*, after nine pages attacking Greenwood, Robertson consumes almost fifty pages attacking forty-three evidentiary examples discussed by Lord Campbell. Although Robertson and others may be right in attacking Lord Campbell for any implication that the mere use of legal terms constitutes proof that Shakespeare has had a legal education, Robertson unwittingly supports Lord Campbell's argument that "Shakespeare's head was so full of the recondite terms of the law, that he makes a lady thus pour them out, in a confidential *tête-à-tête* conversation with another lady" (40). The second example involves Lord Campbell's pointing out a passage in *The Merry Wives of Windsor* in which two ladies have

a conversation regarding Falstaff:

- Mrs. Ford:      What think you: may we, with the warrant of womanhood and the witness of a good conscience, pursue him with an further revenge?
- Mrs. Page:      The spirit of wantonness is sure scared 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>18</sup> (IV:2:193-199)

Robertson then gives over three pages of examples where other contemporary writers use the terms *fine* and *recover*. Robertson quotes from *Greene's Card of Fancy* (41):

Yet Madame (quoth he) when the debt is confest there remaineth some hope of recovery. . . . The debt being due, he shall by constraint of law and his own confession (maugre his face) be forced to make restitution.

Truth, Gwyndonius (quoth she), if he commence his action in a right case, and the plea he puts in prove not imperfect. But yet take this by the way, it is hard for that plaintiff to recover his costs where the defendant, being judge, sets down the sentence.

Robertson then exclaims: "The 'debt' in question is one of unrequited love. Shall we then pronounce that Greene wrote as he did because 'his head was full of the recondite terms of the law'? . . . Greene was no lawyer." Robertson presses the point in the fourth example, where *fine and recovery* are used again in *The Comedy of Errors* (II, ii, 71-75):

- Syr. Dro.    There's no time for a man to recover his hair that grows bald by nature.
- Syr. Ant.    May he not do it by *fine and recovery*?
- Syr. Dro.    Yes, to pay a fine for a periwig, and recover the lost hair of another man.

Lord Campbell comments upon the passage, "[These jests] show the author to be very familiar with some of the most abstruse proceedings in English jurisprudence."

"'Fine' as it happens, is a common figure in the drama of Shakespeare's day," Robertson replies. "Bellafront in Dekker's *Honest Whore* (Part II, iv, 1) speaks of 'an easy fine, For which, me thought, I leased away my soul.' . . . There is nothing more technical in the *Comedy of Errors*" (41).

Indeed, Robertson gives many more examples of contemporary dramatists (Jonson, Massinger, Webster), who were not legally trained, using the terms *fine* to mean a money payment, and *recovery* to mean the reacquisition of that which was taken or lost. What possible reason could Greenwood have to object? Simply the very good reason that, since Robertson himself is not a lawyer, he failed to recognize the technical legal meaning of the phrase *fine and recovery*, and in his ignorance, supplied equivocal parallels that have absolutely no application. In *Is There a Shakespeare Problem?*, Greenwood writes:

Amazement seizes me as I read passages like this. Is this, I ask, the strong reasoner, the great logician, the doughty controversialist? And does he really think that there is any analogy between the passage cited from *The Merry Wives* and the quotation above set forth from *The Card of Fancy*? Shakespeare uses the legal expressions (and whether “recondite” or not, they are, certainly, highly technical expressions): “fee simple with fine and recovery.” What does Mr. Robertson triumphantly produce as a parallel passage? A quotation from Greene in which, certainly, there is mention of an “action” and of a “plea,” and in which, moreover, there is talk of “recovery,” viz. the recovery of a debt, and the recovery of costs. And Mr. Robertson would really appear to think that this ordinary use of the word is equivalent to the very technical use of the word “recovery” as used in connection with a “fine”! It would be as much to the point to cite a passage in which a patient is stated to have made a good “recovery” from an illness. But of course the ordinary reader, glancing rapidly through Mr. Robertson’s countless parallels (so called), and knowing nothing of law, or legal terms, thinks that in the multitude of instances there is necessarily wisdom. . . . If Mr. Robertson had submitted his proofs to any young law student preparing for his “exam,” it would have been pointed out to him that he had been guilty of a ridiculous blunder. “Fine,” as used in the expression “fine and recovery,” means a method (now obsolete) of transferring land by means of a fictitious lawsuit. It has nothing to do with a money payment. But Mr. Robertson adduces as parallel passages to that cited from *The Comedy of Errors* lines from Dekker and Porter respectively, where the word “fine” is used in a totally different sense, viz. as meaning the premium on the grant of a lease! No better example could be found of Mr. Robertson’s qualifications for instructing us on the subject of Shakespeare’s knowledge of law. (59-61)

In the November 13, 1915, issue of *The Nation*, a reviewer of Greenwood’s book writes, “When Mr. Robertson avows the belief that any intelligent man could pick up this vocabulary, as it were, in the streets, he delivers himself into the enemy’s hand. When he quotes from Greene a passage about the ‘recovery’ of a debt as a parallel to Shakespeare’s reference to a ‘fine and recovery,’ he puts himself on a level with the index-marker who wrote on ‘Mill on Liberty and ditto on the Floss’” (263).

With unusual “reasoning” Robertson responded to this reviewer in the January 1, 1916, issue of *The Nation*:

It seems brutal to cancel out this pretty piece of wit; but the statement is sheer hallucination. There is not the remotest suggestion in my book that the non-technical term “recovery” is a parallel to the technical term “fine and recovery.” Till I read your reviewer’s pronouncement it had never dawned on me that such an inference could

be drawn. The passage from Greene was avowedly cited as showing "another lady" talking in the legal vein which Campbell declared to be proof of the author's "legal acquirements" when put in a woman's dialogue by Shakespeare. In the passage cited by Campbell several words are italicized, some of them occurring thousands of times in Elizabethan drama and ordinary literature. In later passages the common terms italicized by Campbell are freely paralleled. Your reviewer has raised an imaginary issue, and has thus wholly ignored the one really raised at this particular point. On his and Campbell's principles Greene was a trained lawyer if Shakespeare was. (510)

Is Robertson a Sophist? The reader may well ask, "How can Robertson create a *parallel* with words that do not have parallel meanings?" With more unusual "reasoning" Robertson responded to Greenwood directly in the January 1, 1916, issue of *The Literary Guide*. Here is his complete response:

Here I will merely remark that his attempt to convict me of identifying simple "fine" with "fine and recovery"—a blunder made before him by a reviewer in this journal, and copied thence by him—is worthy of the rest. The wording of my text explodes the pretence. Again and again I have "paralleled" legal phrases with absolutely different ones. The point is that the one set is as much evidence for legal knowledge or training as the other. (10)

No, Mr. Robertson, it's not. The point made by Lord Campbell is that Shakespeare used "recondite terms of the law" and showed evidence of being "familiar with some of the most abstruse proceedings in English jurisprudence." He cites Shakespeare's technical use of *fine and recovery* as an example. None of Robertson's "parallels" are technical. Robertson might as well be citing as "parallels" such words as *arrest* or *case* or *judge*, terms that are not at all recondite.

We can appreciate Greenwood's incredulity at Robertson's response in the March 1, 1916, issue of *The Literary Guide*:

He now asks us to believe that he did not cite the passage in question as showing that the word "fine" in the technical sense (as in "fine and recovery") was "a common figure in the drama of Shakespeare's day," but only as showing that the word, in its ordinary meaning, was such "a common figure"! In other words, he asks us to believe that he was guilty of the futility of citing the occurrence of the word "fine," in its common meaning of a money-payment, in writers contemporary with Shakespeare, as an example of their use of highly technical legal expressions! But "fine," a money-payment, is not a technical expression at all. Thus, on Mr. Robertson's own showing, his pronouncement, "There's nothing more technical in *The Comedy of Errors*," becomes an absurdity. . . .

Well did Lord Campbell write: “Let a non-professional man, however acute, presume to talk law, or to draw illustrations from legal science, and he will very speedily fall into some laughable absurdity.” (44)

The same may be true of Shakespeare, a point that further supports Shakespeare’s having legal training. Robertson, though a Member of Parliament with access to a dozen books on Shakespeare’s knowledge of law and legal dictionaries and to many associates who are lawyers, once divested of his sources, stands revealed. Once again we see that it is Robertson who is ignorant of the law and not Shakespeare. In his 1916 monograph *Shakespeare’s Law and Latin*, Greenwood puts the cap on this episode:

But such are Mr. Robertson’s parallelisms. Having no knowledge of law, he cannot discriminate between a really technical legal expression, such as might, possibly, be evidentiary of the “legal acquirements” of the writer, and a phrase which, though it may have some legal flavour about it, is yet but a commonplace every-day expression, from which no such inference can be drawn. (17)

We see here a stark contrast in the intellectual rigor between Robertson and Greenwood. Where Greenwood holds to principled intellectual integrity, Robertson willingly embarks on the exploitative rhetoric of a politician with his hand in the cookie jar.

#### Purchase

Robertson’s inability to distinguish between technical legal expressions and their commonplace counterparts is not limited to *fine and recovery*. Robertson (who is not a lawyer, remember) attacks Grant White (who is a lawyer) for his claim that Shakespeare’s use of the legal term *purchase* is remarkable (103):

The philological fact is that the sense of “acquisition,” “a thing got,” is the fundamental meaning of the word “purchase,” of which the starting-point is the idea of the chase (Fr. *Pourchasser*), the product of hunting or foraging. It is the idea of buying that is secondary, thought that is now become the normal force of the word. (101)

“So far so good,” responds Greenwood in *Shakespeare’s Law and Latin* (31).<sup>19</sup> But Robertson goes further:

That is to say, the so-called “legal” meaning of “acquisition” of property by one’s personal action as distinct from “inheritance” is the original meaning, and is the likely sense of the word in the whole feudal period. (101)

Robertson presents ten pages of examples where other dramatists use *purchase* in the

simple sense of *to buy*. But Greenwood exposes Robertson's sloppiness:

Now, I was at first puzzled to know whence Mr. Robertson takes his definition of "the so-called 'legal' meaning" of the word "purchase," which he marks as a quotation. I find, however, in the Oxford Dictionary, under the word "purchase," the following: "(5) Law. The acquirement of property by one's personal action as distinct from inheritance." So that perhaps I should not be wrong in assuming that Mr. Robertson has taken his definition from that source. Now, the Oxford Dictionary is generally a pretty safe guide; but in this instance it is not so, for the definition is obviously inadequate. In the first place, for "property" we ought to read "real property," or "land," seeing that the term "purchase," in the "legal" sense, has no application to "personal" property. And, secondly, one may take land by "purchase," in the "legal" sense, without any "personal action" of one's own, for "purchaser," in the "legal" sense, includes those who have received land as a gift, or upon whom it has been settled before they were born, and even heirs-at-law, who would otherwise have inherited, if they take by a devise not in accordance with the course of descents. If Mr. Robertson had looked further down in the Oxford Dictionary, under the word "purchase," supposing he consulted it on this point, he would have found the following quoted from *Wharton's Law Lexicon*: "An acquisition of land in any lawful manner, other than by descent or the mere act of law, and includes escheat, occupancy, prescription, forfeiture, and alienation"; and under "purchaser" he would have found this quotation from *Blackstone's Commentaries*: "The first purchaser . . . is he who first acquired the estate to his family, whether the same was transferred to him by sale, or by gift, or by any other method, except only that of descent . . . . If I give land freely to another, he is in the eye of the law a purchaser." Or, turning to *Williams on Real Property* (21 ed. 227), he might have read: "The word purchase has in law a meaning more extended than its ordinary sense: it is possession to which a man cometh not by title of descent: a devisee under a will is accordingly a purchaser in law." (31-32)

Greenwood suggests here that Robertson's literary mind may be in play, but that is no substitute for a legal mind. Robertson's simple reliance on, and mistaken use of, the OED betrays him. Like his "parallels" for *fine and recovery*, Robertson tries to parallel Shakespeare's use of the technical legal meaning of *purchase* with dozens of examples of other dramatists' use of the word's common meaning. Because he is either unable or unwilling to address Greenwood's point, he addresses, at great length, something that is beside the point. Such equivocation is *de rigueur* for Robertson.

## The Devil's Law Case

What's important to note in the previous two examples is that Robertson throws out dozens of examples of contemporary writers using the same terms (even when used in other than their technical legal sense) expecting to make a case that Shakespeare's knowledge of law is nothing unusual—that in fact, other dramatists who were not lawyers used more law terms more technically.

In *Did Shakespeare Write "Titus Andronicus"?* Robertson writes: "Mr. Devecmon points out that in Webster's *The Devil's Law Case* there are 'more legal expressions (some of them highly technical, and all correctly used) than there are to be found in any single one of Shakespeare's works'" (54). Neither critic provides support for that statement, but decades later, it is still advanced in virtually identical words by O. Hood Phillips: "Webster's *The Devil's Law Case* contains more legal expressions, some of them highly technical and all correctly used, than are to be found in any single one of Shakespeare's works" (187).

Greenwood responds to both in *The Shakespeare Problem Restated*:

Now if this statement were true, the answer would be that the subject of the play is a "Law Case," and that, therefore, the work was naturally full of legal expressions, and, further, that doubtless the brilliant author had well got up his subject for the purposes of the drama; whereas the proposition concerning Shakespeare is that his knowledge not only of legal terminology, but of legal principles and of the habits and customs of lawyers, had become so much a part of his life and character and mental equipment that it was always showing itself even when very little appropriate to the subject on hand.

But the fact is that the statement as to *The Devil's Law Case* is not only not true, but so preposterously contrary to the truth that one can hardly believe that Mr. Devecmon had read the drama in question. There is, incredible as it may sound, practically *no law at all* in Webster's play! There are, indeed, a few legal terms such as "livery and seisin," "a caveat," "tenements," "executors," thrown in here and there, and there is an absurd travesty of a trial where each and everybody—judge, counsel, witness, or spectator—seems to put in a word or two just as it pleases him; but to say that there are "more legal expressions in the play (and some of them highly technical and all correctly used) than are to be found in any single one of Shakespeare's works" is an astounding perversion of the fact, as any reader can see who chooses to peruse Webster's not very delicate drama. I cannot but think that Mr. Robertson had either not read the play, or had forgotten it when he quoted this amazing passage. (397-398)

Strong words. And they evoked a strong reaction from Robertson, who declares:



I am quite willing to stake the entire question upon this issue. Mr. Greenwood might, I think, have taken the trouble to collate the legal references in *The Devil's Law Case*, and compare them with Lord Campbell's citations from any one Shakespearean play: it would have been more to the purpose than any amount of simple asseveration, however emphatic. He would thus have learned that the "few" legal terms which he dismisses as of no account are exactly on a par with most of those cited by Campbell from Shakespeare (only more realistic), and with those cited by Grant White in a passage which he himself has quoted with approbation. Having read Webster's play thrice—which is more, I fear, than Mr. Greenwood had done by Campbell's book—I will make good his omission. The following "legal" phrases are cited as they come, Act by Act. (*Heresy* 157-158)

And Robertson does precisely that for two pages. The terms are those of property law, and thirty years later Clarkson and Warren compile a list of only fourteen distinct property law terms in Webster's play. (They cite three plays from Shakespeare that exceed that number, including *Hamlet*.) So in strict numbers, Greenwood is proved right. But the number is not really Greenwood's point, which Robertson has missed completely:

How Mr. Greenwood, in the face of all this matter, can say that Mr. Devecmon's assertion "is an astounding perversion of the fact," I cannot understand. . . . I am not concerned to go into the question of the accuracy of Webster's or Massinger's phraseology: that is neither here nor there. Even Campbell, in flat contradiction of his own claims, admitted inaccuracies in Shakespeare; and Mr. Greenwood, in turn, fatally pressed by Mr. Devecmon, makes further admissions, forgetting that they absolutely destroy his own case, which rested not upon mere citation of legal matter in Shakespeare, but upon the repeated claim that Shakespeare's law was impeccable, never open to demurrer or writ of error, and therefore possible only to one within the freemasonry of the profession. It may be left to either lawyers or laymen to judge for themselves whether there is not much more show of legal knowledge and recourse to legal phraseology in Webster than in Shakespeare. From twenty-three of Shakespeare's plays, Lord Campbell can cite on the average only two or three legal allusions apiece: Webster's one play yields over thirty. I do not for a moment pretend that they exhibit "deep" or "accurate" knowledge: I leave these follies to the other side, who profess to certify a dramatist's lawyership on grounds that would move a policeman to derision. The question is whether Webster's multitude of "legalisms" do not, by every principle on which Lord Campbell proceeded in his extracts and his comments, exhibit tenfold more preoccupation with legal matters than do Shakespeare's, and, by mere variety of allusion, far more "knowledge." (*Heresy* 161-162)

Greenwood's response presses home his original point that Robertson either fails to grasp or purposefully avoids, the fact that the question is best dealt with *qualitatively*:

Presuming that by "the entire question" he means the question whether or not Shakespeare's works (Plays and Poems) show, as a whole, and speaking generally, more knowledge of law than the works of other poets and dramatists, his contemporaries, for whom we are not justified in assuming any special legal training or opportunity for acquiring legal knowledge, I am quite content to accept this challenge. I repeat that *The Devil's Law Case* shows no knowledge of law whatever on the part of its author. On the contrary, one might be astonished that in a play the subject of which is a "law case" there should be such a dearth of anything that a lawyer can recognise as "law," were it not for the fact that the whole thing is, of course, in the nature of an extravaganza. A clever writer like Webster, if he had been seriously engaged in writing a legal drama, would no doubt have got up his law beforehand, and in that case we might, certainly, have been treated to many "legal expressions, some of them highly technical and all correctly used." As it is, considering the nature of the play in question, it is not surprising that such expressions are conspicuous by their absence.

Here I must advert to what seems to me a very naïve observation made by Mr. Robertson with reference to the works of dramatists contemporary with Shakespeare, viz. "Where Shakespeare merely uses legal phrases, as often as not metaphorically, the other dramatists introduce actual matters of litigation." My comment here is: "Exactly so." When "the other dramatists" introduce "actual matters of litigation," they, as a natural and inevitable consequence, introduce also legal terms and expressions, more or less correctly used. The contention with regard to Shakespeare is that he introduces such expressions (whether "metaphorically" or otherwise) where there is no necessity for them, and sometimes where they seem not a little out of place, or even "inartistic,"—pace Mr. Robertson. A man who puts on the stage "matters of actual litigation" must talk law as well as he can, and, doubtless, if a clever man, though no lawyer, he can get up his law well enough to avoid making many mistakes, or he may get a lawyer friend to help him. But the man who is himself a lawyer, or who has had some legal training, is frequently apt to bring in legal phrases and expression, maxims and metaphors, on occasions when they would not suggest themselves to an ordinary layman, or where he might think them actually *mal à propos*. . . .

And here let me commend to Mr. Robertson's consideration words which I have recently lighted upon in a little book entitled *Was Shakespeare a Lawyer?* by a barrister who contents himself with the initials "H.T." Shakespeare, writes this author (p. 4), shows that he was well acquainted with law, because "when he allows any of his

characters to speak law, they not being professional lawyers, he makes them talk nonsense. In this he evinces a professional pride—a sentiment which is common to men of all professions; hence non-professionals are allowed to lay down bad law and to misuse legal words. On the contrary, when his lawyers speak, their doctrine is always sound, and their technical terms are correct.”

This criticism well illustrates the point I have endeavoured to make clear. A lawyer writing in his own personal capacity will use correct legal terms. A lawyer dramatist will make legal characters use correct legal terms; but, if he is a skilful and artistic dramatist, he certainly will not make his lay characters speak in the technical language of the trained lawyer. (*Problem* 79-90)

Robertson is silent after this response from Greenwood.

What are we to make of this debate, keeping in mind that there are dozens of other issues on which these two men debated, in every case revealing Greenwood's clarity and Robertson's inability, or refusal, to grasp Greenwood's points? We would think that some notice would be taken of what is abundantly clear to anyone who has read the entire debate, that Greenwood beat Robertson ten rounds out of ten. In fact we find nothing of the sort.

#### The Selective-Amnesia Decades

Table Three: The Selective Amnesia Decades

|       |                    |   |
|-------|--------------------|---|
| *1929 | Sir Plunket Barton | <i>Links Between Shakespeare and the Law</i>          |
| *1942 | Clarkson & Warren  | <i>The Law of Property in Shakespeare</i>             |
| *1954 | Louis Marder       | “Law in Shakespeare,” <i>Renaissance Papers</i>       |
| *1958 | R.C. Churchill     | <i>Shakespeare and His Betters</i>                    |
| *1962 | H.N. Gibson        | <i>The Shakespeare Claimants</i>                      |
| *1967 | George Keeton      | <i>Shakespeare's Legal &amp; Political Background</i> |
| *1972 | O. Hood Phillips   | <i>Shakespeare and the Lawyers</i>                    |
| *1991 | S. Schoenbaum      | <i>Shakespeare's Lives</i>                            |
| *1993 | Ian Wilson         | <i>Shakespeare: The Evidence</i>                      |
| *1994 | Daniel Kornstein   | <i>Kill All the Lawyers?</i>                          |
| *1994 | Irvin Matus        | <i>Shakespeare, IN FACT</i>                           |

\*writer's skeptical of Shakespeare's knowledge of law.

In order to determine how later writers, critical of Shakespeare's having had legal training, deal with Greenwood, I surveyed their works for references to Greenwood and Robertson.

In 1929, thirteen years after the final salvo in the Greenwood-Robertson debate, Sir Plunket Barton wrote *Links Between Shakespeare and the Law*. He only mentions Greenwood once, and that as support for the claim that Shakespeare's use of legal terms were accurate (149-150). He only acknowledges reading *Shakespeare's Law*, in which Greenwood deals with critics other than Robertson. Barton cites Robertson for his "industry and research" in demonstrating that "Shakespeare's legal allusions were less numerous and far less technical than those of Ben Jonson and other dramatists of that time" (10). He gives no indication that Robertson's "industry and research" contained marvelous flaws and were extensively critiqued by Greenwood.

Another thirteen years pass before Clarkson and Warren publish their book. (One gets the feeling that the Greenwood-Robertson debates were so decisive that enough time had to pass to allow the public to forget). Greenwood's name does not appear in the index, but he is mentioned once in a footnote as support for their critique of Charles Allen's example of supposed bad law in Shakespeare. Their bibliography lists only one of Greenwood's books, *Shakespeare's Law*, while Robertson gets but three glancing mentions in footnotes.

In 1954, Louis Marder used Clarkson and Warren to support his conclusion that "Shakespeare, therefore, was no lawyer" in a short essay, "Law in Shakespeare," that appeared in the booklet, *Renaissance Papers* (41). In his brief history of the argument, Marder skips over any mention of either Greenwood or Robertson.

In 1958, R.N. Churchill wrote *Shakespeare and His Betters*, an attempt to quell the new life given to the Shakespeare authorship controversy by the book *This Star of England*, written by Dorothy Ogburn and Charlton Ogburn, Sr., a lawyer. Churchill's index gives twelve listings for Greenwood, eleven of which are incidental (for example, he twice mentions that Greenwood and Robertson were friends, and that he was president of the *Shakespeare Fellowship* and friends with Thomas Looney, and so on). But one reference stands out in its side-swiping effort: "Gilbert Standen's more recent *Shakespeare Authorship: A Summary of the Evidence* is written from the point of view of a Group Theorist who believes Oxford to be the leading figure. Neither this nor Slater's *Seven Shakespeares* nor the various works of Greenwood can truly claim to be unbiased towards the traditional authorship. It would be surprising if they were" (219-220). In other words, the only time Churchill finds Greenwood worth mentioning is indirectly in a sweeping, unsupported claim of bias. Robertson on the other hand gets several approving mentions (160, 163-4, 219), but the reader still gets no sense that theirs was a detailed debate.

However, in the 1962 book, *The Shakespeare Claimants*, H.N. Gibson mentions Greenwood five times, does acknowledge the debate, giving the upper hand to Robertson, and gives the kind of direct attention to *The Baconian Heresy* that other writers before and after have appeared to avoid. The reader gets a hint of how Gibson will handle Greenwood early on:

The classic work on this subject from the Stratfordian viewpoint is *The Baconian Heresy* by that very great Elizabethan scholar, J.M. Robertson. In the course of my investigations I have noticed a remarkable fact. *Not a single one of the theorists* <sup>20</sup> *whose works I have read—and I have read many—ever mentions this important book. . . .* I can conjecture only one explanation for this strange suppression. One of the main props on all the theories is a book entitled *The Shakespeare Problem Restated*, in which Sir George Greenwood, while himself supporting no particular alternative candidate and always vigorously denying that he was a Baconian, delivered a trenchant attack on the authorship of the Stratford actor. This work J.M. Robertson, with his wealth of Elizabethan scholarship, subjected to such a merciless criticism in *The Baconian Heresy* that it was left incapable of supporting anything, even the wreckage of itself. (11-12, original emphasis)

What is remarkable here is that Gibson lists in his bibliography *Is There a Shakespeare Problem?*, which devotes several hundred pages to refuting *The Baconian Heresy*. He does not mention *Shakespeare's Law and Latin*, which finalizes the refutation regarding Shakespeare's knowledge of law and the classics.

The next time he mentions Greenwood, he presents the reader with a promise to reveal Greenwood's arguments:

Unlike all the other theorists, however, he had no particular candidate to put in the actor's place, and he always indignantly repudiated the suggestion that he was a Baconian. The real author for him was an unknown lawyer. There is no need to say anything about his arguments here—except that they showed great forensic skill and an equally great lack of Elizabethan scholarship—for his work has provided the exponents of each theory in turn with most of their ammunition for bombarding the Stratfordian defences. His arguments therefore can be most conveniently dealt with where they occur in the various theories. (19)

The reader patiently waits for those arguments. Then, as the book begins delving into the argument over Shakespeare's legal knowledge, he has reason to expect some as Gibson brings in Robertson. Gibson admits that "As I can lay claim to no legal expertise myself, I rely very largely for my criticism of this part of the Baconian case on J.M. Robertson, who was not only a great Elizabethan scholar, but spent five years of his life in a lawyer's office" (49). He then spends six pages summarizing Robertson's legal arguments. And what of Greenwood? He is never mentioned—precisely in the one area that would demand his presence. In fact, the reader must wade through another 220 pages before Gibson comes back to Greenwood in the middle of a discussion of the First Folio where he states:

Of the arguments [the theorists] use only a few are original; many are borrowed from the writings of Sir George Greenwood, whose whole case, as we have already noted (see p. 49), was so roughly handled by J.M. Robertson in *The Baconian Heresy* that the name of this latter work is never mentioned by the theorists, and is carefully omitted from their bibliographies. (269)

Readers may be forgiven for not seeing Greenwood's real arguments clearly stated—they aren't. Gibson has pulled a sleight-of-hand, promising to show something to come, then later, stating that it was shown. The reader looks in vain. Or rather, the reader gets Robertson's arguments only. For Gibson, one side of the case is sufficient.

James G. McManaway, in his 1962 booklet *The Authorship of Shakespeare* (published by The Folger Shakespeare Library), seems to allude to Clarkson and Warren's *The Law of Property* without citation when he writes, "Research has shown that Shakespeare uses legal terms and situations less frequently than some of the other dramatists, and often less accurately" (34). He cites no examples, and he also makes no mention of Greenwood.

But Milward W. Martin does, in his 1965 book *Was Shakespeare Shakespeare? A Lawyer Reviews the Evidence*. Using words suspiciously like Gibson's, he makes great claims for *The Baconian Heresy*:

Mr. Robertson, a great scholar of Elizabethan literature and himself with five years' experience in a lawyer's office, devotes over one hundred pages to listing citation after citation from the Shakespearean plays (on which our anti-Stratfordian friends rely), following each with citation after citation from many other contemporary authors using identical or equally legalistic language. (89-90)

Later Milward informs us, "In that manner Mr. J.M. Robertson utterly slaughters *The Shakespeare Problem Restated* with his *The Baconian Heresy*" (114). We are expected to take on his authority that Robertson is a reliable authority. Milward also approvingly quotes Clarkson and Warren, but he never presents any notion that Greenwood successfully refuted Robertson claims.

Among other writers who address the question of Shakespeare's legal knowledge is legal scholar George W. Keeton, who addresses it in his 1967 book, *Shakespeare's Legal and Political Background*. The bibliography lists five of Greenwood's books (including the notoriously ignored *Shakespeare's Law and Latin*), but not *The Shakespeare Problem Restated*, oddly enough. Keeton seems not to have noticed Greenwood's refutations:

. . . the writings of J.M. Robertson (who received a legal education in a Scottish law office) and Sir Dunbar Plunket Barton (an Irish judge of high literary attainments) are acute, and go far towards demolishing the assertion that Shakespeare's law is impec-

cable, and Sir Arthur Underhill's verdict was in similar terms. Almost alone among modern English legal writers, Sir George Greenwood (who, like Robertson, was deeply interested in the Bacon-Shakespeare controversy, although with a different viewpoint) is inclined to accept the accuracy of Shakespeare's use of legal terminology. (20)

In a footnote Keeton cites Greenwood as support for his contention that critics who say Shakespeare erred in Shylock's having Antonio sign a single bond (136). Keeton continues:

It is also necessary to compare Shakespeare's work with that of contemporary writers. This has shown that Shakespeare's knowledge is not remarkable, whether in extent or accuracy, for the other Elizabethan dramatists showed a similar disposition to use legal terms. This point is made with clarity in Sir Dunbar Plunket Barton's *Links Between Shakespeare and the Law*, and more fully investigated in *The Law of Property in Shakespearean and Elizabethan Drama* by P.S. Clarkson and C.T. Warren. These inquiries show that the frequent references to fines and recoveries in Shakespeare have their counterparts in plays by other Elizabethan authors, and they seem to have been present to the minds of Elizabethan writers almost as much as they were to Elizabethan lawyers. (15)

But an examination of relevant section of *The Law of Property* (128-133) reveals that precisely one other dramatist used the term *fine and recovery*—Middleton, who did study law at Gray's Inn. One has to wonder how so many lawyers writing on this question can get so many facts wrong. In any event, there is plenty of evidence that a critical reader must treat all authoritative statements with skepticism, especially those that do not provide examples.

In 1972, the next skeptic, O. Hood Phillips, in the bibliography of his *Shakespeare and the Lawyers*, lists four books by Greenwood, but not *Shakespeare's Law and Latin*.<sup>21</sup> While mentioning Robertson several times with implicit approval, Phillips mentions Greenwood six times, twice as support for arguments concerning the single bond in *The Merchant of Venice* (104) and Charles Allen's specious claims in *Notes on the Bacon-Shakespeare Question* (135n). Apart from inconsequential mentions regarding Shakespeare's will (18-20) and *Julius Caesar* (137), two mentions are noteworthy. Phillips writes, "With regard to Mariana's right to dower on Angelo's death for treason (*Measure for Measure* V:1), Shakespeare gets the subtle point of law right, apparently by accident." (134) Phillips does not say why the correct usage must be qualified as "apparently by accident," but he does supply a note that points out that "Greenwood suggests on the contrary that the passage may indicate the dramatist's knowledge of law: *Is There a Shakespeare Problem?* pp. 98-101" (134n). Phillips can't help but follow the tradition of side-swiping Greenwood without support:

Greenwood's early studies of Shakespeare's law led him to disbelieve that the man of

Stratford wrote the works, but later his fixed anti-Stratfordianism coloured his studies of Shakespeare's law. Although a competent lawyer, he sometimes misquoted Shakespeare. (166)

If misquoting Shakespeare had a bearing on Greenwood's legal arguments, Phillips doesn't supply any examples.

Finally, Daniel J. Kornstein, in his highly praised 1994 book, *Kill All the Lawyers?*, quotes approvingly both Mr. Phillips (232-3) and Messrs. Clarkson and Warren (237-8).<sup>22</sup> Kornstein does take Twain to task (properly so) for claiming that only a practicing or trained lawyer can use legal terms accurately, since Twain himself proves the opposite by using legal terms accurately in *Pudd'nhead Wilson* (230-232). Kornstein asserts that "Elizabethan dramatists often used legal allusions in their plays, and some used them more frequently and more accurately than Shakespeare" (232). But he fails to give any evidence, simply pointing the reader to other sources. Furthermore, he fails to mention Greenwood anywhere, while Robertson's *The Baconian Heresy* does appear in the bibliography.

What is to be made of this pattern of ignoring Greenwood and the debate, or citing him primarily as support for other arguments? Clearly, there must be a problem with putting too much attention on Greenwood. As a writer, Greenwood exhibits a level of clarity and persuasiveness that simply overwhelms the kind of opposition put up by Robertson. Furthermore, Greenwood raises the difficult specter of qualitative arguments. The skeptics focus on quantitative arguments. When the issue of Shakespeare's knowledge of law is far from the skeptic's mind one or two might occasionally make an admission that reveals how deeply they actually regard Shakespeare's knowledge. Again, this knowledge appears qualitatively, in ways that the skeptics apparently believe is inconsequential to the argument.

### The Law of Property

Many skeptics avoid the Greenwood-Robertson debates and hold up Clarkson and Warren's *The Law of Property in Shakespeare and Elizabethan Drama* as the research that proves Shakespeare's knowledge of law is not unusual when compared to other dramatists. Clarkson and Warren studied seventeen dramatists other than Shakespeare. Four were members of the Middle Temple, the Inner Temple, or Gray's Inn, and therefore would be eliminated from the comparison:<sup>23</sup>

- Francis Beaumont (son of a judge, and a member of the Inner Temple)
- John Ford (attended Middle Temple, friends at Gray's Inn)
- John Marston (member of the Middle Temple)
- Thomas Middleton (member of Gray's Inn)



John Fletcher would be eliminated because of his connection to Beaumont. Therefore, twelve dramatists remain:

George Chapman (no known connection to law, although he wrote "Memorable Maske of the two Honorable Houses or Inns of Court, the Middle Temple and Lyncoln's Inne," 1614, for the Princess Elizabeth's nuptials)  
 Thomas Dekker  
 Robert Greene  
 Thomas Heywood  
 Ben Jonson  
 Thomas Kyd (a 'noverint' . . . a notary . . . but never a member of an Inn)  
 John Lyly  
 Christopher Marlowe  
 Philip Massinger  
 George Peele  
 Cyril Tourneur (no known connection to law . . . some question his existence)  
 John Webster

Narrowing the scope to Property Law, Clarkson and Warren cite examples from all these. However, several dramatists are deficient in the number and technicality of the examples. Those with fewer than fifty examples in a special index include:

|                     |                         |
|---------------------|-------------------------|
| John Ford           | 16 examples, 2 repeated |
| Robert Greene       | 20 examples, 4 repeated |
| Thomas Kyd          | 2 examples              |
| John Lyly           | 11 examples             |
| Christopher Marlowe | 14 examples, 2 repeated |
| John Marston        | 33 examples, 6 repeated |
| George Peele        | 4 examples              |
| Cyril Tourneur      | 10 examples, 2 repeated |
| John Webster        | 43 examples, 8 repeated |

Clarkson and Warren list six pages of examples from Shakespeare covering quite a range (almost 280 examples, about 130 repeated). Of the remaining four non-lawyers:

|                |                                 |
|----------------|---------------------------------|
| George Chapman | 50 examples, about 12 repeated  |
| Thomas Dekker  | 60 examples, about 14 repeated  |
| Thomas Heywood | 80 examples, about 18 repeated  |
| Ben Jonson     | 124 examples, about 35 repeated |

Quantitatively, Shakespeare overwhelms all dramatists, even Ben Jonson. Clarkson and Warren do not arrange their study to support any of their propositions regarding Shakespeare's knowledge of law and possible legal training. They expect the reader to believe their authoritative propositions. How they expect to use a quantitative methodology to refute the proposition that Shakespeare had legal training is unclear. Just because one person uses more legal terms than another in no way establishes anything.

The fact that they limit their study to Property Law is telling. Since real property was closely connected to an Englishman's sense of self, social standing, and power, it behooved him to know about the legal aspects of acquiring, inheriting, possessing, distributing, defending, willing, and selling property. It's safe to say most English property-owners made some study of real property and its legal terms, even when they had no legal training.

Clarkson and Warren unknowingly imply that there is evidence that Shakespeare had a far-reaching knowledge of law that transcended his contemporaries:

Long ago we realized that the subject of the law in the drama was so broad that it had best be treated in installments. References will be noted throughout this book to later treatises on the law pertaining to Equity, Marriage and Divorce, Criminal Law, etc. For these our materials have already been collected, and we hope to continue this work with a series of volumes on those subjects. (xxvi)

The authors never followed up with any later volumes, but their willingness to propose such volumes may speak volumes about the extent of Shakespeare's law. Like most skeptics, Clarkson and Warren avoid a qualitative approach to resolving the debate.

Let us now turn to some qualitative evidence for Shakespeare's legal learning.

### Shakespeare's Legal Mind

Table Four: Shakespeare's Legal Mind

|       |                    |   |
|-------|--------------------|---|
| *1942 | Clarkson & Warren  | <i>The Law of Property in Shakespeare</i>   |
| 1965  | Mark Andrews       | <i>Law v. Equity in "The Merchant of Venice"</i>  |
| *1967 | George Keeton      | <i>Shakespeare's Legal &amp; Political Background</i>   |
| *1972 | O. Hood Phillips   | <i>Shakespeare and the Lawyers</i>  |
| 1973  | W. Nicholas Knight | <i>Shakespeare's Hidden Life</i>  |
| 1982  | Jack Benoit Gohn   | "Richard II: Shakespeare's Legal Brief on the Royal Prerogative and the Succession to the Throne," <i>The Georgetown Law Review</i> |

- \*1994 Daniel Kornstein *Kill All the Lawyers?*  
 1995 Eric Sams "The Law-Clerk," *The Real Shakespeare*  
 2000 Sokal and Sokal *Shakespeare's Legal Language: A Dictionary*  
 \*writers skeptical of Shakespeare's knowledge of law

Skeptics of Shakespeare's legal knowledge tend to rely strongly on quantitative data: counting the number of legal terms used and comparing the number of technical legal terms used among dramatists. In those rare cases where they address qualitative arguments, their response is perfunctory. For example, they will point to Shakespeare's trial scenes and then supply examples of other dramatists who were not lawyers yet were able to construct a legally accurate trial. They stick to a flat landscape of literalness.

The case for Shakespeare's having had some kind of extensive legal training, formal or informal, must rest on three kinds of qualitative arguments:

1) His extensive use of legal terms is completely accurate.

2) He uses legal terms, not only in their applicable technical use, but also in instances that have no bearing on the drama. In other words, he uses legal terms as metaphors, demonstrating the kind of deeper grasp of their use that generally arises from deep and long-term study, and that tends to develop a mature legal mind.

3) He demonstrates in his dramas a historical and philosophical grasp of law that transcends the mere rewriting of Holinshed's *Chronicles*. He exhibits the kind of deep and searching understanding of law and legal questions that is the domain of one who has had legal training, who has read legal works extensively and thoughtfully, and who has engaged in extensive legal conversations with like-minded students of law. In short, he exhibits a mature philosophical legal mind.

#### A Mature Metaphorical and Philosophical Legal Mind

Supporters tend to cite Hamlet's famous speech in the grave-digging scene as an example that only a trained lawyer could have written the speech:

Ham. There's another: Why may not that be the skull of a lawyer? Where be his quiddities now, his quillets, his cases, his tenures, and his tricks? Why does he suffer this rude knave, now, to knock him about the sconce with a dirty shovel, and will not tell him of his action of battery? Humph! This fellow might be in's time a great buyer of land, with his statutes, his recognizances, his fines, his double vouchers, his recoveries: is this the fine of his fines, 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 hardly lie in this box; and must the inheritor himself have no more? Ha? (V:1:96-110)

Grant White points out that “the hunting of a metaphor or conceit into the ground is a fault characteristic of Elizabethan literature.” He supplies a parallel in George Wilkins’s *The Miseries of Enforced Marriage*, claiming that this kind of piling on of figurative of law phrases supplies little support and that Hamlet’s speech is not much use as evidence:

Doctor. Now, Sir, from this your oath and bond,  
Faith’s pledge and seal of conscience, You have run,  
Broken all contracts, and the forfeiture  
Justice hath now in suit against your soul:  
Angels are made the jurors, who are witnesses  
Unto the oath you took; and God himself,  
Maker of marriage, He that hath seal’d the deed,  
As a firm lease unto you during life,  
Sits now as Judge of your transgression:  
The world informs against you with this voice,  
If such sins reign, what mortals can rejoice?

Scarborow. What then ensues to me?

Doctor. A heavy doom, whose execution’s  
Now served upon your conscience. (White 99)

As much as I hate to disagree with Grant White, I believe these two passages are not parallel. Wilkes uses legal terms that are much more likely to be generally known: oath, bond, seal, contracts, forfeiture, suit, jurors, witnesses, seal’d, deed, lease, Judge, sits, informs, doom, execution, served. The metaphors tend to be so simple and obvious, even to a modern layman, that they would hardly need annotating. Now compare those terms to Shakespeare’s: quiddities, quillies, tenures, action, battery, statutes, recognizances, fines, vouchers, double vouchers, recoveries, purchases, double ones, indentures, conveyances. Both use seventeen law terms, but an ordinary reader of *Hamlet*, one who has not had a legal education, will be driven to the footnotes to grasp the humor. Let’s look at the Arden editor’s glosses:

[quiddities . . . quillies] quibbling arguments. The second word appears to be a mere variant of the first, which referred originally to the sophistical arguments of the schools concerning the *quidditas* or essential nature of a thing and afterwards to fine legal distinctions;<sup>24</sup> [tenures] terms on which property is held; [his action of battery] i.e. his liability to an action for assault; [his statutes, his recognizances] often coupled

together, the recognizance being a bond acknowledging a debt or obligation, the statute (statute merchant or state staple, according to the manner of record) securing the debt upon the debtor's land. [fines . . . recoveries] a fine (an action leading to an agreement calling itself *finalis concordia*) and a recovery (a suit for obtaining possessions) were procedures for effecting the transfer of estates when an entail or other obstacle prevented simple sale. A voucher in a recovery suit was the process of summoning a third party to warrant the holder's title, and the customary double voucher involved a second warrantor; [the fine] the final result. This begins a series of four different meanings for the same word (handsome pate, powdered dirt);<sup>25</sup> [the recovery] the whole gain; [pair of indentures] a deed duplicated on a single sheet which was then divided by a zigzag (indented) cut so that the fitting together of the two parts would prove their genuineness. All the land the purchaser finally has (his grave) is no bigger than the indentures which convey it. [inheritor] acquirer. (382, 383)

Now the reader may be excused for thinking that even these notes need to be glossed. What immediately becomes clear is that we are dealing here with a deep and penetrating mind, one that is not only well-versed in the terminology, but one capable of exploiting the nuances of the meanings to superb and razor-sharp effect. Take for example the passage on fines: "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 the Arden editors themselves have missed 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" (10).

Such wordplay on legal terms would not be the sort of thing you would hear in a tavern in Stratford upon Avon, but it is the sort of thing that law students attending one of the Inns of Court would delight in. Passages such as these point to a legal mind that has associated with other legal minds, that knows how to speak to them, how to amuse them.

In *Antony and Cleopatra*, Lepidus speaks of Antony's faults, using the legal term *purchase* as a metaphor (used properly to mean real estate acquired in a manner other than descent—that is, other than by hereditary):

His faults, in him, seem as the spots of heaven,  
More fiery by night's blackness; hereditary  
Rather than *purchas'd*. (Act I, Sc. IV, 12-14)

Robertson cites over 120 examples of other dramatists who used the term *purchase*, and not one of them is an example of a metaphorical use of *purchase* in its technical legal meaning. Furthermore, since Robertson was apparently trying to be thorough, it is astonishing that, even so, he did not stumble on a single example of its technical legal meaning.

Clarkson and Warren find only one other dramatist, Fletcher, who uses the technical term as a metaphor, but Fletcher always collaborated. He framed the larger issues of his dramas and collaborated with others to supply the details. His collaborators (as cited by Clarkson and Warren) all had legal training: Francis Beaumont, of the Inner Temple; John Ford, of the Middle Temple; and James Shirley, of Gray's Inn. Clarkson and Warren leave the impression that since a single other playwright (who collaborated with lawyers) used the word in the way Shakespeare did, there is nothing unusual about Shakespeare's knowledge of law.<sup>26</sup>

George W. Keeton also points out Shakespeare's use of *purchase* in *Henry IV Part II*, saying, "Again, the reader is impressed by Shakespeare's accurate use of the term 'purchase'" (30). Although Keeton takes the orthodox position that Shakespeare's use of legal terms is nothing unusual, he cannot help but reveal his discomfort with it:

There are, however, many allusions in the plays which cannot be so readily explained. The interesting problems presented by *The Merchant of Venice*, and by Shakespeare's knowledge of the famous case of Hales v. Petit, will be discussed later. These are major matters. *No close reader of the plays can fail to be impressed by the number of extraordinarily apt, and usually incidental, references to incidents (sometimes quite minor) of legal procedure of which the dramatist so effortlessly avails himself.* (29, emphasis added)

Writing in 1967, Keeton demonstrates that he is familiar with the early history of the argument, citing Campbell, Rushton, Grant White, Devecmon, Robertson, Greenwood, Plunket Barton, and Clarkson and Warren. And although he comes down on the side of Robertson, and Clarkson and Warren, he can still say this:

Those [legal allusions] collected by Campbell are by no means exhaustive, but they are nevertheless extremely impressive. Some of them were near the surface of Shakespeare's inventive brain. There are numerous references to bonds, often with a clear appreciation of their legal consequences. References to leases are frequent, both in the Plays and in the Sonnets. Indeed, it is a striking fact that the Sonnets . . . are possibly the richest in such references, and *the lawyer can only admire the richness of the imagery which these allusions create.* (29, emphasis added)

Notice that Keeton is not saying that Shakespeare merely used technical legal terms. He is saying that he used them in such a way that demonstrate their being "near the surface" of his brain, and that the richness of the imagery is worthy of admiration by other lawyers.

This is the kind of language that Lord Campbell and Lord Penzance used decades earlier. Are we then to expect that the creator of such richness of legal imagery, who demonstrates such "clear appreciation," such invention near the "surface of his brain," whose allusions are "extremely impressive," especially to lawyers, was not himself legally trained?

But there's more. Keeton points to lines in "Sonnet 13":

So should that beauty which you hold in lease  
Find no determination . . .

In legal parlance, a lease is always determined, when it is brought to an end. Admittedly, Shakespeare as a property-owner knew something of leases, *but would he automatically, and so felicitously, have spoken of a lease's "determination" had he been completely innocent of legal education?* For anyone less than Shakespeare, "determination" would be an awkward word to use in a sonnet. (29-30, emphasis added)

Keeton wants to believe that Shakespeare had a legal education, but he is constrained by the conventional biography that fairly clearly admits no legal education for Shakespeare of Stratford. So what does Keeton do? By means of the phrase "For anyone less than Shakespeare" he finds an escape via the Satan Maneuver. Shakespeare's genius allows him to do without training what others could do only with training.

Among many more examples, Keeton finds a particularly noteworthy one, previously mentioned, in *The Merry Wives of Windsor*:

Scattered though the plays there are frequent references to the fee simple, and a number also to fines and recoveries, both of which were common modes of establishing title to freehold land in Shakespeare's day; but in *The Merry Wives of Windsor* (Act II Scene 2) we have a striking simile from Ford. When asked the quality of his love, he replies:

Like a fair house built on another man's ground; so that I  
have lost my edifice by mistaking the place where I erected it.

What a sudden flash of legal knowledge, to appear in such a context!<sup>27</sup> (31)

Again, what impresses Keeton in this passage is how *irrelevant* the legal allusion seems to the context. Keeton implies that 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. Daniel Kornstein also finds the Shakespeare plays full of law, with over twenty of them containing trial scenes:

Several other plays have many comments on the problems of law, lawyers, revenge,

equity, government, the nature of the state, the nature and transfer of power, inheritance, and contracts.

Taken together, the plays reflect much knowledge of legal intricacies. Legal themes of one kind or another run throughout. And woven all though, liked barbed wire sewn into a tapestry, are deftly cutting observations about law and lawyers, each glinting shard designed to draw just a little blood from the legal profession. Even where there are no legal terms and allusions, the plays have a style of philosophical debate and discourse aimed at lawyers. Law is essential to our understanding and interpretation of Shakespeare's works: great art is often inspired by a passion for justice. (xii)

He goes on to paraphrase William Carlos Williams: "Shakespeare is the greatest law school of them all" (xiii). Kornstein then exhibits the split consciousness of one who acknowledges Shakespeare's extraordinary and deeply rooted legal knowledge, but excuses it as something that could easily be acquired "by common reading, conversation, and life experience in legal London" (xiii). But he never seriously examines the questions he raises by implication: Is there evidence in Shakespeare the writer of uncommon legal reading? Did Shakespeare the man have the kind of legally trained associates who would spend extraordinary amounts of time educating him and discussing technical matters of law and legal philosophy with lawyer friends? Could Shakespeare's experience possibly cover the law in the plays?

#### Hales v. Petit

Lord Campbell, Keeton, and many other writers have mentioned that the graveyard scene in *Hamlet* reveals that Shakespeare had read Plowden's report on the case of *Hales v. Petit*. The case involved the action by Hales's widow on a lease that was granted by the Crown to Petit. Sir James Hales, a Judge of the Common Pleas, was imprisoned for participating in a conspiracy to make Lady Jane Grey queen. He was released after being induced to renounce his Protestant principles. Apparently the episode deeply affected him, for he first attempted to commit suicide by opening his veins with a knife, and later succeeded by drowning himself in a river. The inquest ruled *felo de se* (a murderer of himself), he was buried at a crossroads, and all his lands were forfeited to the crown. The property in question had been granted jointly to him and his wife by the Archbishop. The widow tried to argue that, since forfeiture can only occur for an event during Hales's lifetime, the property was not forfeit. Suicide was an act of a person killing himself, and therefore it was not an act that could occur during his lifetime. The widow lost.

So when the clowns argue over Ophelia's burial, they are parodying the arguments of *Hales v. Petit*:



- Grave. Is she to be buried in Christian burial that wilfully seeks her own salvation?
- Other. I tell you she is, therefore make her grave straight. The crowner hath sat on her, and finds it Christian burial.
- Grave. How can that be, unless she drowned herself in her own defence?
- Other. Why, 'tis found so.
- Grave. 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 drowned herself wittingly.
- Other. Nay, but hear you, Goodman delver—
- Grave. 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.
- Other. But is this law?
- Grave. Ay' marry is't, crowner's quest law. (V:1:1-22)

The gravediggers freely use the relevant legal terms, though they mangle them in the process (“argal” for *ergo*, “crowner’s quest” for *coroner’s inquest*); but there are two problems with assuming that this passage would be understood by a general audience. First, the case was decided in 1561. Therefore, while such a case would stay with students of law for many decades to come, it is unlikely that it would still be fresh in the public mind forty years later when *Hamlet* was published. Second, *Plowden’s Reports* are not written in English. They are written in Norman French, or *law French*, a technical language restricted to lawyers, judges, and law students, and they were not translated into English. Even those few members of the public audience who could read French would have had a hard time with *Plowden’s Reports*. This passage, therefore, constitutes evidence that Shakespeare read law French, as would lawyers or students of law and only lawyers and students of law, and that he associated with other students of law. Keeton, for one, recognizes Shakespeare’s acuity in this passage:

That Shakespeare was familiar with the reasoning in this highly interesting decision is scarcely open to question, but it should be noticed that the gravedigger correctly takes a further point. In Hales’ case, it was not disputed that he threw himself into the water. He was therefore rightly found guilty of suicide; but the core of the first gravedigger’s argument is that, in Ophelia’s case, the water came to her, that is, that

she accidentally drowned or, at the very least, she could not be proved to have deliberately drowned herself. (188)

Keeton fails to mention that the case was not available in English.<sup>28</sup>

Almost 100 years earlier, another lawyer, R.A. Guernsey in *Ecclesiastical Law in Hamlet: The Burial of Ophelia*, saw the entire scene as strong evidence that Shakespeare had mastered the ecclesiastical law regarding suicide. Acknowledging that the gravedigger's dialogue is always discussed by writers, Guernsey points out that none note all the law present in the scene, law that goes beyond the case of *Hales v. Petit*.

No law writer has yet stated the English law relating to suicides so completely as is done in *Hamlet*. I have mentioned this fact in my recently published "History of the Penal Laws against Suicides," but as all the parallels and allusions contained in the play were not there pointed out, I will now attempt to fully give them. Shakespeare has accurately stated the laws of the Church and of the Statutes in England, at the time he wrote, and not the laws of Denmark, in Hamlet's time. (6)

Keeton also shows evidence of Shakespeare's command of international law:<sup>29</sup>

In mediaeval warfare [heralds] had an exceedingly important function, and must necessarily be of gentle birth. They are obsolete in modern International Law, and were becoming so in Shakespeare's time. Nevertheless, where Shakespeare makes use of them he does so with strict accuracy. (87)

And in *King John*, Keeton discusses how Shakespeare shows that he understands the law of bastardy in ways that go beyond the source play, *The troublesome Reigne of John, King of England*.<sup>30</sup> For the trial scene, Keeton takes issue with a note by Furness in his edition of the play where he claims that "Shakespeare was 'out on his law.' On the contrary, John's judgment is strikingly accurate" (127-8). But Keeton does not stop there:

From first to last, this lengthy trial scene abounds with legal absurdities, and possibly no other of Shakespeare's plays illustrates so clearly the nature of his art as applied to legal topics. If it would be putting it too high to say that Shakespeare had fully mastered the law of bastardy, as it existed in his day, it is nevertheless true that *he showed the same close and (in general) accurate observation on legal topics as on many others, and that this accurate observation is one of the distinguishing features of Shakespeare's dramatic art.* (130-131, emphasis added)

The mind boggles that someone capable of such insights would align with the skeptics. On page after page, Keeton gives evidence for Shakespeare's legal education and deep study, and time after time he uses the Satan Maneuver to get out of what is otherwise clear:

Shakespeare was more than just an observer of law; he was *trained*.

Where *Hales v. Petit* and *King John* demonstrate, not only a knowledge of technical law but also the philosophy of law, another lawyer has found greater evidence of Shakespeare's command of the history and philosophy of law pertaining to the succession to the throne. Lawyer Jack Benoit Gohn wrote a 1982 article for *The Georgetown Law Journal* on *Richard II* and the way that the play could be presented as a legal brief. Gohn points out how Shakespeare grasped the importance of law, especially as it has affected human history. By examining the legal arguments in *Richard II*, he demonstrates that "Shakespeare used the historical overthrow of King Richard II to justify the absolute power of the monarch and also provide for a method of choosing the monarch's successor when the rules of succession failed" (943). Furthermore, Gohn contends that Shakespeare used the play as an example of how to resolve the problem of succession regarding Queen Elizabeth, by depicting a nation in a midst of constitutional crisis, and the consequent breakdown of the legal order. Gohn's judgment of the author is strong: "Shakespeare had both the legal and the historical sophistication to grapple with these problems" (955).<sup>31</sup>

Shakespeare's mind is comprehensive indeed, and many writers have commented on it, to the point that the reader wonders how such an individual could have acquired such a range and depth of topics. But there is another interesting aspect to Shakespeare's mind. One writer recently wrote:

The filaments of his thought are astonishing in their variety . . . one can find pragmatism, atheism, (nineteenth-century) liberalism, materialism, aestheticism, utilitarianism, militarism, biological, social, and historical Darwinism, skepticism, nihilism, Nietzschean vitalism and "will to power," Calvinism, logical positivism, stoicism, behaviorism, and existentialism, together with the explicit rejection of most of these "isms" . . . (Posner xix-xx)

Sound familiar? Such a description has often been noted about Shakespeare's mind. But this passage was not written about Shakespeare. The author, a Federal Circuit Court judge, wrote that passage about Supreme Court Justice Oliver Wendell Holmes. His description of Holmes opens the door to an intriguing possibility—that the Shakespearean mind was not so much that of a lawyer as it was that of a judge.

Shakespeare's mind displays a remarkable objectivity, the kind of objectivity and equipoise that offers his readers a wide variety of philosophies and positions. As stated by Russ McDonald in *Shakespeare and the Arts of Language*: ". . . the dramatist encourages in his audience a receptiveness to multiple points of view, a refusal of absolutes, an awareness of the competing claims of incompatible interpretations" (49). The consciousness of a lawyer is that of an advocate, one who takes sides, one who argues for or against something. The con-

sciousness of an experienced judge is quite different. The judge examines all sides, tries to understand and argue for and against all sides. A judge who responds to the complexity of human action and experience often distrusts the easy fix, the quick solution, the thoughtless procedure, or rule, or custom. Judges experience over time how both sides of a case can be valid, how a case can uncover deeper related issues. The profession of a judge can mold a thoughtful mind into one of profound objectivity, depth, and range—exactly what we find in Shakespeare.

Chief Justice John C. Wu in *Fountain of Justice*, in an essay discussing “Natural Law in Shakespeare,” presents a series of examples punctuated by summary statements that support the notion that Shakespeare has the mind of a judge:

Shakespeare... know[s] his common law and natural law pretty well. He knows the psychological reason for case law. . . . He knows the importance of tempering the rigours of the law with equity. . . . He knows the importance of observing degree, proportion, form and order, which to him are objective standards of right and wrong because they have an ontological basis. . . . No one has painted more vividly “the majesty and power of law and justice.” (86-87)

## Conclusions

Shakespeare used legal terminology with perfect accuracy. William C. Devecmon stated that “Though the frequent use of legal terms, with their proper technical meanings, has a cumulative effect, and tends strongly to prove a legal training; yet a very few errors in such use, if glaring and gross, would absolutely nullify that effect and proof” (33). From this skeptic’s statement we can infer that a writer who frequently uses legal terms, with their proper technical meanings, is likely one who has had legal training. But there is more.

What distinguishes the formally learned from the unlearned (or those who acquire information from second-hand sources) is how information transforms into a deeper understanding. Anyone who has studied long and deeply any field of study knows the experience of deeper mastery—how mastery of a subject begins to work on the consciousness in such a way that it transforms and informs one’s view of the world. The master of mathematics sees a different world than the savvy student who knows the mere definitions, and who can memorize and correctly use advanced equations. A master mathematician does not need much time to determine whether or not a pretender to mathematical mastery actually *is* a master. Furthermore, a master mathematician who reads an author whose series of literary works use mathematical terms, not only with perfect accuracy, but also metaphorically in contexts outside of mathematics—such a master mathematician will come to presume that the author is

also a master. Like minds respond to and recognize each other.

Mastery makes the terminology a part of one's world view. A master of legal studies, the history of law, and the philosophical implications of differing systems of justice, goes far beyond mere technical usage. Such a master begins to see the hidden similarities between the objects of the world and the distinctions that form the foundation of the master's discipline. Thus legal terms enter the realm of metaphor.

What distinguishes Shakespeare's use of legal terms has nothing to do with the quantity of terms he uses or his merely technical usage in legal matters: Shakespeare had a wide-ranging legal understanding integrated into his consciousness, the kind of consciousness that would draw on legal terms in non-legal contexts, where the apt legal metaphor of excellent understanding and quality is applied. It is this mastery and integration that judges and lawyers have responded to over the last two centuries. Malone, Rushton, Campbell, White, Greenwood, and others have all recognized a like-minded individual, a man of the craft, possessing an understanding equal to theirs, perhaps even greater than theirs.

Stratfordians bent on quantitative analysis have acknowledged Shakespeare's metaphorical usage without realizing its implications. Irvin Matus in his *Shakespeare, IN FACT* unwittingly lets it slip through in praising Clarkson and Warren:

Clarkson and Warren's verdict is that Shakespeare's references "must be explained on some grounds other than that he was a lawyer, or an apprentice, or a student of the law." What separates him from the others is his knack for making legal terms serve his drama, in the opinion of Justice Dunbar Plunket Barton. "Where Shakespeare's legal allusions surpassed those of his contemporaries," he said, ". . . was in their quality and their aptness rather than in their quantity or technicality." (272)

Our point exactly.<sup>32</sup>

Finally, in 2000, as part of its *Athlone Shakespeare Dictionary Series*, The Athlone Press published *Shakespeare's Legal Language: A Dictionary* by Sokal and Sokal.<sup>33</sup> The comprehensive dictionary fills over 400 pages of detailed discussion of Shakespeare's legal terms and concepts. An index of passages containing these terms and concepts fills forty pages with approximately 1600 references using over 200 distinct terms and concepts (dramatically displaying the inadequacy of Clarkson and Warren's efforts).

The authors acknowledge in the introduction that, even though the bare statistics supports a case that Shakespeare was law-obsessed, other dramatists were law-obsessed as well; and that legal language "was common currency in Shakespeare's litigious age. . . ." (1). They warn against "legal word-spotting" as a reliable indicator that "Shakespeare took a precise or detailed account of substantive English law" (3). Nevertheless:

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. (3)

Although, as of 2001, it is still academically dangerous to say so, the authors of this important new work clearly imply that this "conveying" of such "matters," this "precise" and "serious" interest in law as it relates to "social, moral, and intellectual substance," indicates nothing short of legal mastery. Perhaps the tide is turning. \_\_\_\_\_ ©

## Notes

- 1 Portions of many pre-1925 texts mentioned in this essay are available free on the Web at *The Shakespeare Law Library*, which can be accessed through *SourceText.Com*
- 2 Whatever shortcomings I find with O. Hood Phillips, his book *Shakespeare & the Lawyers* is an indispensable aid to anyone researching this argument. With remarkable exceptions (noted later), Phillips provides a comprehensive review of the literature.
- 3 Kathman is plainly wrong in claiming that Messrs. Clarkson and Warren's 1942 book is "an exhaustive study of legalisms." The book's title confines the scope to "The Law of Property," and the authors admit the need to narrow the scope: "Long ago we realized that the subject of the law in the drama was so broad that it had best be treated in installments. References will be noted throughout this book to later treatises on the law pertaining to Equity, Marriage and Divorce, Criminal Law, etc." (xxvi). The authors have yet to deliver the promised installments (which must necessarily include International, Maritime, and Commercial Law, as well as the law administered by the Privy Council and the Star Chamber). Mr. Phillips points much of this out in *Shakespeare & the Lawyers*. A quick scan of Holdsworth's *History of English Law*, Vol. V reveals that the percentage of English Law covered by Clarkson and Warren can be no more than a single digit.
- 4 Available on the Web. Search <http://groups.google.com>. The post is dated 08/24/1999, the Subject line: "Re: Shakespeare's Misuse of Legal Terms" and the Author: "David Kathman."
- 5 For an extended discussion of non-lawyers who accurately portray the law in fiction, see Kornstein's *Kill All the Lawyers?* (236).
- 6 Because trial scenes are easily created by non-lawyers, those scenes in *The Merchant of Venice* and *Measure for Measure* are not discussed in this essay. Andrew's *The Law of Equity in The Merchant of Venice* is often cited as a good argument for Shakespeare's mastery of the law of equity, but whatever the merits of that case, Andrews' argument is weak, in my opinion. I may address the issues surrounding these two plays when this essay is expanded into a book.
- 7 The one notable holdout is Eric Sams in his 1995 book *The Real Shakespeare*.
- 8 Heard's *Shakespeare as a Lawyer* (1883), Davis's *The Law in Shakespeare* (1883), and White's *Commentaries on the Law in Shakespeare* (1911).
- 9 Before turning to Shakespeare's "errors," Devecmon spends the first thirty pages of his book repeating the arguments of Dickens and Grant White (that Shakespeare was not necessarily a lawyer just because he used legal terminology) and presenting similar attacks on Lord Campbell. The list of "errors" distinguishes Devecmon from other writers.
- 10 All citations are from *The Arden Shakespeare*.
- 11 Although *Shakespeare's England* was published in 1916, Underhill only shows knowledge of some of the arguments through 1900. He lists only Campbell, Davis, and Allen in his bibliography and neglects to mention Devecmon. It appears that the essay was already out of date by the time it was finally published.

12 Moore also exposes Underhill's hidden agenda: "King Lear orders law to sit with equity (III:6:39-41), and Underhill remarks that '[b]ut for [this] passage, Shakespeare gives no hint that he knew of the existence of Courts of Equity as distinguished from Courts of Law' (I.395). We might just as well say that, but for one remark in *1 Henry IV* (I:3:60-62), we would have no idea that Shakespeare knew that saltpeter is used in making gunpowder. But the remark is there, and so obviously Shakespeare did know that saltpeter is used in gunpowder, just as he knew about the judicial system called *equity*. So what's Underhill's point? Underhill won't say, but the point is that Francis Bacon was a specialist in equity who ended up achieving his goal of becoming Lord Chancellor, that is, the head of equity. In other words, Underhill is arguing the case against Francis Bacon." O. Hood Phillips, by the way, holds up Underhill as an authority (188-9).

13 Dr. Kathman's statement: "Shakespeare was average at best in the number and accuracy of his legal allusions."

14 Phillips also holds up Allen as an authority of Shakespeare's "bad law," but he cites only one example (135) and that only to shoot it down with a reference to Greenwood! This use of Greenwood as a supporting authority is strangely typical of several critics of Shakespeare's law and of some critics of Oxfordian arguments. When discussing Shakespeare's law, Schoenbaum in *Shakespeare's Lives* avoids addressing Greenwood's legal arguments, but does draw on him as support for other arguments. And Matus, who knows perfectly well that Greenwood still stands as one of the finest anti-Stratfordian defenders, avoids bringing up his name when discussing law, and many other key topics, but does mention him twice in other contexts, once for support.

15 I have made every effort to find all of Clarkson and Warren's examples of Shakespeare's misuse of legal terms, despite an index that fails to provide references. I admit it is possible, but improbable, that I missed one or two.

16 Robertson replies: "In an amusing footnote he quotes from my book on *Titus Andronicus* the phrase 'putting a few necessary caveats.' 'No lawyer,' he comments, 'would speak of 'putting a caveat.' The legal term is to 'enter a caveat.' And the compiler of his index sternly clinches the matter by the entry, 'Robertson, Mr. J.M., betrays his ignorance of law: 'the most amusing matter of all, perhaps, is that I happen to have spent four and a half years of my youthful life in a law office. But it was a Scotch office . . . and in Scotch law they do not, to my recollection, speak of 'caveats,' which word is therefore for me simple English, and not 'jargon.' 'Enter a caveat' is a phrase well-entitled to the latter label'" (175). Greenwood replies in *Is There a Shakespeare Problem?:* "I do not quite understand the reference to 'jargon,' but I note that 'caveat' is for Mr. Robertson 'simple English,' though for most others it is simple Latin. I will not controvert Mr. Robertson's statement that this is 'the most amusing item of all,' though whether the humour be 'English' or 'Scotch' I do not quite know; but I fear Mr. Robertson must have 'smiled a sort of sickly smile' at the joke of his having spent four and a half years of his youthful life in a Scotch law office with results rather literary than legal, and, though I deplore the unfortunate language made use of by my indexer, I must still assert that the instance I selected from Mr. Robertson's book on *Titus* is an extremely appropriate one, and that 'no lawyer would speak of 'putting a caveat'" (39). This exchange typifies Robertson's willingness to avoid his own faults and his attempts to misdirect the reader.

17 Clarkson and Warren, 1945, *The Law of Property*; James McManaway, 1962, *The Authorship of Shakespeare*; H.N. Gibson, 1962, *The Shakespeare Claimants*; Milward Martin, 1965, *Was Shakespeare*



*Shakespeare?*; George Keeton, 1967, *Shakespeare's Legal and Political Background*; O. Hood Phillips, 1972, *Shakespeare & the Lawyers*; Daniel J. Kornstein, 1994, *Kill All the Lawyers?*.

18 The Arden editor's note for "with fine and recovery": "Both 'fine' and 'recovery' have more than one meaning in law, but almost certainly the reference here is to the processes, based on legal fiction, by which an entailed estate is transferred. Mistress Page would thus mean, in short, that unless the devil's title to Falstaff is now final, beyond any possibility of change, Falstaff will not err in this way again." And then the editor feels it necessary to add, in parentheses and without any supporting evidence: "Elizabethans were particularly interested in legal procedure, and Shakespeare's knowledge of law is not exceptional."

19 Although Greenwood responds to Robertson's attack in *Is There a Shakespeare Problem?*, with more back and forth between the two in *The Literary Guide*, Greenwood is most cogent in his response in *Shakespeare's Law and Latin*.

20 By "theorists" Gibson means anti-Stratfordians.

21 This is a significant omission, not only because *Shakespeare and the Lawyers* attempts to be a comprehensive survey of the topic and *Shakespeare's Law and Latin* is the significant conclusion to the Greenwood-Robertson debate, but also because Phillips knows the book exists. He cites it in his 1964 article "The Law Relating to Shakespeare, 1564-1964" in *The Law Quarterly Review* (80: 421n).

22 While the book's jacket boasts several examples of advance praise, it is unfavorably reviewed in *Brooklyn Law Review* (Winter 1995: 1517-1534).

23 Biographical information is drawn from Saunders's, *A Biographical Dictionary of Renaissance Poets and Dramatists, 1520-1650*.

24 I cannot help but express my amusement when I read over and over in the commentaries on Shakespeare by experts and amateurs alike that Shakespeare had only a smattering of education, particularly in Latin and the classics, when the most modest perusal of the notes to almost any of his plays will reveal the immense erudition required of any editor who ventures to explicate them.

25 Mr. Robertson's ghost, and all those later writers who approve of Robertson, please take note that not one of the four meanings of *fine* necessarily have anything to do with a money payment.

26 Clarkson and Warren spend five pages trying to explain away Shakespeare's use of *purchase* (102-106). These are worth reading to see how skeptics use convoluted logic to avoid a logical, but politically uncomfortable, conclusion.

27 This passage is cited by Campbell, who says, "Now this shows in Shakespeare a knowledge of the law of real property, not generally possessed. The unlearned would suppose that if, by mistake, a man builds a fine house on the land of another, when he discovers his error he will be permitted to remove all the materials of the structure, and particularly the marble pillars and carved chimney-pieces with which he has adorned it; but Shakespeare knew better" (39-40). Robertson ridicules Campbell mercilessly, claiming that literally millions know this law (*Heresy* 40). Greenwood follows by demonstrating Robertson's faulty reasoning (*Law and Latin* 19-20).

28 [Editor's note: Apart from the fact that Edward de Vere might have known of this case from his time at Gray's Inn (c. 1567), it's very likely that he had a more personal connection with it. He was

living at Cecil House in 1563-64, during the period that Barnabe Googe was a member of the group of young writers surrounding William Cecil (later Lord Burghley) and his friend and colleague, Matthew Parker, Archbishop of Canterbury. These writers were six to ten years older than de Vere, but his interest in writing, particularly poetry, would have been sparked by Googe, at the time a resident of one of the Inns of Chancery. Googe's poetry, *Eclogues, Epitaphs, Songs and Sonnets*, was published in 1563 (the first book of its kind to be published in England). As the grandson of the Lady Hales, the plaintiff in *Hales v. Petit*, Googe would certainly have been interested in the case and may even have stood to benefit if she won. *Plowden's Reports* record action in the case in 1561, '63 and '64, so it's possible it was still being appealed during the period that de Vere was involved with Googe and Cecil. (Reference: S.Hopkins Hughes, *Shakespeare's Mentors: the Education of Edward de Vere*. Forthcoming.) SHH]

29 [Editor's note: It should be noted that Sir Thomas Smith, who acted as tutor to Edward de Vere for eight years, from age four to twelve, was considered one of the leading authorities in England on International Law, or Civil Law, as it was called then. Civil Law was basically Roman Law, the law that ruled most of the nations on the Continent. Smith occupied the Regius (King's) Chair in Civil Law at Cambridge, the first to be appointed to that post, from 1540 until called to Court in 1547. He was widely known for his teaching and lecturing skills, skills which he devoted primarily to tutoring de Vere from 1559 to 1562. Smith authored two of the most influential treatises on government policy written during Elizabeth's reign, served as Principal Secretary to two monarchs and did several turns overseas as Ambassador to France. (Reference: Mary Dewar. *Sir Thomas Smith: A Tudor Intellectual in Office*. London: Athlone, 1964.) SHH]

30 [Editor's note: When de Vere was fifteen and still living with William Cecil, his elder half-sister, Catherine, and her husband, Lord Windsor, sued for possession of his title and estates, claiming that his parents' marriage was invalid because, they held, the sixteenth earl was already married when he married de Vere's mother. This, of course, would have meant that de Vere was a bastard. Luckily the case fell under the jurisdiction of Matthew Parker, the Archbishop of Canterbury, who ruled in the boy's favor, but the process could well have left him with a unique awareness of the finer points of the Law as it applied to bastardy. (Reference: Louis Thorn Golding, *A Puritan Elizabethan: Arthur Golding*. NY: Freeport, 1937.) SHH]

31 In order to suck from the reader's mind any notion that Shakespeare might have had legal training (as his entire article implicitly argues), Gohn immediately supplies the vacuum: "The source of Shakespeare's legal knowledge might have been his personal background. John Shakespeare, his father, had been a party to over fifty lawsuits, and Shakespeare himself was either a litigant, witness, or party to a number of real estate conveyances. But beyond that the level of legal sophistication in Elizabethan England seems to have been high" (955).

32 For example, the authors note under "bastard/bastardy" that one particularly bawdy reference in *The Merchant of Venice*, where Launcelot Gobbo's comment, "the getting up of the Negro's belly," relates "to an obscure and repulsive English law against miscegenation, and to a theme of prejudice central to the play" (27). References to bastards and bastardy are so common in Shakespeare's plays that the authors' discussion of this topic fills almost eight pages.

33 Other dictionaries include *Military Language in Shakespeare*, *Shakespeare's Theatre, Music and Musical Imagery in Shakespeare*, and *Literature in Shakespeare*.

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