

6-12-2017

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Recommended Citation

Karen Cunningham (2017) "Missing Shakespeare's Law: Some Writing about Some Reading about Close Reading," *Early Modern Culture*: Vol. 12 , Article 2.

Available at: <http://tigerprints.clemson.edu/emc/vol12/iss1/2>

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Missing Shakespeare's Law: Some Writing about Some Reading about Close Reading

KAREN CUNNINGHAM

This paper begins with a question: how is it that literary scholarship on law in Shakespeare historically figured so little in close readings of the plays? Presently there is a proliferation of work on all aspects of the relationships between Shakespeare and the wide swath of legal history. Yet older and newer editions of the plays adopt the view that Shakespeare's pervasive references to contemporary legal language and questions do not bear importantly on his achievements. When aspects of law do appear in literary readings, they are often assimilated into the broad category "political background," obscured via a marginalizing intellectual osmosis. In these views, instead of being the story itself, legal Shakespeare is a small element in a larger more significant tale. Indeed, in virtually all editions there is ample talk about religious thought but none about legal thought, yet the latter touched the everyday life of English persons as profoundly as did the former.¹ More than this, the language of law touches the Shakespearean text with surprising regularity. How is it that this everyday aspect of being and this pervasive aspect of Shakespearean language remained marginal in readings?

Put differently, my problem is my curiosity about something that did *not* happen: the regular inclusion of legal awareness in close readings of Shakespeare's works. To explore this idea, I want here first to trace a partial (in both senses) history of some theoretical and ideological underpinnings of close reading (for which I'm going to lean heavily on Terry Eagleton), then to consider the more recent "law and literature" movement. Over time, the separation of law, with all its complexity about human relationships, from literature in general and Shakespeare in particular, produces characteristics of both the literary and the legal disciplines: a particular version of Shakespeare as a playwright interested only in "these" kinds of things (religion, etc.) and not in "those" kinds of things (law), and a version of law as a marginal or "other" collation of ideas unrelated to popular culture and humanist thought. In short, as literature is separated from the concerns of everyday society, law is separated from the humanities and concomitantly from its humanity.

The Shakespearean imaginary itself resists this idea that persons are separable from legal language, processes, and culture. The law's elusive ways of being, for example, are captured in *Measure for Measure*: law might be only a

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“scarecrow,” an inanimate semblance of a person, a feigned human presence designed to frighten trespassers into submission and to make them believe in its threatening powers; or law (which “hath not been dead, though it hath slept”) might be a gifted person, “like a prophet” reawakened to foresee and prevent future evils; or it may be that law is an autocratic ruler, a “tyrant” whose extreme and abusive use of authority justifies resistance and rebellion. All of these examples make evident that in Shakespeare’s works “law” refuses to settle into a tidy collection of codes to be enforced or procedures to be followed. Instead, in order to think about the legal, Shakespeare in these instances adopts the language of personification, and the language itself figures the inseparability of the relationship between persons and their laws.

One History of Close Reading

In “The Rise of English,” Terry Eagleton offers a useful overview of the practical and ideological roots of “literature” and what has become known as close reading. In eighteenth-century England the idea of literature meant the whole body of writing valued in society. Though this writing “embodied the values and tastes of a particular social class” only, it nonetheless included history, political essays, philosophy, letters, and so on.² Under Romanticism, however, from which our own idea of “literature” develops, the category narrows to creative or imaginative work, and poetry comes to be associated with a concept of human creativity at odds with the utilitarian ideology of early industrial capitalist England: “to write about what did not exist was somehow more soul stirring” than to pen accounts of history, society, science.³ Offering an alternative to and detachment from history, the theories of the Romantics stressed the “sovereignty and autonomy of the imagination, its splendid remoteness from the merely prosaic matters of feeding one’s children or struggling for political justice.”⁴

The names of those who to a greater or lesser extent adopted this idea of literature as a counter to the realities of life in society will be familiar to students of close reading: F. R. Leavis, I. A. Richards, William Empson, and L.C. Knights embraced the idea that literature was a vehicle for reshaping and saving English society—a view ironized by one pundit’s comment that “The Decline of the West was felt to be averted by close reading.”⁵ A recurring motif of this view was that those (of a certain sex and class) who learned to read literature according to certain principles were of superior morality. (Eagleton is quick to point out that soon Leavis and his followers were faced with the realization that “all those who could not recognize enjambement [sic] were not nasty and brutish, and not all who could were morally pure.”⁶)

Under the designation “practical criticism,” Leavis and his colleagues pioneered a mode of reading that was unafraid to take a text apart, but they also propagated the idea that literary “greatness” and “centrality” could be judged only by focusing attention on poems or pieces of prose removed from their cultural and historical contexts. Hence, “close reading.” (This kind of thinking comes, of

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course, with interpretive and social consequences: the cost of establishing literature as different from other kinds of writing is the uprooting of literary texts from critical aspects of daily life including legal contexts.) Eagleton offers the following description:

Like “practical criticism” [“close reading”] meant detailed analytic interpretation, providing a valuable antidote to aestheticist chit-chat; but it also seemed to imply that every previous school of criticism had read only an average of three words per line. To call for close reading, in fact, is to do more than insist on due attentiveness to the text. It inescapably suggests an attention to *this* rather than to something else: to the “words on the page” rather than to the contexts which produced and surrounded them. It implies a limiting as well as a focusing of concern—a limiting badly needed by literary talk which would ramble comfortably from the text of Tennyson’s language to the length of his beard. But in dispelling such anecdotal irrelevancies, “close reading” also held at bay a good deal else: it encouraged the illusion that any piece of language, “literary” or not, can be adequately studied or even understood in isolation. It was the beginnings of the “reification” of the literary work, the treatment of it as an object in itself, which was to be triumphantly consummated in the American New Criticism.⁷

Promulgating the idea that “poetry is an ‘emotive’ rather than a ‘referential’ language,” I. A. Richards and the American New Critics isolated human feelings about the world in poetry.⁸ Focusing on ambiguity, paradox, irony, and the effects of connotation and figurative language, American New Criticism flourished from the 1930’s to the 1950’s, discovering in literature an “aesthetic alternative” to the perceived sterility of the scientific rationalism of industrial America.⁹

From the late twentieth century to the present, new modes of analysis developed in response to feminism, queer theory, New Historicism, and gender and cultural studies. Initially these approaches adopted the conventions of close reading, but as they became more dominant, close reading became less prominent in these modes of inquiry. Pointing to “[t]he introduction to an influential American volume, *Cultural Studies*, [which] declares ‘although there is no prohibition against close textual readings in cultural studies, they are also not required,’” Jonathan Culler notes one consequence of the sidelining of close reading: “freed from the principle . . . that the main point of interest is the distinctive complexity of individual works,” cultural studies could treat works as instances or symptoms of something else.¹⁰ The perceived dominance of cultural studies has prompted resistance, sometimes in language that revives Leavisite aspirations. At the 2016 Shakespeare World Congress, a panel entitled “Shakespeare in Zoom” offered this description: “Recent scholarship shows

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renewed interest in excavating the coherence and complexity of literature before attempting political advocacy or diagnosing social symptomology. Through very close reading of page and stage, this panel will be ‘Recreating Shakespeare’ as if by cloning, zooming in on patterns of details that give his words life.”¹¹ Though the description adopted the futuristic language of “cloning” and optical terminology of modern film criticism in “zooming,” the metaphors sit uneasily with the nostalgia for “excavating the coherence” of literature and positioning that excavation “before” “attempts” at other readings—here broadly categorized as “political advocacy” or diagnoses of “social symptomology.”

It is not inevitable, however, that close reading be severed from the contradictions and inequities of contemporary society or pursue “coherence.” In her recent “Shakespeare in Slow Motion,” Marjorie Garber refocuses the literary argument from the meanings of language to its operations: “The last several decades have seen sustained interest on the part of literary scholars in the contexts of Shakespeare’s plays, from political, social, religious, and cultural history to biography. . . . My objective in ‘Shakespeare in Slow Motion’ is to slow down the move to context, if not reverse it altogether, by redirecting attention to the language of the plays, scene by scene, act by act, moment by moment, word by word.”¹² Though this may sound initially like a return to the past—another version of “the radical nature of close reading, achieved through the analytical rigor of attention to the philological or rhetorical devices of language” —Garber’s goal is to slow readers from slipping too hastily into the various usual kinds of explanations for linguistic events: the idea that the language reflects character flaws or intentions or generic conventions or audience effects.¹³ “Reading Shakespeare in slow motion resists the idea of determination by character and motive unless these elements can be described in a particular linguistic formation. Puzzles and loose ends remain as puzzles and loose ends. . . . Character and motive, in fact, are revealed or produced as critical fantasies—which is not at all the same as saying they do not exist.”¹⁴ Garber’s pedagogical experiment in “slow reading” resists the push toward “coherence” and internal equipoise:

The point was not that reading in slow motion would disclose the singular truth but that many readings are not readings at all but prior identifications with meanings already there, a literary practice that projects an intention to mean. Whether such readings were historicist (based on a historical referent or cause), or generic (based on expectations of what a tragedy or a comedy was or should do) or characterological (making claims about personality and psychology and motive), or indeed whether they developed out of the sheer weight and preexistence of so much prior commentary on Shakespeare, each had a narrative to offer. Small details that seemed to interrupt or contradict the narrative could be, and often were, ignored or set aside.¹⁵

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In a similar vein, Culler identifies “one thing that is crucial to the practice of close reading: a respect for the stubbornness of texts, which resist easy comprehension or description in terms of expected themes and motifs. . . . Close reading teaches an interest in the strangeness or distinctiveness of individual works and parts of works. . . . The work of close reading is not primarily to resolve difficulties but above all to describe them, to elucidate their source and implications.”¹⁶ For Garber and Culler, a text’s “stubbornness,” its resistance to “coherence,” its comfort interrupting preexistent ideas, are not to be ignored or effaced but embraced. This view allows us to see that precisely because they are “stubborn” and “strange,” because they lie outside an expected narrative, legal language, thought, and action in Shakespeare have (until relatively recently) gone largely unread, even by the “closest” of readers.

A Legal Story

The connections between Shakespeare and legal thought are not new but deep and longstanding, reaching back to our earliest knowledge of his life and the performances and publications of his plays and poems. Yet it was only in the later nineteenth century, as biographers produced versions of “Shakespeare the author” and lawyers sought to foreground the humanistic basis of legal education, that these connections began to become prominent in literary studies. In the late sixteenth and early seventeenth centuries the divide between legal and theatrical professions was neither clear nor firm; both the theatrical and legal disciplines in England were continuously establishing their own professional procedures, modes of thought, and boundaries. The Inns of Court were also the training grounds for writing of all kinds. Much of the legal literature was produced at the Inns, and in the sixteenth and seventeenth centuries an impressive number of well-known writers passed through them, including More, Ascham, Gascoigne, Sackville and Norton, Raleigh, Donne, Bacon, Marston, Ford, Beaumont, and Congreve, among others.¹⁷ Innsmen acted in revels, and professional players performed at the Inns. Public interest in legal activities spilled out of the court centers to local taverns, where specialists and amateurs alike could debate “table-cases.” This easy circulation of law-related ideas into drama is evident in Dick the Butcher’s infamous cry of rebellion in the second part of *Henry VI*, “the first thing we do, let’s kill all the lawyers” (4.2.73), in Hamlet’s satirical conversation with a lawyer’s skull about legal quiddities (5.1.93ff.), in the trial scene in *The Merchant of Venice* (4.1), and in the sustained legal plot of *Measure for Measure*.¹⁸ Although later centuries saw the progressive separation of legal and literary studies from each other into their own fields, Shakespeare continued to draw legal minds. Yet one of the less-remarked aspects of the connection between lawyers and the playwright is that at least seven collections published throughout the eighteenth and nineteenth centuries—including Englishman Nicholas Rowe’s critical edition in 1709, Irishman Edward Malone’s editions of the poems in 1780 and the plays in 1790, and American H. H. Furness’s New Variorum edition in 1871—were by

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men with legal backgrounds.¹⁹ Awareness of this editorial pattern allows us to see that there was a moment in legal and Shakespearean history when the two disciplines were seen not only as compatible but also as potentially integral to each other. In contrast, the erasure of this editorial history obscures the extent to which thinking about legal issues may have entailed thinking about literature in general and Shakespeare in particular, when law and the humanities were considered essential to each other; it clouds over the extent to which eighteenth and nineteenth-century editions may tilt toward the interests of lawyers; and it blurs the extent to which Shakespearean texts may have been treated as competitive proving grounds among lawyers and literary scholars—all of which perpetuate the severing of the legal from the literary disciplines.

In light of this legally-informed editorial history (and in light of the historical aims of “practical” criticism to remove literature from its historical and cultural contexts), it is perhaps not surprising that much of the impetus behind the modern Shakespeare and law movement originated not among literary scholars but among lawyers. Its roots are not political but biographical, resting on the long-standing and continuing question about authorship: could the young, ill-educated man from Stratford-on-Avon have written so knowledgably about law? Throughout the nineteenth and early twentieth centuries, scholars scoured the frequency of Shakespeare’s legal terms, evaluated whether they were used correctly, and argued about whether the author had been or had not been a law clerk. The debate was muted (though not silenced) in the early twentieth century by Paul Clarkson and Clyde Warren, both attorneys, who conclude in *The Law of Property in Shakespeare and Elizabethan Drama* that “what law there is in Shakespeare can, indeed must, be explained upon some grounds other than that he was a lawyer, or an apprentice, or a student of the law.”²⁰

At the same time that theories of Shakespearean authorship were being founded on instances of legal language, new concerns were arising among legal scholars about the objectivity of the law—and about the value of that objectivity if it did exist. Modern law was supposed to strive to be “impartial,” to adopt a key term from Duke Solinus in *The Comedy of Errors*. But did that ostensible impartiality always result in a fair or just verdict? Did a strict formalism allow law to function most effectively? Was the best law the least human (or humane) law? Pioneers of what has come to be known as the law-and-literature movement, two American jurists, John Wigmore (b. 1863) and Benjamin Cardozo (b. 1870), both of whom were practicing lawyers, argued that legal education and practice were too far removed from their human side; both believed that poetry and fiction should be incorporated into the law school curriculum in order to rehumanize the law. The result was the law-and-literature movement, which falls into two broad (and not wholly distinct) categories: law *in* literature and law *as* literature. Law *in* literature assumes that the study of great literary works can give insight into the nature of law and its effects on people; it looks at how legal situations and issues are presented in literature. Law *as* literature brings to bear the tools and theories of modern literary criticism for textual analysis in order better to understand not only the linguistic but also the textual basis of law, its narrative, rhetorical, and interpretive practices. One of the movement’s foundational books, James Boyd

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White's *The Legal Imagination*, 1973, adopts a humanist approach as it sets out to "look at the literature of the law as a literature of the imagination." White asks readers to "see what the lawyer does as a literary activity, an enterprise of the imagination" with the goal not of reaching conclusions but of defining responsibilities.²¹ In chapters that combine explanations of legal topics, excerpts from legal theories and cases, and excerpts from literature, White embraces authors from Mathew Arnold to William Carlos Williams, and includes Shakespeare's *Antony and Cleopatra*, *Macbeth*, *Richard II*, *Richard III*, *Romeo and Juliet*, *The Tempest*, *The Winter's Tale*, sonnet 29, "When in disgrace with fortune and men's eyes," as well as a little Roger Ascham and Raphael Holinshed along the way.

How better to (re)humanize law than to demonstrate its need for and treatment in the most prominent figure in the humanities? It would be an error to assume that only Shakespeare is part of that pedagogy; a brief survey shows that many authors—including Kafka, Dostoyevsky, and Dickens—make their way onto the syllabi of many current "literature and law" courses in law schools and in English departments. But Shakespeare enjoys a unique status in the English-speaking world, having been credited by some academics as having "invented the human," by others as having "invented poetic subjectivity," and by others outside of academia as "the greatest writer in the English language—the writer from whose work our entire literary culture flows."²² "To engage with literature is necessarily to encounter Shakespeare."²³ Whether or not one agrees with these attributions of origins (and many have pointed out problems with such idealizations), they remind us of the cultural power of saying "Shakespeare" in connection with almost any social or political concern. Yet what has remained less visible is that to engage with Shakespeare is also necessarily to encounter early *and* modern law.

Speaking Law in Shakespeare

Whatever is happening in literary and legal culture is happening *in* and *through* language, written and spoken, and I want to conclude by gesturing quite briefly to some instances and implications of legal language in Shakespeare. Although it may today seem obvious, simply recognizing the diffuse presence of legal language was a crucial early step in developing the nascent field of Shakespeare and law. If initially law-related terminology went unrecognized in academic scholarship, when it *was* visible, scholars troubled over the basis of choosing which terms to include among the "legal." Clarkson and Warren, for example, dismiss the relevance of words they consider to be primarily figurative; if the usage is "metaphorical" or "general," the language is considered "of little importance" to their project, a view that not only suppresses Shakespeare's multivalent use of language, but also reiterates the idea that legal language was specifically not metaphorical.²⁴ Nonetheless, this new awareness of law's pervasive linguistic presence in the Shakespeare canon opened the possibility of glosses appearing in editions and brief legal commentaries emerging in interpretations. This kind of study culminates in

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B.J. and Mary Sokol's comprehensive *Shakespeare and Legal Language*, an invaluable work that both demonstrates the extensiveness of legal terms and references, and supports the authors' discovery that the playwright's language "in effect produced an outline of English law and its institutions in Shakespeare's age: the courts; law officers; the laws of property, inheritance, marriage, status; contract and debt, crime, misdemeanor, and regulation of morals."²⁵

Although early studies took legal language in Shakespeare's works as an explanation of other things—in particular, the author's knowledge of law—more than as the revelation of a particular character or play, even in this restricted context, Shakespeare's artistic intervention was evident. Myriad invocations throughout the canon of the language of property in all its facets—contracts, wills, inventories, possession, use, tenancy—not only situate characters imaginatively and emotionally within various courts and jurisdictions, but also establish legal language as the coin of the Shakespearean realm. Falstaff's pun on *escheat* (the return of land upon the death of the tenant to the lord from whom it was held) in *The Merry Wives of Windsor*, as he anticipates deceiving Mistresses Page and Ford, for example, signifies both legal knowledge and poetic creativity: "I will be *cheaters* to them both, and they shall be *exchequers* to me" (1.3.70). New connotations of the term *escheators* were developing in early modern English popular culture, such that the public was beginning to associate *escheators* with informers. In an act of poetic appropriation, Shakespeare shortens the term to *cheaters*, apparently the first use of the term in English.²⁶ (See also *Henry IV, Part II*, 2.4.110-111, and sonnet 151, "Love is too young to know what conscience is.") Shakespeare's legal imagination is not restricted, of course, to local linguistic events. As the language of the plays invokes legal points, it simultaneously invokes their larger social significance: in *this* relationship, in *this* fictional society, in *this* play, what counts as justice? Play after play troubles over what might constitute an equitable response to a plea like Isabella's: "Justice, O royal Duke! . . . // . . . justice. Justice! Justice! Justice!" (*Measure for Measure*, 5.1.20-25).

Thinking with Shakespeare about law and close reading comes with a certain historical irony. During the "culture wars" of the 1990's in the American academy, as many English departments recast their curricula, courses in individual authors often were replaced with wider period offerings. One result was the elimination of requirements that undergraduates take at least one course in Shakespeare. At the same time, Shakespeare and law studies were exploding with all kinds of work that would make it evident that the Shakespeare canon is a foundational archive in law and literature studies. One unanticipated result of the law's habit of recruiting Shakespeare to recreate itself has been the exposure of the law's extensive dependency on the arts of *poesis* of all sorts—and on Shakespeare's in particular. Certainly these studies demonstrate that the Shakespeare canon is not supplemental nor incidental to the law, but essential to it. More than this, however, detailed, provocative studies are also persuasively demonstrating that the playwright's works do not merely reflect legal culture, but take a central role in producing that culture in a distinctly Shakespearean way, bringing to light new and crucial insights into the role of the canon not only as a repository for early modern law but as a textual necessity for our continuous reimagining of a just society.

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Notes

I would like to thank Phyllis Rackin and Peter Parolin for their invitation to submit this essay and for their generous comments, which allowed me to see it through new eyes. I am also grateful to Will Stockton for going above and beyond in shepherding the manuscript to publication.

Portions of this essay, in particular those focused narrowly on early modern legal history and Shakespeare's works, are adapted and reprinted from my chapter, "The Shakespearean Legal Imaginary," in *The Shakespearean World*, edited by Jill L. Levenson and Robert Ormsby (Routledge 2017), and appear here with permission from Taylor & Francis Group. <https://www.routledge.com/The-Shakespearean-World/Levenson-Ormsby/p/book/9780415732529>.

1. A cursory scan of historical and literary databases suggests the vastness of the scholarship on religion in early modern England. There are thousands of titles devoted to religion in the English Renaissance and hundreds more (even allowing for duplication) devoted to the English Reformation. Focused more narrowly, hundreds of articles and books unpack not only Shakespeare and the Bible(s), but also Shakespeare and the Old Religion, Shakespeare and early modern religion, and Shakespeare and non-Christian religions, among others. These are in addition to the conventional coverage of the Reformation or religion as a category included in the introductory matter of collected and individual editions of Shakespeare. The abundant scholarship suggests the degree to which religion is perceived of by critics and historians as an essential topic for understanding the culture and cultural productions of the era. Paradoxically, it also attests to the belief that the need for knowledge of religious history "goes without saying."

2. Terry Eagleton, "The Rise of English," in *Literary Theory: An Introduction* (Minneapolis: University of Minnesota Press, 1983), 17-63, 17.

3. Eagleton, "The Rise of English," 20.

4. Eagleton, "The Rise of English," 20.

5. Quoted in Eagleton, "The Rise of English," 34 n.16.

6. Eagleton, "The Rise of English," 35.

7. Eagleton, "The Rise of English," 44.

8. Eagleton, "The Rise of English," 45.

9. Eagleton, "The Rise of English," 46.

10. Jonathan Culler, *Literary Theory: A Very Short Introduction* (Oxford: Oxford University Press, 1997), 49-50.

11. "Shakespeare in Zoom." 2016 Shakespeare World Congress. www.wsc2016.info.

12. Marjorie Garber, "Shakespeare in Slow Motion." *Profession* (New York: Modern Language Association, 2010), 151-164, 151.

13. Garber, "Shakespeare in Slow Motion," 152.

14. Garber, "Shakespeare in Slow Motion," 157.

15. Garber, "Shakespeare in Slow Motion," 159.

16. Jonathan Culler, "The Closeness of Close Reading," *ADE Bulletin*. No. 149 (New York: Modern Language Association, 2010), 20-25, 22.

17. Philip Finkelpearl, *John Marston of the Middle Temple* (Cambridge: Harvard University Press, 1969), 19.

18. All Shakespeare citations are from *William Shakespeare: The Complete Works*, 2nd edition, edited by Stanley Wells, Gary Taylor, John Jowett, and William Montgomery (Oxford: Clarendon Press, 2005).

19. O. Hood Philips, *Shakespeare and the Lawyers* (London: Methuen, 1972), 141-45.

20. Paul S. Clarkson and Clyde T. Warren, *The Law of Property in Shakespeare and the Elizabethan Drama* (Baltimore: Johns Hopkins University Press, 1942), 286.

21. James B. White, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression* (Boston: Little Brown, 1973), xix-xxi.

22. I refer, respectively, to Harold Bloom, *Shakespeare: The Invention of the Human* (New York: Riverhead, 1998); Joel Fineman, *Shakespeare's Perjured Eye: The Invention of Poetic Subjectivity in*

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the Sonnets (Berkeley: University of California Press, 1986); and Jonathan Yardley, "For Many English Majors, It's as you Like It," *The Arizona Republic* 2 January 1997, B7.

23. Anthony Julius, *Law and Literature: Current Legal Issues*. Vol. 2 (Oxford: Oxford University Press, 1999), xi.

24. Clarkson and Warren, *The Law of Property in Shakespeare and the Elizabethan Drama*, 5.

25. B. J. Sokol, and Mary Sokol, *Shakespeare's Legal Language* (London: Althone, 2000), 5.

26. Clarkson and Warren, *The Law of Property in Shakespeare and the Elizabethan Drama*, 34.

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