



Review of María José Falcón y Tella, *The Law in Cervantes and Shakespeare*. Translation by Dierdre B. Jerry of *El Derecho en Cervantes y Shakespeare* (Marcial Pons, 2021). Leiden: Brill Nijhoff, 2021.

by Christina G. Waldman

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“In the Spanish-speaking world, María José Falcón y Tella stands out among those authors who have studied the theme of law and literature in its diverse modalities,” writes Carla Forelli, Professor of Legal Philosophy, University of Bologna, in her foreword to Falcón y Tella’s *The Law in Cervantes and Shakespeare* (xiii). Falcón y Tella is the author of *Derecho y Literatura* (2015; translated into English as *Law and Literature* [Brill, 2016]). In her foreword, Forelli refers to *Derecho y Literatura* as “one of the greatest contemporary European studies on law and literature” (xiii).

It has long intrigued me that the divisions between law, literature, and religion were not as pronounced in earlier times as they are today. For example, it is probable that ancient Greek drama had its roots in religious rites (see, e.g., Eric Csapo, intro., *The Origins of Theatre in Ancient Greece and Beyond: From Ritual to Drama* (Cambridge: Cambridge University Press, 2007), xvii –1). Judges in Ireland were once bards (see John C. Kleefeld, “From Brouhahas to Brehon Laws: Poetic Impulse in The Law,” *Law and Humanities* 41 (2010), 21–61). And, until 1868, the Japanese were still putting the “weightiest part of state documents” in verse (J. Huizinga, *Homo Ludens: A Study of the Play Element in Culture* (London: Routledge, 1949), 126).

Still, it was a surprise to me, and perhaps it will be to others, to learn that *Don Quixote* has so much to say about law and even jurisprudence (the philosophy or science of law). In the introduction to her book under review, Falcón y Tella clearly affirms the role that literature in general, and *Don Quixote* in particular, can, and does, play, in the establishment of values and principles like “freedom, justice, and equality” (p. 1). She explains that one reason *Don Quixote* is considered among the world’s greatest works of literature is its strong appeal for human rights and dignity, stating:

We do not have to go back to Cervantes’ Spain to realize that in every period of history, and even today, there have been and still are human beings who have acted as knights-errant, waging constant battles to defend their beliefs and never betraying their ideals. The humanity of such individuals I precisely what has driven the progress of mankind. (intro, 1)

In this same vein, she quotes author Carlos Mata Indurálin (intro, 2):

What a splendid lesson Cervantes teaches us through his immortal creature! That men—any man, all men—are free and must always fight to fulfill their dreams, even if the path to achieving that goal is strewn with defeat and bitterness ...”And that is the lesson: that every man who fights for a beautiful ideal is a hero who can never be vanquished, though he suffer a thousand defeats He may be defeated but never vanquished

Falcón y Tella’s decision to make Shakespeare’s works and Cervantes’ *Don Quixote* the subject of one book is an interesting one, for it invites the making of comparisons between the two—which she does. For example, she compares and contrasts the characters of Hamlet and Quixote (148–153). Both were mad (147–148). King Lear, too, was mad (135–136). Was Shylock also mad? I have wondered. Also, in *The Merchant of Venice*, Falcón y Tella finds Shakespeare’s treatment of Jessica “reminiscent” of the love story of the “captive captain” in *Don Quixote* and the story of the daughter of the Moor, Ricote, and Don Gaspar Gregorio.

Falcón y Tella points to a “central theme of equity” running through both *The Merchant of Venice* and *Don Quixote*. Equity was Francis Bacon’s turf. “Certainly it partakes of a higher science to comprehend the force of equity that has suffused and penetrated the very nature of human society.” (Francis Bacon, *Aphorismi de Jure gentium maiore, sive de fontibus Justitiae et Juris*, or, “Aphorisms on the greater Law of nations, or of the fountains of Justice and Law.” For more on Bacon’s *Aphorismi*, see Daniel R. Coquillette, *Francis Bacon* (Stanford: Stanford University Press, 1992), 237–43.)

What is equity? There are different definitions, depending on context. When I was in law school, *Black’s Law Dictionary* defined it, for our purposes, as “justice administered according to fairness as contrasted with the strictly formulated rules of common law.” (*Black’s Law Dictionary*, 5th ed., ed. by Bryan A. Garner (West: St. Paul, 1979). The 11th ed. (2019) of *Black’s* (Garner, ed.) now defines it as (1) “fairness, impartiality, even-handed dealing”; (2) “the body of principles constituting what is fair and right, natural law”; and (3) “the recourse to principles of justice to correct or supplement the law as applied to particular circumstances” Falcón y Tella’s book contains numerous references to equity. For example, she offers this quotation, “When equity may and should be brought not play, press not the utmost rigor of the law against the guilty; for the reputation of the stern judge stands not higher than that of the compassionate.” (64). The term equity can be used in a procedural context, as well, referring to specific courts or rules of equity. “Portia’s ‘quality of mercy’ speech is perhaps the greatest equitable plea ever penned or spoken[.]” (Mark Edwin Andrews, *Law versus Equity in The Merchant of Venice: A Legalization of Act IV, Scene 1* (Boulder: University of Colorado Press, 1965), 52.

There are five chapters in *The Law in Cervantes and Shakespeare*. After the “Introduction,” chapter 2, “Law and Literature” discusses the “law and literature movement” for which the author’s expertise has been established (xiii). Chapters 3 and 4 focus on Cervantes and *Don Quixote*. In chapter 5, Falcón y Tella discusses three major Shakespeare plays: *King Lear*, *The Merchant of Venice*, and *Hamlet*. She describes *King Lear* as a play which “has everything,” including “rage and passion, cruelty and selfishness, hypocrisy and moral outrage” (130–136, at 130). She points out that, although *King Lear* is not considered per se a “legal” play, it contains three trial scenes (131). She describes *The Merchant of Venice* in one instance as “a comedic counterpoint to the sublimely tragic personal sacrifice of *Antigone*” (136–144, at 139). In both *Hamlet* (144–153) and *The Merchant of Venice* (136–144), she perceives vengeance as a central theme (143, 145).

The book includes chapters on “individual rights and freedoms” (37–47), “war and peace” (47–58), and “government and the administration of justice” (61–74). Law in the categories of “criminal,” “civil,” “labor,” “commercial,” “tax,” “procedural,” and “aristocratic” is all to be found in *Don Quixote*! As the teacher she is, the author uses the novel to explain and interpret important concepts within a jurisprudential framework. For example, when considering what constitutes a “just war,” she considers the appropriateness of past United States military actions (53–55).

Among literary works, Falcón y Tella ranks *Don Quixote* with Shakespeare, Dante, Goethe, and Homer (126, 20). It would be a loss for Spain if it were ever to be determined that an Englishman authored the novel. I did not find the author directly addressing authorship in this book. It could be suggested, however, that—just as with Shaxpere/Shakespeare—what is known about Cervantes’ life does not “fit” with his being the author of the literary masterpiece *Don Quixote*. She devotes significant space to demonstrating the legal/jurisprudential frame of reference in the works of both Shakespeare and Cervantes. Unlike what had been done in the past with Shakespeare’s works, however (see, e.g., discussion in O. Hood Phillips, *Shakespeare and the Lawyers* (London: Routledge, repr. 2004 [1972]), 119–140), no one seems to have made a significant effort to deny the prevalence and quality of the law presented in *Don Quixote*. At least, I am unaware of such an effort.

How does the author explain the means by which Cervantes and Shakespeare obtained their profound knowledge of the law, one might ask? According to Falcón y Tella, Cervantes’ life was “riddled with lawsuits, multiple court appearances, and periodic stints behind bars” (10). Life experiences and (presumed?) “extensive reading” prepared him to write on the civil law, although he was “neither a student of the law nor a jurist” (15). Similarly, she credits Shakespeare’s “propensity for litigation” for his legal knowledge. “Shakespeare was a potential lawyer, a walking litigation factory. Though not a lawyer by profession, he certainly acquired an extensive and solid legal education based on his own personal experience with the

law, again like Miguel de Cervantes” (127, citing Daniel J. Kornstein, *Kill all the Lawyers? Shakespeare’s Legal Appeal* (Lincoln: University of Nebraska Press, 2005 [date corrected], 15–21). Thus, it can be seen that, in this book, Falcón y Tella does not challenge the traditional narrative as to authorship. Yet, as lawyers would know, superior knowledge of the law does not come easily, In any century, it tends to require years of rigorous study under the tutelage of learned individuals.

On the authorship of *Don Quixote*, two books by Baconian authors come to mind. One is the late British historian Francis Carr’s *Who Wrote Don Quixote?* (2020). Thanks to the generosity of the Carr family, it may be read at SirBacon.org, <https://sirbacon.org/quixote.html> and/or purchased from Amazon. The second is the German author Alfred Von Weber-Ebenhof(f)’s book (in German), *Bacon-Shakespeare-Cervantes (Francis Tudor): A Criticism upon the Shaxper and Cervantes Festivals* (3 vols) (Leipzig-Vienna Anzengruber Publishing House, Suschitzky Brothers, 1917). According to Lawrence Gerald, this was the “first published book to challenge Cervantes’ authorship of *Don Quixote*.” (Lawrence Gerald, “Bringing Home Bacon, Shakespeare, and Cervantes,” What’s New on SirBacon.org?, March 1, 2024, <https://sirbacon.org/bringing-home-bacon-shakespeare-cervantes/>).

However, now English language readers can read Weber-Ebenhof’s never-before-published, entire 3-volume book in an English translation made by Arthur Cornwall, right on SirBacon.org, at <https://sirbacon.org/ebenhoffbook.htm>. Moreover, Don Elfenbein, a former law and philosophy professor, has provided his helpful 28-page review of Book 2. It may be read online as part of the March 1, 2024 article or downloaded from SirBacon.org. On March 24, 2024, SirBacon.org added Francis Carr’s essay, “Thomas Shelton and Hamet Benengeli” and the “Don Quixote Resource List by A Phoenix,” alerting readers to numerous *Baconiana* articles on the topic, as well as other materials, for further reading/. See <https://sirbacon.org/bacon-forum/index.php?/topic/679-bringing-home-bacon-shakespeare-cervantes/#comment-12835>.

I have not yet read all of *Don Quixote*. Also, I do not read Spanish. It is probably true that most books are best read in the language in which they were originally written. Unless one reads Spanish, however, one must read *Don Quixote* in a translation. The first “translation” by Thomas Shelton (published in 1612) was apparently remarkably fresh! For readers seeking a modern translation, this website may be useful: “What’s the Best Translation of Dox Quixote” (in 2 parts), <https://welovetranslations.com/2022/03/28/whats-the-best-translation-of-don-quixote-part-1/>.) The footnotes in Falcón y Tella’s book are comprised largely of publications in Spanish which I have not read and upon which I cannot comment.

However, it should be noted that, in her extensive bibliography (155–205), she does refer to a substantial number of works in English by authors whose names will be

familiar to students of law and literature, including—to list only a representative few: Bradin Cormack, Martha Nussbaum, Richard Strier, B. J. and Mary Sokol, Ian Ward, George Keaton, and O. Hood Phillips on Shakespeare and Eric Josef Ziolkowski on *Don Quixote*. The book contains an index (206–211). Impressively, the bibliography entry for Falcón y Tella herself is nearly half-a-page long. Two additional resources that could be suggested are: Susan Byrne, *Law and History in Cervantes' Don Quixote* (Toronto: University of Toronto Press, 2013) and Laurent de Sutter, “The Quixotic Principle, or, Cervantes as a Critique of Law,” (*Law and Literature* 26, no 1 (Spring 2014), 117-126.

Among her bibliography's American entries are Clarkson and Warren's *The Law of Property in Shakespeare and the Elizabethan Drama* (Baltimore: Johns Hopkins University Press, 1942) and Edward J. White's *Commentaries on the Law in Shakespeare* (St. Louis, F. H. Thomas Law Book Co., 1911). The 1913 edition includes White's 48-page essay, “The Bacon-Shakespeare Controversy: History of the Vagary” (vii–xlvi). In my opinion, both the Clarkson-and-Warren and the White books should be read more critically than they usually are with regard to authorship concerns, for they lack objectivity. White devotes 512 pages to “the law in Shakespeare,” yet calls it a mere “smattering” (xxxvi). I discuss Clarkson and Warren's book in my essay, “Challenging the Lie in Shakespeare Authorship Studies: Even in Shakespeare Authorship?” SirBacon.org, Nov. 14, 2023, 36–38, <https://sirbacon.org/waldman/Waldman-to-SirBacon-Solzhenitsyn-10-20-23.pdf>.

I was surprised to see at least two works challenging authorship listed in Falcón y Tella's bibliography: Mark Twain's *Is Shakespeare Dead?* and Delia Bacon's article (not her book), “William Shakespeare and his Plays: an Inquiry Concerning them,” *Putnam's Monthly Magazine*, 7 (1856). These share space with the “Stratfordian” Jonathan Bate's *The Genius of Shakespeare* (1997) and Samuel Schoenbaum's *Shakespeare's Lives* (1991). There was no entry for Francis Bacon in the index. There is no *particular* reason why there should have been one; however, as a Baconian, that is something I always look for in a book. I encourage writers to look for Bacon.

I am more familiar with the literature on “Shakespeare and law” than I am with that on “*Don Quixote* and law.” Of course, new works are constantly being published. R. H. Helmholz's Selden Society lecture, published in “Shakespeare and the European *ius commune*,” in M. Lobban and I. Williams, eds., *Networks and Connections in Legal History* (Cambridge: Cambridge University Press, 2020, 262–284, may also be of interest. Helmholz provides examples suggesting Shakespeare's knowledge of the *ius commune*. However, he accepts the traditional attribution of Shakespeare authorship to William Shaxpere of Stratford in that lecture. I discuss his lecture, reprinted by the Selden Society in booklet format (2023), in my essay, “Challenging the Lie in a Free Society: Even in Shakespeare Authorship Studies?”

SirBacon.org, PDF, Nov. 14, 2023, 38-41, <https://sirbacon.org/challenging-the-lie-in-a-free-society-even-in-shakespeare-authorship-studies/>.

Readers may ask: what is the *ius commune*? In his foreword to the American edition of Manlio Bellomo's *The Common Legal Past of Europe 1000–1800*, Kenneth Pennington defines the *ius commune* as the “Roman, canon, and feudal law, spoken of by “the jurists of the twelfth and thirteenth centuries,” which was “taught in the law schools of Italy, France, Spain, Germany, England, and other European countries until the Seventeenth century.” In his preface, Bellomo explains, “[T]he fusion of Roman, canon, and feudal law produced a *ius commune* and a common jurisprudence in Europe between 1100 and 1800.” (Manlio Bellomo, *The Common Legal Past of Europe 1000–1800*, trans., from the 2d ed., by Lydia G. Cochrane (Washington D. C.: The Catholic University of America Press, 1995), x, xi) Of note, Professor Bellomo has questioned the traditional narrative on Shakespeare authorship (see Manlio Bellomo, “*Ius commune e Shakespeare, fra drammi e commedie*,” *Rivista Internazionale di Diritto Comune* 30 (2019), 11–27).

As to the *ius commune*, Daniel R. Coquillette has written of Francis Bacon's interest in the “civilian law” practiced on the Continent, in his book on Francis Bacon and in his several articles on Bacon and/or the civilian lawyers in England during the sixteenth-seventeenth centuries (available from <https://www.bc.edu/bc-web/schools/law/academics-faculty/faculty-directory/daniel-coquillette.html>). For example, Coquillette observed: “The civilian tradition in Scotland permitted Bacon an excuse to compare English legal institutions to the world of continental civil law, and to begin to look to universal legal science as a legitimate source of national law.” Daniel R. Coquillette, *Francis Bacon, Jurists: Profiles in Legal Theory* (Stanford: Stanford University Press, 1992), 6. Perhaps, when looking for “the law in Shakespeare,” one would do well to look beyond Anglo-American common law.

This book should be of interest to students of law and literature, generally, and of *Don Quixote*, more particularly. However, as with Shakespeare, the discrepancy between the life story of the writer and the legal knowledge and jurisprudence displayed in the works suggests a need for further inquiry into authorship. At first, it might seem far-fetched to think that even the literary genius Francis Bacon could possibly have written *Don Quixote* and the works of Shakespeare and everything else he wrote. I used to doubt it. However, now that I realize how much the author of *Don Quixote* had to say about law and jurisprudence, I am much less of a doubter.

When he was alive, Bacon, as a top judge (Lord Chancellor) and lawyer in important legal cases, was entitled to be considered an authority on law and jurisprudence, as Coquillette sets forth in his book, *Francis Bacon* (although the recognition due to Bacon in this regard was tainted by political factors). Yet, in his philosophical writings, Bacon wrote of his concern that too much reliance on authorities had

impeded the progress of “science” (knowledge). He urged, in *The Advancement of Learning* (1605, the year part one of *Don Quixote* was first published in Spain) et al., that “the advancement of learning” for the betterment of humanity would need, in the future, to depend less on reliance upon the teachings of religious and other “authorities” (in this age when Galileo’s research was curtailed by house arrest for heresy and Giordano Bruno was burned at the stake) and more on improving the quality of human reasoning and fact-finding.

To draw a parallel, 1623 saw the publication both of the augmented Latin edition of *The Advancement of Learning* (*De dignitate et augmentis scientiarum*) and of the First Folio, attributed to “William Shakespeare.” It has been said that an entire law school curriculum could be taught from the works of Shakespeare. Is it not plausible that, pursuant to plan, Bacon was putting his own teaching into practice by incorporating important legal and jurisprudential teachings into literary works which he intended would outlive him, but to which his name “as authority” would not be attached?

“For my name and memory, I leave it to men’s charitable speeches, and to foreign nations, and the next ages.”

We remain in his debt.

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