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“Et in Arcadia Eco: Law & Masonic Literature”

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Abstract

This paper explores how Umberto Eco's novel *Foucault's Pendulum* can be interpreted as a critical parody of *The Holy Blood and The Holy Grail* by the historians Baigent, Leigh and Lincoln respectively. We explore why two of these authors chose Dan Brown's novel *The Da Vinci Code* as the object of their copyright grievance when Eco's work was at least potentially an equal case. Especially since Eco's work is frequently referred to as 'the thinking man's Da Vinci Code.' First, we have analyzed the proximity of the structure of Eco's novel with that of *The Holy Blood and The Holy Grail's*. Second, we have highlighted the similarities between the themes in both Eco's and Brown's novels to show how any attempt of copyright litigation against either publication, according to the ruling of the judges in the United Kingdom's High Court and Court of Appeal would still result in a loss for the claimants.

Resumen

Este trabajo explora como la novela de Umberto Eco, *El péndulo de Foucault*, pudo haber sido interpretada como una parodia de *Holy Blood and Holy Grail* por sus autores, Baigent y Leigh. Exploramos porqué Baigent y Leigh eligieron llevar a juicio la novela de Dan Brown "El Código Da Vinci" cuando la obra de Foucault era un caso parecido. Especialmente porque la obra de Eco es conocida como "El código Da Vinci del hombre que piensa". Primero, hemos analizado la proximidad de las estructuras de la novela de Eco a la de *Holy Blood and Holy Grail*. Después, ilustramos las semejanzas temáticas en las obras de Brown y Eco para demostrar cómo cualquier intento de litigio contra cualquiera de las dos publicaciones, según los jueces que ajusticiaron el caso en el Tribunal Supremo y en el de Apelación del Reino Unido resultaría en la pérdida del caso para los demandantes.

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Et in Arcadia Eco¹: Law & Masonic Literature

Pauline Chakmakjian

Introduction

This paper not only explores how Umberto Eco's novel *Foucault's Pendulum* can be interpreted as a critical parody of a work of historical non-fiction *The Holy Blood and The Holy Grail* (*HBHG*), but also the possibilities as to why authors of the *HBHG* selected Dan Brown's novel *The Da Vinci Code* (*DVC*) as the object of their copyright grievance rather than potentially having at least an equal, if not better grounds for a case against *Foucault's Pendulum* (*FP*), especially since Eco's work is frequently referred to as 'the thinking man's *Da Vinci Code*.' First, Eco's novel will be analysed in relation to the proximity of its structure with the authors and agenda of *HBHG* in the context of the issues involved in the litigation brought against Brown's novel. Second, similarities between the themes in both Eco's and Brown's novels will be brought to light to demonstrate that despite any attempted copyright litigation against either of their publications, the conclusions reached by the judges in the high and appellate courts within the United Kingdom would still result in a loss for the Claimants.

HBHG and Mass Exposure of Occult Ideas

Contrary to popular opinion, the term 'occult' refers neither linguistically nor metaphorically to any negativity such as "evil" or "satanic", but from its Latin root *occultus* to neutral unexposed ideas, persons or things that are "hidden" or "secret" from the general public. The expression is compatible with concepts such as the esoteric and the arcane, which refer to notions and organizations that only an exclusive number of individuals are aware of and are allowed to participate in. More so prior to the new millennium than in the current decade, it is invariably the case that when works on the occult are published, the very nature of the thoughts contained within them having previously been clandestine can lead the public to react to such books with shock and controversy as well as intrigue and curiosity.

HBHG is one outstanding example of such a book when the concept of an occult agenda was originally published and sold on a massive scale in the 1980s, arguably one of the decades in history where knowledge was spread more widely due to innovations in technology. This was coupled with the increasing levels and sophistication of the middle classes, who due to their education, are often more fond of reading than the classes on either of the other extreme ends of the social spectrum. With technology such as appliances providing modern convenience and lengthening the amount of leisure time of the leisured

¹ Having the meaning that Eco has escaped any assertions of copyright that had managed to entangle Dan Brown as a witness for the defense in a legal case doomed to failure for the plaintiffs, this is intended to be a play on the Latin phrase *Et in Arcadia Ego*, commonly translated as "And I am in Arcadia," the inscription written on the tomb in Nicolas Poussin's painting *Les Bergers d'Arcadie* the authors of the *HBHG* incorporate in their book as one of many links in association with their historical conjectures. Henry Lincoln, Michael Baigent and Richard Leigh, *The Holy Blood and the Holy Grail* (London: Arrow Books Ltd., 1996), 39.

classes, mysterious and romantic ideas revolving around historical facts and spirituality could once more take hold of the human imagination, only this time on a much larger scale to a much wider audience.

This was not only true of common teenage enchantments with European medieval knights, but with the advent of success and money of those with certain socio-economic backgrounds began the influx of trendy forms of Western escapism. This included insipid interpretations and practice of the so-called knowledge, liberation and peace that came with superficially delving into Hinduism, Buddhism, Zen, which later merged with Western esoteric thought to form new age movements that now have greater networks than their theosophical predecessors. It was in this societal atmosphere that the individuals who pieced together *HBHG*, unwittingly or otherwise were perfectly comfortable with blurring the lines between fact and fantasy, making their writings fit both neatly into historical research and literary sensationalism while formally classifying the text as non-fiction.

HBHG was the result of the collaborative efforts of three authors, Michael Baigent, Richard Leigh and Henry Lincoln. Michael Baigent was born in New Zealand, moved to England in 1976 due to interest in conducting a research project on the Knights Templar and died on June 17 2013 after spending his life as an author, photographer and a Freemason, including being the editor of *Freemasonry Today* since 2001². Richard Leigh was born in New Jersey and died on November 21 2007 after having spent his life primarily as a writer of novels and short stories³. A Francophile and writer, Henry Lincoln was born in London and met Leigh in 1975 as well as Baigent shortly thereafter at which time it was made apparent to each of them that they all shared an interest in the medieval order of warrior-monks known as the Knights Templar⁴.

A mysterious brotherhood of knights, ‘the Templars evolved from the call by Pope Urban II for the Christian kings and knights of Europe to recover for Christians the burial place of Christ in the holy city of Jerusalem⁵.’ The facts and myths surrounding these knights were capable of provoking the imagination of anyone, especially a Freemason such as Michael Baigent as it has been commented that ‘the Templars, suppressed by tyrannical kings and popes, had surely been free-thinking proto-Masons⁶.’ Once the signature fantasy of mostly teenage girls, the medieval knight together with some shadowy facets of their fraternity captured the inquisitiveness of these three adult men to forge a hypothesis using bits and pieces of each of their research material to create *HBHG*.

HBHG essentially involves the merging together of an overwhelming number of mysterious aspects in European history, largely through information from what were wrongly perceived by the authors as authentic, previously concealed and seemingly encrypted documents. What made *HBHG* an international bestseller when it was first published in 1982 was the scandalous hypothesis based on the authors’ interpretations of these documents that

² *The Telegraph*, “Michael Baigent Obituary” (21 June 2013).

³ *The Telegraph*, “Richard Leigh Obituary” (30 November 2007).

⁴ *The Telegraph*, “Richard Leigh Obituary”.

⁵ Robin Griffith-Jones, *The Knights Templar* (London: Games Workshop, Limited, 2011), 1.

⁶ Griffith-Jones, *The Knights Templar*, 20.

the religious figure of Jesus and Mary Magdelene were in fact husband and wife, that they had at least one child and their descendant(s) settled in France after which they intermarried with the noble families in that country to give rise to the Merovingian line of French monarchs. Moreover, the remnants of this bloodline supposedly still lay claim to the French throne with an agenda to create a new, universal monarchy while currently operating through a secret, conduit organization called the Priory of Sion from which the Knights Templar were created. The book also insinuates that whereas the Holy Grail found in literary fables and lore was usually thought to be a chalice or stone that it rather more represented the personage of Mary Magdelene because she was the vessel through which the sacred royal bloodline was delivered.

It is noteworthy for the upcoming analysis of the legal case brought against the publishers of *DVC* by two of the three authors of *HBHG*, that prior to the publication of *HBHG*, none of the three authors of *HBHG* had any significant academic or literary standing as historians or writers. Meaning, none of them had any major status in the peer-reviewed world of historical research and academe, and none of them had created any bestseller in terms of a work of creative, fictional literature. They have the appearance of being educated drifters fond of travelling and generally marvelling at some things in life that seemed to possess a particularly strong allure for them personally. The result of this lack of experience with a certain level of academic discernment was destructive in the sense that most of the material that served as the basis for the piecing together of their historical conjectures was supplied by a Frenchman named Pierre Plantard, who was later discovered to have done so as a hoax⁷.

It is because of their passion for the subjects they wrote about without the necessary objective, detachment found in the precise presentation of academic work that they possessed a capacity for the naiveté to believe in the conspiracy that they concocted by putting together their own puzzle in a particular manner. The writing flow of *HBHG* gives the impression that one, both or all three authors were initially working on some topics they adored as amateur historians or hobby writers, gradually became seduced into thinking that they have genuinely come upon an amazing contribution to human knowledge and then perhaps saw the entire project as an opportunity for fame and success in the dissemination of their material (however fragmented, haphazard or conjectural) through a sensationalist publication. Any reader of *HBHG* will notice its non-academic nature where it is clear that while a book and hypothesis have been crafted through original research, there are countless ideas loosely presented as themes, links and bridges for that hypothesis to take shape. In other words, it is not entirely clear which of their multitude of musings based on historical facts constitute a dominant, or more important link in relation to the hypothesis and which ones are less important, or recessive to the general hypothesis.

⁷ Robert Richardson, "The Priory of Sion Hoax", in: *Gnosis* 51 (1999): 49-55.

Eco's *Foucault's Pendulum* as a Satire of *HBHG*

Umberto Eco is a world renowned and respected philosopher, academic and author with his most noted interests being medieval history as well as an area of literary criticism known as semiotics as evidenced in his numerous non-fictional and fictional publications. *FP* was his second novel and is arguably the first work of fiction that deliberately mocks the authors and contents of *HBHG* to any alert reader who has examined both books closely. For purposes of the upcoming legal discussion, it is the second book chronologically, having been published in 1988 with the English translation being published in 1989. For those unfamiliar with information available on perceived shadowy orders such as Freemasonry, the Knights Templar and other spiritual organizations and philosophies, *FP* can cause authentic fear as a mysterious thriller. However, for those already familiar with such matters, this novel can be interpreted as a tragic-comedy based on the ideas presented by *HBHG*, which Eco obviously finds amusing enough to transform nearly all of its content into an infrastructure of absurdities.

It is remarkable that *FP* involves three men named Casaubon, Belbo and Diotallevi, who meet in 1972 (similar to when Baigent, Leigh and Lincoln meet in 1975) and who are all characterized as somewhat bored individuals interested in esoterica in general as well as the Knights Templar in particular. They are also all connected to these topics either through writing, research and publication houses, and it could very well be that Casaubon, Belbo and Diotallevi are supposed to be constructed after Baigent, Leigh and Lincoln, respectively. Casaubon, much like Baigent is the youngest of the three and joins the other two later to be involved with a project while in the process of working on a thesis on the history of the Knights Templar. As the story progresses, Casaubon is the character who encounters the elderly gentleman named Aglie who appears to have some detailed knowledge of occult matters, including the claim that he is the reincarnation of the mystic Comte de Saint-Germain. Towards the end of the novel, Aglie is pointed out as a fraud with respect to his claim. This is not unlike Baigent encountering a M. Pierre Plantard in real life. Plantard was responsible for perpetrating what was later found to be a hoax on the authors of *HBHG* that he was the keeper of secret knowledge they were researching, including the outrageous claim that he was next in line to the French throne according to their hypothesis about Jesus and the Merovingian monarchs.

FP involves the three main characters of Casaubon, Belbo and Diotallevi immersing themselves in esoteric books during which they start to observe insipid connections among a plethora of historical events. Whether out of boredom or curiosity, the three decide to invent their own conspiracy theory called 'The Plan'. They construct 'The Plan' through the aid of a computer referred to as Abulafia, which has an inbuilt programme they use to create historical connections by entering random words taken from occult manuscripts and then fabricate a new text. In fact, the very first processing of the computer for this purpose produces the hypothesis about Mary Magdelene found in *HBHG*. Casaubon does not appear to be impressed with such a result and advises that in order to create something truly novel they should be looking for clandestine connections in linkages between ridiculously disparate

ideas. This eventually leads them to concocting ‘The Plan’ around the notion that the Knights Templar came to become familiarised with some secret knowledge of energy sources called telluric currents, which they aim to use to take over the world using an unique map as well as Foucault’s pendulum. The preference for the use of exaggeration between ideas to make the links for their own conspiracy rather than what the computer outputs at first instance demonstrates what a low opinion Eco has for *HBHG* whether as a non-fiction or as something totally invented.

As they concentrate their minds on this conspiracy theory, little by little, Casaubon, Belbo and Diotallevi become convinced of the truth of the very own nonsense they invented. Throughout the novel, it is unclear whether Casaubon as narrator of the book actually believes what he has helped to fabricate, to what extent this is the case and also how much he has been deceived by other characters like the charlatan, Aglie. This is crucial to understanding the psychology of Baigent’s testimony in the legal case when he and Leigh came to the decision to sue the publishers of *The Da Vinci Code* for copyright. It seems Eco was able to presage the mental toll taken by the sort of activity Baigent, Leigh and Lincoln indulged in through the creation of *HBHG*. The true horror lies not in Belbo being hanged by the pendulum in Eco’s novel, but that people can start to seriously believe what they wish to believe no matter how risible the propositions could be.

Brown’s *The Da Vinci Code* in praise of *HBHG*

Dan Brown had been an author previously and *DVC* was his fourth book. *DVC* concerns the investigation of a murder scene having taken place in the Louvre Museum in Paris at which the body of the victim is displayed in the pose of Leonardo Da Vinci’s, *Vitruvian Man*. There is a message on the body, which is one of several cryptic codes the protagonists have to decipher the mystery behind the murderer’s intent, which is to seek and find the Holy Grail. With the help of an expert on the Grail, the main characters discover that the Grail refers to Mary Magdalene, the revelation of which in Brown’s novel takes nearly the exact same form as the hypothesis put forward by the authors of *HBHG*. The main female protagonist then discovers that she is a descendent of this bloodline originating from the union between Jesus and Mary Magdalene. Brown did not impress the literary world due to his mediocre style and careless handling of historical accuracy, but the fact that his novel has sold millions of copies most definitely proves he has succeeded in appealing to the ordinary man.

While Eco’s novel is a highly complex spoof of *HBHG*, Dan Brown’s *DVC* is a relatively rather simpler detective novel in which the author seriously flatters the work of the authors of *HBHG*. Brown’s novel is the most recent in terms of publication date of 2003 among these three works. It received intense criticism for having both weak style and mundane content, but it only deserves such criticism if it were attempting to make some profound mark on the world of literature. It is more likely that what Brown more realistically wanted to create was a page-turning thriller that would stimulate the human attention span in circumstances in which people were not so concerned with mental intensity such as at travel ports or if people desired a casual read. After all, there is much literature that is published in

contemporary times that may not be of a high quality but are nevertheless purchased as light reading, jokes and presents. It is highly improbable Brown wrote *DVC* hoping to join the ranks of esteemed writers since he did seem to have accepted the material in *HBHG* as wholesome and totally worthy of flattery. Unlike Eco, he directly refers to sections of *HBHG* with even the same linguistic execution as the authors of that work. Moreover, the very name of the character of Sir Leigh Teabing is conspicuously a compliment to Richard Leigh and Michael Baigent (Teabing) since he appears as the expert who provides the protagonists with most of the information they require to solve the murder mystery. A lazy and selfish plagiarist would have been more opaque about any such lawless intentions to steal ideas.

Identifying the Legal Issues in the Claim of Copyright Infringement

After the publication of *DVC*, two of the three authors of *HBHG*, Richard Leigh and Michael Baigent brought forth a lawsuit to the Chancery Division of the High Court of the United Kingdom against Dan Brown's publishers claiming copyright infringement. The legal issues of the case were 1) whether the Central Theme of *HBHG* copied by Dan Brown in *DVC* and 2) whether was the Central Theme a substantial part of *HBHG*⁸. In his lengthy judgment, Peter Smith J explained that the Claimants relied on the existence of a Central Theme in *HBHG* consisting of fifteen selected points found in Brown's novel, which possess the main allegedly plagiarised idea that 'Jesus was father of a bloodline which married into the Merovingians in France and his descendants who have been protected since the Middle Ages by a secret society have a claim to the throne of Palestine'⁹.

⁸ *Baigent & Another v. The Random House Group Ltd* [2006] EWHC 719 (Ch); [2006] FSR 44; [2006] EMLR 29(5) IPD 29039.

⁹ *Baigent & Another v. The Random House Group Ltd* [2006] EWHC 719 [153] Index Section R lists the central theme points that 1. Jesus was of royal blood, with legitimate claim to the throne of Palestine, 2. Like any devout Jew of the time, and especially like a Rabbi and any royal or aristocratic claimant, he would have been married, 3. As expected of any Jew at the time, he would have children, 4. At some point after the crucifixion, Jesus' wife, the figure known as Mary Magdelene, fled the Holy Land and found refuge in one of many Judaic communities then scattered around the south of France. When she fled the Holy Land, the Magdelene might have been pregnant with Jesus's offspring, or such offspring might already have been born and brought with her. We concluded from studying the Grail Romances and early manuscripts that Mary Magdelene fled the Holy Land with the Sangraal and that by turning Sangraal into 'Sang Raal' or 'Sang Real' we suggested that Mary Magdelene fled with the royal blood, 5. We considered what the Holy Grail was, whether the Holy Grail was a cup or whether the Grail was in some way related to Mary Magdelene and the Sang Real. We concluded that the Grail would have been at least two things simultaneously. On the one hand it would have been Jesus's bloodline and descendants and it would have been quite literally the vessel that contained Jesus's blood. In other words it would have been the womb of the Magdelene and by extension the Magdelene herself, 6. In a Judaic community in the South of France, the bloodline of Jesus and the Magdelene would have perpetuated for some five centuries -not a particularly long time, so far as royal and aristocratic blood lines are concerned, 7. Towards the end of the 5th century, Jesus's bloodline intermarried with that of the royal line of the Franks. From this union, there issued the Merovingian dynasty, 8. In the meantime, the Roman Empire in the fourth century AD, under the auspices of Constantine, had adopted "Pauline" Christianity as its officially sanctioned and tolerated form of Christianity. This was done as a matter of convenience to foster unity; and once "Pauline" Christianity became the official orthodoxy, all other forms of Christianity became, by definition, heresies. By the end of the century Christianity had become the official religion of the Roman Empire. The Church's dogmatic religious stance thus benefited from the support of secular authority, 9. When the Merovingian dynasty grew weaker under Clovis' successors, the Church reneged on its pact and colluded in the assassination of Dagobert II, last of

In reply, the Defendant denied the existence of any Central Theme in *HBHG* and contended that the concept of the Central Theme was ‘an artificial creation dovetailed to what can be found in the DVC. Thus it is submitted large parts of essential elements of *HBHG* are jettisoned from the Central Theme because they do not appear in the DVC and are thus inconvenient for the purpose of present play¹⁰.’ According to the judge, upon serving as a witness for the Claimants to show their case on the Central Theme, Mr. Baigent was unable to state what exactly their Central Theme is in a coherent manner¹¹.

The primary reason for confusion on the part of even one of the authors is that *HBHG* is full of so many conjectural ideas between so many different ideas that the fifteen points submitted allegedly constructing the Central Theme simply appeared to be plucked out of thin air to fit what the Claimants required to commence a legal battle against some of the myriad of ideas Dan Brown used to create his fictional book. Whether it is the Knights Templar or the Cathars or the Freemasons or any of the countless other mysterious events, objects or personages referred to in *HBHG*, not a single one of them or a random group of them in that work classified under historical non-fiction appears to have dominant importance over another. In other words, the sections in *HBHG* about the Knights Templar or the Cathars or Rennes-le-Chateau are of equal importance as the sections about The Holy Grail, the notion of Jesus being married and the idea that Mary Magdelene was the source of a merger of the bloodlines of Jesus and kings in France. Perhaps one reason why the Claimants subjectively perceived the fifteen points submitted as the Central Theme in the legal case is related to those particular points being considered the most shocking, controversial or sensationalist ideas presented to the public, but this does not objectively equate to importance or dominance over everything else they had researched and wrote about in *HBHG*.

Meaning, if the plot of *DVC*, for example had focused primarily on the Knights Templar or the Cathars or the Freemasons while being set in Rennes-le-Chateau rather than issues surrounding the sacred feminine and Mary Magdelene, the Claimants would have then

the Merovingian rulers. Although Dagobert died and the Merovingians were deposed, Dagobert’s son, Sigisbert, survived and perpetuated the Merovingian bloodline through a number of noble houses. Towards the end of the 11th century, the Merovingian blood line emerged on the central stage of history in the person of Godfroi de Bouillon, Duke of Lorraine, 10. When Godfroi embarked on the first crusade in 1099, he was, in effect seeking to reclaim his birthright and heritage, the throne of Palestine to which his ancestors had possessed a claim a thousand years before, 11. Godfroi surrounded himself with a circle of counselors, who were endowed with the Abbey situated on Mount Sion in Jerusalem and became known as the Ordre de Sion, or, subsequently, the Prieure de Sion (Priory of Sion), 12. The Ordre or Prieure de Sion created the Knights Templar as their administrative and executive arm, 13. In the mid-12th century, members of the Ordre de Sion established themselves in France, from where they subsequently spread out to own properties across the whole of Europe. When the Holy Land was lost, France became the Prieure’s primary base and headquarters, 14. The Prieure continued to act as protectors and custodians of the Merovingian bloodline, the “blood royal” or “sang real”, the so-called “Holy Grail, 15. During its early history – until the 14th century – the Grand Masters of the Prieure were drawn from a network of interlinked families, all of whom could claim Merovingian descent. From the 14th century on, the Prieure (according to its purported statutes, which Brown would appear not to have seen) would, for complicated reasons, move outside the family. Grand Masters would then be, on occasion, illustrious names – Leonardo, for example, Botticelli, Sir Isaac Newton, Victor Hugo, Debussy, Cocteau. Sometimes, however, the names would be rather more obscure, like Charles Nodier. In any case, all “outsiders” listed as Grand Masters still have close connections with the network of families claiming Merovingian descent.

¹⁰ *Baigent & Another v. The Random House Group Ltd* [2006] EWHC 719 [187].

¹¹ *Baigent & Another v. The Random House Group Ltd* [2006] EWHC 719 [240].

plucked the historical conjectures in *HBHG* to create a Central Theme using fifteen (or a different number) other, perhaps completely different points to accuse Dan Brown of plagiarism. Moreover, if another replacement set of points can be listed to allege the existence of a Central Theme, then the fifteen points focused on Jesus and Mary Magdalene cannot constitute a substantial part of *HBHG* just as no other random set of selected ideas can be a substantial part of *HBHG*. Therefore, if the constitution of the Central Theme consisting of certain points is capable of being randomly interchangeable with other points in the book in order to accuse any other person of copying *HBHG*, then a Central Theme cannot genuinely exist. In siding with the Defendant and dismissing the claim, the judge clearly pointed out that ‘...the Central Theme is not a genuine Central Theme of *HBHG* and I do not accept that the Claimants genuinely believe it as such. In my view it is an artificial contrivance designed to create an illusion of a Central Theme for the purposes of alleging infringement of a substantial part of *HBHG*¹².’ In other words, the law does not exist to be used like Abulafia in Eco’s *FP* to churn out a combination of ideas to present to the court when the Claimant considers it appropriate.

For all authors desiring publication and fame for their work, it is common sense that fictional works will always have a wider market than niche categories of writing. For instance, if one wants to publish a work in order to give solid business advice to budding entrepreneurs, there are at least the two options of either writing a dry, heavy academic manual of how to succeed in business or to create a light-hearted fictional novel of his or her own experiences in the corporate world that can contain a wider range of stimulation from intrigue, humour and shock on the one hand while weaving real advice, strategy and experiences within the story to accompany the entertaining style on the other. It is noteworthy that the judge further hypothesized what was really behind the legal action since the underlying psychology of Mr. Baigent and Mr. Leigh appears to be bitterness at not having chosen to present *HBHG* in fictional form when originally published in 1982. They certainly had the option to go the fictional route, but perhaps in their internal mindset they desired to be taken seriously and therefore made the decision to present the book as a work of historical conjecture instead. This succeeds in blurring the line between serious, academic history and fiction, but it still places *HBHG* in the commonly more restricted publishing category of non-fiction in terms of potentially explosive sale numbers without penetration into the usually larger entertainment market of fiction. In contemplating why the case was brought to the court, Peter Smith J stated, ‘...They may be disappointed that Mr. Brown has done so well by *DVC*. There are a number of reasons for that. First the Claimants’ book is categorised as a book of non-fiction (although many would suggest it should be truly categorised as fiction)¹³.’

¹² *Baigent & Another v. The Random House Group Ltd* [2006] EWHC 719 [250].

¹³ *Baigent & Another v. The Random House Group Ltd* [2006] EWHC 719 [268].

Hypothetical claim of Copyright against *FP*

What the legal case between two of the authors of *HBHG* showed was that while it would be possible to claim copyright to the plot of a novel, this is not possible in protecting the contents of a story based on ideas presented as historical facts. If this were the case, then all historical novels in fiction sections of libraries and bookstores could be accused of copyright whether historical ideas in non-fiction work were proven or conjectural based on material available to everyone. The judgment in the case highlights this as ‘...the Plaintiff cannot claim a monopoly in those historical facts. It is accordingly perfectly legitimate for another person to contrive a novel based on those facts as otherwise a Claimant would have a monopoly of the facts¹⁴.’ Like many other fiction writers, this is in fact what Dan Brown did with some of the material in *HBHG* as well as similar works on the same subject, which he clearly acknowledged in his novel. Chapter 60 of his *DVC* is the point in the novel where it is revealed that ‘*The Holy Grail is Mary Magdelene...the mother of the royal bloodline of Jesus Christ*¹⁵.’ Despite his work being a fiction, Brown blatantly reveals his sources and even compliments *HBHG* as ‘...perhaps the best-known tome...HOLY BLOOD, HOLY GRAIL, *The Acclaimed International Bestseller*¹⁶.’

While it is now revealed that the courts decided against the Claimants in any situation of theirs in which some of their ideas have been chosen to be added to a fictional work by another person, it is a mystery as to why two of the three authors of *HBHG* decided to exclusively select Dan Brown’s work in bringing the lawsuit. Even the judge thought this was remarkable when he stated, ‘...It seems odd that they have only chosen to attack the *DVC*¹⁷.’ Being a well-read individual, the judge may likely have had Eco’s *FP* in mind when making his comment. After all, that particular work of Eco’s has constantly been referred to as “the thinking man’s *Da Vinci Code*” in literary circles. If one goes through both *HBHG* and *FP* in terms ideas and sequencing, Eco’s *FP* more closely and intricately mimics any supposed structure of *HBHG* than does *DVC*. Interestingly, the authors of *HBHG* declared, ‘At the same time, we were aware that we were engaged in what Umberto Eco would call a semiotic exercise¹⁸.’

In *HBHG* the originating fascination is with the Knights Templar as evidenced by the three authors’ own interests and curiosities upon meeting and agreeing to work on the book together. The broad, chronological sequencing of main ideas for purposes of comparing the text with *FP* as per certain, relevant sections of *HBHG* are as follows: France (Starts in Rennes-le-Chateau) – Secret Codes - Cathars – Knights Templar – The Trial of the Templars – Godefroi de Bouillon - *Dossiers Secrets* - The Priory of Sion – Rose-Croix - The Grand

¹⁴ *Baigent & Another v. The Random House Group Ltd* [2006] EWHC 719 [174].

¹⁵ Dan Brown, *The Da Vinci Code* (London: Random House, 2003), 339.

¹⁶ Brown, *The Da Vinci Code*, 339-40. Brown additionally lists ‘THE TEMPLAR REVELATION: *Secret Guardians of the True Identity of Christ*, THE WOMAN WITH THE ALABASTER JAR: *Mary Magdelene and the Holy Grail* as well as THE GODDESS IN THE GOSPELS: *Reclaiming the Sacred Feminine*,’ (Brown, *The Da Vinci Code*, 339) which clearly shows that other similar works to *HBHG* exist and that Brown has also used material from them.

¹⁷ *Baigent & Another v. The Random House Group Ltd* [2006] EWHC 719 [146].

¹⁸ Lincoln, Baigent and Leigh, *The Holy Blood and the Holy Grail*, 15.

Masters of the Priory – Kabbalah – Dee & Fludd – Freemasons - Catholicism - The Protocols of Sion – The Merovingians – The Holy Grail – Eschenbach – Jesus – Mary Magdelene - The Gnostics – The Essenes. Compared to these broad, large sections that trickle down to formulate a convoluted network of conjectural linkages in *HBHG*, Dan Brown’s novel has simply extracted a few of these, most of which are superficially mentioned or utilized to advance his detective novel with the exception of the larger section about The Holy Grail, Jesus and Mary Magdelene. However, as already described, simply because what could be perceived to be the most controversial parts of *HBHG* are used the most in *DVC* out of all other sections of *HBHG* Brown could have selected does not translate into that part of *HBHG* being a substantial part of *HBHG*.

The reality of Dan Brown’s work is that the broad, chronological sequencing of *DVC* is as follows: France (starts in Paris) – Godefroi de Bouillon – Knights Templar – The Trial of the Templars – The Holy Grail – The Priory of Sion – *Dossiers Secrets* – Jesus – Mary Magdelene – Kabbalah – The Gnostics. Most of the rest of his novel heavily relies on the use of other cryptic or mysterious elements such as the Fibonacci Sequence, Opus Dei and Rosslyn Chapel, which are subjects virtually non-existent in *HBHG*. Brown’s book sales for *DVC* did not reach millions necessarily solely because of its substance or use of controversial elements such as those thought to have been plagiarised from *HBHG*. Brown is an American writer who published a fiction based in Europe, and America has a much larger population than Great Britain, which is where *HBHG* was first published. Of course, it follows then that the majority of sales will be derived from the country where a book is first published, particularly if it contains controversial substance.

The very “Europeaness” of *DVC* might be one of the draws of the novel rather than religious controversy since the majority of Americans may perceive such shocking claims in a novel to be much more exotic when they take place in a setting less familiar to them such as in France. Not only does Great Britain have a smaller readership than America, but also the readers of a book such as *HBHG* will likely not be entirely as mystified by their findings and arguments surrounding the French nation since it is a country closer and more familiar to them. It is perhaps the combination of the flighty travel by the protagonists in *DVC* around artistic and cultured Europe with certain elements of *HBHG* thrown in with a few other elements from elsewhere that amounts to the sufficiently escapist lure to purchase the novel by a larger market. In the light of this, it could be that the Claimants felt they had been cheated out of a higher level of success despite *HBHG* being non-fiction and *DVC* being fiction. This is because at some point the same material to some degree was published in both books with Brown being the more successful in terms of sales and fame due to the naiveté and generally the less overall cosmopolitan nature of the American readership or more diplomatically, the intellectual distance between America and Europe. This is rather what makes *DVC* appear sophisticated to ordinary Americans while nearly all trained academics of any nationality as well as most ordinary Europeans will view both *HBHG* and *DVC* as trivial nonsense, lacking both intellect and style.

The more cosmopolitan and enlightened individual’s option to enjoy the very same esoteric material incoherently presented as historical conjecture in *HBHG* as well as insipidly

fictionalised in *DVC* is to be found in Eco's writing. Eco's pattern of sequencing in *FP* is not dissimilar to *HBHG* with respect to chronology, material and giving equal weight to many of the elements in *HBHG*: France (Starts in Paris) – Kabbalah Codes – Knights Templar – The Trial of the Templars - Cathars – Catholicism - The Holy Grail – Eschenbach – *Les Cahiers du Mystere* (probable reference to *Dossiers Secrets*) – The Priory of Sion – Rose-Croix – Godefroi de Bouillon – Jesus – Mary Magdelene – Freemasonry – Protocols of the Elders of Zion – Dee & Fludd. Divided using the names of the Sephiroth, or the attributes of God according to the Jewish mystical tradition found in Kabbalah, *FP* is a jigsaw puzzle of practically the same flow of ideas in *HBHG*, only pieced together coherently, irreverently and fictionalised in-depth and in a style far superior to that of *DVC*. All three books start in France and all three employ codes, but they then differ slightly with *HBHG* and *FP* appearing most similar.

It would be fair to say that as the narrator and one of the authors of 'The Plan,' Casaubon is the most important figure in Eco's novel since he emphasizes the fundamental basis of intrigue of both *HBHG* and *FP* – the Knights Templar. Not unlike our real life drifters and authors of *HBHG* who adore the idea of the Knights Templar, Casaubon too states these warrior monks to be his original fascination with things esoteric and occult when he explains that, 'For no particular reason I signed up for a seminar on medieval history and chose, for my thesis subject, the trial of the Templars¹⁹.' Eco spends a little over two, entire chapters (end of Chapter 12 and Chapters 13 & 14) of *FP* describing the Knights Templar and the issues surrounding their knowledge, activities, arrest, trial and reformulation as Freemasons²⁰. Interestingly enough, the major section about the Knights Templar in *HBHG* is located in pages 75-107, which nearly exactly parallels Eco's detailed description of the Knights Templar in pages 75-105 of *FP*. This demonstrates the commencement of Eco copying the sequencing of the themes in *HBHG* in order to weave together his mockery of it in *FP*.

However, while *HBHG* and *DVC* both examine the Knights Templar in an austere capacity, Eco's description of them mimics historical points about them as copied from *HBHG* while deliberately muddling their behaviours with disparate ideas as a sort of preparation for the notion that to constantly have them associated with nearly everything is an absurd conclusion²¹. In fact, the cautious reader can find dozens of clues in *FP* that demonstrate that Eco is not only referring to the writings of *HBHG*²², but that he is also

¹⁹ Umberto Eco, *Foucault's Pendulum*, trans. William Weaver (New York: Ballantine Books, 1990), 52.

²⁰ Eco, *Foucault's Pendulum*, 77-105.

²¹ Eco, *Foucault's Pendulum*, 77, introduces the trial of the Knights Templar very seriously only to end the starting paragraph with the absurd enquiry, 'How can the Marquis of Carabas not exist when Puss in Boots says he's in the marquis's service?' In a section discussing the study of the Knights Templar, on pp. 156 Eco seems to dismiss any historical conjecture by the authors of *HBHG* when it is stated, 'I suggested two books, popular but fairly serious. I also told him he would find reliable information only up to the trial. After that it was all raving nonsense.'

²² Eco, *Foucault's Pendulum*, 79, for example, where Chapter 13 begins with 'Et in Arcadia ego', which is a reference to pp. 39 in *HBHG* where the authors discuss Poussin's painting containing the same phrase. Eco, *Foucault's Pendulum*, 99-101 enters into the same detail regarding the accusations against the Knights Templar as found in Eco, *Foucault's Pendulum*, 72-76. In *HBHG*, 104 adds on the altogether separate idea of Indian

exaggerating the writing style of the authors of *HBHG* as the chief means of showing how ridiculous a publication it is, primarily through the use of the computer, Abulafia:

The Templars have something to do with everything
What follows is not true
Jesus was crucified under Pontius Pilate
The sage Omus founded Rosy Cross in Egypt
There are cabalists in Provence
Who was married at the feast of Cana?
Minnie Mouse is Mickey's fiancée
It logically follows that
If
The Druids venerated black virgins
Then
Simon Magus identifies Sophia as a prostitute of Tyre
Who was married at the feast of Cana?
The Merovingians proclaim themselves king by divine right
The Templars have something to do with everything²³.

It is here at this point, approximately in the middle of *FP*, first published in Italian in 1988, that the attempted invention of a conspiracy within Eco's novel is declared by directly copying some of the points in the idea of the 'Central Theme' in *HBHG* as per the court case against Random House at which the author of *DVC* was accused of doing a very similar thing fifteen years later:

'...Here is my interpretation: Jesus was not crucified, and for that reason the Templars denied the Crucifix. The legend of Joseph of Arimathea covers a deeper truth: Jesus, not the Grail, landed in France, among the cabalists of Provence. Jesus is the metaphor of the King of the World, the true founder of the Rosicrucians. And who landed with Jesus? His wife. In the Gospels why aren't we told who was married at Cana? It was the wedding of Jesus, and it was a wedding that could not be discussed, because the bride was a public sinner, Mary Magdelene. That's why, ever since, all the Illuminati from Simon Magus to Postel seek the principle of the eternal feminine in a brothel. And Jesus, meanwhile, was founder of the royal line of France²⁴.'

Every chapter in *FP* begins with a different quotation that is often related to a work of esoterica. However, no one chapter is so opaque that *FP* is a negative critique of *HBHG* than Chapter 66 of Eco's novel. On the very next page after the aforementioned interpretation of what Abulafia produced, Eco overtly refers to *HBHG* and its authors at the start of Chapter 66 of *FP* and immediately follows this with an insult when the dialogue between the characters start afterwards:

mysticism combined with Templar knowledge learned from exotic sources whereas this is solely confined to learning from esoteric Muslim sects in *HBHG*.

²³ *HBHG*, 376.

²⁴ *HBHG*, 376.

'If our hypothesis is correct, the Holy Grail...was the breed and descendant of Jesus, the "Sang real" of which the Templars were the guardians...At the same time, the Holy Grail must have been, literally, the vessel that had received and contained the blood of Jesus. In other words it must have been the womb of the Magdelene.

___M. Baigent, R. Leigh, H. Lincoln, *The Holy Blood and the Holy Grail*, 1982, London, Cape, xiv

"Nobody would take that seriously," Diotallevi said.

"On the contrary, it would sell a few hundred thousand copies," I said grimly. "The story has already been written, with slight variations, in a book on the mystery of the Grail and the secrets of Rennes-le-Chateau. Instead of reading only manuscripts, you should look at what other publishers are printing."

"Ye Holy Seraphim!" Diotallevi said. "Then this machine says only what we already know." And he went out dejected.

Belbo was piqued. "What is he saying – that my idea is an idea others have had? So what? It's called literary polygenesis. Signor Garamond would say that means I'm telling the truth. It must have taken years for the others to come up with it, whereas the machine and I solved the problem in one evening."

"I'm with you. The machine's useful. But I believe we should feed in more statements that don't come from the Diabolicals. The challenge isn't to find occult links between Debussy and the Templars. The problem is to find occult links between, for example, cabala and the spark plugs of a car²⁵."

The dialogue clearly communicates that Eco considers the work of the authors of *HBHG* to not only be nothing new, but also that it is fundamentally useless because of the methodology they had chosen to execute in the process of their book's creation. Furthermore, there is not only overt and direct copying of parts of *HBHG*, but also several examples of replacing something that is obviously from *HBHG* with an alternative expression in *FP* such as the mention of *Les Cahiers du Mystere* in *FP*, which is clearly a reference to *Dossiers secrets* ('Secrets Dossiers') in *HBHG*²⁶.

²⁵ *HBHG*, 377. Additionally, the mention of Debussy in association with the Templars is a direct reference to the discussion section about Debussy and the Rose-Croix in *HBHG*, 158-161.

²⁶ *HBHG*, 97. Other examples of such nearly identical referencing by Eco include page 123 discussing Hugues de Payens as per Hugues de Payen in page 61. *HBHG*, 127 makes mention of the story behind Rennes-le-Chateau as per the opening chapter of *HBHG* with the same content starting on page 24. *HBHG*, 203 mentions the Great White Fraternity, which is a possible replacement name in *HBHG* in reference to the Prieure de Sion (Priory of Sion) on page 111. *HBHG*, 141 begins a discussion of the nature of The Holy Grail as possibly some form of stone based on Wolfram von Eschenbach's Grail romance, *Parzival*, which mentions many of the same points covered by a similar section on The Holy Grail in *HBHG*, 306-317 most especially page 311 regarding the Grail as a form of stone object, page 197 essentially contains information about Robert Fludd in 1616 and the Rosicrucians as per the similar material in *HBHG*, 145, page 354 declares the Masons as 'adepts of a chivalric order inspired by the Rosicrucians, and indirectly inspired by the Templars' just as *HBHG* on page 76 explains 'By the eighteenth century various secret and semi-secret confraternities were lauding the Templars as both precursors and mystical initiates. Many Freemasons of the period appropriated the Templars as their own antecedents. Certain Masonic 'rites' or 'observances' claimed direct lineal descent from the Order, as well as authorized custody of its arcane secrets', page 355 even shows this link between Freemasons and Templars as a joke at the comment, '...What better hiding place for the true Templar than in the crowd of his caricatures?' just as when *HBHG*, 77 makes the remark that some of the claims made by Freemasons at that time linking them to

The sheer depth and breadth of the range of topics surrounding Eco's research on the esoteric and occultism in *FP* is so much grander, cosmopolitan (chapters set in Brazil in addition to Europe) and contemplative than the sketchy, exclusively Euro-centric span of *HBHG*. Eco tends to show the narrow-mindedness of *HBHG* by expanding the possibilities around each important theme in that work. Eco goes over and beyond where the authors of *HBHG* cease with Knights Templar, Rosicrucianism as well as merely an outline of Freemasonry. For instance, he encompasses the wide array of mystical history and thinking by including details about the Theosophical movement like the hollow earth theory and its subsequent pseudo-masonic offshoots as well as the Nazi fascination with the occult during World War II²⁷. It is evident that Dan Brown's work contains the least amount of detailed research among these three books. In the light of the volume of factual minutiae included in Eco's novel, it would be fair to deem the Claimant's desire to somehow rob Dan Brown of his success through a court case by thinking they owned historical material simply because they worked hard to conduct what research they did to arrive at various historical conjectures for *HBHG* as absurd in the extreme.

the Templars were 'patently preposterous', pp. 376 about Jesus being married and the wedding at Cana draw upon the same material covered in *HBHG* on pp. 348 about the identities of the bride and groom at that wedding being anonymous, pp. 421-426 (the entirety of Chapter 75) contains a chronological list of major historical events within Freemasonry. While the list shows Eco has most likely conducted his own more thorough research into the matter of Freemasonry, some of the points he lists are basically the same information about various points about Freemasonry scattered throughout *HBHG* such as on pp. 147-8 regarding Elias Ashmole and the founding of the 'invisible college' that later became The Royal Society in 1660, pp. 150-1 regarding the Chevalier Andrew Ramsay and his 'Oration' on the history of Freemasonry, pp. 151-3 regarding the Baron von Hund and the founding of 'Strict Observance' during which time the first mention of 'unknown superiors' is made, pp. 77 regarding Madame Blavatsky and Theosophy, pp. 406-7 regarding Manichaeism and pp. 144 regarding Rosencruce and Rosicrucianism. One final replication is on pp. 480 when Eco mentions the *Protocols of the Learned Elders of Zion* as per the discussion in *HBHG* of *The Protocols of the Elders of Zion* on pp. 199. Dan Brown's *DVC* contains nowhere near the amount of links, themes and references to *HBHG* as Eco has managed to include in *FP*.

²⁷ *HBHG*, 509. Three major examples of Eco demonstrating a remarkable span of depth and breadth in terms of esoteric knowledge and occult theories are 1. The coverage of Theosophy and alternative history as found in page 272 as well as eerie figures in mysticism such as Aleister Crowley as found in page 269 and Cagliostro as found in page 489 whereas *HBHG* makes extremely small mention of this only on page 77 with the comment that '...Towards the end of the nineteenth century, a sinister 'Order of the New Templars' was established in Germany and Austria, employing the swastika as one of its emblems. Figures like H.P. Blavatsky, founder of Theosophy, and Rudolf Steiner, founder of Anthroposophy, spoke of an esoteric 'wisdom tradition' running back through the Rosicrucians to the Cathars and Templars – who were purportedly repositories of more ancient secrets still...' 2. The number and quality of linkages among ideas as when Eco writes about not only the comical expansion of accusations regarding sodomy made against the Knights Templar in conjunction with the esotericism within Indian doctrines concerning Kundalini as found on page 104, but also a more serious exploration of the Grail being taken to India, the cradle of the Aryan race as found on page 144. In attempting to explain why Philip the Fair instigated the persecution of the Knights Templar Eco writes, '...They wanted the secret of the Kundalini; who cares about sodomy,' on page 451. This both makes more sophisticated conjectural links among European and non-European esoterica and could be perceived as an attempt to belittle the shock the authors of *HBHG* were trying to create by delving into such details surrounding their study of the Knights Templar as found on page 73, albeit in a short and relatively non-analytical way and 3. The amazing detail with respect to the Freemasons as seen on pp. 122, 420-8 and 477, which fails to be present in *HBHG* on page 76-7, 151, 153 as well as a few other less important references gives Freemasonry a much more shallow treatment despite one of the authors (Michael Baigent) having been a Freemason himself.

At the same time, Eco appears to constructively critique *HBHG* by mirroring the situation between Pierre Plantard and Mr. Baigent in *HBHG* through the characters of Aglie and Casaubon, respectively: ‘That Aglie’s ruined you. You’re looking everywhere for revelation²⁸.’ Moreover, Eco presaged the future confusion of Mr. Baigent as a witness in the court case when he pointed out in *FP*, ‘I believe that you can reach the point where there is no longer any difference between developing the habit of pretending to believe and developing the habit of believing²⁹.’ It is the combination of the research the authors of *HBHG* conducted in seeking the truth about the Templars with their obsession to hunt down any truth about them that appears to cause Eco to point this out in *FP* through the statement that ‘...the idea is not to discover the Templars’ secret, but to construct it³⁰.’

It could be argued that any points surrounding the theme of the Knights Templar could be considered to be one of the more dominant themes in *HBHG* since the mystery surrounding these warrior monks is the core source for further exploration in unravelling the other, equally important themes. Meaning, it is fairly transparent that the little over a dozen points revolving around Jesus, Mary Magdelene and the Holy Grail as presented in the court case do not make any Central Theme when the theme of the Knights Templar is equally important and arguably more important than those as well as other aspects found within *HBHG*. This also shows that had Dan Brown chosen to have *DVC* proceed in the direction of the Knights Templar rather than focusing on Mary Magdelene in relation to his writings about the Holy Grail, logically, the Claimants would have easily been able to alter the nature of their supposed Central Theme by substituting points concerning Mary Magdelene and replacing them with points in *HBHG* to declare a Central Theme about the Knights Templar. By linguistic categorization of something as a Central Theme, the capacity to alter, substitute and replace whatever is claimed to be means that it is non-existent, or in the situation of a court case, it was solely a fabrication for legal purposes.

What is noteworthy is that Eco uses most of the themes in *HBHG* and not just the fifteen points supposedly constituting the Central Theme of the Claimants for purposes of their court case against Random House. If they felt compelled to commence legal proceedings one must then ask the question whether it might have been more prudent for the Claimants of that case to have possibly brought a lawsuit against the publishers of *FP* for copying the sequence and material of nearly all the themes found in *HBHG*, all of which together clearly form a substantial part of *HBHG*. If the concept of copying the sequence and copying a substantial part of the sequencing of major themes of *HBHG* were the legal issues in a copyright infringement case rather than the invention of a Central Theme, then Eco’s publisher for his *FP* would most certainly have been selected as the Defendant. What Eco is doing with *FP* is fleshing out his own fictional work based on a skeletal sequencing of the major segments of material presented in *HBHG*.

The overall outcome of such a hypothetical scenario might have been the same since the argument about not being able to possess a monopoly on historical facts, more likely than

²⁸ *HBHG*, 192.

²⁹ *HBHG*, 467.

³⁰ *HBHG*, 383.

not, would have still held true. However, the architecture of the Claimants' case might have been more solid, and solid enough to persuade a judge to identify the identical sequencing of major themes rather to focus any attention on a so-called Central Theme, which fails to exist through analysis. It will never be known what might have happened under such altered legal circumstances, but such a presentation to the court might have been a stronger option for the Claimants. The judge's decision in the case against the publishers of *DVC* may have been lengthy and convoluted, but the result is the simple fact that no central theme can be singled out among the many significant items discussed in *HBHG*. To reiterate, simply because Dan Brown decided to focus his fictional work on the more controversial themes in *HBHG*, this neither means those particular points in the entirety of the book fabricate a Central Theme, nor does it mean that those points that construct a so-called Central Theme are substantial parts of *HBHG*. This appears to have been the cause of the majority of the confusion on the part of Claimants.

Many people, including the judge were perplexed as to the reasons behind the Claimants in bringing the lawsuit in the first place. What is it really that Baigent and Leigh perceived as being stolen from them? Since it was clearly dissected in the court case that the idea of the Central Theme seemed only a cover, i.e. the only method to vent their anger towards the success of Dan Brown, perhaps the psychology behind the desire and tenacity to sue lay much deeper. The judgment of Peter Smith J highlighted the poor performance of Mr. Baigent when he served as a witness: '...Nevertheless the Defendants...say they do not know whether he was deliberately trying to mislead the court or was simply deluded and that he is either extremely dishonest or a complete fool. I do not need to decide that issue; it does not matter why he said what he did. I can place no reliance on any part of his evidence³¹.' Referring to the other Claimant, 'I am not sure what Mr. Leigh thought was the purpose of his evidence. He seemed to want to have a fight over something and was clearly disappointed at the relative shortness of his cross examination...³²'

It is fortunate that the judge's role did not include deciding on whether Mr. Baigent was dishonest or a fool since there are at least a few other options he has seems to have overlooked aside from those two, extreme ways of perceiving the situation. It appears as though the psychological issues with Mr. Baigent and Mr. Leigh are primarily related to confusion over the aforementioned lack of ability to delineate between the more sensationalist elements in their book with the notion that these more titillating parts, essentially the same in both *HBHG* and *DVC*, are somehow more relevant or important than all the other various strings of thematic information they had researched to write *HBHG*. Moreover, these two authors of *HBHG* then seem to believe that because of their perceived notion that these particular themes copied by Dan Brown are somehow much more relevant in *HBHG*, that they had been robbed of the high level of success that came with his publication when he had not made the initial research and revelation at first instance, albeit in the other form of non-fiction.

³¹ *Baigent & Another v. The Random House Group Ltd* [2006] EWHC 719 [232].

³² *Baigent & Another v. The Random House Group Ltd* [2006] EWHC 719 [340].

The judge's wonder as to why the Claimants have sued is understandable since those involved in the administration of justice must examine evidence in a logical manner. The additional reasons for the Claimants' animosity at the success of Dan Brown's *DVC* are based on emotions, which are variables in legal equations that the courts are not obligated to calculate. However, it is apparent emotions have played a large part in the Claimants' pursuit of an imagined wrong. In all probability, the underlying issue is perhaps that both Mr. Baigent and Mr. Leigh have a sense of regret at not having decided to select the literary route with *HBHG*, and instead they had opted for a non-fiction publication based on historical conjecture. Not only would there have been a wider market for a greater amount of sales, but also a greater protective copyright boundary as it would have been more obvious if one writer plagiarized the plot of a novel in order to create his or her own fiction. There is the impression that the blurring of non-committal academic history and adopting a more literary style in *HBHG* would be enough to convince the court of copyright infringement, but this was to be a disappointment.

In a way, there was no real legal case between the Claimants and their concocted rival in the form of Dan Brown's *DVC*. The actual enemy Mr Baigent and Mr. Leigh were fighting was themselves and their bitterness at not having made the alternative decision to transform their interests, hobbies and research into a work of fiction rather than a creative non-fiction in 1982. But this alone would not have guaranteed the same level of success as Dan Brown had achieved in the new millennium since timing of the publication of such material is an equally important factor. By its very nature, the new millennium opened a portal to the possibilities of alternative realities other than the ones presented and studied by humanity previously. There has never been a greater awareness among a larger percentage of the public about previous connections between the West and the East as well as alternative, mystical theories about the origins of humanity. This is evidenced by the growth in the number of exchanges between continents and the increase in the rise of spiritual study and retreats in attempts to channel things beyond the material. Of course, materialism as the result of mass-scale technological advancement was the excitement of the 1980s. The focus of human excitement now could lean equally towards the spiritual and higher human consciousness. It is not possible to be certain that had the authors of *HBHG* published their work in a fictional context in 1982, that they would have been sure to reap the same rewards as *DVC*. Dan Brown published his novel a few years after a period in history where there was greater amounts of speculation as to the end of the world, extraterrestrial visitation and the like, all of which are mentalities brought about by a universally significant moment in time – the year 2000.

Conclusion Regarding a Hypothetical Case Against Eco's *FP*

With the evidence that Eco's *FP* would have been a better candidate for the Claimants' bitterness to manifest itself in the form of a lawsuit, one must ask why Mr. Baigent and Mr. Leigh chose not to attack this work of the enigmatic medievalist. It is unknown if the idea to sue the publishers of *FP* ever occurred to the Claimants considering the amount of similar material as evidenced in the method of analysis above. But, there are

some reasons why they decided not to do so if they had contemplated the option. In discussing that their litigious behaviour stems from the success of Dan Brown's novel, perhaps one reason is related to the fact that Eco, while being a deeply respected intellectual, has a relatively smaller circulation of his publications. If the originating aggravation with *DVC* on the part of the Claimants is due to the sales success of Dan Brown's book, there is apparently not the same grudge to bear with *FP* since Eco's readership is more exclusive and would hardly be purchased by Americans en masse for casual reading.

As clever and humorous as *FP* is, Eco does not appeal to the mass market of ordinary readers since his work is very much an intellectual's choice for literary entertainment. The fact that the Claimants never sued Eco's publishers for copyright in *FP* is further evidence that they are not genuinely annoyed by an author copying sections of their non-fictional history, but they did harbour resentment against an author who admittedly copied sections from their work but achieved a wider penetration as well as a more successful result. Success in Dan Brown's case did not necessarily translate into literary respect in the traditional sense. This is something that only Eco's *FP* has among the three publications, but Dan Brown achieved a certain level of financial and fame-related success, something which the Claimants both coveted and could have strived to obtain for themselves in 1982.

Another reason for not having attempted to castigate Umberto Eco for possible copyright infringement might have been their fear of Eco's defence that his work is a mockery of theirs. It is clear from their behaviour in the court case against Random House that their testimony in aid of their case was poor or otherwise unhelpful. It is therefore suspected that such person as Mr. Baigent and Mr. Leigh would have had great difficulty in matching wits against that of a highly intellectual man like Eco. Because of the nature of *FP*, any court case against Eco would have made *HBHG* appear much more of an object of laughter on a public scale while the current impression of it is confined to the book as simply not something to be taken seriously in the academic world. The result of a supposed attack on Eco of this kind would have led to both disappointment as well as humiliation and embarrassment whereas the outcome of the attack against Dan Brown merely led to disappointment in both the high and appellate courts.

After the case was allowed permission to appeal, the appellate court justices all concurred to dismiss the appeal.³³ In arriving at their conclusions that the logic adopted by Peter Smith J in order to reach his decision in the High Court was not wrong, the appellate court justices reiterated and clarified material in the original case presented in the High Court.³⁴ Even if it were the case that Baigent and Leigh chose to bring a lawsuit against Eco

³³ *Baigent & Leigh v. The Random House Group Ltd. (CA)* [2007] EWCA Civ 247.

³⁴ *Baigent & Leigh v. The Random House Group Ltd. (CA)* [2007] EWCA Civ 247 [11] summarises the conclusion of Peter Smith J that the within alleged Central Theme of 15 points, points 10, 11 and 13 were not to be found in *DVC* and that point 14 was not to be found in *HBHG* so the judge had both 'the task of establishing whether the material said to have been copied was (a) in the copyright work itself and, if so, (b) also in the work alleged to infringe that copyright', [53] emphasized the conclusion of Peter Smith J in [309] of his decision in *Baigent & Another v. The Random House Group Ltd* [2006] EWHC 719 in which he states, 'I therefore accept the Claimants' first point to show that there are grounds that Mr. Brown copied language from *HBHG*. I do not accept they are evidence of copyright infringement by substantial copying of *HBHG* whether textual or non textual as they are as I have said too general and too low level of abstraction.' (In this last sentence, as

for using many of the ideas discussed in *HBHG* in order to create a backdrop for and expand upon in *FP*, perhaps the comments of Lord Justice Mummery in dismissing the appeal best summarizes the position any court would have taken as had actually been done so in the case against Dan Brown for the publication of *DVC*:

The position is that the individual elements of the Central Theme Points distilled from *HBHG* in the *VSS* are not of a sufficiently developed character to constitute a substantial part of *HBHG*. In the words of the judge they are “too generalised” to be a substantial part of *HBHG*. They are an assortment of items of historical fact and information, virtual history, events, incidents, theories, arguments and propositions. They do not contain detailed similarities of language or “architectural” similarities in the detailed treatment or development of the collection or arrangement of incidents, situations, characters and narrative, such as is normally found in cases of infringement of literary or dramatic copyright. The 11 aspects of the Central Theme in *DVC* are differently expressed, collected, selected, arranged and narrated.

Of course, it takes time, effort and skill to conduct historical research, to collect materials for a book, to decide what facts are established but the evidence and to formulate arguments, theories, hypotheses, propositions and conclusions. It does not, however, follow, as suggested in the Claimants’ submissions, that the use of items of information, fact and so on derived from the assembled material is, in itself, “a substantial part” of *HBHG* simply because it has taken time, skill and effort to carry out the necessary research³⁵.

The deception was that *DVC* only appeared to be closer to copying *HBHG* when in reality Eco’s *FP* is more of a copy of that book than any other work. When the texts are scrutinized thoroughly, the court case against Dan Brown may have cost the Claimants millions in legal fees, but the true harm done is the irreverent mocking tone of Eco’s *FP*,

elsewhere, the judge must mean too high a level, rather than too low a level, of abstraction). Just prior to dismissing the appeal on [99], Lord Justice Lloyd concluded that ‘Although the judge did not express his reasoning in these terms, it seems to me that his judgment can be analysed as proceeding as follows I) There is relevant material in *HBHG* which is also to be found in *DVC*, namely eleven of the Central Theme elements. II) Mr. Brown had access to *HBHG* at the time when he wrote the parts of *DVC*, which include this common material. It is not in dispute that Mr. Brown used *HBHG* at this stage. III) Mr. Brown based relevant parts of *DVC* (the Langdon/Teabing lectures) on material in *HBHG*. IV) Nevertheless, what he took from *HBHG* amounted to generalised propositions, at too high a level of abstraction to qualify for copyright protection, because it was not the product of the application of skill and labour by the authors of *HBHG* in the creation of their literary work. It lay on the wrong side of the line between ideas and their expression. V) In any event (this being the judge’s principle ground for decision) although the relevant eleven Central Theme elements were to be found in both books, the claim depended on showing that the Central Theme propounded was a central theme of *HBHG*, sufficient to qualify as a substantial part of the work, albeit as a combination of features obtained by abstraction, as described by Lord Hoffmann in paragraph 24 of *Designer’s Guild*, and this assertion by the Claimants was not justified, because the Central Theme was not a theme of *HBHG* at all, but rather was no more than a selection of features of *HBHG* collated for forensic purposes rather than emerging from a fair reading of the book as a whole. The basis of the Claimants’ contention that the Central Theme was a substantial part depended entirely on showing that it was a central theme of the book and, as appears from the passages, which I have quoted at paragraph [70] above, was really *the* central theme of the book. The judge rejected that contention on the facts. It does not seem to me that it was necessary for him to provide any further explanation for his conclusion that, whatever elements (if any) were copied from *HBHG*, they did not amount to a substantial part of it.’

³⁵ *Baigent & Another v. The Random House Group Ltd* [2006] EWHC [154 & 155].

which somehow escaped the Claimant's radar. This also demonstrates that the attack on Dan Brown was likely triggered by feelings of jealousy at the success of *DVC* rather than any genuine notion of an act of plagiarism. But, all of this is irrelevant since the main legal point is that copyright infringement does not extend to a fiction writer using conjectural material from historical non-fiction as both Dan Brown and Umberto Eco had done with *HBHG* in their different ways. Both truly gifted and mediocre authors have always drawn inspiration from other works, but what is always produced that is thought of as new is the combination and reconstitution of a myriad of ideas chosen in order to create a different version of ideas that have previously been explored. This is how literature and knowledge develops over time in the human experience whether new works are inspired to flatter or to mock previously published ones.

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