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Exploring authorship and ownership of plays at the time of William Shakespeare's *First Folio*

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ABSTRACT

In this article I evaluate how authorship of theatre occurred in the Elizabethan and Jacobean periods. I explore whether individual playwrights such as William Shakespeare were viewed as authors, and thus owners, of plays at this time. I analyse the role of the Stationers' Company as print monopolists, and the role of Elizabethan theatre companies, who took ownership of scripts for performance purposes. I examine the impact of the publication of the *First Folio*. I note that the publishing syndicate behind the *First Folio*, led by Shakespeare's friends John Heminges and Henry Condell, had to obtain the print rights for several plays, not from Shakespeare's estate, but from the various Stationers who had acquired publishing rights while Shakespeare was alive. Therefore, the *First Folio* stands as an early example, even before statutory copyright existed, of a book created via what we now describe as the 'clearing' of copyright licences. A consequence of the *First Folio* was not just the emergence of Shakespeare as the English author-figure par excellence; the *First Folio* coincided with a rising legal expectation that authors should be owners of dramatic texts under copyright law. Throughout the seventeenth century and into the early eighteenth century I mark how tensions between the market power of the Stationers' Company and emerging recognition of the author's literary property led to the first British copyright statute: the Statute of Anne in 1710.

KEYWORDS Law; Shakespeare; copyright; theatre; performance

Introduction

In William Shakespeare's *Hamlet* we are told 'the play's the thing' – an object.¹ Today, as with many other 'things', the law protects plays as objects of property owned by their authors.² It was not ever thus. In this article, I place the

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¹W Shakespeare, *The Oxford Shakespeare: Hamlet* (S Wells ed, OUP 2008) Act 2 Scene 2, 236.

²B Sherman, 'What is a Work?' (2011) 12 *Theoretical Inquiries in Law* 99, 120. See also A Pottage, *Figures of Invention* (OUP 2011) and HY Kang, 'Is There (Should There Be) a Law & Humanities Canon?' (2019) 16 *Law, Culture and the Humanities* 1.

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issue of authorial copyright in historical perspective, focusing on the history of authorship and ownership of plays during the English renaissance: the Elizabethan and Jacobean periods (1558–1625).

As we shall see, an Elizabethan play was not the author's copyright work in the modern sense of a property-object encompassing a substantial bundle of rights (to copy, publish, perform, adapt, etc). At the time when Shakespeare wrote his plays, the publishers – represented by the Stationers' Company – were all powerful, exercising a legal monopoly over play-texts as print commodities. Meanwhile, theatre companies, such as the Lord Chamberlain's Men, took ownership of scripts as valuable performance texts. An Elizabethan dramatist, such as Shakespeare, neither owned nor fully controlled either the print commodity or the performance commodity.

I posit that the posthumous publication of Shakespeare's *First Folio* in 1623 acted as a catalyst for change in the status and rights of dramatic authors. There are two points of particular significance in this regard. The first is that the publication of the *First Folio* brought issues of copyright to the fore. The publishing syndicate, led by Shakespeare's friends John Heminges and Henry Condell, had to obtain the print rights for several plays, not from Shakespeare's estate, but from the various Stationers who had acquired publishing rights while Shakespeare was alive.³ Therefore, the *First Folio* stands as an early example, even before statutory copyright existed, of a compilation created via what we now describe as the 'clearing' of copyright licences. The second factor is that, along with the activities of Shakespeare's rival Ben Jonson, the printing of Shakespeare's plays in a bound book collection contributed to a rise in esteem of the dramatic author-figure as the seventeenth century went on. This coincided with a growing respect for the author's 'literary property' in law, which would evolve in the post-*Folio* era, via the Statute of Anne 1710, into our author-centred modern copyright law.⁴ After the Statute of Anne, legal claims made by playwrights, publishers, and theatre owners helped establish key case law principles concerning the protection of the 'right to copy'.⁵ Hence, this article argues that a consequence of the *First Folio* was not just the emergence of Shakespeare as the English author-figure par excellence; the *First Folio* coincided with, and may have helped to solidify, a rising legal expectation that authors should be owners of dramatic texts under copyright law.

To begin this article, I evaluate how authorship of theatre occurred in the Elizabethan and Jacobean periods. I explore whether individual playwrights such as Shakespeare were viewed as authors, and thus owners, of plays at

³C Laoutaris, *Shakespeare's Book: The Intertwined Lives Behind the First Folio* (William Collins 2023) 16–18.

⁴D Miller, *Copyright and the Value of Performance, 1770–1911* (CUP 2018). See also E Cooper, *Art and Modern Copyright: The Contested Image* (CUP, 2018) and M Rose, *Authors and Owner – The Invention of Copyright* (Harvard UP 1993).

⁵J Feather, 'The Book Trade in Politics: The Making of the Copyright Act of 1710' (1980) 8 *Publishing History* 19; T Ross, 'Copyright and the Invention of Tradition' (1992) 26 *Eighteenth-Century Studies* 1.

this time. I analyse the role of the Stationers as print monopolists, and the role of Elizabethan theatre companies, who took possession of scripts for performance purposes. I examine the impact of the *First Folio*, which coincided with improved printing technologies and an expanding British market for books. Throughout the seventeenth century and into the early eighteenth century I mark how tensions between the market power of the Stationers' Company and emerging recognition of the author's literary property led to the first British copyright statute: the Statute of Anne in 1710.

On the ownership of plays in print and performance at the time of Shakespeare

During the Elizabethan (1558–1603) and Jacobean (1603–25) eras the practices of theatre worked in tandem with early capitalist market forces. As today, the production of culture was a sphere in which questions of ownership and value were vital.⁶ Yet, unlike today, there was no statutory copyright.⁷ Rather than an author-oriented publishing system, the Stationers' Company was all important. From its formal incorporation via Royal Charter in 1557, the Stationers' Company possessed a near-exclusive jurisdiction to register and copy books for printing.⁸ Only members of the company could print books (unless the Crown had granted a direct privilege).⁹ During the Elizabethan and Jacobean eras it was the Stationers who profited from the growing market for printed books and play-texts.

The power of the Stationers meant that during the Elizabethan/Jacobean periods playwrights were not treated as 'author-owners' – they did not possess intellectual property rights in their writings. Playwrights could not enter their texts onto the Stationers' register, nor could they own copyright privileges.¹⁰ Indeed, the idea that the writer could own intellectual property in the dramatic text would have been difficult to understand for most Elizabethan-era playwrights.¹¹ Once a dramatist had developed a text whatever 'ownership' a writer could claim was short-lived:

*Strictly speaking, a playwright owned a copy of a play, a manuscript distinguishable from a scribal copy only by the fact that it was a unique copy ...*¹²

⁶R Knutson, *Playing Companies and Commerce in Shakespeare's Time* (CUP 2001).

⁷R Deazley, *On the Origin of the Right to Copy* (Hart 2004).

⁸I Gadd, 'The Stationers' Company in England before 1710' in I Alexander and HT Gómez-Arostegui (eds), *Research Handbook on the History of Copyright Law* (Edward Elgar 2016) 81–95. For the early history of the Stationers' Company see PWM Blayney, *The Stationers' Company and the Printers of London, 1501–1557* (CUP 2013).

⁹For example, the universities at Oxford and Cambridge had their own Crown right to print.

¹⁰Blayney (n 8) 394–99.

¹¹B Salter, 'Taming the trojan horse: an Australian perspective of dramatic authorship' (2009) 56 *Journal of The Copyright Society of The USA* 789, 815. See also R Knutson, *The Repertory of Shakespeare's Company, 1594–1613* (University of Arkansas Press 1991).

¹²J Lowenstein, 'The Script in the Marketplace' (1985) 12 *Representations* 101, 102.

In other words, playwrights lacked the essence of modern copyright ownership: control of their work in print and performance. After a play's performances had run their course, actors sometimes sold their copies of the play-text for print.¹³ Thus, play-texts could be sold as print commodities without the permission of the playwright and then published without attribution. It was the publisher who would register the play-text at the Stationers' Company to obtain the right to print the 'book' in perpetuity. To the extent the play operated as a print commodity, it was the publisher who benefited from its exploitation; and it was the publisher who controlled the legal privilege, which could be asserted in a case of alleged 'piracy' at the Stationers' court.¹⁴ Playwrights were sometimes named as authors in published play-texts registered at the Stationers' Company; but authorial attribution did not always occur, and there was no automatic right to royalties. Although concepts of individualist authorship and ownership were not absent entirely from the print economy, they were only dimly perceived.¹⁵

Apart from printed playbooks, during the Elizabethan period the most profound way that plays could be said to be 'owned' was in the form of performance texts controlled by acting companies like the Lord Chamberlain's Men (later, the King's Men), or the Admiral's Men.¹⁶ Such companies emerged as a result of the growth of an early capitalist marketplace for theatrical performances, which benefited the shareholders of various medium- and large-scale theatre companies. These theatres operated under severe economic pressures, knowing they could be forced to close by outbreaks of plague, as well as needing to be attentive to censorship.¹⁷ Nonetheless, when times were good the shareholders of theatre companies would receive a stable income.¹⁸

Companies purchased play-texts from writers for a flat fee; and in a practical sense, that transaction brought to an end any claim the writer might have had to 'own' the play.¹⁹ Litman remarks:

Theatre managers valued playwrights as they valued actors and paid them in the same fashion. Scripts once acquired entered a theatre company's repertory,

¹³ibid 105–06.

¹⁴H Gómez-Arostegui, 'What History Teaches Us About Copyright Injunctions and the Inadequate-Remedy-at-Law Requirement' (2008) 81 S. Cal. L. Rev. 1197. See also E Arber (ed), *A Transcript of the Registers of the Company of Stationers of London 1554–1640* (London: Privately Printed, 1875), available at <https://catalog.hathitrust.org/Record/001168984> (accessed on 1 July 2024).

¹⁵L Bently, 'Copyright and the Death of the Author in Law and Literature' (1994) 57 *The Modern Law Review* 973, 978. See also M Woodmansee and P Jaszi (eds), *The Construction of Authorship: Textual Appropriation in Law and Literature* (Duke UP 1994).

¹⁶R Dutton, *Licensing, Censorship and Authorship in Early Modern England* (Palgrave MacMillan 2000) 91.

¹⁷B Freedman, 'Elizabethan Protest, Plague, and Plays: Rereading the "Documents of Control"' (1996) 26 *English Literary Renaissance* 17, 19–25.

¹⁸JJ Marino, *Owning William Shakespeare: The King's Men and Their Intellectual Property* (University of Pennsylvania Press, 2011).

¹⁹JD Litman, 'The Invention of Common Law Play Right' (2010) 25 *Berkeley Tech. L. J.* 1381, 1390. See also Z Lesser, *Renaissance Drama and the Politics of Publication: Readings in the English Book Trade* (CUP 2004).

where they could be revived, adapted, rewritten, performed, and printed without any further license from the writer.²⁰

The acting company took ownership – and thus, control – of the play in the performance context, and would thereafter rework the text, adding edits and improvisations as it was performed.²¹ What the company took possession of was an early version of what Miller calls the ‘performance commodity’.²² Unlike play-texts as print commodities, this performance commodity did not have the force of legal protection. Instead, mindful of competition and market saturation, theatre companies operated a system of informal, reciprocal social norms to regulate their activities, ensuring they did not perform each other’s plays without permission.²³

As noted above, playwrights were not always attributed when play-texts were printed. This was true of the stage performance as well. It is notable that early modern prologues and epilogues spoken on stage usually did not name authors, whether individuals or collaborators.²⁴ Rather, during the Elizabethan period actors on stage would refer to a playwright as ‘our poet’, increasing the sense that the theatre company not only owned the play, but that the role of the poet/writer was subsumed within collective management:

*On the margins of dramatic representation – in inductions and epilogues – the Elizabethan play is regularly represented by the speaking actor as ‘ours,’ the possession and, indeed, the product of the actors. Where the playwright is mentioned, he is almost never ‘the Author’ or ‘the Playwright’; he is ‘our poet,’ an adjunct to the proprietary group of performers. Of course, playwrights almost always wrote the prologues to their scripts. Still, the marketplace was such that authorial assertions of preeminent domain were all but unthinkable.*²⁵

Thus, we can observe that, even as early as the Elizabethan period, plays provided two potential sources of value: print and performance. Yet, in practice, dramatists neither owned nor controlled either one of these sources of value.

How did plays get created in the Elizabethan and Jacobean eras (1558–1625)?

As contemporary readers of plays, or as theatregoers, it is hard to escape a presumption of ‘writing as composition’ by a defined author, with William

²⁰ibid. See also T Stern, *Rehearsal from Shakespeare to Sheridan* (OUP 2000) 129–31 and 241–45.

²¹JS Peters, *Theatre of the Book, 1480–1880: Print, Text, and Performance in Europe* (OUP 2000), 1, 4–5.

²²Miller (n 4).

²³B Lauriat, ‘Literary and Dramatic Disputes in Shakespeare’s Time’ (2018) 9 *Journal of International Dispute Settlement* 45.

²⁴T Stern, ‘Review of Authorship and Appropriation: Writing for the Stage in England, 1660–1710’ (2002) *The Scriblerian* 73. See also P Kewes, *Authorship and Appropriation: Writing for the Stage in England, 1660–1710* (Clarendon Press 1998).

²⁵Lowenstein (n 12) 102. See also M Straznicky (ed), *The Book of the Play: Playwrights, Stationers, and Readers in Early Modern England* (University of Massachusetts Press, 2006).

Shakespeare often seen as the archetypal playwright. Yet, this assumption clashes with the creative practices of Elizabethan drama. Cox and Kasten suggest that in order to truly comprehend the nature of theatrical creativity during this period we should 'dislodge authors and scripts' from our thinking; rather, we should open our perspective to the 'collaborative sense of early English dramatic activity by focusing on the conditions and constraints of playmaking, the networks of dependency, both discursive and institutional, that motivated and sustained it'.²⁶ While a form of individual authorship certainly existed, it must be contextualized 'within the social and material circumstances in which early English drama was enabled and inhibited'.²⁷

The most obvious way that this collaboration manifested itself is in the work undertaken by playwrights labouring together. Masten notes that during the period 1590–1642 almost two-thirds of the plays referenced in the papers of the impresario Philip Henslowe 'reflect the participation of more than one writer'.²⁸ Hirschfeld views collaboration within theatre companies as the normal playmaking practice of the time;²⁹ while Taylor views collaboration in this period as a type of (often collective) artisanal production.³⁰ Working together – sometimes radically – was central to the creation of plays during the Elizabethan and Jacobean periods.

Virtually all major playwrights of the time, including Christopher Marlowe, Ben Jonson, Thomas Middleton, and of course, William Shakespeare, wrote plays collaboratively.³¹ Attribution to all contributors was not always given correctly – or at all. As noted earlier, play-texts were sometimes printed without attributing any author; and even where there were printed title-pages, statements of singular authorship tended to obscure and simplify the practical circumstances of composition.³²

The most famous example of a consistent writing partnership during the Jacobean era is that of Francis Beaumont and John Fletcher. Yet, Masten demonstrates that even attributing plays to a limited number of joint

²⁶J Cox and D Kasten, 'Introduction: Demanding History' in J Cox and DS Kasten (eds), *A New History of Early English Drama* (Columbia UP 1997) 1–6. See also J Clare, 'Shakespeare and Paradigms of Early Modern Authorship' (2012) 1 *Journal of Early Modern Studies* 137.

²⁷G Egan, 'What is Not Collaborative about Early Modern Drama in Performance and Print?' (2010) 67 *Shakespeare Survey* 18, 20–28. See also P Pender and A Day (ed), *Gender, Authorship, and Early Modern Women's Collaboration* (Palgrave Macmillan 2017).

²⁸J Masten, 'Beaumont and/or Fletcher: Collaboration and the Interpretation of Renaissance Drama' (1992) 52 *English Literary History* 337, 347.

²⁹See H Hirschfeld, *Joint Enterprises: Collaborative Drama and the Institutionalization of the English Renaissance Theatre* (University of Massachusetts Press 2004) and D Nicol, *Middleton and Rowley: Forms of Collaboration in the Jacobean Playhouse* (University of Toronto Press 2012).

³⁰G Taylor, 'Artiginality: Authorship after Postmodernism' in G Taylor and G Egan (eds), *The New Oxford Shakespeare: Authorship Companion* (Oxford: Oxford University Press, 2016).

³¹B Vickers, *Shakespeare, Co-Author: A Historical Study of Five Collaborative Plays* (OUP 2002). See also W Shakespeare, *The New Oxford Shakespeare: Modern Critical Edition – The Complete Works* (G Taylor, J Jowett, T Bourus and G Egan eds, OUP 2016) and G Edelstein, 'Collaborating on Credit: Ben Jonson's Authorship in Eastward Ho!' (2020) 50 *English Literary Renaissance* 233.

³²Masten (n 28), 339.

authors, such as Beaumont and Fletcher, does a disservice to the creativity involved in theatrical authorship at this time. Masten argues that although dual authorship in their plays is 'intermittently present' it does not appear in anything approaching a 'definitive' form.³³

Notably, the text itself was not fixed.³⁴ Elizabethan and Jacobean theatrical texts, even the works of Shakespeare, defy easy categorization because they 'strikingly de-naturalize the author-text-reader continuum assumed in later methodologies of interpretation'.³⁵ As mentioned earlier, once a dramatist sold a script to a theatre company, the company took control of it, and would often make significant edits, as well as allowing for improvisation, thus 'unsettling' the text. As a result, there are many different surviving versions of plays from this period.

For Masten the 'ample evidence of the frequent revision of play-texts' within companies indicates the existence of 'a diachronic form of collaboration' involved in creating an iterative play-text.³⁶ Theatrical authorship ought to be viewed as polyvocal: the 'joint accomplishment of dramatists, actors, musicians, costumers, prompters (who made alterations in the original manuscript) and ... managers'.³⁷ Therefore, although a writer may have originated a text, or adapted one from an earlier work, once the company took ownership, the text was shaped, in a polyvocal sense, by several other parties (actors, musicians, costumers, prompters, managers).³⁸ In contrast to a modern *ur*-text written by a sole author such as Samuel Beckett or Harold Pinter, whereby the writer expects it to be performed with every word and comma in place, the Elizabethan text would often change from performance to performance.³⁹

Writers, often different from those who originated the play-text, would add materials (new scenes, additional prologues/epilogues, new songs, etc) to existing scripts. Virtually any play 'first printed more than ten years after composition and ... kept in active repertory by the company that owned it is most likely to contain later revisions by the author or, in many cases, by another playwright'.⁴⁰ An example is *Dr Faustus* – a play attributed to Christopher Marlowe, but which passed through several other hands, and thus came to exist as a text 'patched' together.⁴¹ As Masten relates, *The Knight*

³³ibid 347.

³⁴R Knutson, 'Working playwrights, 1580–1642' in J Milling and P Thomson (eds), *The Cambridge History of British Theatre* (CUP 2004) 339–63.

³⁵Masten (n 28) 338.

³⁶ibid 339.

³⁷GE Bentley, *The Profession of Dramatist in Shakespeare's Time 1590–1642* (Princeton University Press 1971) 198.

³⁸Masten (n 28) 340.

³⁹C Hoy, 'Critical and Aesthetic Problems of Collaboration in Renaissance Drama' (1976) 19 *Research Opportunities in Renaissance Drama* 4.

⁴⁰GE Bentley, *The Profession of Dramatist in Shakespeare's Time 1590–1642* (Princeton University Press 1971) 263.

⁴¹T Stern, *Documents of Performance in Early Modern England* (CUP 2009).

of the *Burning Pestle* (attributed to Francis Beaumont) is a literal manifestation of Barthes' phrase in 'The Death of the Author' that a text is often 'a tissue of quotations drawn from the innumerable centres of culture'.⁴²

Another example is the influential play *The Spanish Tragedy*, which was published in at least ten different versions during 1594–1613, showing the text was in an unsettled state during this period.⁴³ Moreover, Thomas Kyd was not initially attributed as its author.⁴⁴ What this reveals is that in the Elizabethan era it was possible for the text of the most influential tragedy of the period to circulate in print and be performed widely in the absence of a definitive named author-figure.⁴⁵ Multiple 'collaborators' – including actors and writers – were adding to the text of *The Spanish Tragedy* as it was being performed. Most famously, Ben Jonson was commissioned to write additional passages for an extant version of *The Spanish Tragedy* in the 1590s.⁴⁶

Moreover, writers were not the only creative parties making edits to the text during the Elizabethan period.⁴⁷ Actors often added lines of dialogue or character alterations. The theatre company's collaborative approach to the text allowed improvisation during performances.⁴⁸ The Lord Chamberlain's Men revised the plays in their repertory continuously, including updating topical references and adding/removing satirical comments on rival companies' plays.⁴⁹ In fact, improvisation was so commonplace the term 'tarltonising' (after the comedic actor Richard Tarlton) arose to describe actors' improvisation in verse, though the term began to fall out of favour in the 1590s.⁵⁰ Nevertheless, there is no doubt that improvisation was vital to the process until at least the late Elizabethan era.

Rather than assuming retrospectively the existence of a singular author, Masten urges that we must accept that collaborative texts of the era 'are of a kind different (informed by differing mechanisms of textual property and control, different conceptions of imitation, originality, and the "individual") from collaborations produced within the regime of the author'.⁵¹ Even if

⁴²Masten (n 28) 349. See also R Barthes, 'The Death of the Author' 5/6 *Aspen: The Magazine in a Box* (R Howard tr, 1967), available at www.ubu.com/aspen/aspen5and6/index.html (accessed on 1 July 2024); and M Foucault, 'What Is an Author?' in JM Marsh, JD Caputo and M Westphal (eds), *Modernity and its Discontents* (Fordham UP 1992) 299, 305 (original essay dating from 1969 and seen by many as a response to Barthes).

⁴³E Smith, 'Author v. Character in Early Modern Dramatic Authorship: The Example of Thomas Kyd and *The Spanish Tragedy*' (1999) 11 *Medieval and Renaissance Drama in England* 129, 131–32. See T Kyd, *The Spanish Tragedie* (1587), available at www.gutenberg.org/files/6043/6043-h/6043-h.htm (accessed on 1 July 2024).

⁴⁴*ibid.* See also B Vickers, 'Shakespeare and the 1602 Additions to *The Spanish Tragedy*: A Method Vindicated' (2017) 13 *Shakespeare* 101.

⁴⁵Smith (n 43).

⁴⁶*ibid.* See also D Kezar, 'Shakespeare's Guilt Trip in *Henry V*' (2000) 61 *Modern Language Quarterly* 431.

⁴⁷Censors – particularly the Master of the Revels – were also involved in 'editing' texts.

⁴⁸Masten (n 28) 339.

⁴⁹Marino (n 18) 107–42.

⁵⁰C Lehmann, *Shakespeare Remains: Theater to Film, Early Modern to Postmodern* (Cornell UP 2002) 80.

⁵¹Masten (n 28) 346.

we do not accept all Masten's contentions, when evaluating the Elizabethan and Jacobean eras we should recognize that our modern ideas of individual authorship and ownership did not yet hold sway – and, of course, copyright law as we know it did not yet exist.⁵²

This analysis does not erase or minimize the role of the writer – such as William Shakespeare, whose *First Folio* I analyse below – rather, it contextualizes and enriches our understanding. Only by taking this approach can we observe 'the different configuration of authorities controlling texts' and 'constraining their interpretation'.⁵³ The writer played an important role, but the writer was only one active party within a greater collaborative enterprise.⁵⁴ Elizabethan/Jacobean polyvocal authorship should be viewed as featuring 'a dispersal of author/ity'.⁵⁵ Ultimately, Cox and Kastan remark that 'actors, annotators, revisers, collaborators, scribes, printers, and proof-readers, in addition to the playwright, all have a hand in shaping the text'.⁵⁶ The combination of authorial and textual instability confirms that theatrical production was indeed 'polyvocal'.⁵⁷ Every participant – from those involved in the first performance to later archivists – could be said to perform a role in the authorship of the play.⁵⁸

Viewing Shakespeare as author and owner within this polyvocal context

There are two aspects of Shakespeare's career that are worth highlighting before we delve into the *First Folio*. These points are important for understanding Shakespeare's purported authorship and ownership of plays during the period. First, it is notable that Shakespeare was active in theatre in capacities other than playwriting (acting, management); and second, in line with the above, we should view the surviving Shakespearean texts as testaments not only to his brilliance, but also to his successful collaborations with other writers, and more generally to the vibrancy of polyvocal theatrical authorship.⁵⁹

⁵²T Stern, "Whether one did Contrive, the Other Write,/Or one Fram'd the Plot, the Other did Indite": Fletcher and Theobald as Collaborative Writers' in D Carnegie and G Taylor (eds), *The Quest for Cardenio: Shakespeare, Fletcher, Cervantes, and the Lost Play* (OUP 2012) 115–30.

⁵³Masten (n 28) 338.

⁵⁴J Lowenstein, *Ben Jonson and Possessive Authorship* (CUP 2002) 10–18.

⁵⁵J Masten, *Textual Intercourse: Collaboration, Authorship, and Sexualities in Renaissance Drama* (CUP 1997).

⁵⁶Cox and Kastan (n 26).

⁵⁷Masten (n 28) 339.

⁵⁸LB Petersen, *Shakespeare's Errant Texts: Textual Form and Linguistic Style in Shakespearean 'Bad' Quartos and Co-authored Plays* (CUP 2010).

⁵⁹J Clare, 'Shakespeare and Paradigms of Early Modern Authorship' (2012) 1 *Journal of Early Modern Studies* 137–53.

On the first, recalling the earlier discussion of whether writers ‘owned’ plays in the Elizabethan era, it is revealing that even William Shakespeare did not – and, in all likelihood, could not – rely on playwriting as a way to make a living. To obtain a steady income he needed to play multiple roles, becoming, in addition to a writer, an actor, a producer and, effectively, a business manager.⁶⁰ Thus, Shakespeare fulfilled several different roles in theatre companies over his career, most notably in the Lord Chamberlain’s Men (and the successor company – the King’s Men).⁶¹

For the second, given that neither the theatrical copyright ‘work’ nor modern authorship had yet been conceived in the terms we understand them today, we should not allow the figure of Shakespeare in our modern imagination to obscure the fact that collaboration, in various forms, was a major – and perhaps the dominant – contemporary form of textual and theatrical production.⁶² Like his contemporaries, Shakespeare was a serial collaborator. He crafted several plays with other writers, including *Titus Andronicus* (with George Peele), *Timon of Athens* (with Thomas Middleton), *Pericles* (with George Wilkins) and *Henry VIII and The Two Noble Kinsmen* (with John Fletcher).⁶³ This list was expanded as recently as 2016 when *The New Oxford Shakespeare* credited Christopher Marlowe as a co-author of the *Henry VI* cycle of plays (Parts One, Two and Three).⁶⁴ To view Shakespeare as a collaborator does not in any way lessen the stature of his plays – rather it enriches our understanding of them.⁶⁵ Moreover, it would surely be unjust to allow Shakespeare’s poetic brilliance to overshadow the substantial input of other parties.⁶⁶ The texts that have survived have done so in varying forms – in the first published ‘quarto’ version of *Hamlet*, which is much shorter than the later versions, the famous ‘To be or not to be’ soliloquy does not state ‘that is the question’ – it states ‘that is the point’.⁶⁷ Such variances should not necessarily be viewed as ‘corruption’ – they instead reflect the polyvocal nature of authorship that Masten describes.⁶⁸ Indeed, as we now turn to the creation of Shakespeare’s *First Folio*, this idea of ‘collaborative enterprise’ must extend to the compilers of the book, as well as the legacies of company ownership, iterative text, and polyvocal authorship that contributed to the play-texts themselves.⁶⁹

⁶⁰D Price, ‘Evidence for A Literary Biography’ (2004) 72 *Tenn. L. Rev.* 111, 133–34.

⁶¹Vickers (n 31). See also D Bruster, ‘Shakespeare the Stationer’ in M Straznicky (ed), *Shakespeare’s Stationers* (University of Pennsylvania Press, 2013) 112–31, 112–14.

⁶²Masten (n 28) 339.

⁶³Vickers (n 31).

⁶⁴W Shakespeare, *The New Oxford Shakespeare: Modern Critical Edition – The Complete Works* (G Taylor, J Jowett, T Bourus and G Egan eds, OUP 2016).

⁶⁵Vickers (n 31).

⁶⁶Marino (n 18) 5.

⁶⁷Shakespeare (n 1).

⁶⁸Masten (n 28).

⁶⁹See S Orgel, ‘What Is a Text?’ in DS Kastan and P Stallybrass (eds), *Staging the Renaissance: Reinterpretations of Elizabethan and Jacobean Drama* (Routledge 1991) 84 and J Knapp, *Shakespeare Only* (University of Chicago Press, 2009).

The publication of Shakespeare's *First Folio* (1623) and the beginning of his acclamation as the greatest English author-figure

Today we have no compunction about attributing individual authorship and attribution of tragedies, histories, or comedies to William Shakespeare; yet it appears Shakespeare himself did not give much thought to the publication of his plays, or how they would be viewed in posterity. In line with the above, it is quite possible he viewed his plays as being collaborative performance texts for the company's shows, with the texts living and breathing on stage, rather than being definitive authorial statements. Unlike his poetry, there is little evidence that he sought to arrange for his preferred texts to be printed. Gurr concurs that Shakespeare took little interest in the printing of his plays – for example, in the case of *Henry V*, Shakespeare allowed the theatre company to arrange for printing of the company's shortened performance text rather than his superior manuscript version, which only received posthumous publication as part of the *First Folio*.⁷⁰

This brings us to the *First Folio* itself and the question of how Shakespeare's plays came to be printed and bound in this folio form. The first point is to acknowledge the *First Folio's* posthumous status. When Shakespeare died in 1616, he left a sum of money to John Heminges and Henry Condell, as well as to the well-known actor Richard Burbage, who died not long afterwards in 1619. Some speculate that this bequest may have been to encourage his friends to print his plays, but no definitive statement can be made on this point.⁷¹ In any event, Heminges and Condell were sincere in their attempt to ensure that their friend's plays were preserved, with the bound folio form representing a prestigious literary object likely to survive for later generations.

The *First Folio* provides the text for thirty-six plays. Several of these texts were more complete than the previously published abridged 'Quartos'.⁷² Even more remarkably, eighteen of the plays had never been printed before at all, even in quarto form: *All's Well That Ends Well*, *Antony and Cleopatra*, *As You Like It*, *The Comedy of Errors*, *Coriolanus*, *Cymbeline*, *Henry VI, Part One*, *Henry VIII*, *Julius Caesar*, *King John*, *Macbeth*, *Measure for Measure*, *The Taming of the Shrew*, *The Tempest*, *Timon of Athens*, *Twelfth Night*, *The Two Gentlemen of Verona*, and *The Winter's Tale*. None of these eighteen had been registered at the Stationers' Company during Shakespeare's lifetime,

⁷⁰A Gurr, 'Shakespeare's Lack of Care for His Plays' (2015) 2 *Memoria di Shakespeare: A Journal of Shakespearean Studies* 161, 161–62. Gurr's view can be contrasted with that of Erne who makes the claim that Shakespeare did intend his plays to be read – L Erne, *Shakespeare as Literary Dramatist*, 2nd edn (CUP 2013).

⁷¹Laoutaris (n 3) 6.

⁷²E Smith, *Shakespeare's First Folio: Four Centuries of an Iconic Book* (OUP 2016).

demonstrating how distant the world of print publication was from the performance arena.

Assembling the thirty-six play-texts was a mammoth task. To bring the project to fruition, Heminges and Condell formed a syndicate of investors and right-holders, including the prominent Stationer Edward Blount. In their own commentary in the *First Folio* Heminges and Condell allude to the difficulty of ascertaining what were the correct scripts to print, referring to the existence of numerous ‘stolne, and surreptitious copies’ of the plays.⁷³ Parsing through the accurate versions from the surreptitious copies was the crucial labour that facilitated the journey of Shakespeare’s plays from stray texts and abridged quartos to the more reliable texts printed and bound in the *First Folio*.⁷⁴ The task also required the compilers to make tricky decisions about whether to include plays that were related but not the same. For example, the play registered with the Stationers and printed in 1594 as *The Taming of a Shrew* shares little in common – other than a basic plot – with the text printed in the *First Folio* as *The Taming of the Shrew*.⁷⁵

Crucially, a large part of this labour was an early form of what we would now view as copyright licensing or ‘clearing’. Since the Stationers’ Company held the exclusive right to print works, Heminges and Condell, often aided by Blount, had the time-consuming task of tracking down all the Stationers who had previously registered a right to print certain Shakespeare plays.⁷⁶ The syndicate had to obtain these print rights from the various Stationers, most of whom had acquired publishing rights while Shakespeare was still alive.⁷⁷ For example, the rights to print *Much Ado About Nothing* and *Henry VI Part Two* were owned by the Stationer William Apsley.⁷⁸ Blount convinced Apsley to join the syndicate, bringing with him the rights to print these plays in the *First Folio*. The right to print *As You Like It* belonged to William Jaggard, who also became part of the syndicate.⁷⁹

With some of the plays, there was uncertainty about which Stationer owned the right to print. For example, it was unclear who had the print right to *A Midsummer Night’s Dream*.⁸⁰ The Stationer Thomas Fisher had originally published the play in 1600, but after Fisher’s death it was unclear which stationer had acquired the right. Laoutaris relates that the Jaggards – William, and his son Isaac – seem to have resolved this by bringing another Stationer,

⁷³Erne (n 70) 280–83.

⁷⁴Laoutaris (n 3) 10–13.

⁷⁵Marino (n 18) 48–74.

⁷⁶M Rose, ‘The Public Sphere and the Emergence of Copyright: Areopagitica, the Stationers’ Company, and the Statute of Anne’ (2009–10) 12 *Tulane Journal of Technology and Intellectual Property* 123.

⁷⁷Laoutaris (n 3).

⁷⁸ibid 125.

⁷⁹ibid 126.

⁸⁰ibid 133.

Thomas Pavier, who had a plausible claim to the play, into the syndicate.⁸¹ Another Stationer brought into the syndicate was John Smethwick, who owned the print rights to four Shakespeare plays, *Hamlet*, *Romeo and Juliet*, *The Taming of the Shrew*, and *Love's Labour's Lost*.⁸² However, not all rights-holding parties were encouraged to join as an investor. For instance, the syndicate acquired the right to print *The Merchant of Venice* from the Stationer Lawrence Hayes without making him part of their collective.⁸³

This early form of copyright licensing did not always go smoothly. There was a significant delay in the preparation of the text of *Troilus and Cressida* for printing because the right-holder Henry Walley caused 'trouble' and would not agree to reasonable terms.⁸⁴ In fact, this licensing dispute was only resolved after the initial print of the *First Folio* was published without *Troilus and Cressida*, which finally prompted Walley to allow the play-text to be added to all subsequent editions.⁸⁵

For plays performed by The Lord Chamberlain's Men/The Kings Men but never printed, the issue was more about locating the most complete texts rather than licensing. In other words, where no Stationer had a registered right, Heminges and Condell could utilize any script still held by the company. For example, the King's Men had held onto the unpublished scripts of *The Tempest*, *The Two Gentlemen of Verona*, *Measure for Measure* and *The Comedy of Errors*.⁸⁶ Some of these texts held by the King's Men were the 'approved copies' – scripts sent to the Master of the Revels for prior content approval, with these approved copies kept by the companies to demonstrate the play had passed through the state censor. The scrivener Ralph Crane, who worked as a scribe for the King's Men in the 1610s and early 1620s, is known to have 'cleaned up' and set down the most accurate transcripts for at least the first four texts printed in the *First Folio*: *The Tempest*, *The Two Gentlemen of Verona*, *The Merry Wives of Windsor*, and *Measure for Measure*.⁸⁷ As such, Crane certainly deserves to be recognised within the framework of polyvocal authorship examined above.

Even with the best efforts of Crane and the collators of the *First Folio*, the texts of Shakespeare remain replete with literary uncertainties, including questions of attribution and textual instability.⁸⁸ Nonetheless, even if the texts are not always entirely stable, our modern understanding of William Shakespeare as the greatest English author can be traced to the publication

⁸¹ *ibid.*

⁸² *ibid.* 129.

⁸³ *ibid.* 134.

⁸⁴ *ibid.* 124 and 251.

⁸⁵ *ibid.* 285.

⁸⁶ *ibid.* 126.

⁸⁷ P Werstine, 'Scribe or Composer: Ralph Crane, Composers D and F, and the First Four Plays in the Shakespeare First Folio' (2001) 95 *The Papers of the Bibliographical Society of America* 315–39.

⁸⁸ E Smith (ed), *The Cambridge Companion to Shakespeare's First Folio* (CUP 2016) 68–85.

of the *First Folio*. Without this, later critics would not have had enough literary material to pronounce him as a theatrical genius.⁸⁹ Nevertheless, as noted above, it is worth approaching his elevation to this lofty status, and its attendant effect on ideas of the author as owner, in a cautious fashion.

On the questions of authorship and ownership, one reason for caution is that it is arguable that Ben Jonson had a greater sense of himself as a dramatic author-owner than Shakespeare had. This is evidenced by Jonson's attitude to his published works, which I explore below. Thus, while Shakespeare is undoubtedly the greatest playwright in English theatrical history, Ben Jonson is perhaps the key author-figure of the time, and one whose own 1616 folio presaged that of Shakespeare's.

Was Ben Jonson the first self-conscious author-owner in English theatre?

Ben Jonson's attitude towards publication of his texts marks him out from his contemporaries and anticipates the later emergence of authors as possessive owners of copyright in their works. In this way, Jonson was undoubtedly ahead of his time. Unlike Shakespeare, Jonson arranged for publication of his preferred manuscript versions of plays and emphasized his authorial status by adding paratextual material (prologues, epilogues, dedications, etc) to manuscripts before printing.⁹⁰ McMillan opines that Jonson cared deeply about his literary status and 'made a campaign out of turning plays into respectable literature'.⁹¹ In this vein, Lowenstein remarks that the 1616 publication of Jonson's folio – *The Workes of Benjamin Jonson* – 'marks a crucial moment in that history of the cultural marketplace, and in the history of the bibliographic ego, from which later developments in legal history derive'.⁹²

Another point relevant to Jonson's attempt to establish the author as a respectable vocation is that he pursued multiple avenues of authorial revenue, allowing him to earn an income primarily from his writings. This too distinguishes him from Shakespeare. Jonson had several sources of revenue: first, Jonson sold plays to acting companies; second, he made appeals for patronage based on his manuscripts; third, he sold 'masques' to the Royal court for performances at, for example, the Banqueting House at Whitehall; and finally, he sold 'verse' for registration at the Stationers' Company and thereafter print dissemination.⁹³

⁸⁹Egan (n 27).

⁹⁰Peters (n 21) 136. Although Jonson also worked as an actor (as Shakespeare did) Jonson's efforts to derive an income from his writings mark him out.

⁹¹S McMillan, 'Professional Playwriting' in DS Kastan (ed), *A Companion to Shakespeare* (Blackwell 1999) 226–38, 238.

⁹²Lowenstein (n 12) 110.

⁹³*ibid* 102.

A key part of Jonson's activities was his business relationship with Philip Henslowe, the prominent theatrical manager of the Rose Theatre and the Admiral's Men. Although Jonson benefited from the relationship in numerous ways, Lowenstein cautions that Jonson was, in effect, 'indentured to Henslowe'.⁹⁴ A positive factor for Jonson was that Henslowe could arrange for Jonson's texts, including Jonson's paratextual additions, to be registered at the Stationers' Company, which, in addition to preserving the plays in print, also provided Henslowe with income once audiences for a formerly popular play had begun to dwindle.⁹⁵

Jonson's self-conscious approach to authorship became more and more evident throughout the Jacobean era. As noted earlier, acting companies typically purchased plays from writers for a flat fee and such transactions effectively brought to an end the writer's 'ownership' of the work;⁹⁶ and when the playwright was referred to on stage, it was typically as 'our poet' and almost never as the 'author' or the 'playwright'.⁹⁷ Jonson began to challenge these presumptions, engaging with acting companies with a higher level of agency than most writers. This is evident in the prologue he wrote for *Bartholomew Fayre* in 1614 which, unusually, referred to a contract between 'the Hearers' (the audience) and 'the Author' (Jonson, as playwright).⁹⁸ This was a radical moment in the history of authorship in theatre because it presented the playwright, rather than the actors, as the originator (not merely 'our poet') of the play in the mind of the audience.⁹⁹

This individualist turn presaged the move, over the decades that followed, towards appreciating the unique 'voice' of the author. Indeed, the efforts of Jonson, and the posthumous appreciation of Shakespeare via the readership of the *First Folio*, meant that as the Jacobean era gave way to the Caroline period (1625–49), the perception of theatrical authorship was already beginning to stabilize around an individualist author-figure. The idea that such an author should also own property in the play was not far off. On this too, Ben Jonson was ahead of his time, advocating publicly for increased legal rights for writers.¹⁰⁰ In this regard, the author's rights tradition in English theatre owes a debt to Ben Jonson.¹⁰¹

⁹⁴ibid 103.

⁹⁵ibid 104. See also AW Pollard, *Shakespeare's Fight with the Pirates and the Problems of the Transmission of His Text*, 2nd edn (CUP 1920) 35–52.

⁹⁶ibid 102, noting that 'printers conventionally gave limited privileges of revision to authors'.

⁹⁷ibid 102.

⁹⁸B Jonson, *Bartholomew Fair* (1614), induction, lines 58, 64–66, 73–82, available at www.gutenberg.org/files/49461/49461-h/49461-h.htm (accessed on 1 July 2024).

⁹⁹Lowenstein (n 12) 103.

¹⁰⁰J McKeough, K Bowrey and P Griffith, *Intellectual Property: Commentary and Materials* (4th edn; Butterworths 2007) 21.

¹⁰¹Peters (n 21).

The end of the Stationers' monopoly

Throughout the seventeenth century, even though the value of play-books continued to increase, the rights of playwrights as authors remained opaque, barely perceptible in a haze of legal relationships that benefited publishers and booksellers. As the seventeenth century ended, the Stationers' system proved inflexible – and even corrupt in some respects.¹⁰² With an increase in competition and the tussle for market control, authors began to come into focus as plausible property owners. The English courts were beginning to perceive, and acknowledge, the possibility of authorial ownership. Although not a case about a theatrical text, the ruling of the Court of Common Pleas in *Seymour v Stationers* (1677) is relevant as it raised questions about whether authors could possess a kind of common law literary property.¹⁰³ On this, Gómez-Arostegui argues that during the mid-to-late seventeenth century there was some implicit Parliamentary and judicial acceptance that authors owned a form of literary property in their writings, but it was never given definitive approval by the courts.¹⁰⁴

The Licensing Act 1662, which approved the rights of the Stationers, continued in force, via amendments, with some temporary lapses, before it finally expired in 1695. In the decade that followed, the Stationers agitated for the renewal of their monopoly rights. The outcome of this struggle was the push for statutory copyright, which involved a shift from the sole rights of publishers to making the right to copy the author's property right.¹⁰⁵ In 1710 the Statute of Anne formally linked literary property rights in texts to their authors as creators, as opposed to the masters of the print medium: the stationers. After the Statute of Anne of 1710, the scene was set for legal claims made by playwrights, publishers, and theatre owners to establish key case law principles concerning the protection of the 'right to copy' that remain relevant to this day.¹⁰⁶

Conclusion

In this article I have argued that the posthumous publication of Shakespeare's *First Folio* in 1623 was one factor that acted as a catalyst for change in the status and legal rights of dramatic authors, a process that led eventually to the first copyright statute: the Statute of Anne 1710. There are two points of particular significance in this regard. The first is that the publication of

¹⁰²ibid 105–06.

¹⁰³*Stationers' Company v Seymour* (1677) 1 Mod. 256. See also HT Gómez-Arostegui, 'Stationers v Seymour (1677)' in J Bellido (ed), *Landmark Cases in Intellectual Property Law* (Hart 2017) 21–58.

¹⁰⁴R Deazley and E Cooper (eds), 'What is the Point of Copyright History? Reflections on Copyright at Common law in 1774 by H. Tomás Gómez-Arostegui' (2016) 4 CREATE Working Paper 1.

¹⁰⁵Lowenstein (n 12) 105–06.

¹⁰⁶L McDonagh, *Performing Copyright: Law, Theatre and Authorship* (Hart 2021).

the *First Folio* required John Heminges and Henry Condell to engage in an early form of copyright licensing. Their syndicate had to obtain the print rights for several plays from the various Stationers who had acquired publishing rights while Shakespeare was alive. Thus, the *First Folio* stands as a significant early example, even before statutory copyright existed, of a compilation created via the 'clearing' of copyright licences.

The second factor is that, along with the activities of Ben Jonson, the printing of Shakespeare's plays in a bound book collection contributed to a rise in esteem of the dramatic author figure throughout the seventeenth century. This coincided with a growing respect for the author's 'literary property' in law, which would evolve, in the post-*First Folio* era, via the Statute of Anne 1710, into today's author-centred, modern copyright law.

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