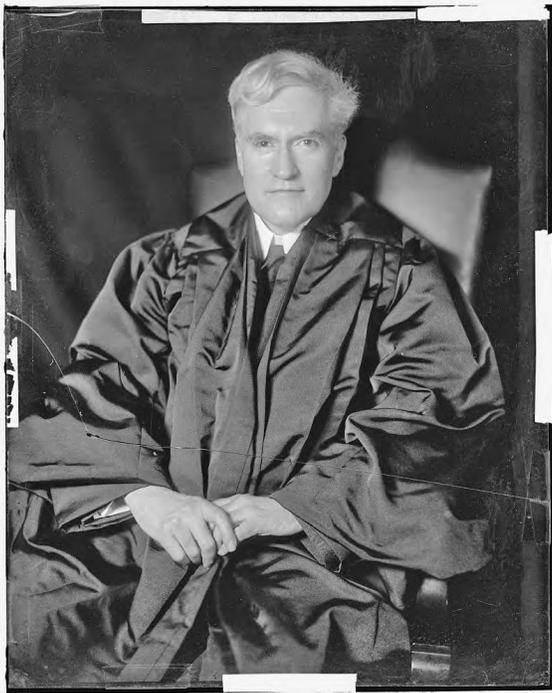


From the Courts?

Backward Ran The Sentences – 'til 1600

By Ronald W. Meister

The release of Roland Emmerich's film *Anonymous*, and the recent publication of Arthur Phillips's *The Tragedy of Arthur*, have renewed the



debate over who wrote Shakespeare's plays. Scholars have long puzzled over how the unlettered son of an undistinguished Midlands glove-maker could write poetry of such beauty. From Mark Twain's conclusion that the plays were written not by Shakespeare, but by someone else with the same name, to Emmerich's claim for the Earl of Oxford, many candidates have been put forth as the

Bard, his collaborator, his literary agent, or his alter ego.

It seems, however, that we are looking at this problem from the wrong end of the telescope.

Whoever wrote the plays, they are undoubtedly among the highest achievements of the English language.

What we should be looking for is not who wrote Shakespeare's plays, but what else Shakespeare wrote: what other writings are so good, and bear the unmistakable influence of the Bard, that they should be attributed to him, and not to their ostensible authors?

Lawyers, with their tradition of persuasive writing, have a special stake in this issue. We harbor little doubt over the identity of the greatest legal stylist of modern times: Benjamin Nathan Cardozo, Associate and then Chief Judge of the New York Court of Appeals, and later Associate Justice of the U.S. Supreme Court, whose opinions in *Meinhard v. Salmon*, *Palsgraf v. Long*

Island Railroad, and *Palko v. Connecticut* are rightly held out as examples of literary, as well as judicial, art. His Storrs lectures at Yale, collected as *The Nature of the Judicial Process* and *The Growth of the Law*, have been regarded as without peer for "facility of expression, breadth of imagination, and lucidity of thought."

Yet, from whence did this eloquence spring? The young Cardozo gave hardly more promise as a literary stylist than the young Shakespeare. He had little formal schooling before entering college, and never graduated from law school. His father had, if anything, less stature than Shakespeare's, having served as a Tammany henchman of Boss Tweed's, and resigned his judicial post in disgrace. It seems inconceivable that, from this undistinguished background, could come a literary output that Charles Evans Hughes described as "a mighty arsenal of forensic weapons." We must accordingly look elsewhere for the source of these great writings. And where more likely to look than to Shakespeare?

Fortunately, we can do more than speculate about Shakespeare's authorship of Cardozo's works. The science of stylometry provides us with tools to attribute works to their proper authors. By examining similarities in works attributed to Shakespeare and to Cardozo, we can form rational conclusions about their sources.

Iambic Meter? Check

To begin, we examine the stylistic features most readily identifiable in each purported author's writings, and look for similarities in the other's. For Shakespeare, that is easy. If he is known for anything, it is iambic meter: "The play's the thing wherein I'll catch the conscience of the king;" "A horse! A horse! My kingdom for a horse!" Iambic meter not being a common feature of judicial writing, it would be a significant surprise to find it there. And yet, there it is, prominently, in Cardozo's most important works: in Palsgraf, "The risk to be perceived defines the duty to be obeyed;" in *The Growth of the Law*, "The inn that shelters for the night is not the journey's end;" and in *The Nature of the Judicial Process*, "Law never is, but is always about to be."

Cardozo's most often-quoted maxim, from *Meinhard v. Salmon* – the "To be or not to be" of his judicial writing – provides two additional clues: "Not honesty alone," it holds, "but the punctilio of an honor the most sensitive, is then the standard of behavior." The opening phrase, of course, is iambic. But even more telling is Cardozo's use of *punctilio*, a term not previously found in the lexicon of the New York Court of Appeals. It will come as little surprise to the reader who has followed this argument so far that the first appearance of the word in English can be traced to a startlingly similar quotation ("standing upon the punctilio of honour") in Harington's *Metamorphosis of Ajax*, published in 1596, exactly when Shakespeare was enjoying the successes of *Romeo and Juliet* and *A Midsummer Night's Dream*.

Taken together, this constitutes strong evidence that Shakespeare was in fact the true author of Palsgraf, Palko and Meinhard v. Salmon, and adopted the pseudonym "Cardozo" merely to disguise his work.

Inversion? Check

Approached from the other end, "Cardozo's" (if we can still call it that) most prominent stylistic feature is a backwards course of construction familiarly known as the "Cardozo inversion" – as in Palsgraf, where he (or was it he?) famously wrote, "Negligent the act is, and wrongful in the sense that it is unsocial, but wrongful and unsocial in relation to other travelers, only because the eye of vigilance perceives the risk of danger." Or in *Palko v. Connecticut*: "Fundamental too in the concept of due process, and so in that of liberty, is the thought that condemnation shall be rendered only after trial." What are the chances that this stylistic tic appears as well in Shakespeare? As it turns out, quite high: "The better part of discretion is valour" (*As You Like It*); "How sharper than a serpent's tooth it is to have a thankless child" (*King Lear*). Unless both Shakespeare and Cardozo studied English at the feet of Yoda, the similarity is too strong to attribute to coincidence.

Other suggestive usages abound. The word "glove," a reflection of Shakespeare's father's trade, appears no fewer than 24 times in Cardozo's opinions, surely

out of all proportion to the need. By contrast, while a stylist as accomplished as pseudo- Cardozo (as we by now may call him) might be expected to cite the Bard frequently, references to Shakespeare appear *not once* in his opinions – most likely out of concern lest the author reveal the true source of his writing.

Taken together, this constitutes strong evidence that Shakespeare was in fact the true author of *Palsgraf*, *Palko* and *Meinhard v. Salmon*, and adopted the pseudonym “Cardozo” merely to disguise his work. Determining why he adopted that disguise, as well as identifying other works of his that have been misattributed, will be the work of future scholars.

Objection may be made that for Shakespeare to have prolonged his writing career so far into the modern era is wondrous strange. The explanation may be found in the Bard’s own words, “There are more things in heaven and earth, Horatio, than are dreamt of in your philosophy.”

Editor’s note: Ronald W. Meister, who once had to memorize the second half of Antony’s funeral oration, is a partner at Cowan, Liebowitz & Latman, P.C.