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Innocent Until Proven Guilty: Shakespeare's Use of Source Material in Three Plays

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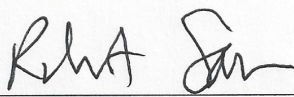
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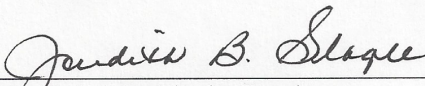
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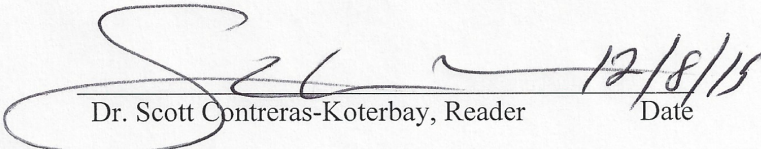
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Innocent Until Proven Guilty: Shakespeare's Use of Source Material in Three Plays

Abstract

In my thesis, I discuss and analyze William Shakespeare's utilization and adaptation of source texts within three of his dramas: *Henry IV, Part I,* a history; *Twelfth Night,* a comedy; and *Julius Caesar,* a tragedy. By comparing Shakespeare's adaption of sources to the contemporary United Kingdom intellectual property policies, it becomes possible for me to determine whether Shakespeare's extensive and popular dramas would violate modern copyright law.

The first chapter, "Printing and Writing in the Early Modern Period," discusses the development of proprietary interests among the Elizabethan people. I break down the individual components of the printing process in the early modern period and further consider how its creation affected writers and impacted the world at large. Additionally mentioned within this chapter are the United Kingdom's initial attempts at regulating printed materials among publishers. The availability, pricing, and evolution of printed material is all discussed, as well as the imitative and collaborative writing process among Elizabethan dramatists and poets.

The second chapter, "An Introduction and Brief History of Intellectual Property and Copyright," addresses the United Kingdom's current legislation on borrowing and infringing upon creative works. After an introduction to key terms within the intellectual property field, I provide a brief history on the evolution of copyright within the United Kingdom. After a discussion on property protection and rights for literary, dramatic, and artistic works, I cite the Copyright, Designs and Patents Act 1988 as the key document from which I draw my conclusions on Shakespeare's infringement of source texts within his plays.

Chapters three, four, and five, focus on the individual analyses of source texts used by Shakespeare within each of his selected plays. While Shakespeare did borrow from a multitude of source texts, I strive to analyze his utilization of content within only his most primary source

texts. Each chapter begins with a brief synopsis of the play, characters, and major themes. After each introduction, I devote multiple pages of text to comparing and contrasting Shakespeare's imitation and utilization of primary source texts within his own works. At the end of each chapter, I calculate the age of each source text as it relates to the public domain and intellectual property law.

Following chapter five, I use the combination of my analyses and personal understanding of copyright to render three separate verdicts on Shakespeare's infringement of source materials within each of his plays. Alongside each verdict, I provide lawful reasoning for the individual outcome of each case. In the final pages, I draw a conclusion concerning Shakespeare's infringement of source texts within his plays. It looks like one play clearly breaks the United Kingdom's copyright laws, one play may or may not depending on further studies, and a third drama clearly does not constitute infringement. Furthermore, I offer a brief commentary on the reigning United Kingdom intellectual property laws based upon my analyses and verdicts.

Introduction

In their popular song "Cemetry Gates," the 80's English indie rock band "The Smiths" responded to plagiarism accusations with the lyrics: "If you must write prose and poems, the words you use should be your own." Over 300 years prior to The Smiths' catchy song lyrics, another artist was using his words to entertain audiences. Commonly referred to as the greatest dramatist of all time, early modern playwright William Shakespeare has garnered an abundance of praise and speculation for his works over the years. His immeasurable fame has propelled his works into a separate sphere and proved the truth in Ben Johnson's declaration that Shakespeare "was not of an age, but for all time." However, as we will see later, Johnson's assertion of Shakespeare is more complicated than it first appears. When people hear his name, they either hold their hands over their hearts and begin a soulful recitation of, "Oh Romeo, oh Romeo…," or they roll their eyes and admit that his plays were the bane of their literature studies in secondary school. Regardless, the majority of everyday readers and scholars acknowledge his ingenious ability to convey the human experience through the written word, and it is only a minority of people who question his authorship.

While there are scholars who consider Shakespeare a swindler, those people rarely go beyond their speculations. For this thesis, however, I will go a step ahead of merely making conjectures by attempting to convict Shakespeare of modern-day copyright infringement. Although I do regard Shakespeare as the sole author of his works, I do not believe all of his words and storylines were his own. Just as contemporary writers have their inspirations, so did Shakespeare; however, whereas present-day writers would give credit to their sources, Shakespeare simply lifted phrases and plots from other works without giving any acknowledgement to the original writer. As John Jowett points out, "the underlying protest is

against Shakespeare as a mere player who muscles into the craft of the playwright, arrogantly taking it upon himself to imitate or appropriate or pad out the plays of the established dramatists" (7). This quotation highlights Shakespeare's obvious utilization of source texts and begs the question: why wasn't Shakespeare punished for lifting the thoughts and borrowing the words of other writers?

Based on personal research in preparation for my thesis, the answer to that question seems somewhat simple. Shakespeare was not sentenced for stealing others' words because such a notion of theft did not exist in his time. During Shakespeare's time, "the habit of re-cycling was so commonplace that it was rarely commented upon" (Clare 9). As Clare points out, by studying the history of copyright alongside the method of writing and printing in the early modern era, it becomes fairly easy to identify the causes that led to the modern United Kingdom copyright system of today. Wofford adds that writers prided themselves on being able successfully to reproduce the words and plots of their contemporaries' inspirations because imitation was valued over creativity and viewed as a sign of intellect (19).

The change from borrowed originality to artistic ownership stems from the development of commerce and proprietary interests among the people who produced them (Clare 11). Initially, the United Kingdom's governmental intellectual property concerns were not for the benefit of writers but instead for the regulation of printed of works; however, as the notion of author as creator developed in the eighteenth and nineteenth centuries, copyright laws regarding protection and infringement were quickly expanded to include writers. It is important to note that for this particular study, I will be using the Copyright Designs and Patents Act (UK) to decide whether Shakespeare is innocent or guilty of committing copyright infringement. This means that all of Shakespeare's source texts will be considered in relation to modern-day copyright

protection of seventy years duration. While intellectual property has expanded over the years to provide the best possible protection to the works and ideas of writers, an additional question that may be asked is whether or not such strict protection may be inhibiting the writers of today.

When I chose to take Shakespeare to court for his imitations, I did so with the intention of focusing on the pros and cons of the reigning United Kingdom intellectual property document. I am in no way trying to discredit Shakespeare's works or to diminish the impact he has had on society because, simply put, he wrote in a time where the expectations and regulations of authors were different. Instead, I am attempting to show that if the world's greatest playwright can be convicted on copyright infringement, what does that say about the intellectual property systems of today? Perhaps in exchange for rigid copyright protection, the world is arguably missing out on works just as complex and influential as those in William Shakespeare's repertoire.

By analyzing Shakespeare's use of specific source texts in three of his plays, *Henry IV, Part I,* a history; *Twelfth Night,* a comedy; and *Julius Caesar*, a tragedy, and comparing them to current policy concerning copyright, it may become possible for me to determine whether or not Shakespeare's extensive and popular dramas would violate modern copyright law. In other words, had Shakespeare been writing today, would he have been able to publish his classic works? If that answer is "no," then at what point(s) did Shakespeare commit copyright infringement within his dramas? Following my study of Shakespeare's appropriation of source texts, the verdict will be rendered – the world's greatest playwright will either be proven guilty or innocent of his crime – and it is only then that I can make a proper allegation concerning modern copyright regulations.

Chapter One:

Printing and Writing in the Early Modern Period

Described by Stephen Harris as "a rebirth among English elite of classical learning, a rediscovery of ancient Greek and Roman authors, and a recovery of the ancient Greek spirit of scientific inquiry," the early modern period marks the peak of English literary achievement. Additionally referred to as the English Renaissance, this cultural movement began around the year 1500 and lasted through roughly the mid-seventeenth century. While music and the visual arts were expanded and valued throughout the movement, it was literature – specifically drama and the English Renaissance theatre – that acquired the largest Elizabethan following and became the lasting legacy of the early modern period. Prior to the early modern period, England was already highly regarded for its literature; however, according to "The Gutenberg Press," it was not until the invention and utilization of the printing press in the fifteenth and sixteenth centuries that writing became a marketable, well-respected artistic field in need of governmental laws and regulations. Popular poets and dramatists of the era such as Edmund Spenser, Thomas Wyatt, and Christopher Marlowe would eventually be recorded in literary history as some of the greatest writers who ever lived, but it was the works of Shakespeare the playwright and poet that would outshine them all. Inspired by a variety of sources, including Greek and Roman texts, Shakespeare created an assortment of dramas that have become a hallmark of the Elizabethan era. With the development of the printing press and the popularity of the cultural movement, early modern writers in England managed to translate, to dramatize, and to print many of the literary texts admired and studied by writers and readers today.

The creation and developments of the printing press in the fifteenth century not only impacted early modern writers but the future of the world. Designed in 1436 by goldsmith Johannes Gutenberg, the first moveable type printing press allowed for the commercial

production of religious and literary works in the West. Although there were other systems of printing in use at the time of his invention, Gutenberg's machine could manufacture pages of text at a greater speed than the older press methods. Deazley argues that the effect of this rapid commercial production of materials was the creation and implementation of the first copyright act – the Statute of Anne – in 1710 (33). Gutenberg's design made texts accessible to a larger audience and "marked the beginning of the Printing Revolution, a colossal moment in the history of information and learning" ("The Gutenberg Press"). This stepping stone in the press industry allowed for the hasty reproduction of academic and religious tracts and treatises, and it soon gave way to the printing of early modern poetry and drama.

Although the first moveable type press did not officially reach England until 1475, Shakespeare and his contemporaries were well aware of the improvements being made to the print trade ("The Gutenberg Press"). Smith writes that in 1494, within twenty years of the establishment of the printing press in England, the first English paper mill was founded to accommodate the growth of the industry. While it did take roughly two centuries to establish a quality "domestic industry for the production of printing or writing paper," many writers of the early modern period alluded to the emergent print business, both on and off the stage (17). Shakespeare himself even made references to the printing presses within his plays. For instance, in *2 Henry VI*, the rebel character Jack Cade criticizes the printing of books, "And whereas before our forefathers had no other books but the score and the tally, thou hast caused printing to be used, and contrary to the King his crown, and dignity, thou hast built a paper-mill" (4.7.29-34). Such examples firmly illustrate the profound effects the printing industry had upon literature, the Elizabethan people, and Parliament.

With the printing press firmly established in London, a need eventually arose for the regulation of materials among publishers. Because commercial printing and the widespread distribution of texts was new to England, Cornish argues that there were no regulations or laws comparable to the governmental documents regarding publishing and copyright infringement today. In 1557, however, England made its first attempt to regulate printing through a group of printers and publishers referred to as the Stationers' Company (17). Defined by Grosheide as an assembly of "government-licensed, local organizations of industrial producers," the Stationers' Company became an essential component for the production of book publishing in the early modern period (81-82). During this era, Jowett writes that a stationer who desired to print from a writer's manuscript was required to obtain a license through the Stationers' Company (199) The company compiled the licenses and printing records of publishers in the Stationers' Register. Commonly referred to as account books, the Stationers' Register listed recording transactions among stationers, the amount of individual allowances allotted to each publisher to print, as well as the publication dates of plays (Wofford 5; Jowett 199).

By the time Shakespeare was writing and producing his plays in the late sixteenth century, the publishing trade was ingrained in English society, the printer, author, and publisher all sharing different responsibilities within the process. Aside from the three primary individuals, argues Orgel, the print industry in England also heavily relied on the diverse businesses and labor of people in the Elizabethan area to complete its publications (15). As a new and rising business in England, the print industry employed a wide range of people and industries. According to Smith, these businesses included: paper mills, metalwork factories, transport services, and even fabric and clothing manufacturers who aided with the binding of print sources (33). The relationships and transactions made between local businesses and print manufacturers

display the extensive amount of labor required to turn a single manuscript into a widely-circulated text.

Although the number of printing houses was controlled at around twenty-two in the early modern period, the entries of text in the Stationers' Company Registry continued to grow. With the exception of the university-based printing houses of Cambridge and Oxford established in the 1580s, explains Smith, the Stationers' Company largely became a monopoly for printing in England (19-20) .While aristocratic clientele could sponsor the publication of a text they thought important to society, the members of the Stationers' Company had control over what and how much of a text could be published (Grosheide 100). This print industry monopoly led to the conception of secret presses in England. Largely motivated by principle and profit, writes Smith, these illegal presses defied the laws and regulations of the Stationers' Company as the printers of these businesses were not licensed to operate. Similar to the consequences regarding copyright infringement and illegal printing today, if caught in the early modern period, the people in charge of an illegal press could lose their print equipment and be fined or imprisoned for their criminal behaviors (20).

In addition to the Stationers' Company, printers, and writers who aided in the early modern replication of texts, the concept of the publisher emerged as well. It must be noted that in Shakespeare's time the word "publisher" referred to an assortment of people including printers, booksellers, and bookbinders (Smith 18). Until the utilization of the printing press, a group called the London Guild of Stationers was used to scribe and sell the manuscripts of books and other writing materials (Bentley 8). As the desire for publication grew, writes Smith, England quickly supported the growth with the conceptualization of the publisher. These early modern publishers were responsible for procuring ample paper stock as well as paying the printer,

compositor, corrector, and presswork people responsible for constructing a printable version of the manuscript. Described as the primary retail agent, the publisher was also in charge of designing an array of marketing tactics in order to entice customers to purchase the book (22-29). Orgel writes, tactics of the era included developing a compelling title, inserting engaging preface material, and making the cover of the text appealing to buyers (15-19).

All of the individuals and groups described in the preceding paragraphs were part of the early-modern process of getting individual works printed. Much like the publishing industry even today, as early as the fifteenth century and beyond, Holland argues that printing became a regulated process that involved a series of choices (2). According to Elam, the initial step in the printing process was made by the publisher. It was his or her job to secure the rights to a manuscript. These manuscripts came in various forms such as authorial drafts, "prompt" copies marked up by individual theater companies, or even previously printed texts seeking republication (355). Because of the multiplicity of manuscripts surrounding many of the early modern texts, there has been a great deal of speculation about the transmission processes of each work. Described by Holland as "vulnerable documents," early modern printed texts may have started as an individual manuscript, but they were often written and re-written to meet the needs of performers, editors, and publishers (2-3).

According to Smith, once the manuscript was secured – usually via a one-time payment to the writer – the text would be sent to a printer who owned the necessary manufacturing equipment and workmen needed to produce a book (21-24). Because, "it was the responsibility of Renaissance printers to transform writer's scripts into readable texts," explains Stallybrass and Chartier, the printers often took on the additional role of "editor" (36). Smith writes, the printer of a text oversaw complex processes such as formatting, editing, and the drying and storage of

completed sheets in chronological order (22). Although this process of printing sounds long and daunting, in the early modern period it certainly represented an upgrade to original manuscript reproduction of the 1400s which was reliant on the work of scriveners to produce quality texts ("The Gutenberg Press").

Cornish writes, once a text was printed in England, it was then sent for review to the Stationers' Company. If the text was accepted and registered, the stationers of that text then held the official rights to the individual book, texts by the writer on the same topic, as well as different versions of the same text. Although registration of a text was not legally required by publishers, it did allow for the opportunity to ascertain lawful ownership of the text and provide protection against other publishers attempting to make revenue off the same work (15-19). This optional registration would eventually be made mandatory due to the development of intellectual property law and government regulation of copyright. Whereas poetry and religious texts were widely published, Jowett argues that dramas of the early modern period seldom appeared as printed books. When they did, however, the title pages almost always listed the theater company that had performed the play in public. Unlike the works of individual writers, the theater company that performed the play first would usually release the manuscript to a publisher to be printed (8).

Smith notes that the writers' input on the publication(s) of their work(s) in the early modern period was optional. Unlike today, when authorial rights are emphasized within the leading United Kingdom intellectual property document, early modern writers did not have authorial rights because the concept of the "author" was still being developed. Within the printing process, the only thing required of the writer was the transfer of his or her proprietary rights to the publisher along with the handing over of the manuscript copy (26). Some authors

took complete interest in the production of their works, while others, like Shakespeare, were rarely concerned with the fate of their works after they were given over to a stationer. The conjecture may be made that Shakespeare was uninterested in the publications of his plays because as a dramatist and actor, he wanted people to attend the theatre productions of them instead, as Wofford notes: "He himself never oversaw the publication of his plays, though some were published in his lifetime" (4-5).

The availability of printed material in the early modern period varied. According to Smith, most general readers could purchase their books from a wide range of sources including the center of London, the area around Westminster Hall, and St. Paul's Churchyard which was the national book trade area in the region. Books were widely traded across national borders, and people would often travel around the West to either sell or purchase new texts. Within England, people could purchase books from booksellers within a commercial two-story building or random street peddlers (30). Ioppolo notes that the audience for printed dramas only averaged approximately 500 copies per print cycle. This highlights the fact that the printing trade in the early modern period was largely dependent on its reproductions of individual texts. Because the printing presses feared losing money via overproduction, they often printed a limited number of first edition texts (9).

As for pricing of texts, Smith writes, the Stationers' Company was originally in charge of issuing an order to limit the price of new books. Normally, a book without illustrations cost around a penny for two printed sheets (30). When printed, dramas were often in the form of either quartos or folios. Described by Wofford, quartos in the early modern era were cheaply printed paperbacks that cost six pennies and were designed to be purchased by the general Elizabethan public. Meaning "four," a quarto was a large printed sheet of eight pages each that

was folded twice to make four leaves. In modern day, the quarto is comparable in size to the hardback novel. In addition to the popular quartos, folios also existed. These folios were more expensive, double-columned pages used to publish multiple works by the same writer (15).

Comparable to the advancements made in the print industry, literary writing in the early modern period began to evolve as well. Unlike the individualistic writers of today, dramatists and poets of the Elizabethan era prided themselves on being able to imitate popular texts and collaborate with other writers. In other words, "Anonymity, collaboration, and the absence of authorial rights were the typical circumstances of dramatic writing" (Jowett 8). Shakespeare often read, appreciated, and molded his literary sources to fit the plots of his dramas. According to Jowett, Shakespeare did this so much that he was even condemned as a plagiarist in the 1592 pamphlet *Greene's Groatsworth of Wit* (7). Clare argues that within this pamphlet Robert Greene attacks Shakespeare and describes him as, "an upstart Crow, beautified with our feathers, that with his Tygers hart wrapt in a Players hide, supposes he is as well able to bombast out a blanke verse as the best of you (10). Greene vehemently compares Shakespeare and his utilization of source material to the imitative crow that does little more than copy its betters. At the time the pamphlet's accusation did not hold up due to the wide acceptance of imitation and the accuser eventually issued a public apology. While plagiarism and imitation are frowned upon today, Wofford writes, "in the Renaissance intellectuals, poets, and writers admired the capacity to imitate and reproduce the devices, concepts, plots, and even vision of an already existing work or art, especially if it was created by a Greek or Roman artist" (19). Whereas originality is regarded as the most valued trait among modern artists, early modern writers such as Shakespeare were more concerned with imitation than innovation.

In addition to the collaborative writing method of the early-modern era, imitation, borrowing, and adapting were also taught and encouraged. Throughout his years in grammar school, Barkan writes, Shakespeare studied logic and rhetoric, learned Latin, and read a wide array of literature. Writing was also taught in grammar school, and educators often made their students imitate the works of classic writers such as Plato, Virgil, and Sophocles. In other words, students like Shakespeare kept imitating until they attained a work that was a complication of their own vice and the re-creation of a previous text (35). There is little doubt that Shakespeare practiced imitation in his schoolroom. It may even be assumed that Shakespeare's dramatic skills were formed around the rhetorical training taught in grammar school and that he was more than likely encouraged to appreciate the value of imitation.

As just noted, collaboration among writers was common. Authors, dramatists, and poets of the time often negotiated with employers, actors, and fellow writers as they moved through the various stages of the works. While Shakespeare is largely regarded as the sole author of his major works, Jowett believes there is historical evidence that supports the notion that he collaborated with writers such as Thomas Middleton and George Wilkins (17). Dissimilar to modern attitudes and government regulations regarding collaboration and the borrowing of material, Clare argues that it was normal in early modern culture for literary works – specifically dramas – to be trafficked amongst playwrights with little regard for their origins or creativity (1). As copyright regulations developed and the notion of individual expression gained credibility, the trafficking of works eventually became illegal and punishable in a court of law.

Unfortunately, while imitation was allied with high culture and carried a positive connotation in early-modern writing, the writing technique has slowly been given a negative association due to intellectual property laws. Regardless of the extensive range of sources

displayed in his dramas, Wofford argues that "Shakespeare was not an expert on classical literature. His greatness lay elsewhere – in his ability to combine a good understanding of European and classical literature with the native English popular and learned theatrical traditions to produce a dramatic poetry still unequaled in power and range in English today" (5). Arguably the most successful dramatist of all time, Shakespeare was able to combine the aspects of multiple sources into each of his dramas. He repeatedly found stories and dramas that replicated his personal interests, explains Barkan, and then re-shaped those texts by writing personal adaptations (44). Due to the strict intellectual property laws related to copyright, if a modern dramatist went about constructing imitative dramas the way that Shakespeare did, he or she would most likely face multiple criminal charges.

Despite the early modern period overlap between the advancements of the printing press and the production of Shakespeare's dramas, many of his plays were published posthumously. While some of Shakespeare's plays did appear in print via quartos in his lifetime, there were often multiple versions of the same play (Wofford 15). Had there been intellectual property laws in place at the time Shakespeare's works were written and published, I doubt there would be much speculation concerning the various versions of his dramas because current regulations would not have allowed for such imprecise publication. Jowett explains that the single-play volumes that were issued while Shakespeare was alive were only secondary forms based upon the performances of the plays on stage, and generally the dramas that were published were not issued until two or three years after they had been written and performed (4). During Shakespeare's lifetime there was never a printed, collected edition of his works; however, following his death, a nearly complete set of his works were published as a folio in 1623 by John Heminges and Henry Condell. This historic folio is known for the preservation of 18 plays

previously printed in quarto editions and eighteen other plays that had never been printed (Wofford 15).

All in all, the early modern period gave way to many of the literary texts studied and admired today. The invention and development of the printing press allowed for the circulation of religious and literary works to larger audiences. The process from authorial manuscript to printed text was often long and involved multiple industries and individuals. Elam writes, "The printing of Shakespeare's plays, especially in the form of the collected First Folio volume, was the result of a chain of transmission – from author to company, sometimes perhaps via the company's 'bookkeeper', to the publishers to the printers to the booksellers" (355). Besides the developments of the printing press in the early modern movement, writers were being encouraged to collaborate with others and imitate classic works. This expectation and acceptance of imitative texts would eventually lead to the creation of intellectual property laws and implementation of authorial rights.

Chapter Two:

An Introduction and Brief History of Intellectual Property and Copyright

Like the writing of any historical account, tracking the history and development of copyright over the years is complicated. In fact, copyright was not even a term used by writers or publishers when the first intellectual property statute came into existence in 1710. Since that date, however, intellectual property, copyright, and the idea of authorship has gradually developed around the world to embrace and include new forms of communication beyond the written and published word. In the process of researching intellectual property, I myself have encountered endless viewpoints and sometimes contradictory definitions concerning the history and terms of copyright, especially since copyright law is country specific. In other words, just as I noted above about any historical narration, "So it is with writing the history of copyright: Truth up to a certain point, with conjecture and perhaps bias for the rest" (Deazley 53). This quotation is a stark reminder of the considerable sum of inference and speculation that must be made by anyone tracing the multifaceted histories of literature or legal terminology. There will always be differing perspectives on the history of intellectual property and copyright, and mine is purely an account connected to the publications of the playwright Shakespeare as related to his country of residency, the United Kingdom.

Before reading the history of copyright, one must have a clear understanding of the key terms used within the field of intellectual property. Although the meanings of some terms have changed considerably since they were first coined, it is imperative for my argument to base all findings and judgments upon contemporary terminology. In the subsequent paragraphs, the reader will be better introduced to the following terms: 1. intellectual property, 2. copyright, 3. public domain, and 4. infringement. These key words are a stepping stone to better understanding the past and current system of copyright used in the United Kingdom today.

Additionally, these words and their modern definitions will be referred back to when rendering the verdict regarding Shakespeare's use of source materials based on current copyright laws.

The government of the United Kingdom defines the legal area of intellectual property as, "something unique that you physically create" ("Intellectual Property and your Work"). This basic definition is further accompanied by an explanation of what counts as owning intellectual property. In this case, the government attributes someone the owner of a physical creation if he or she invented the creation and it meets the requirements for a form of intellectual property protection including a copyright, patent, or design. Having one these three forms of protection helps a creator stop individuals from stealing or copying their creation and makes it easier to take legal action against such individuals. It must be noted that an idea itself is not considered intellectual property; the creation must take a physical form to be protected by law. Moreover, one can purchase intellectual property rights from a creator or previous owner. In the case of this thesis, I will be focusing on the intellectual property protection known as copyright.

The Copyright, Designs and Patents Act 1988, the United Kingdom's reigning intellectual property law document, identifies copyright as, "a property right" for the following: "original literary, dramatic, musical or artistic works" ("Copyright, Designs and Patents Act"). Unlike patents or designs, copyright is automatically granted to the creator upon the physical construction of an original work ("Intellectual Property and your Work"). For example, had Shakespeare been writing today, his plays would have been granted an automatic copyright protection based on the simple fact that he created a paper trail by physically writing out his plays. Copyright protection starts as soon as a work is created, and the duration of protection depends on the type of work. In the case of written, dramatic, musical and artistic work, copyright protection currently lasts for seventy years after the author's death. This lengthy

protection prevents other individuals from doing all of the following: copying a creator's work, distributing or renting copies of that work, performing or showing that work in public, making an adaptation of that work, or putting that work on the Internet.

Once a creation's copyright protection expires, that work then falls into the public domain. Defined by the United Kingdom as "public property," the public domain includes all works that have expired from copyright protection (The UK Copyright Service). All works within this domain may be used freely by anyone for further creation, adaptation, or appropriation. However, according to the webpage "Public Domain," when dealing with works within the domain, individuals should keep in mind the following items: copyright rules vary by country, a reproduction of such a work regularly qualifies for copyright, and an adaptation of such a work is protected by copyright (Deazley & Meletti).

The final key term worth understanding is infringement. Defined by the United Kingdom's government as "a legal term for an act that means breaking a law," infringement occurs when an individual copies or exploits a creation that is protected by intellectual property laws ("Intellectual Property Crime and Infringement"). In order to use lawfully someone else's intellectual property, an individual must either get permission from the creator or buy the rights to use the property. It is important to note that infringement can occur when someone directly or indirectly uses a substantial part of a copyrighted creation. Since copyright is considered a legal right, when an individual infringes upon a creator's work, he or she could be fined, imprisoned, or both.

Now that I have provided contemporary definitions of key intellectual property terms, it is worth looking back to the past in order to better understand how copyright evolved to its current standards. In the early history of copyright, there is no doubt many countries developed

some form of "copyright" in relation to their copying and publication needs. Lionel Bently argues that there were undoubtedly "multiple, international contributions to the development of copyright law and practice" (11-12). However, due to a lack and loss of records, it is nearly impossible to track Britain's sources of inspiration for their first piece of copyright legislation, the Statute of Anne to which we will return soon; it was the first legislation piece that promoted the issue of copyright to a level laudable of governmental regulation and practice (Bently 12-13). Since then, the copyright system has undergone multiple transformations to incorporate the changes of society and technology. As the desire for international content grew, the need for copyright protection did as well, thus the Berne Convention was developed in 1886 to extend a creator's copyright protection beyond the boundaries of his or her own country ("International Copyright Act"). Following the Berne Convention, copyright ideas continued to grow and to spread toward the systems of laws today. For instance, the World Intellectual Property Organization was created in 1967 to balance the rights of authors and public interest in differing countries, and shortly after that, the Copyright, Designs and Patents Act of 1988 was passed and remains the leading legislative document involving copyright insight and protection for modern creators working in England (Xalabarder 230 and "Copyright, Designs and Patents Act 1988").

Prior to the first copyright act, the Statute of Anne in 1710, England was more or less an "author-swindling nation," argues Deazley, in which writers had little to no legal reparation against an individual producing an epitome of his or her work (33). During the 150 years preceding the Statute of Anne, printing privileges were regulated by the Guild of Stationers (Bently 8). During Shakespeare's lifetime, however, the Stationers' Company took over and allowed printing companies to purchase patents for the sole rights to produce specific works and particular genres of work (Cornish 17). The printing privileges granted by the Stationers

Company were not established to protect writers, but instead were used to support the trade monopoly of the small group of licensed publishers in the country (Grosheide 100). After over a century of success in regulating the book trade, the Stationers' Company began to decline in the end of the seventeenth century due to economic and political factors as well as the creator's desire for authorial rights (87).

Following the failure of the Stationers' Company, Parliament enacted the "Licensing Act of 1662" (Cornish 17). Designed to restore monarchical powers to Charles II, the Licensing Act is referred to as the, "Act for preventing the frequent abuses in printing seditious, treasonable and unlicensed books and pamphlets; and for the regulating of printing and printing presses" (Cornish 17; Gardner). Originally viewed as a temporary document until a better act could be developed, the Licensing Act was continually renewed until the year of 1679 when Parliament overlooked its renewal due to country chaos (Gardner). From that year onwards, the Licensing Act was sporadically renewed until its final expiration in 1695 (Cornish 18). Due to the decline of the Guild of Stationers and the irregularity of the Licensing Act in between the years of 1679 to 1695, printing presses and the purchasing of patents were left largely unregulated by Parliament (Gardner). On the Licensing Act's final expiration, unscrupulous book producers began printing copies without patents or the permission of the writer; and although the Stationers' Company was still in existence, it had little power against derivative printers since legislation preventing such acts was now non-existent. To correct such abuses, Parliament designed legislation that could restore order to the book trade that had dissipated since the Licensing Act's expiration.

The creation and implementation of the Statute of Anne in 1710 came as a long-awaited relief to the printers and writers working in England. Intended as a "trade regulation device," the

Statute, according to Bently, produced a legislative system which gave writers and publishers uniform, limited duration privileges as a right, proposed punishment for illegal copyists, and instituted a new way of thinking about authors (8-10). A notable section of the Statute of Anne, which includes references to authors as proprietors and the illegal copy actions that occurred after the expiration of the Licensing Act, can be seen below:

> Whereas printers, booksellers and other persons have of late frequently taken the liberty of printing, reprinting and publishing, or causing to be printed, reprinted and published, books and other writings, without the consent of the authors or proprietors of such books and writings to their very great detriment and too often to the ruin of them and their families: For preventing therefore such practices for the future. (qtd. in Bently, Uma, and Paul eds. 501)

Unlike preceding legislation, the Statute of Anne was the first to propose a limit on duration of protection for published works. Cornish writes, the Act extended legal rights to existing works for twenty-one years from publication and oddly granted new creations protection for fourteen years. If the first term protection expired while the author was still alive, he or she could request a protection extension for 14 more years (23). The time-limited "copyright" protection proposed in the Statute of Anne instantly became a topic of debate among printing companies and common law advocates. Despite the controversy surrounding the duration of copyright, the Statute of Anne's time-limited declaration would become a central component for future intellectual property legislation around the world (25).

Described by Cornish as "an Act for the Encouragement of Learning," the Statute of Anne came into existence as a law to protect the investments of printing corporations rather than the intellectual expression used to create the works (25). To achieve copyright protection under

the Statute of Anne, Barlow writes, a writer or his or her publisher had to abide by specific procedures involving registration and the presentation of registered works to particular libraries (17). Additionally, according to Cornish, the Statute provided the owner of the copy license the right to demand forfeiture of pirated copies and entitled him or her to fine the illegal copyist one penny for each published sheet. Aside from illegally printing a work, a person could also be punished for importing or selling a work without an official license. It is important to note that the penal law set against third-party pirates in the Statute of Anne became one of the first legislative pieces in England to regulate punishment for a crime via legal policy (20).

While the Statute was created to prevent the copying of works by strangers who did not have the right-holder's license, it also pioneered a new way of thinking about authorship. Because the copying right was initially given to the author – "proprietor" – of a work then transferred to a bookseller or publisher, people were forced to adopt the ideal of literary property as an independent creation of the writer (Cornish 20). This innovative way of viewing writers as authors became a catalyst for future legal concepts that favored the author as, "the person initially entitled to the exclusive right to publish, and later to perform, the protected work" (25). The preamble of the Statute of Anne even encouraged erudite men and women to add to the culture of their society by composing useful books with the assurance that their work(s) would be safe from illegal copyists (22).

The Statute of Anne, despite its problems concerning limitations on duration and equity, lasted all the way until 1911, with only occasional amendments. The impact of the Statute of Anne can still be seen around the world as it provided countries with a model that would be adopted in many nations, most notably the United States. Furthermore, this piece of legislation remains vital to the history of copyright for two reasons. First, the document supplied the basic

concept for providing entitlement to authors, and secondly, it encouraged the public to advance society by writing books. However, with the emergence of better printing presses, technology, and the acceptance of the concept of authors as owners, England was forced to re-erect the Statute of Anne under an imperial copyright structure (Cornish 25).

Throughout the eighteenth century, and under the new legislation of the Statute of Anne, the term "literary property" emerged in England and gave rise to the opinion that writers were the owners of their works. Van Horn Melton describes the author position that surfaced in the eighteenth century as, "the modern idea of the author" that is "the idea of authorship as ownership, or what we today call copyright, with authors considered the proprietors of works" (qtd. in Grosheide 95). Authors during this time attained a new cultural and political identity, and that invention gave way to the conceptualization of individual author expression in content and forced Parliament to make a legal distinction between idea and expression (Grosheide 95-100).

Grosheide argues that as the concept of the "author as owner" gained popularity in the nineteenth century, philosophers began promoting the theory that creators had property rights to both their physical works and the ideas contained within them (96). After a series of court cases involving differing opinions on the time-limit issued in the Statute of Anne, the duration of copyright protection was lawfully extended to 42 years in 1842 ("History of Copyright"). In addition to the endorsement of the property rights theory, along with the spread of the Romantic Movement and Freedom Ideology, a foundation was laid for the acknowledgment of personality in writing in the late nineteenth century. The effect of this personality recognition was the establishment of intellectual property law (Grosheide 96). At the time of the development of intellectual property law, authors' works were being published in countries other than their own. Referred to as "cross-border piracy," this spread of falsified copies along with unlawful money

exchange around the world encouraged writer Victor Hugo, who would benefit from it personally, to create the framework for an international intellectual property agreement entitled the Berne Convention ("History of Copyright").

Like England, other countries were developing an assortment of copyright systems to fit their printing and authorial needs, so it was only a matter of time before an international intellectual property agreement like the Berne Convention was created to handle copyright issues. Formed in 1886, the Berne Convention set out a structure for world-wide copyright. This international legislation allowed participating countries the opportunity to converse and agree on a set of global regulations for copyright in all the countries involved. Despite intermittent differences surrounding the copyright rules, the Berne Convention has only gained momentum since its induction in the late nineteenth century, although the international agreement has been amended on multiple occasions to reflect technological advancements and promote copyright unity among nations. To date, the Berne Convention consists of 167 participating countries ("History of Copyright").

Following the Berne Convention, a hundred years passed with little copyright conflict in England. Although the Statute of Anne was retired in 1911, multiple aspects of the Statute were revived in England's imperial copyright structure. For the most part, this new copyright structure allowed writers and publishers to carry on much as they had been doing with the Statute of Anne (Cornish 25). In 1956, the duration of copyright protection was once again extended, this time to a lengthy fifty years ("History of Copyright"). Aside from a time-limit extension in England, undoubtedly the biggest global intellectual property development of the twentieth century was the formation of the World Intellectual Property Organization (WIPO) in 1967. This organization was established in response to the creation of the Berne Convention, and since its inception, the

WIPO has discussed intellectual property issues such as moral rights and fair use in copyright ("History of Copyright").

While the WIPO may have been the chief international advancement of the twentieth century, the biggest intellectual property development for England was the creation of a new piece of legislation, the Copyright, Designs and Patents Act. Approved by Parliament in 1988, this Act remains the leading intellectual property document used in England today. In addition to extending the duration of copyright protection to creators' works for seventy years, the Copyright, Designs and Patents Act strived to "restate the law of copyright, with amendments; to make fresh provision as to the rights of performers and others in performances" (www.gov.uk – actual document). Unlike prior copyright legislation such as the Statute of Anne, the Copyright, Designs and Patents Act deliberately references the author as the creator (www.gov.uk). Also unique to this intellectual property document is the inclusion of works produced in a digital format. The only notable fault in the copyright system of today, argues Obhi, is its lack of developing a system for "orphan works" also known as works without a known author (280). With the continuing growth of intellectual property law, however, it is only a matter of time before such works will be addressed from a legal perspective.

There is no doubt that intellectual property law, specifically copyright, has developed considerably over the years. England has come a long way since its "author-swindling" days in the sixteenth and seventeenth centuries where commercial printing was in the developmental stages and intellectual property was more or less nonexistent (Deazley 33). In the remaining chapters, I will breakdown Shakespeare's utilization of source texts in three of his plays to determine whether he would have been able to publish his dramas based on the United Kingdom's current copyright laws.

Chapter Three:

An Analysis of Source Texts Used in *Henry IV Part One*

Regarded as one of the greatest English history plays, *The History of King Henry the Fourth, Part I*, is estimated to have been written by Shakespeare between the years of 1596 and 1597. The second part of a historical tetralogy, *1 Henry IV* may be described as a *bilungsroman* drama because it features the psychological and moral growth of the protagonist Prince Hal (McMullan xi). While both parts of *Henry IV* dramatize the main characters' quests for individual and national identity, *Part 1* solely focuses on the transformation of the future King Henry V of England, Prince Hal. According to Jowett, on February 25, 1598, the history was officially entered in the Stationers' Register to the patron Andrew Wise under the title, "*The Historye of Henry the Fourth his battaile at Shrewsburie against Henrie Hottspurre of the North with the conceipted mirthe of Sir Iohn Falstoff*" (177). Following its registration, the popular play was published in seven editions before it was finally printed in 1623 in the collected edition of Shakespeare's works, the First Folio.

In order to analyze Shakespeare's use of source texts within the drama, it is necessary to provide a basic summary concerning the principal events, characters, and themes. Based on the English history of the fifteenth century, *1 Henry IV* opens in the royal court of England where the fretting King Henry IV states, "So shaken as we are, so wan with care, / Find we a time for frighted peace to pant, / And breathe short-winded accents of new broils" (1.1.1-3). [1] The King's vexed declaration foreshadows problems between his people and the strong Percy family that will eventually lead to the battles and bloodshed that take place in the final acts of the play. Obligated to defer a crusade to Jerusalem due to escalating rebellions at home, King Henry IV is

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[1] For this chapter, all quotations and references to *1 Henry IV* will come from the Longman Cultural Edition of *Henry IV: Parts One and Two* edited by Ronald L. Levao.

forced to face the fact that his son and heir Henry – also known as Prince Hal – displays few princely qualities. Often contrasted to Harry "Hotspur" Percy, the noble young son of the Earl of Northumberland, Prince Hall spends the majority of his time in the London taverns with riffraff such as Sir John Falstaff.

Described by Prince Hal as "fat-witted with drinking of old sack," Sir John Falstaff proves time and time again that he will do whatever necessary to fund his boisterous behavior (1.2.2). On multiple occasions, Falstaff uses his "surrogate father" relationship with Prince Hal to meet his personal needs and distract Hal from his kingly duties. For example, while Prince Hal participates in a robbery with his friend Ned Poins at Falstaff's expense, the dignified Hotspur plots with his family to overthrow King Henry IV. Eventually, however, Prince Hal returns to his father and seeks forgiveness for his unacceptable behavior. He promises to redeem himself by defeating Hotspur and the rebel forces: "For the time will come / That I shall make this northern youth exchange / His glorious deeds for my indignities" (3.2.144-46). Before this declaration can be acted upon, the King offers to excuse Hotspur's rebellious behavior if he will withdraw his resistance; however, before the message can get to Hotspur, the battle of Shrewsbury begins.

Throughout the battle, Shakespeare shifts from scene to scene to show the audience the actions of the leading characters. Having been given a commission and manipulated the ranks to his benefit, Falstaff exhibits extremely cowardly war conduct. He feigns death and claims to have killed Hotspur, when it is actually Prince Hall who kills the Percy boy and fulfills his declaration. In the final moments of the play, the King's army wins the battle of Shrewsbury, and King Henry states that they will continue the war against the remaining rebels until "all our own be won" (5.5.44). Having redeemed himself in his father's eyes, King Henry declares that his son Harry will join him in conquering the rebels in Wales. As the play draws to a close (and sets the

stage for *Henry IV Part II*), it is clear that *Part I* is an engaging play full of round characters and worldly themes. Gordon McMullan argues that *1 Henry IV* is:

> a dramatic study of the establishment and maintenance of power, of kinship and the negotiation of identity, of the relationship between official life and the alternative world of carnival, and of the fundamental instability of masculinity, of hereditary monarchy, and of British geography. It is a powerful and engaging stage play that has thrived in the theater ever since it was first performed. (ix)

There is no doubt that Shakespeare borrowed many of his characters, plot actions, and themes from the actual events and political figures of the fifteenth century. He was inspired by the events surrounding him, and once he decided to dedicate a tetralogy to the Tudor history, it may be argued that he felt compelled to seek out secondary sources to aid in his writing. While his explicit use of source materials in the early modern period may not have been problematic, upon further examination, it may be argued, as we will see, that his direct application of material constitutes copyright infringement based on the UK's current intellectual property standards. By analyzing Shakespeare's use of material in two primary texts A) *The Chronicles of England, Scotland, and Ireland, 1587* and B) *The Famous Victories of Henry V*, one may render a proper verdict regarding the copyright infringement claim.

A. *The Chronicles of England, Scotland, and Ireland*, 1587
Raphael Holinshed

In writing *1 Henry IV*, Shakespeare looked to Raphael Holinshed's historic account *The Chronicles of England, Scotland, and Ireland*, specifically the second edition published in 1587. According to Levao, although named after Holinshed – a contributor and the first edition editor – the historic work was made possible by the collaborative efforts of roughly a dozen writers (228). Due to the text's detailed chronological reports, varying points of view, and variety of

supporting documents, Shakespeare was able to borrow repeatedly from *The Chronicles* when

constructing his plot and characters for *1 Henry IV*. While *The Chronicles* is a historical

compilation of centuries, Shakespeare only covers the years 1400 to 1403 in his drama.

According to Bullough, Shakespeare begins roughly with the conception of the nobles' rebellion

and ends with the Battle of Shrewsbury that occurred on July 21, 1403. Described by Joseph

Satin as providing "almost the entire plot skeleton," for *1 Henry IV*, Holinshed's *Chronicles* is

arguably the primary source from which Shakespeare acquired his plot arc and basic character

sketches (4: 151).

Shakespeare chronologically follows Holinshed's source text as closely as he can

throughout the entire play. Although he does individualize each scene of the play by shifting

events or compressing details, the dramatic structure largely still remains a construct of

Holinshed's historical recount. There are multiple sections within the two texts that parallel each

other including the following: the initial friendship between the King and the Percy family,

Glendower's rebellion against the King, and the auspicious weather descriptions which

symbolically reflect the turbulence in the kingdom. These three specific elements may all be

compared and compiled to determine just how much Shakespeare relied on Holinshed's text

when completing *1 Henry IV*.

In Act 1 of *1 Henry IV*, the surface relationships between King Henry IV and the Percy

allies and family are dramatized as a positive, mutual friendships; however, beneath the surface,

there is foreshadowing and unique references to the rebellion being formed against the King. As

Holinshed writes, "Henry, Earl of Northumberland, with his brother Thomas, Earl of Worcester,

and his son the Lord Henry Percy, surnamed Hotspur, which were to King Henry in the

beginning of his reign both faithful friends and earnest aiders, began now to envy his wealth and

felicity" (qtd. in Satin 158). This initial reference to the crumbling relationships among the King

and his people is expanded upon in lines 1-124 of Shakespeare's drama. He makes direct

references to the envious and rebellious thoughts of the Earl of Northumberland, Hotspur, and

the Earl of Worcester. As Worcester complains, "Our house, my sovereign liege, little deserves /

The scourge of greatness to be used on it— / And that same greatness too which our own hands

have holp to make so portly" (1.3.10-13). This envious speech regarding the King's wealth and

happiness leads the King to question the intentions of Worcester, and so he replies, "Worcester,

get thee gone, for I do see / Danger and disobedience in thine eye" (1.3.15-16). Shakespeare uses

the jealousy and budding rebellion referenced in Holinshed as a basis to expand the actions of the

play and foreshadow the Battle at Shrewsbury.

Another plot thread in *1 Henry IV* that stems from Holinshed is Glendower's rebellion

against the King and the Battle of Shrewsbury. Throughout the play, Shakespeare relies heavily

on Holinshed's details involving the actions of the rebels and the preparation details leading up

to Shrewsbury. As Holinshed notes, "The earle of Northumberland himselfe was not with them,

but being sicke, had promised upon his amendement to repaire unto them (as some write) with

all convenient speed" (qtd. in Bullough 4: 186). This specific battle detail is described by

Shakespeare in a conversation between Hotspur and a messenger.

MESSENGER: These letters come from your father.

HOTSPUR: Letters from him? Why comes he not himself?

MESSENGER: He cannot come, my lord. He is grievous sick. (4.1.14-16)

While Shakespeare could have created another reason for the Earl's absence, he chose to copy

almost word-for word through a series of written letters Holinshed's historical detail that

describes the Earle's sickness.

Shakespeare also uses Holinshed's details involving the actual Battle of Shrewsbury. After an initial reading of *1 Henry IV*, one could argue that Shakespeare's dramatization of the Battle of Shrewsbury is innovative; however, upon studying Holinshed's depiction of the battle in *The Chronicles*, the reader soon realizes that Shakespeare's exciting battle scene is nothing more than a replication of Holinshed's historical account. For instance, in Shakespeare's text Hotspur states, "Now, Esperance! Percy! And set on. / Sounds all the lofty instruments of war, / And by that music let us all embrace" (5.3.96-98). Shakespeare's reference to the Percy battle cry may easily be traced back to Holinshed's description of the fight in the third volume of *The Chronicles*: "The adversaries cried *Esperance Persie*, and so the two armies furiouslie joined" (qtd. in Bullough 4: 190). Holinshed's quotation was no doubt the source material from which Shakespeare borrowed when constructing the Shrewsbury Battle, and while Shakespeare does strive to represent accurately the events of the battle, it is clear the words he claims as his own are nothing more than a more dramatic representation of Holinshed's historical report.

In addition to using *The Chronicles* to describe the rebellious thoughts and actions of the characters, Shakespeare also takes weather details from Holinshed. For instance, Holinshed writes, "In the month of March appeared a blazing star, first between the east part of the firmament and the north, flashing forth fiery beams towards the north, foreshowing the great effusion of blood that followed" (qtd. in Satin 155). This quotation is comparable to the astronomy reference Shakespeare makes in Act 3, when Glendower proclaims, "At my nativity / The front of heaven was full of fiery shapes, / Of burning cressets, and at my birth / The frame and huge foundation of the earth / Shaked like a coward" (3.1.12-16). While it may be argued that Shakespeare needed Holinshed's chronological details to make his historical drama more accurate, there is no reason why he needed to borrow Holinshed's weather and astronomy

details. As a writer, he should have been able to insert small, secondary details of his own invention.

Aside from providing Shakespeare with the basic plot outline, Holinshed also supplies Shakespeare with the essential character outlines for Prince Hal and his father King Henry IV. For example, Holinshed describes Prince Hall in this way: "Indeed he was youthfully given, grown to audacity, and had chosen his companions agreeable to his age, with whom he spent the time in such recreations, exercises, and delights as he fancied" (qtd. in Satin 177). This description is comparable to Shakespeare's Prince as Hal is often reprimanded by his father for associating with the reprobates. Similarly, the characteristics Shakespeare gives King Henry IV are comparable to those created in *The Chronicles*. Holinshed writes, "This king was of a mean stature, well-proportioned, and formally compact, quick and lively, and of a stout courage" (qtd. in Satin 180). Shakespeare does little to veer away from Holinshed's description of the King. Instead, he emphasizes Holinshed's portrayal of Henry IV by constructing dialogue that mimes a variety of traits such as honor and cleverness. For instance, Shakespeare details a bitter conversation between the King and the rebel Worcester, with the King ranting, "Then with the losers let it sympathize, / For nothing can seem foul to those that win… You have deceived our trust / And made us doff our easy robes of peace / To crush our old limbs in ungentle steel" (5.1.7-13). This quotation is yet another example of how Shakespeare borrowed and replicated Holinshed's *Chronicles* to aid his history play.

B.   *The Famous Victories of Henry V*, 1594
Anonymous

In addition to appropriating from Holinshed's *The Chronicles*, Shakespeare also studied and borrowed from the anonymous play *The Famous Victories of Henry V*. The historical play, explains Bullough, was registered in the Stationers' Registry on May 14th, 1594. A reenactment

of the life of Henry V as Prince, the drama focuses on Henry V's youthful exploitations, his relationship with his father, and his gradual ascension to the throne (4: 167). Muir explains that while there are only tentative ideas concerning the original contents of *The Famous Victories*, there is little doubt that Shakespeare's fusion of comedy and heroism in *1 Henry IV* was derived from *The Famous Victories*. He borrows from the anonymous text to help develop Falstaff's character (Sir John Oldcastle), create the comic tavern scenes between Prince Hal and Falstaff, and expand the character Ned Poins (96).

Perhaps the biggest story element Shakespeare takes from *The Famous Victories* is the origins of Prince Hal's portly friend Falstaff. The fat and laughable character stems from the invention of Sir John Oldcastle. In the text of *The Famous Victories*, Oldcastle participates in a robbery, swears freely, and looks forward to being a hangman eventually when Hal becomes king. At the beginning of the play, upon seeing Oldcastle, Prince Hal states, "But sirs, I marvel that Sir John Oldcastle / Comes not away: zounds, see where he comes. How now, Jockey, what news with thee?" (qtd. Satin 215: 1.1.15-17). It is obvious that Shakespeare's Falstaff reflects the features of Oldcastle in multiple ways. Historically, Falstaff is described as a supporter of Henry IV and a friend of Prince Hal. There is also a mention of Oldcastle's failure to convert religiously. Although Shakespeare does not incorporate this controversial aspect of Oldcastle in *1 Henry IV*, he does include a variety of other borrowed facts such as the cowardice Falstaff exhibits at Shrewsbury and his banishment by Prince Hal (Bullough 4: 168-171). Shakespeare even goes so far as to make a direct allusion to Falstaff's original name in the play. Hal states to Falstaff, "As the honey of Hybla, my old lad of the castle. And is not a buff jerkin a most sweet robe of durance?" (1.2.39-40). This quotation proves that Shakespeare was open about his

borrowing of source materials, so much so that he made plays on words in the hopes that the audience would catch on to his borrowing of other popular texts.

Satin argues Shakespeare's comic events surrounding Falstaff, Prince Hal, and his friends are also borrowed from *The Famous Victories* (152). There is a direct reference in Shakespeare's play to the tavern and drinking described earlier in *The Famous Victories of Henry the Fifth*. Henry V states, "No. No: you know the olde Taverne in Eastcheape, / There is good wine: besides, there is a pretie wench / That can talke well, for I delight as much in their toonges, / As any part about them" (qtd. in Bullough 4: 301-302: 1.1.87-90). This description is comparable to the actions that take place in Shakespeare's tavern world. Poins makes a parallel reference to the tavern's location when he states, "I have bespoke supper tomorrow night in Eastcheap" (1.2.115-116). Additionally, the Gadshill robbery that occurs in Act Two of *1 Henry IV* is a reflection of the one that occurs in *The Famous Victories*. For instance, in *The Famous Victories* Henry states, "How now, you villains, what are you?" (qtd. in Satin 216: 1.1.47). This question is comparable to the Prince's question, "How now, woolsack, what mutter you?" (2.4.124). Satin argues that by comparing these two statements along with the scenes of the robbery, it becomes clear that Shakespeare not only uses exact words from *The Famous Victories* such as "zounds" and "villains," but he also manipulates aspects of the robbery to fit his borrowed plot arc (215-217).

The character Ned Poins is an expanded development of Ned in *The Famous Victories* play. In Shakespeare's drama, Poins's friendship with Prince Hal is developed through the comical tavern scene leading up to the Gadshill robbery. In *The Famous Victories*, Prince Hal – Henry V – and Poins converse:

> HEN. V: But *Ned*, so soone as I am King, the first thing I wil do, shal be to put my
>
> Lord Chief Justice out of office, and thou shalt be my Lord chiefe Justice

in England.

> NED: Shall I be Lord chiefe Justice? By gogs wounds, ile be the brauest Lord
>
> chiefe Justice that euer was in England.
>
> HEN. V: Then *Ned*, ile turne all these prisons into fence Schooles, and I will endue
>
> thee with them, with lands to maintaine them withal. (qtd. in Muir 100-
>
> 101)

This conversation shows the playful banter and relationship between Prince Hal and Ned that

Shakespeare adapts to fit his play. Interestingly enough, while Shakespeare does incorporate this

conversation from *The Famous Victories* into his play, he puts the words of Ned's character into

Falstaff's mouth instead:

> FALSTAFF: But, I prithee, sweet wag, shall there be gallows standing in England
>
> when thou are king… Do not thou, where thou are king, hang a thief.
>
> PRINCE: No, thou shalt.
>
> FALSTAFF: Shall I? Oh, rare! By the Lord, I'll be a brave judge!"
>
> PRINCE: Thou judgest false already. I mean, thou shalt have the hanging of the
>
> thieves, and so become a rare hangman. (1.2.52-60)

Although this scene does differ slightly from that described in *The Famous Victories,* it is clear

that Shakespeare borrowed and adapted the section to further expand the relationship between

Falstaff and Prince Hal. Still, the original scene exhibits the playful relationship between Prince

Hal and Ned which Shakespeare uses to enhance his drama. In short, various elements and

characters of *The Famous Victories* were used by Shakespeare to aid the development of his

characters and strengthen the historic plot inspired by Holinshed's events.

In conclusion, while writing *1 Henry IV*, Shakespeare mainly relied on source material

from Holinshed's *The Chronicles of England, Scotland, and Ireland* and *The Famous Victories*

of Henry V. Satin argues that the only parts of Shakespeare's drama that are solely of his own

invention and design are the creations of the valorous Hotspur and the expanded depth of Falstaff

(152). Although the verdict for Shakespeare's copyright infringement claim in each of his plays

will not be rendered until the conclusion of the entire thesis, it is important to determine whether

the primary source texts he used in *1 Henry IV* would have fallen under public domain during the

time he was writing. In the case of Holinshed's *Chronicles*, because the text was the combined

work of multiple writers, the death date of each editor must be considered to determine whether

The Chronicles would have fallen under public domain. Holinshed himself passed away in 1580,

and the remaining *Chronicles* editors died shortly after: William Harrison passed away in 1593,

Richard Stanyhurst in 1618, and John Hooker in 1601. That means that seventy years would be

added to the date of the last editor's death – 1618 – to determine the text's public domain

eligibility. Placing the text under modern intellectual property restrictions, *The Chronicles* would

not have fallen into public domain until the year 1688, long after Shakespeare had actually

borrowed from the text for his play. In the case of Shakespeare's second source text, *The Famous*

Victories of Henry V, there was no known author to determine the most accurate date of

induction into the public domain. Despite its anonymous name, however, the work was not

registered until 1594 meaning it still would not have fallen into public domain until at the earliest

1664. The fact that both of the source texts Shakespeare borrowed from for *Henry IV Part I*

would not have been in public domain at the time of his writing impacts whether Shakespeare

may be found innocent or guilty of committing copyright infringement at the conclusion of the thesis.

Chapter Four:

An Analysis of Source Texts Used in *Twelfth Night*

One of the most popular and admired comedic plays of the early modern era, *Twelfth Night, or What You Will*, was written by Shakespeare in 1601. Referred to by Kenneth Muir as "a masterpiece of recapitulation," *Twelfth Night* is a tale about twins and the errors of identity that occur in a strange town after a catastrophic shipwreck (132). The father of twins, Shakespeare wrote repeatedly on the topics of male and female disguises, transformations, and mistaken identities. The play dramatizes the actions and emotions of the primary characters Viola and her brother Sebastian after they have been separated in a shipwreck. While it is not the last of Shakespeare's comedic plays, it is often viewed as one of his last romantic comedies before he turned to his tragedy period. Following the productions of *Twelfth Night* in the early seventeenth century, the text was officially printed in 1623 in the collected edition of Shakespeare's works, the First Folio.

To accurately evaluate Shakespeare's utilization of source texts within the drama, a fundamental summary concerning the key events, characters, and themes is necessary. Set in the kingdom of Illyria, *Twelfth Night* opens with duke Orsino listening to music and desiring the love of Lady Olivia. He croons out lines like a love-sick ballad: "If music be the food of love, play on / Give me excess of it, that surfeiting / The appetite may sicken and so die," and the opening declaration of the poetic Orsino quickly introduces the audience to the important themes of love and death which are woven through the rest of the drama (1.1.1-3).[2] Mourning the death of her brother, Lady Olivia continually rejects Orsino. Meanwhile, a shipwreck off the coast of Illyria has separated the twins, Viola and Sebastian, and each thinks that the other has drowned.

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[2] For this chapter, all quotations and references to *Twelfth Night, or What You Will* will come from the Arden Shakespeare edition of *Twelfth Night* edited by Keir Elam.

In sorrow, Viola discusses her circumstances, "And what should I do in Illyria? / My brother he is in Elysium" (1.2.2-3). While Viola ponders the gloomy thought that her brother is dead in the afterlife, Sebastian is alive because he was rescued by the sea-captain Antonio, a man also wanted for piracy against Orsino. Reluctantly, Sebastian states, "A lady, sir, though it was said she much resembled / me, was yet of many accounted beautiful…. She is drowned already, sir, with salt / water, though I seem to drown her remembrance / again with more" (2.1.23-29). The twins continually speak of their loss to other characters, and they are not reunited until the final scenes of the play.

Although mourning the loss of her brother, Viola disguises herself as a page boy named Cesario in order to gain employment with Duke Orsino. She declares, "I'll serve this duke," and "speak to him in many sorts of music, / That will allow me very worth his service" (1.2.52-56). After being employed by Orsino, Cesario is sent by him to convince the Countess Olivia to allow him to woo her despite having been already rejected. Unfortunately, in the process of working for the duke and courting the Countess, Olivia falls for Cesario – the disguised Viola – and Viola falls in love with Orsino. Viola admits in the final scene of the play that she has fallen in love with Duke Orsino, and that if that love is a crime, punish her. Meanwhile, in another part of Illyria, Olivia comes across Sebastian, mistakes him for Cesario, and arranges a secret marriage.

In the sub-plot, Olivia's steward, Malvolio disapproves of the other members of her household. Reacting against Malvolio's strong dislike towards them, Olivia's kinsman Sir Toby Blech, his friend Sir Andrew Aguecheek, the jokester Feste, and Olivia's waiting-lady Maria, plot his downfall. The group composes a fake letter and tricks Malvolio into believing Olivia loves him. Unaware of the trick, Malvolio dresses up in yellow cross-garters and appears in front of the Countess. Horrified by his appearance and outburst in her bedroom, Olivia condemns him

as a madman and has him shut up in the dark, claiming, "Why, this is very midsummer madness"
(3.4.53). This quotation encapsulates the play as a whole with its revelry, insanity, multiple
disguises and unconventional love affairs.

At the conclusion of the play, there are many misperceptions among the characters
concerning the true identities of the twins. Upon seeing both twins, Olivia finally understands the
confusion surrounding her love for Cesario and betrothal to Sebastian. Also in the closing scenes
of the play, a letter is brought from Malvolio and on his release, he promises revenge even
though the conspirators confess to having written the fake letter. Originally furious at Viola's
disguise, Duke Orsino soon overcomes his anger in the final scene and recognizes his love for
her. He promises that once she looks like a woman again they will discuss marriage. The play
ends just as it begins, with music, and the memorable verse of Orsino's fool, Feste. He sings, "A
great while ago the world begun, / With hey, ho, the wind and the rain, / But that's all one, our
play is done, / And we'll strive to please you every day" (5.1.398-401). This ending readdresses
the audience and further proves that Shakespeare's plays are designed to entertain us then and
now.

It is clear that *Twelfth Night* is an engaging play full of round characters, laughable
moments, and heartwarming themes; however, there is no doubt that Shakespeare borrowed
many of his plot elements, themes, and characters from other dramas. Despite having fathered a
set of twins himself, Shakespeare sought out other inspirations and sources when constructing his
play. First performed on February 2, 1602, in the Middle Temple at Candlemas, the play was
originally described by the spectator John Manningham as, "a play called 'Twelve Night, or
What You Will,' much like the *Commedy of Errores*, or *Menechmi* in Plautus, but must like and
neere (sic) to that in Italian called *Inganni*" (qtd. in Bullough 2: 269). This quotation highlights

the ease with which a knowledgeable member of the audience could connect Shakespeare's

comedy to other dramas of the era. While his obvious use of source materials in the early modern

period may not have been challenged, upon further examination, it becomes apparent that his

direct exploitation of materials constitutes copyright infringement based on the UK's current

intellectual property standards. By analyzing Shakespeare's use of material in two primary texts

A) "Apolonius and Silla" and B) *Gl' Ingannati*, one may render a proper verdict regarding the

copyright infringement claim.

<div align="center">

A. "Apolonius and Silla," 1581
Barnaby Riche

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In writing *Twelfth Night*, Shakespeare initially looked to Barnaby Riche's novella

"Apolonius and Silla," part of Riche's longer collection *Riches Farewell to Military Profession*,

to provide him with principal plot material. According to Muir, Shakespeare's *Twelfth Night*

contains the following of Riche's novella elements: a shipwreck, the twin protagonists, a heroine

disguised as a man, the duke's love for another lady, the lady's love for the disguised heroine,

the brother's arrival, and the happy resolution (136). While all of these story essentials are

manipulated by Shakespeare to fit his characters, he boldly follows the structure of "Apolonius

and Silla" throughout the entire play. Although Shakespeare does individualize each scene of the

play by shifting events or compressing details, the plot structure is still largely built upon the

foundation of Riche's novella.

The first element that Shakespeare borrows from "Apolonius and Silla" is Riche's use of

shipwreck. As Riche narrates, "He set sail, holding his course towards Constantinople: but, being

upon the sea, but the extremity of a tempest which suddenly fell, his fleet was deserved, some

one way, and some another; but he himself recovered" (qtd. in Satin 318). In *Twelfth Night*, the

captain of the sunken ship comforts Viola by explaining, "After our ship did split, / When you

and those poor number saved with you hung on our driving boat, I saw your brother, / Most provident in peril, bind himself…hold acquaintance with the waves" (1.2.8-15). This quotation shows that Shakespeare heavily depended on Riche's descriptions to provide him with important background material for his comedy.

Another story detail that Shakespeare takes form Riche's novella is the love triangle surrounding Orsino, Olivia, and Viola. In "Apolonius and Silla," the characters Silla, Julina, and Apolonius, are all involved in a love triangle. In an early scene, Riche's disguised female character Silla has been asked by her employer Apolonius to talk to the beautiful Julina. He writes, "Silla abashed to heare these wordes, began in her minde to accuse the blindnesse of Love, that Julina, neglectying the good will of so noble a Duke, would preferre her love unto suche a one" (qtd. in Bullough 352).[3] This scene is appropriated by Shakespeare when Olivia refuses Orsino's advances and starts to fall for Cesario. Olivia declares, "Have you not set mine honour at the stake / And baited it with all th'unmuzzled thoughts / That tyrannous heart can think? To one of your receiving / Enough is shown" (4.2.116-119). This quotation highlights the love triangle concept lifted by Shakespeare and plopped into his comedic play. Just as Julina refuses Apolonius's wooing, Olivia rebuffs Orsino's advances.

In addition to appropriating the basic outline of the love triangle, Shakespeare also borrows details from Riche's relationship between Apolonius and Silvio. Nearing the end of the novella, the duke Apolonius becomes aware that his page Silvio is actually the female Silla. The duke berates Silla with these words, "Had it not been sufficient for thee, when I had reposed myself in thy fidelity and the trustiness of thy service that thou shouldst so traitorously deal with me" (qtd. in Satin 329). Once Viola's true identity and sex is revealed to Orsino, he becomes angry and yells, "What, to perverseness? You uncivil lady, / To whose ingrate and unauspicious

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[3] I am quoting directly from Riche and using his non-modern spellings.

altars / My soul the faithfull'st offerings hath breathed out / That e'er devotion tendered – what shall I do?" (5.1.108-11). This comparison between "Apolonius and Silla" and *Twelfth Night* illustrates the idea that Shakespeare sought out more than just plot skeletons or themes; instead he fleshed them out by using Riche's novella to provide him with specific, emotional character reactions to grandiose events.

A final connection between *Twelfth Night* and Riche's text is the multiple similarities surrounding the reunion of the twin brother and sister at the end of both texts. In Riche's text, the brother hears of his sister and journeys to Constantinople to find her, Riche declaring himself to be "the gladdest man in the world, hasted to Constantinople, where coming to his sister, he was joyfully received, and most lovingly welcomed, and entertained of the duke his brother-in-law" (qtd. in Satin 334). This joyous reunion is echoed in the closing scene of Shakespeare's comedy when Viola and Sebastian realize that they each survived the shipwreck.

> SEBASTIAN: Do I stand there? I never had a brother,
>
> Nor can there be that deity in my nature
>
> Of here and everywhere. I had a sister,
>
> Whom the blind waves and surges have devoured.
>
> Of charity, what kin are you to me?
>
> VIOLA: Of Messaline. Sebastian was my father.
>
> Such a Sebastian was my brother too;
>
> So went he suited to his watery tomb…
>
> SEBASTIAN: Were you a woman, as the rest goes even,
>
> I should my tears let fall upon your cheek
>
> And say, "Thrice welcome, drowned Viola." (5.1.222-37)

This uplifting meeting between Sebastian and Viola ushers in the pleasant ending that follows. Although Shakespeare did expand upon Riche's scene by providing an even more heartwarming reunion between brother and sister, he still depended on the character development and resolution of "Apolonius and Silla" to construct his play.

A. *Gl' Ingannati*, 1537
Anonymous

In addition to appropriating from Riche's "Apolonius and Silla," Shakespeare also studied the anonymous drama *Gl'Ingannati*, commonly known as *The Deceived*. A comedy with a great assortment of characters and plenty of action, the text also seems to provide Shakespeare with tone and plot material concerning the convoluted love affairs that take place among his characters. In the anonymous text, explains Muir, the heroine Lelia enlists the help of nuns to disguise herself as a man named Fabio so that she may become a page for her love, Flamminio. As his page, Lelia is sent on errands to Isabella, and in turn, Isabella happens to fall in love with the Fabio's disguise. After the return of Lelia's lost brother, Fabrizio, the play draws to a close with the marriages of Flamminio to Lelia and Fabrizio to Isabella (Muir 133-34). The farcical plot of *Gl' Ingannati* is eerily similar to that of Shakespeare's *Twelfth Night*. There is little doubt that Shakespeare had a basic knowledge of the anonymous text, so much so that it inspired him to mimic the characters and plot actions in his own comedy.

A major plot element of *Gl' Ingannati* occurs when Lelia disguises herself as a page to work for Flamminio. Describing her thoughts to the character Clemenzia, Lelia admits, "All at once I got the idea of seeing whether I could be this fortunate boy – when he left I talked it over with Sister Amabile –seeing whether Flamminio would take me along as a servant (qtd. in Satin 345). Lelia's idea of being hired by the man she loves is also a feature of Shakespeare's *Twelfth Night*. Just as Lelia enlists the help of a nun, Viola asks for help from the captain of the wrecked

ship, Viola begging, "I pray thee… Conceal me what I am, and be my aid / For such disguise as haply shall become / The form of my intent. I'll serve this duke" (1.2.49-52). This quotation highlights a similarity between Shakespeare's play and one of his source texts by showing that disguising Viola as a page boy for Orsino was not an idea of Shakespeare's own invention, but instead the manipulation of a piece of the anonymous writer's plot.

In the final scene of *Gl' Ingannati*, the character Clemenzia reveals Lelia's disguise to Flamminio and in disbelief, Flamminio questions his own actions.

> CELEMEZIA: Here, Master Flamminio, is your Fabio. Look at him closely. Do you
>
> recognize him? Are you amazed? This same girl is that faithful
>
> constant lovestruck young girl I told you about. Look at her closely
>
> and see whether you recognize her….
>
> FLAMMINIO: I don't believe there was ever a lovelier cheat in the whole world.
>
> Could I be so blind that I never recognized her?

This scene is comparable to Shakespeare's concluding scene when Orsino learns that his page Cesario is really Viola.

> ORSINO: Boy, thou hast said to me a thousand times
>
> Thou never shouldst love woman like to me.
>
> VIOLA: And all those sayings will I overswear,
>
> And all those swearing keep as true in soul
>
> As doth that orbed continent the fire
>
> That severs day from night.
>
> ORSINO: Give me thy hand,
>
> And let me see thee in thy woman's weeds. (5.1. 263-269)

This striking similarity between *Twelfth Night* and *Gl' Ingannati* shows that while Shakespeare may have manipulated the wording of his source texts, he still heavily relied on them to supply him with essential plot details and interactions among characters.

Not only did Shakespeare borrow from *Gl' Ingannati* for the main plot of *Twelfth Night*, but he also used it to supplement his sub-plot and secondary character development. Within them, for instance, in *Gl' Ingannati*, the characters Fabrizio and Frulla have a quick discussion that enhances the main plot:

> FABRIZO: While my two servants are sleeping I'll go about the city. When they
>
> wake up tell them I went toward the square.
>
> FRULLA: Yes sir. If I didn't see you wearing these clothes I'd swear you were the
>
> page of a gentleman of this city. He is dressed in white like you and looks
>
> enough like you that you seem to be he.
>
> FABRIZIO: Have I a twin brother perhaps?
>
> FRULLA: It could be. (qtd. in Satin 358-59).

This scene references the main plot of Shakespeare comedy. Just as Viola is disguising herself as Cesario the page, Frulla discloses to Fabrizio that there's a man in the city that looks similar to him. Also, this scene is comparable to Shakespeare's scene in *Twelfth Night* where Antonio and Sebastian discuss the people and Illyria.

> ANTONIO: Tomorrow, sir; best first go see your lodging.
>
> SEBASTIAN: I am not weary, and 'tis long to night.
>
> I pray you, let us satisfy our eyes
>
> With the memorials and the things of fame
>
> That do renown this city (3.3.20-23).

Although this scene does differ some from that described in *Gl' Ingannati*, it is clear that Shakespeare borrowed and adapted the section to further expand his main plot and secondary characters.

Additionally, in *Gl' Ingannati* the character Lelia states, "During those days it happened that Flamminio Carandini, being a member of our party, formed a close friendship with my father" (qtd. in Satin 343). Comparably, in Act One of *Twelfth Night*, the Captain who rescues Viola admits to having known her father. Surprised, Viola states, "Orsino: I have heard my father name him. / He was a bachelor then (1.2.25-26). Having already borrowed the main plot, it is interesting that Shakespeare felt further compelled to use simple sentences or background details such as the basic paternity details of his primary texts. In short, various elements and characters of the anonymous play *Gl' Ingannati* were lifted almost verbatim by Shakespeare to aid the development of his characters and strengthen the plot largely inspired by Riche's "Apolonius and Silla."

In conclusion, while writing *Twelfth Night*, *or What You Will*, Shakespeare obviously relied on Riche's "Apolonius and Silla," and the anonymous *Gl' Ingannati*, even if certain parts of Shakespeare's comedic play are solely of his own design and invention, such as the Malvolio sub-plot. As with *1 Henry IV*, the verdict for Shakespeare's copyright infringement claim in *Twelfth Night* will not be rendered until the conclusion of the entire thesis. Regardless, it is important to determine whether or not the primary source texts he used in *Twelfth Night* would have fallen under public domain during the time he was writing. In the case of Shakespeare's source text, Barnaby Riche's "Apolonius and Silla," the important date is 1617, when Riche passed away. By placing the text under modern intellectual property restrictions, that means

"Apolonius and Silla" would not have fallen into public domain until the year 1687, long after

Shakespeare had actually borrowed from it in 1610 or so. Moreover, in Shakespeare's second

source text, *Gl' Ingannati*, there is no known author to determine the most accurate date of

induction into the public domain. Despite its anonymous name, however, the work was not

registered until 1537 meaning it still would not have fallen into public domain until at the earliest

1607. The fact that both of the primary source texts Shakespeare borrowed from for *Twelfth

Night*, *or What You Will* would not have been in public domain at the time of his writing impacts

whether or not Shakespeare may be found innocent or guilty of committing copyright

infringement at the conclusion of the thesis.

Chapter Five:

An Analysis of Source Texts Used in *Julius Caesar*

Regarded as one of Shakespeare's most historically-accurate tragedies, *Julius Caesar* was written by Shakespeare in the year 1599. Described by T. S. Dorsch as "striking and popular," *Julius Caesar* is a drama about the corruptness of politics and the problems that arise from trying to balance honor, friendship, and patriotism (viii). An avid reader of both contemporary classical historians, Shakespeare wrote frequently on topics such as politics and governmental corruption, and it comes as no surprise that he would write a drama based on the popular, enigmatic historical figure, Julius Caesar. The play reflects on a succession of leadership and comments on the interactions among the primary characters Julius Caesar, Marcus Brutus, and Marcus Antony. First performed in the autumn of 1599 in London, the play was specifically described by the spectator Thomas Platter as "an excellent performance of the tragedy of the first Emperor Julius Caesar with about fifteen characters" (Binz 458). This quotation shows the praise for Shakespeare's tragedy among early eyewitnesses. Estimated to have been the first play performed in the Globe theatre, the popular text was first published in 1623 in the collected edition of Shakespeare's works, the First Folio.

To correctly examine Shakespeare's use of primary source texts within *Julius Caesar*, it is essential to provide a basic synopsis of the leading characters, events, and themes of the tragedy. Set in ancient Rome during the year 44 B.C., *Julius Caesar* opens in the city streets where Roman citizens are celebrating Caesar's exultant return from war. On his way to see his friend Mark Antony take part in the public games, Caesar is stopped by a soothsayer who eerily warns him, "Beware the ides of March" (1.2.18).[4] This quotation ominously foreshadows the

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[4] For this chapter, all quotations and references to *Julius Caesar* will come from the Arden Shakespeare edition of *Julius Caesar* edited by T. S. Dorsch.

terrible events that follow. Caesar's popularity and power that he holds in Republic leads the jealous senators Marcus Brutus and Caius Cassius to plot Caesar's murder. Although Brutus is bothered by the idea of betraying Caesar, he refuses to discuss the matter with his wife, Portia.

As the 15th of March arrives, Caesar's wife Calphurnia begs Caesar to stay home and heed the soothsayer's warning. Fearless, Caesar walks the streets of Rome; however, he is soon surrounded by petitioners. Brutus is the last man to stab Caesar, and as Caesar dies he utters his last words in disbelief, "*Et tu, Brute?*—Then fall Caesar!" (3.1.77). Ignoring the conspirator Cassius's advice, Brutus allows Caesar's friend Mark Antony to speak at Caesar's funeral. After Brutus explains the conspirators reasoning for killing Caesar, Antony delivers a stirring oration that convinces the city people to riot. He goes so far as to declare, "I fear I wrong the honourable men / Whose daggers have stabb'd Caesar; I do fear it" (3.2.53-54). Following this speech, the conspirators flee the city and gather an army to fight Mark Antony and the triumvirs.

Despite their quarrels and doubts, Brutus and Cassius prepare to fight Antony's army at Philippi. The night before the battle takes place, however, Brutus receives word that this wife has committed suicide back in Rome. Unable to sleep because he sees Caesar's ghost, Brutus mutters in shock, "It comes upon me. Art thou any thing? / Art thou some god, some angel, or some devil, / That mak'st by blood cold, and my hair to stare?" (4.3.277-79). After encountering Caesar's ghost, Brutus remains troubled throughout the rest of the play. In the final scenes, the battle at Philippi ensues between the conspirators and triumvirs; however, the conspirators are quickly defeated by Antony's forces. Fearing the worst, Cassius gets his servant to stab and kill him. Upon finding Cassius's body, the honourable Brutus commits suicide. Victorious, Antony demands a proper funeral for Brutus and declares, "His life was gentle, and the elements / So mix'd in him, that Nature might stand up / And say to all the world, 'This was a man!'" (5.5.73-

75). The play ends on a triumphant note, with Julius Caesar's nephew Octavius discussing honorable behavior and the glories, that is the successes of the day.

It is interesting to note that Julius Caesar is not necessarily the leading character of the tragedy. Instead, Bullough argues that because Shakespeare had a variety of biographies among him, his interests were separated among central historical figures:

> His own interest seems to have been divided between them, and since in Plutarch and other histories none of the three was above reproach, and all were portrayed with a mixture of approval and disapproval, the paradoxes of motivation and morality seem to have seized Shakespeare's imagination and inspired or fortified his disinclination to make any one of them the central figure. Rather he prefers to give a balanced view, pointing out the mingled good and evil in their behavior without explicit moralizing or Senecan rant. (V: 52-53)

This quotation by Bullough not only highlights the notion that Shakespeare had a deep interest in the history surrounding historical figures, but also that his interests were divided in such a way as to encourage him to seek out additional source texts on individual figures such as Marcus Brutus and Marcus Antonius.

Julius Caesar is a captivating play full of historical characters, tragic actions, and political themes; however, it is indisputable that Shakespeare borrowed a majority of his plot actions, character details, and thematic material from other texts. Despite being a tragic account of a historical figure, Shakespeare still sought out further inspiration and source material when constructing the secondary aspects of his drama including character details and dialogue. While his intentional use of source material in the early modern period may not have been of concern, upon further examination, it because obvious that his apparent utilization of material constitutes

copyright infringement based on the UK's current intellectual property standards. By studying

Shakespeare's explicit use of material in two primary texts A) *Lives of The Noble Grecians and*

Romanes and B) *The Ancient History and Exquisite Chronicle of the Roman Wars, Both Civil*

and Foreign, one may render an appropriate verdict regarding the copyright infringement claim.

A. ***Lives of The Noble Grecians and Romanes*, 1579**
Plutarch, translated by Sir Thomas North

In writing *Julius Caesar*, Shakespeare primarily studied Sir Thomas North's translation

of Plutarch's *Lives of The Noble Grecians and Romanes*. Within Plutarch's text, Shakespeare

looked to the individual pieces *The Life of Marcus Brutus*, *The Life of Julius Caesar*, and *The*

Life of Marcus Antonius to provide him with character details and key plot material. According

to Muir, Shakespeare's *Julius Caesar* contains the following of Plutarch's elements: Caesar's

triumphant return to Rome, the civil war between the conspirators and the triumvirs, the use of

omens, and the treatment of the co-conspirators, Brutus and Cassius (257). While Shakespeare

uses story elements from each of Plutarch's *Lives* in the first three acts of his play, he carefully

relies on *The Life of Marcus Brutus* to supply him with an outline for his entire play. Although

Shakespeare does differentiate each scene of the play by condensing historical events or

manipulating dialogue, the plot structure and characters are largely based on the foundation of

Plutarch's *Lives*.

Shakespeare borrows his opening scene of *Julius Caesar* from Plutarch's text *The Life of*

Julius Caesar. In both texts, the tribunes Marullus and Flavius break up a gathering of Roman

citizens as they celebrate Julius Caesar's return from war. In *The Life of Julius Caesar*, Plutarch

sets the scene for his readers: "After that, there were set up images of Caesar in the city, with

diadems upon their heads like kings. Those the two tribunes, Falvius and Marullus, went and

pulled down, and furthermore, meeting with them that first saluted Caesar as king" (qtd. in Satin

263). This quotation shows how Shakespeare borrowed the basic plot for his entire tragedy from Plutarch's text. Although he does flesh out the dialogue and expand upon the actions among the tribunes and commoners, Shakespeare was still largely dependent on Plutarch's plot structure.

Another element that Shakespeare borrows from *The Life of Julius Caesar* is Plutarch's use of omens. For instance, Plutarch narrates, "Furthermore there was a certain soothsayer that had given Caesar warning long time afore, to take heed of the day of the Ides of March, (which is the fifteenth of the month), for on that day he should be in great danger" (qtd. in Satin 265). This scene is comparable to the scene in Act One of Shakespeare's tragedy, which we noted earlier, where a soothsayer warns Caesar among the tribunes and some conspirators to "Beware the ides of March" (1.2.23). Furthermore, when writing a later exchange between the soothsayer and Caesar, Shakespeare copied the direct dialogue used by Plutarch. In *The Life of Julius Caesar*, Caesar passes the soothsayer and he says, "the Ides of March be come" (qtd. in Satin 265). This statement is similar to the one in Shakespeare's play when Caesar declares to the soothsayer, "The ides of March are come" (3.1.1.). In both texts, the soothsayer replies to Caesar that the foreboding day has not yet concluded. Shakespeare advances Plutarch's notion , almost word-for-word, that omens express inevitable truths that should be believed by the people.

In Plutarch's segment entitled *The Life of Marcus Antonius*, Shakespeare uses Plutarch's complex view of Antony to develop the character in his tragedy. According to Satin, because Plutarch provided a description of Antony from the conspirators' point of view as well as from a third-person omniscient point of view, Shakespeare was able to provide audience members with the well-rounded character Marcus Antony. For instance, throughout Act Three, Scene One, Shakespeare borrows material from Plutarch repeatedly. After Caesar is slain, Antony becomes a key character in *Julius Caesar*. The people develop a respect for him and approve of his decision

to battle the conspirators. This genuine and well-liked character stems from Plutarch's description of Antony after Caesar has been killed: "Thus went Antonius out of the senate more praised and better esteemed than ever man was… he had shewed himself a marvelous wise governor of the commonwealth" (qtd. in Satin 304). This quotation lists some of the primary characteristics allotted to Shakespeare's version of Marcus Antony during the latter half of the play.

Additionally, just as Antony gives a funeral speech that rouses the plebeians in Shakespeare's play, so does the Antony in Plutarch's text. Plutarch writes on Antony:

> He mingled his oration with lamentable words; and by amplifying of matters did greatly move their hearts and affections unto pity and compassion. In fine, to conclude his oration, he unfolded before the whole assembly the bloody garments of the dead, thrust through in many places with their swords, and called the malefactors cruel and cursed murders. With these words he put the people into a fury…. (qtd. in Satin 304-05)

This passage further proves Shakespeare's imitation and dependency on Plutarch's text. Although he devotes an entire scene to this passage of Plutarch's text, he still blatantly borrowed chief events and character traits while writing his play.

According to Satin, *The Life of Marcus Brutus* actually contains the primary outline for all five Acts of Shakespeare's tragedy, as well as the small incidents of the play such as Portia's self-inflicted wound and Caius's discontent. This particular segment of Plutarch's text focuses on the conspiracy and fates of Brutus and Cassius, and it is clear that Shakespeare emphasized these events in his drama (257). For instance in *The Life of Marcus Brutus*, Plutarch writes, "I dare assure thee, that no enemy hath taken nor shall take Marcus Brutus alive, and I beseech God

keep him from that fortune: for wheresoever he be found, alive or dead, he will be found like himself" (qtd. in Dorsch xiv). Shakespeare directly borrows these words from Plutarch in the last act of his play. A friend of Brutus declares, "I dare assure thee that no enemy / Shall ever take alive the noble Brutus. / The gods defend him from so great a shame! / When you do find him, or alive or dead, / He will be found like Brutus, like himself" (5.4.21-25). By analyzing these two passages, it becomes clear that Shakespeare not only borrowed basic plot elements and characters, but he even imitated Plutarch's dialogue when composing *Julius Caesar*.

B. *The Ancient History and Exquisite Chronicle of the Roman Wars*, 1578
Appianus Alexandrinus

In addition to appropriating from Plutarch's *Lives*, Shakespeare also borrowed from Appianus Alexandrinus's text *The Ancient History and Exquisite Chronicle of the Roman Wars*. Just as with Plutarch's text, Shakespeare adapted a variety of details and character traits from Appianus's text. According to Muir, Shakespeare borrowed the following elements from Appianus's text: Antony's famous speech directed at the Roman citizens, reference to Caesar's sickness after refusing the crown, ambiguity about the motives of the conspirators, and the repetitive use of the phrase "Caesar came forth" (118-19). Again, Shakespeare's imitation of these primary and secondary story elements highlights the notion that Shakespeare relied heavily on a variety of source texts when constructing his plays, in this instance, specifically *Julius Caesar*.

Aside from borrowing from Plutarch's interpretation of Marcus Antony, Shakespeare also used sections of Appianus's text to aid his writing of Antony's famous speech in Act Three. The manipulative nature of Antony's speech hints at the speeches of the characters Antonius and Lepidus after the assassination of Caesar in *The Ancient History and Exquisite Chronicle of the Roman Wars*. Muir argues that Shakespeare's Antony has, "considerable resemblance to the

complex character depicted by Appian – loyal, histrionic, emotional, ruthless, and cunning"
(119). All of the traits listed by Muir are revealed and emphasized in Shakespeare's version of
Antony. For instance, Antony's ruthless and cunning characteristics may be seen when he states,
"Now let it work. Mischief, thou art afoot, / Take thou what course thou wilt! How now,
fellow?" (3.2.62-63). This quotation comes after Antony delivers his oration and begins to
witness the desired effects it is having on the plebeians.

Also, just as Shakespeare's Antony is able to encourage the commoners to rise up against
the conspirators, so does Appianus's version of Antony: "Thus Antony did kindle a fire, not for
Caesar but for themselves, and held his peace. Then they by and by in throngs with shouts,
started up, and denied that any other trial should be made by the voices of the people, but that the
things appointed should be assuredly held" (qtd. in Satin 313). This passage shows Antony's
ability to incite a reaction among the people concerning Caesar's murder, and Shakespeare
borrows this aspect of Appianus's text to benefit the rising actions of his plot. In short, secondary
character actions, dialogue, and events of Appianus's text were borrowed by Shakespeare to aid
his character development and support the historical plot events inspired by Plutarch's *Lives of
The Noble Grecians and Romanes*.

In conclusion, while writing his tragedy *Julius Caesar*, Shakespeare patently relied on Sir
Thomas North's translation of Plutarch's *Lives of The Noble Grecians and Romanes* and
Appianus Alexandrinus's *The Ancient History and Exquisite Chronicle of the Roman Wars*.
Following this chapter, the verdicts will be rendered for Shakespeare's copyright infringement
claims on all three of his plays, including *Julius Caesar*. In order to provide a proper verdict, it is
important to determine whether or not the primary source texts Shakespeare used in *Julius

Caesar would have fallen under public domain at the time he was writing. In the case of

Shakespeare's primary source text, Plutarch's *Lives of The Noble Grecians and Romanes*, the

key date is AD 120, the year Plutarch passed away. Even though the text was not translated by

Sir Thomas North until 1579, the text would have fallen into public domain because Plutarch, the

author of the original text, passed away over a millennium before Shakespeare borrowed from

the material. Moreover, in Shakespeare's second source text, Appianus's *The Ancient History*

and Exquisite Chronicle of the Roman Wars, the date of importance is 165, when Appianus died.

By placing the text under current UK intellectual property restrictions, that means Appianus's

text would have fallen into public domain centuries before Shakespeare actually borrowed from

it in the late 1590s. The fact that both of the primary source texts Shakespeare borrowed to write

Julius Caesar would have been in public domain impacts whether or not Shakespeare may be

found innocent or guilty of committing copyright infringement.

Verdicts and Conclusion

`   Over the course of this thesis, I have analyzed William Shakespeare's use of source

materials in three of his dramas to determine whether each of them would violate the United

Kingdom's modern day intellectual property laws regarding copyright. It is important to

remember from Chapter One that during Shakespeare's era there was no such thing as

intellectual property or copyright. Therefore, regardless of the verdicts, I am not trying to debase

Shakespeare's dramas or his ability to write and borrow from secondary sources because his way

of writing was regarded as acceptable during the early modern era. Additionally, in reference to

Chapter Two's description on the long history of intellectual property, it is crucial to observe

copyright as a series of complicated regulations created and implemented to protect the thoughts

and artistic expressions of creators. Just as copyright laws are complex, so is rendering a verdict

on Shakespeare's use of source material within each of his dramas. Based on the United

Kingdom's reigning legislation concerning copyright as well as the individual analyses of each

play, it becomes clear that one play clearly breaks the law, the second play may or may not, and

the third play clearly does not break the law.

Based on modern intellectual property statutes, it is clear from previous individual

analysis that Shakespeare's use of secondary texts in the historical drama *The History of King

Henry the Fourth, Part I,* breaks the UK's intellectual property law regarding copyright.

Shakespeare's primary source for his historical drama was the 1587 revised second edition of

Raphael Holinshed's text, *The Chronicles of England, Scotland, and Ireland.* Holinshed's work

provides Shakespeare with key plot material and character descriptions. As was previously

noted, in order to determine the public domain eligibility of a text, one must take the death date

of the author and add seventy years. In the case of Holinshed's text, it would <u>not</u> have fallen into

public domain until the year 1688, decades after Shakespeare actually borrowed from the source. This means that Shakespeare would have either needed to purchase the rights from the publisher to borrow material from *The Chronicles* or request to use parts of the text from the author. Because Shakespeare blatantly borrowed key elements from the source without conferring with the publisher or author(s), he would undoubtedly be incriminated for infringing on the creative work of another artist.

A second source text that Shakespeare borrowed from when writing *1 Henry IV, Part 1,* was the anonymous play *The Famous Victories of Henry V* published in 1594. From this text, Shakespeare borrows character details and thematic content to flesh out the relationships among characters and supplement the plot. Despite being anonymous, the text was still officially entered in the Stationers' Register in 1594 meaning that *The Famous Victories of Henry V* would not have fallen into public domain until at the earliest 1664. At the time Shakespeare borrowed from the text, he would have needed to contact the person or company that entered the text in the Stationers' Register in order to buy the rights or seek permission to borrow the material from *The Famous Victories* for his drama. Based on these understandings, it is fair to conclude that Shakespeare would have been convicted for copyright infringement had he attempted to publish *The History of King Henry the Fourth, Part I,* in today's writing industry.

While *Henry IV, Part I* clearly breaks modern copyright laws, Shakespeare's adaptation of outside sources in the comedic play *Twelfth Night, or What You Will* may or may not constitute copyright infringement. While there is no doubt that Shakespeare borrowed many of his themes, characters, and plot essentials from outside sources, he did adapt and mold each element to fit his comedy. Shakespeare initially borrowed from Barnaby Riche's 1581 novella "Apolonius and Silla" to supply him with principal plot material. Because the source text would

not have fallen into public domain until the year 1687 – 70 years after Riche's death – Shakespeare would have needed to buy rights or ask permission to borrow lawfully any primary material from Riche's text; however, although Shakespeare does follow the structure of "Apolonius and Silla," he drastically alters each of the story elements to fit his play. A more thorough analysis would be necessary to demonstrate convincingly whether or not Shakespeare's alteration of Riche's story elements would in fact constitute copyright infringement.

Similarly, a second source text that Shakespeare borrowed from when writing *Twelfth Night, or What You Will* was the anonymous drama *Gl' Ingannati* published in 1537. Despite its anonymous name, the work was listed in the Stationers' Register in 1537 meaning that the play still would not have fallen into public domain until at the earliest 1607. While most of Shakespeare's scenes and dialogue do contain echoes of other sources, it is clear that he relied on his creativity and personal interactions with his own twins – Hamnet and Judith – to provide him with central material for his comedy. Because of his stark manipulation of source material, a more detailed study would need to be conducted to determine without a reasonable doubt that Shakespeare would be convicted for breaking the law. Under modern intellectual property restrictions, Shakespeare may or may not be guilty of copyright infringements. Depending on the judge, jury, and further analysis, the verdict could easily go one way or the other.

Unlike the previous verdicts, it is clear that Shakespeare's utilization of source material in *Julius Caesar* does not break the United Kingdom's current legislation on copyright. Although there is no doubt Shakespeare blatantly took from his source texts when writing his tragedy, he did so lawfully according to currently intellectual property restrictions. Shakespeare borrowed from Sir Thomas North's translation of Plutarch's text *Lives of The Noble Grecians and Romanes*. Shakespeare mainly studied the individual pieces *The Life of Marcus Brutus, The Life*

of Julius Caesar, and *The Life of Marcus Antonius* within the historical document. Plutarch's text would have easily fallen under current public domain laws at the time Shakespeare was writing. Because Plutarch died in the year AD 120, over a millennium before Shakespeare sat down to write *Julius Caesar*, Shakespeare would have been free to take whatever he wanted from the secondary text to supplement his drama without fear of being punished by law. Similarly, when writing his historical tragedy *Julius Caesar*, Shakespeare adapted sections of Appianus Alexandrinus's work, *The Ancient History and Exquisite Chronicle of the Roman Wars*. Because Appianus passed away in the year AD 165, Shakespeare would have been free to borrow material from the ancient text since it technically would have fallen into public domain centuries before he actually borrowed from it. Because both of Shakespeare's key source materials for *Julius Caesar* would have been under public domain at the time he was writing his plays, it is obvious that Shakespeare would be found innocent from committing copyright infringement based on the United Kingdom's current regulations

All in all, based on the United Kingdom's modern day intellectual property laws regarding copyright, it is clear that Shakespeare's use of source materials within his individual plays could render a range of verdicts. While Shakespeare's adaptation of material in *1 Henry IV, Part I,* does break the law, his use of material in *Julius Caesar* clearly does not. As for Shakespeare's utilization of source texts in *Twelfth Night, or What You Will*, the verdict is debatable depending on a more in-depth analysis. Again, just as copyright laws are complex, so is attempting to render verdicts on Shakespeare's use of source material within his dramas. Overall, if Shakespeare were tried for committing copyright infringement in all of his dramas, the court case would more than likely end in a hung jury after extended deliberation and extensive analyses.

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