Introduction

Dennis Kezar

In the archetypal confrontation from which our volume takes its title, the Athenian lawmaker blames the first man of the theater for a professional deceit that threatens to pervade society:

Thespis, at this time, beginning to act tragedies, and the thing, because it was new, taking very much with the multitude, though it was not yet made a matter of competition, Solon, being by nature fond of hearing and learning something new, and now, in his old age, living idly, and enjoying himself, indeed, with music and with wine, went to see Thespis himself, as the ancient custom was, act; and after the play was done, he addressed him, and asked him if he was not ashamed to tell so many lies before such a number of people; and Thespis replying that it was no harm to say or do so in a play, Solon vehemently struck his staff against the ground: "Ay," said he, "if we honor and commend such play as this, we shall find it some day in our business."¹

By responding anxiously to the hypocrisy of acting, Solon gives voice to what Jonas Barish has termed the "antitheatrical prejudice." Central to this prejudice is the belief that theater confuses pointless play with purposeful business, just as an "ontologically subversive" stage debases privileged truth.² Allegorically, Solon's
criticism of Thespis directs us to a fundamental motivation of this volume: exchanges between theater and law frequently take shape as an institutional antagonism over the tenuous distinction between theater’s inconsequential fiction and the real world’s socially consequential fact. While this antagonism has often had the effect of separating theater and law as objects of study, it can itself be revelatory of their important institutional connections and interdependences. Even as they are each in their own way influenced by such antagonism, the essays collected here investigate the transactions between theater and law that Solon’s hostility seeks to prevent.

By focusing on the connections between law and theater, this volume foregrounds a disciplinary relation just beginning to emerge from Solon’s pronouncement. And by focusing on the professional theater of the English Renaissance, this volume engages a historical period when Solon’s distinction between “play” and “our business” had become markedly and importantly untenable, when a culture’s claim that “all the world’s a stage” had stretched metaphor to tautology. Organizing our study is an emphasis both generic and historical that responds to a crucial moment in England’s cultural and legal formation when both theater and law were emerging as increasingly secular and increasingly powerful institutions. If Solon feared the future relevance of drama to the real world of commerce and law, the Renaissance experienced this relevance as reciprocal. Its legal processes were subject to dramatic representation and appropriation. Its commercial theater was not simply subversive of the law but also subject to the law and often populated by law students and practitioners. Indeed theater and law were not simply relevant to each other in the early modern period; they participated with each other and defined an institutional co-presence. In the following essays, we demonstrate some of the important consequences of this fact by presenting the connections between Renaissance theater and law not simply as thematic but as conceptual and substantive.

The “law and literature movement” describes a space in which institutional momentum and interdisciplinary inquiry meet with often intriguing but frequently short-lived and theoretically inarticulate results. Few can define this “field” compellingly or lastingly enough to describe what would amount to an orthodoxy, let alone an intervention.3

The intervention intended by this volume is relatively modest in scope, but that scope is aimed at a moving target. We hope, in a sustained and unified way, to bring Renaissance law and Renaissance theater into the same interpretive realm and to insist upon the neglected scholarly importance of this nexus. But
there is a double-barreled, much less modest claim subtending this first. We believe that theater and law (not only in the slice of historicity we cut but also transhistorically) require the other for themselves to be fully understood; and we believe that in the amorphous movement to which this volume appeals (the movement of “law and literature”) connections between theater and law have constituted a perennial blind spot. A case for this grander claim need not be made with contemporary bibliography. It could begin with Solon versus Thespis, then course through some of the entrenched positions graphed by Professor Barish, then dwell upon the vexed relations between nineteenth-century British law and that period’s drama, and conclude with Alan Dershowitz’s contemporary reenactment of Solon’s encounter with Thespis.

Dershowitz vehemently calls for the exclusion of literary (and specifically dramatic) forms from the courtroom. Confusing generic and literary epistemologies with “real” forensics can only corrupt the latter. He specifically objects to the importation of drama into the legal process—claiming that this “art form” is essentially scripted and prejudicial, failing accurately to imitate the chaos of the real: “[The] critical dichotomy between teleological rules of drama and interpretation, on the one hand, and mostly random rules of real life, on the other, has profoundly important implications for our legal system. When we import the narrative form of storytelling into our legal system, we confuse fiction with fact and endanger the truth-finding function of the adjudicative process.” Consider the timelessness of this complaint. Like Solon’s desire to exclude “play” from “our business,” Dershowitz’s insistence on a “critical dichotomy” between the form of drama and the “real life” of the law attempts to drive a disciplinary wedge between theater’s corrupting fictions and the law’s endangered fact. Dershowitz’s articulation of this dichotomy offers an explicit example of the way Solon’s anti-theatrical legacy structures much current thinking about the proper relation between law and literature.

The danger Dershowitz identifies lies in a formal or generic contagion that threatens to invade the legal system, converting its human beings into characters. His “real life” is best judged without the lens of genre, his law most effective when kept discrete from the forms of literature. While some recent studies of law and literature—including several of the essays in this volume—admit and even celebrate genre’s function in the judicial process, law and literature have generally been conceived as divided by the fact that one is more generic than the other. For law and literature figures such as Martha Nussbaum, to give just one example, Dershowitz’s dichotomy is simply reversed, with literature’s humanism offering an important corrective to the law’s formalism.
Genre, in other words, is itself a contagion in the law and literature movement. As I wrote this introduction, I had several readers’ reports in front of me, one of which claims that the majority of the essays that follow treat Renaissance theater as “superfluous” to their interest in law, and one of which claims that these same essays are strong readings of Renaissance plays that regrettably treat law and legal history in a “subordinate” and sometimes “tangential” manner. We believe that an important value of this volume lies in its diversity, but it would be wrong for us to present that diversity as a challenge to current disciplinary divisions without also admitting its status as a symptom of such divisions.8

It would also be wrong for us to overstate our case. In today’s law schools and English departments there is, of course, a vital and diverse interest in law and literature that attests to a general blurring of the boundaries that Solon and Dershowitz seek to preserve.9 Moreover, both literary critics and legal historians have begun to consider theater more specifically in the law and literature field. A growing body of scholarship on Shakespeare and the common law, for instance, recognizes important connections between developing legal ideas and methods of dramatic representation.10 And historians such as Theodore Ziolkowski have traced the origins of and important transitions in Greek drama to Greek law and the development of jury trial.11 In this analysis, early Greek drama frequently engages precisely the kinds of questions a trial might pose and resolves those questions in part (through a chorus) as a jury might. When he applies this approach (briefly) to *The Merchant of Venice*, Ziolkowski avoids the narrativizing tendencies of most legal readings of drama to ask questions such as those we wish to ask in this volume: “What if it were Shakespeare’s intention not to advocate either the need for strict liability or the appeal of equity but to expose the unpredictability of the legal system in which Shylock and Portia encounter each other? What if it were his aim not to contrast Venice and Belmont but to reveal the anomy governing the society that embraces them both? If we read the play in this way, in the legal and social context of the 1590s, we lose a romantic comedy, but we gain a remarkable commentary on Elizabethan England.”12 Ziolkowski’s study of an emergent drama and emergent law in Greece has offered an important precedent for our own volume, which focuses on a similar moment of legal and theatrical emergence in Renaissance England.

Drama has more typically been elided, however, from investigations of law and literature that concern genre. Broadly speaking, the study of law and literature has tended to focus on literary genres other than the more inclusive dramatic mode. The literary kinds most frequently associated with law have been lyric and narrative. Lyric has gained prominence when scholars have conceived as
structural the legal issues in which “law and literature” is invested. In such approaches, literature is deployed to challenge or call attention to those structures on which the law allegedly relies. In the hands of Nussbaum, for instance, lyric comes to stand for the entire enterprise of self-conscious reflection—which, she claims, good judges perform by imaginatively placing themselves in the subject position of an other. In some of Barbara Johnson’s more recent work a similar claim emerges, though in her case the lyric is less a normative structure to which judges should be accountable than a form of subjectivity that the law should acknowledge as an essential part of the very category of the human. Hence the law’s normative accounts of persons should be replaced with those of poets.

Dershowitz’s silent conflation of “drama” with “the narrative form of storytelling” points to another general tendency to subordinate drama in generic investigations of law and literature. When “law and literature” has been less concerned with the differing ways in which law and literature conceive of persons, and with finding solutions to these conflicts, it has tended to focus upon the methods by which the law generates and sanctions accounts of these conflicts. Here the generic emphasis seems decidedly narrative. But we might say that the emphasis is actually more epistemological than generic. Wai Chee Dimock praises literature for its principled refusal to honor the claims of narrative truth required by the law. Reversing Dershowitz’s argument, she holds that “literature” requires skepticism and that the conventions of “law” involve epistemological errors that literature’s skepticism exposes. Consequently, Dimock is interested in essentially narrative generic forms like the novel, especially the realist novel. Some scholars have developed a similar analysis of the narrative content of dramatic works by treating them as narrative forms. While I shall suggest below the virtues of resisting the narrativizing of drama in analysis interested in the law, conceiving the relation between literature and law as one of skepticism versus fideism offers a limited but useful approach to investigating the law-theater connection. An important aspect of the law-theater dynamic explored by several essays in this volume, in fact, lies not only in the stage’s ontological subversiveness but in its epistemological subversiveness—its challenge to legal ways of seeing, its destabilization of “representation,” “exhibit,” and “proof.”

There are compelling reasons for thinking about the law in the generically specific terms of drama and for subordinating lyric and narrative emphases to the complex dynamics of the stage. Both court cases and drama are essentially and explicitly polyvocal and agonistic. Both present less a unified authorship and authority than multiple performative agencies participating in the constitution
of a reality that is on some level representational and juridical. And if plays (even Ben Jonson’s) should not be conceived as devoted to constructing from all their diverse voices a definitive verdict, they nonetheless pose questions of narrative authority strikingly similar to those that emerge in the courtroom. Indeed, the fractious “War of the Theaters” that contested the terms of dramatic authority on England’s public stage at the end of the sixteenth century was termed by its participants a series of “Law cases in Verse.” As an ever-present if frequently resisted analogy to the courtroom, drama presents us with an especially appropriate literary genre for reformulating the disciplinary relation between law and literature, generally but fairly characterized by Shoshana Felman:

The dialogue between the disciplines of law and literature has so far been primarily thematic (that is, essentially conservative of the integrity and of the stable epistemological boundaries of the two fields): when not borrowing the tools of literature to analyze (rhetorically) legal opinions, scholars in the field of law and literature most often deal with the explicit, thematized reflection (or “representation”) of the institutions of the law in works of the imagination, focusing on the analysis of fictional trials in a literary plot and/or on the psychology or the sociology of literary characters whose fate or whose profession ties them to the law (lawyers, judges, or accused).

Simply put, there are no “stable epistemological boundaries” between theatrical and legal performance, between dramatic and legal representation, between audiences and juries. And while several essays in this volume certainly concern thematic dialogue between law and theater, this dialogue does not leave law and theater in discrete parallel or in a relation of simple analogy.

An exemplary case appears in Matthew Greenfield’s essay, which argues that Jonson’s *Poetaster* explores generic instabilities and anxieties shared by the legal apparatus of the state. The “critical dichotomy” between literary form and real life—asserted by Solon and Dershowitz, inverted by Nussbaum—collapses in an argument for the generic and social intersection of theater and law. Though pursued through the habits of literary criticism, our shared interest in such intersection can best be described not as “law in theater” but as the near-appositive “law and theater.” Each institution invokes the other; neither appears without the other.

Such a strong connective claim is not supported, however, by nominally dramatic representations of law and literature in which drama is often a subordinate or fugitive analytic term. The neglect of drama in law and literature analysis misses
an excellent opportunity to coordinate literary criticism with legal theory. While the idea of polyvocality has been central to some of the most important recent developments in modern legal theory, legal theorists rarely establish structural connections with the polyvocality of the dramatic mode. The legal theorist who has been most interested in thinking about the way in which different voices interact in the law, for instance, has thought about the interaction largely in terms of the history of the law. And this theorist, Ronald Dworkin, has tended to think about these interactions in largely nondramatic terms. Indeed, in *Law’s Empire*, he conceives the interaction as serial authorship (several hands writing the same story) rather than as a paradigm more specifically dramatic. Law and literature studies that focus upon rhetoric, such as Lorna Hutson and Victoria Kahn’s fascinating volume *Rhetoric and Law in Early Modern Europe*, tend to emphasize nondramatic and indeed extraliterary texts; and when dramatic texts are concerned in such studies, they are divided into their constituent rhetorical parts. Some influential law and literature figures, such as James Boyd White, have studied dramatic works to emphasize their local rhetorical constructs and to contrast them with the rhetorical constructs of legal works. For White, however, the terms of drama itself would seem to place it beyond the pale of any straightforward rhetorical analysis; he performs analyses of speeches within plays but rarely considers the complex and mediated speech acts of plays themselves.

A partial but important exception appears, however, in White’s reading of Shakespeare’s *Richard II*, which recognizes that the drama “works on the principle that the truth cannot be said in any single speech or language, but lies in the recognition that against one speech or claim or language is always another one. In this sense its *Richard II*s life is that of voice speaking against voice; this life is what it ultimately holds out as authoritative: not the crown or the usurper, but its own performances.” For White these claims are not entirely exclusive to drama. Indeed, he introduces the passage above with the phrase “like his sonnets, like his other plays”; his template for reading *Richard II* is often the *Crito*, not a drama but instead a rather teleological dialectic; and he frequently has Shakespeare’s play tell the “story” or “the narrative” of a fall into the modern crisis of authority. The legal-historical story White wishes to tell ends in “incoherence” and “inconclusion,” so in a sense we should not be surprised by his strategic attention to these aspects of the play. But by paying this attention he finds in drama what our volume presents as an important generic “capacity to hold in the mind at once, or in rapid sequence, a variety of incompatible ways of talking, none of which can be a master language.”

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White comes close to acknowledging the specifically generic nature of this capacity, in fact, when for once the lyric is dramatized rather than the drama lyricized: “To use the sonnet for a moment as an example of a general tendency I mean to describe, one might say that this form, for Shakespeare, is like a little drama, in which he starts with a moment, a phrase, a situation, and then explores by contrast and transformation the possibilities for human speech that it occasions.”26 We contend that on an important level the dynamic White describes here is not “a general tendency” but a revelatory generic connection between theater and law. White’s description of Shakespeare’s play as a kind of moot court, as Karen Cunningham’s essay in this volume will explore quite explicitly, points as well to an interest defining the collection more generally.

A consequence of approaching Solon through Thespis is that “the law” does not resolve into any simple focus, instead refracting into economic, judicial, legislative, ethical, and religious applications. Such diversity and specificity result from attending to the resonance of the law in Renaissance culture. “The law” is also inherently mobile when invoked on the Renaissance stage, which looks in on sixteenth- and seventeenth-century London but also out to different economies, countries, and historical periods. Our collection of essays therefore has several axes of organization.

A majority of the essays concern the plays of Shakespeare or Jonson, and these two playwrights produce very different accounts of the relation between theater and law. A distinctive Ben Jonson emerges in this volume. Just as he seeks the innovative economic and literary metamorphosis of plays into works, so does Jonson seek to substantiate the economic and ethical claims of his drama with appeals to the material relevance of law. Readers of this volume will notice an interesting difference between Jonson and Shakespeare on this point.27 The two playwrights would seem to have very different readings of Hamlet’s famous deployment of theater to assess guilt and provide for justice: “The play’s the thing / Wherein I’ll catch the conscience of the king.” For Shakespeare, Hamlet’s is a statement of metaphoric opportunity: the theater of revenge clearly is not an efficacious courtroom, but resemblance opens the door to selective appropriation, adaptation, and ambiguity. By contrast, Jonson’s interest lies in the reification of theater as an actual instrument of social justice.

Investigations of law and literature, including those collected here, also define themselves by choosing to seek Jonson’s level of legal specificity or Shakespeare’s literary transmutations. The evolving field of law and literature, in fact, might be understood as replicating the imaginative tension between Jonson and
Shakespeare as an analytical tension. When the law is privileged as a source of rigor and substance, terms such as literary quality identify a potential for irresponsible wordplay that must be remanded to the legally real if the critic is not to be guilty by arbitrary association. For those reading the law through “imaginative literature,” however, legal specificity can appear less appealing precisely because its interpretive positivism restricts association, replacing literary criticism with a kind of case law. The original tension between Solon and Thespis survives in the creative tension between Jonson and Shakespeare and is reproduced in criticism of law and literature. In fact one important function of the title of this volume is to indicate that each essay participates in an ongoing dialogue and that such participation can involve taking preestablished sides.

Here is where another well-known distinction between Jonson and Shakespeare can be particularly helpful in illuminating a disciplinary tension between law and literature. In prologue after prologue, Jonson instructs his audience how to watch and read his plays, legislating interpretation by specifying authorial intention. By contrast Shakespeare often effaces his own dramatic author-function while at the same time inviting his audiences to respond to his plays as they like it, to make of his plays what they will. This divergence, an important development in the history of the stage, prefigures Richard Posner’s characterization of the difference between legal and literary interpretation: “I do think a judge should pay more attention to legislators’ conscious intentions than a literary critic should pay to the author’s conscious intentions. . . . I see no inconsistency between being a pragmatist judge who emphasizes legislative intention and practical consequences and a formalist literary critic in the style of the New Criticism. This just illustrates my opening point in this chapter about the field-dependence of interpretation.”28 Posner’s “field-dependence of interpretation,” while presenting obstacles to the disciplinary claims of “law and literature,” appears within the dramatic works considered in this volume. Like Jonson, Posner’s pragmatist judge conceives authority as legible authorship. Like Shakespeare, the formalist critic conceives interpretation as an associative activity conducted in the absence of an author. Posner’s formalist literary criticism may seem irrelevant to the readings presented in this volume, which could be described as new historicist in orientation. But the formalist aspect of new historicism—by which juxtapositions of text and context are justified by a chiastic paradigm29—has for some time now been recognized by its practitioners and critics.

In readings of law and drama, does one follow Jonson and use the law as a model by which literary criticism becomes a kind of finding of fact? In her essay on Volpone, Frances Teague argues that Jonson revisits a notorious law case to
dramatize a nearly ideal legal system; in his essay on *Bartholomew Fair*, Paul Cantor argues that Jonson enacts in his play a specifically legal endorsement of the free market. Or does one take Shakespeare’s cue and imagine the work of criticism as predicated upon associative opportunity? In her essay on *King Lear*, Heather Du-Brow reads in Shakespeare’s indirect and unspecific references to land law a more pervasive interest in categories of the alien; in his essay on *The Tempest*, Ernest Gilman finds in Shakespeare’s mention of an offstage witch a symbolic representation of the legal apparatus of colonialism. Does law mean “text,” privileged with intended signification, or “context,” designating all evidence as subject to further proof?

Perhaps the most polarizing question to ask of each essay is how it negotiates Solon’s antitheatricalism—whether or not it calls Renaissance theater as a friend of the court. In each essay, the answer to this question involves not only epistemological concerns but ethical ones. To conceive drama as a degradation of important legal principles, for instance, is in some sense to take the antitheatrical position of Stephen Gosson, for whom the Renaissance stage travesties the courtroom, leaving the defendant with no voice and replacing a single judge with an injudicious jury: “At stage plays it is ridiculous, for the parties accused to reply, no indifference of judgment can be had, because the worst sort of people have the hearing of it, which in respect of their ignorance, of their fickleness, and of their fury, are not to be admitted in place of judgment. A judge must be grave, sober, discreet, wise, well exercised in cases of government, which qualities are never found in the baser sort.”30 In his sympathy with “the parties accused” by the stage, and in his anxious sense of a “baser sort” given to slander, Gosson adapts an early modern concern with defamation that interests Debora Shuger. Radically revising the standard account of Tudor-Stuart censorship, Shuger asserts that early modern censorship laws sought to control not the dissemination of subversive political ideas but the possibility of libelous misrepresentation—not dangerous truths but dangerous lies. While her essay demonstrates that Renaissance dramatic characterization often accommodated this ethical legislation, the dynamic between law and theater that emerges in her argument is one of justified policing and dangerous license; for Shuger censorship laws protect real persons from representations that can cause real harm. Her theater, where the potential and consequence of misrepresentation are high, is not necessarily a friend of a court presented as civic and protective.

Matthew Greenfield investigates this ethically charged notion of representation as acted out in the generic innovations of the War of the Poets, in which Jonson, Marston, and Dekker transformed the theater into a courtroom and ar-
raigned each other for slander. In these dramatic exchanges, satirist figures serve as trial lawyers and judges; the stakes in these cases include not only the reputations of the playwrights but also the source and nature of artistic authority. Jonson distrusts his audiences and instructs them to defer to the judgment of the learned; Marston and Dekker submit themselves humbly to the judgment of the public. Jonson therefore imagines theater as governed by a kind of Roman law, in which cases are decided by an elite, appointed judiciary, while Marston and Dekker use the language of English common law and imagine the audience as a jury of peers. We might describe Greenfield’s litigious theater as a friend of the court, in that the satires he considers employ legally conventionalized forms of justice, punishment, and rehabilitation. In his essay, comical satire emerges as a central repository of values, and the satirist collaborates in the state’s regulation of behavior—a regulation, when applied in theater, of writers and indeed genres. But the divide between Jonson’s Roman law adjudicator and Marston and Dekker’s common-law audience suggests more than a simple theatrical appropriation of legal practice. The divide suggests, in fact, a mutually informed development in theatrical and legal institutions that would have profound consequences in the seventeenth century—coming to a head in 1649, when the law closed the theaters and killed a theatrical king.

To refine still further the poles represented by the essays of Greenfield and Shuger, we might say that on one side, theater and law assume collaborative positions; on the other side, theater and law may exploit each other’s resources, but the process is presented as competitive and exhausting of one or both. Under such rubrics, the first group would include the essays of Frances Teague, Karen Cunningham, and Luke Wilson. In “Ben Jonson and London Courtrooms,” Teague reads Jonson’s *Volpone* as a carefully distanced response to the Privy Council’s investigation of Guy Fawkes and the Gunpowder Plot conspirators. Jonson’s Scrutineo may reveal intractable juridical problems, such as perjury, but in many respects Venice represents a model of legal judgment; and in Teague’s reading, the very fact that the play is set in Venice, rather than London, suggests Jonson’s increasingly uncritical accommodation of England’s legal system. Cunningham’s essay concerns the collaborative energy between London’s stage and the Inns of Court, where court-centered authority was often contested and the pedagogical practice of mooting encouraged improvised performance. Cunningham’s argument does not posit a general and conservative harmony between law and theater, then, but a mutual interest in one of the more destabilizing aspects of legal education: in mooting, the law was taught not as a uniform code, nor as a reaction to real events, but as an act of imagination. Wilson also investigates a connection
between law and theater that lies in imaginative exercise. His essay considers the legal category of bribery, which, like dramatic representation, makes agency visible. Making agency visible is arguably a representational desire of theater, but, like the antitheatrical account of the stage, bribery is understood to consist in a covert and illegitimate means of exerting influence or force over the behavior of others in the pursuit of selfish ends. In Wilson’s reading, then, bribery functions as a theatrically and dramaturgically useful metaphor for human agency. But the concept of bribery, like witchcraft, also articulates rather abstract anxieties about human experience—anxieties that interest the stage even as they call its function into question.

As the essays in this collection move from the collaborationist law-theater model represented by Greenfield to the contestatory law-theater model represented by Shuger, gender, sexuality, and “otherness” are correspondingly foregrounded as objects of investigation. Occupying an important middle ground in this respect, Heather Dubrow, Ernest Gilman, and I consider theatrical interventions in legal and political instabilities. Where Cunningham’s essay considers an aspect of the law that itself challenges institutional unity and coherence, Dubrow’s concerns a historical moment of instability when land law and property rights are being reconceived. In her reading of King Lear, Dubrow shows that recognizing the legal complexities and perils associated with land law and burglary can offer a further perspective on fears of invasive Others, typically studied primarily in terms of national politics. By extension, acknowledging the instability of land ownership complicates the commonplace associations between real estate and women; in King Lear, the text that opens on the division of property pivots on its alienation and gendering. Gilman similarly presents The Tempest, a play that thematizes problems of land ownership and ethnic anxieties, as hinged upon a woman’s body and the law to which it is subject. Sycorax’s status as a pregnant witch—condemned, reprieved, and banished by the law—offers an index into the cultural double vision by which the European imagination constructs a “new” world as a re-encounter with the old. Presenting Sycorax as the symbol of that re-encounter, Gilman argues that the play’s complex vision of the past produces, and is re-produced in, the protocolonial future. To remember Sycorax is to admit cultural implications and responsibilities that the play, and the exclusionary legal code it practices, are otherwise invested in abjuring. Gilman’s essay demonstrates that theatrical critiques of law frequently involve critiques of theater itself. This correspondence defines the method of my reading of The Witch of Edmonton, a play in which a critique of the legal fictions necessary to convict and execute a witch coextends with a metatheatrical critique of the credulous audience necessary to
witness the play itself. I argue that The Witch of Edmonton constitutes an anatomy of courtroom drama—directed not toward entertaining the audience with a spectacular sanctioning of the judicial process in early modern witchcraft trials but toward inviting the audience metatheatrically to question the theater in which it participates as a jury. That the play also encourages this participation and continues to benefit from the kind of credibility established in the courtroom, however, suggests that the dramatists and spectators are not simply a jury but under indictment themselves.

The stage appears much more clearly an agent rather than an object of indictment in the essays in this collection that present theater as an important ethical or social corrective to law. But Shakespeare’s characterization of misjudging men and innocent women limits responsibility to the expectations we bring to theater, and to the world into which we exit the theater. Focusing on a radically de-troped “economy,” Paul Cantor reads Jonson’s theater as a praiseworthy challenge to legal restriction; the liberation and enrichment he celebrates are material, not metaphorical, and they are fearless of anachronism. In an essay that complements the collection’s several considerations of Ben Jonson and the law, Cantor presents Bartholomew Fair as the first literary portrait of how a free market operates. Recognizing that the play’s enthusiasm for proto-capitalism is tempered by the recognition of its liability to abuse, Cantor observes that Bartholomew Fair reserves its sharpest criticism for those forces that want to use the power of the law to regulate economic activity. Though Jonson’s stage contests the law’s restrictive misapplication, his fair’s free market identifies the terms by which theater can operate legally and profitably.

There are several rubrics under which our title might be pursued, and it is tempting to follow the vectors sketched above, to perpetuate the divisions that motivated this volume in the first place: Solon v. Thespis and Thespis v. Solon. Such an organization might yield the following categorization:

Thespis v. Solon: Dubrow, Gilman, Kezar
Solon v. Thespis: Cunningham, Shuger, Wilson

But such an organization would fail entirely to capture the authorial intent in each of the following essays. And such an organization would require a parenthetical category bridging the transactions of theater and law. That bridge would certainly include essays by Cantor, Greenfield, Shuger, Teague, and Wilson. Most importantly, such an organization would not accurately advertise the reader’s experience of the collection—unified (we hope) by pontification in the best sense, by each
author’s commitment to blurring institutional boundaries. We hope that the reader will experience the scheme of organization that we chose as devoted to intersection rather than exclusion and that the reader will feel invited to violate it:

*Jonson and the Tribe of Law*: Greenfield, Cantor, Teague  
*Legal Rhetoric and Theatrical Pressure*: Dubrow, Gilman, Kezar  
*Law Staged and Theory Troubled*: Shuger, Cunningham, Wilson  
*Epilogue*: Nabers

**NOTES**

4. Though we will gesture toward that bibliography in the following pages and can narrowly exemplify here with Theodor Meron’s *Bloody Constraint: War and Chivalry in Shakespeare* (New York: Oxford University Press, 1998) and Paul Kahn’s *Law and Love: The Trials of King Lear* (New Haven: Yale University Press, 2000). Both books are excellent examples, in the field specified by our own volume, of what “law and literature” often looks like from the perspective of legal scholars. They are important, but with a few exceptions their importance has failed to register in the discipline of Renaissance literary studies—registering instead in elective seminars at schools of law or political science and in “law and literature” as it is conceived by legal scholars for whom literature is an interesting but subordinate coordinate of interdisciplinarity. There are reasons both books have not registered with equal impact in departments of English, and I suggest those reasons not to justify them but to describe the divide that our own volume also negotiates. Meron sensitively reads Shakespeare, especially *Henry V*, from the point of view of international humanitarian law; the analytical results are fascinating (and in my view frequently illuminating of the playtexts) but frequently at the expense of what many scholars of Shakespeare would call “the literary” and “the historical.” To a slightly lesser extent, Kahn also is comfortable with anachronism, with reading Shakespeare through a universalizing and timeless lens of legal and ethical tradition. Such analytical moves can sound, to contemporary literary critics, reminiscent of a moralizing and hypostatizing brand of criticism that the last three decades have been devoted to destroying.
5. Deak Nabers’s epilogue will do some of this dwelling.

7. Dershowitz’s essay curiously admits the importation of literary forms into the courtroom and into the human experience of “real life” while insisting at the same time that such importation should be resisted where the law is concerned. The weakness of this argument would seem to lie in the fact that experiential constructs resist such prophylaxis and that the law itself, narrativized or not, might be read as such a construct. Truth also becomes a problematic category when experiential constructs are introduced as its opposite. Dershowitz suggests (“Life,” 100), for instance, that religion can be read as a construct, an imaginative response to our need for order and teleology. Why should the law, directed toward justice and social order, not be read in this way?

8. In note 4, the reader will find a disciplinary inversion of the account of our own readers’ reports just presented.


16. By explicitly I mean to distinguish drama from a Bakhtinian conception of narrative. For the audience of drama, polyvocality is not an interpretive discovery but merely the sentient response to what is advertised by the playtext as performed. Most, though not all, of the novels under Bakhtin’s lens do not explicitly place the reader in the position of juror—if by juror we mean the announced auditor and arbiter of competing voices of legitimacy. Every Renaissance play does (unless the reader of this volume wishes to except Jonson).
17. This claim for the law becomes more obvious when we consider, for instance, the narratives and characterizations necessary to convince jurors of categories of culpability such as negligence.


20. Lorna Hutson and Victoria Kahn, Rhetoric and Law in Early Modern Europe (New Haven: Yale University Press, 2000). In general, this volume does not focus on literary texts, although some of the essays do treat literature substantially. Two essays (Luke Wilson’s and Lorna Hutson’s), moreover, treat specifically dramatic texts. Hutson’s essay, “Not the King’s Two Bodies,” challenges the tendency of historians old and new to read Edmund Plowden through the lens of Ernst Kantorowicz. Hutson’s new reading of Plowden—one of fame and importance in his own time lay in his enabling of lawyers to apply the interpretive principles of equity to a burgeoning mass of statutory legislation—leads to a new reading of Hal’s reformation in 1 and 2 Henry IV. In Hutson’s reading, Hal’s coming to power is distinguished from the triumph of the absolute monarch; rather, it demonstrates the triumph of the common lawyers as interpreters of legislative intention.


22. Ibid., 50.

23. See, for instance, ibid., 47, 71.

24. See ibid., 71–76.

25. Ibid., 76.

26. Ibid., 78.

27. Though I should note that at least one of the volume’s contributors (Luke Wilson) does not agree with some aspects of the following claim.

28. Richard A. Posner, Law and Literature, rev. ed. (Cambridge, MA: Harvard University Press, 1998), 245. Posner carefully qualifies this statement elsewhere in the chapter in which it appears, and of course the line between legal and literary interpretation blurs considerably when one reads the law as an activist or constructivist and when one reads literature biographically or as intentional signification.


30. Stephen Gosson, Playes Confuted in Five Actions (London, 1582), C8'.