The Oxford Handbook of English Law and Literature, 1500-1700

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Editor: Lorna Hutson  
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Between 1500 and 1700, the period of Edmund Spenser and William Shakespeare, of John Selden and Edward Coke, English law and literature flourished. Yet, these two worlds did not exist separately from each other. The literary world seeped into legal institutions such as the Inns of Court, where lawyers not only learned the intricacies of the common law but also produced and hosted several Elizabethan and Stuart plays and masques. Conversely, the early modern period witnessed the enactment of several laws, such as the 1662 Printing Act, which affected how English plays and literary works were produced and published.

The Oxford Handbook of Law and Literature 1500–1700 successfully highlights these blurred lines between the literary and legal worlds of Early Modern England through an interdisciplinary approach. 38 essays, from scholars of history, legal history, and literature, are split across eight sections focusing on various aspects of literature and the law. Although literature is the best represented of the three disciplines at play – 20 contributors from literature, 11 from history, and seven from law – each section is divided thematically and an attempt has been made by the Handbook’s authors to engage with the other disciplines. The Handbook opens with a comprehensive introduction by the editor, Lorna Hutson, who not only provides a background for the subsequent articles and sections but also outlines the development of ‘law and literature’ as an interdisciplinary movement from the 1970s to the present, and is as worthy of attention as the chapters which follow.

All the essays in part one (‘Textual and interpretive culture’) engage with the question of how aware English Common Lawyers were of non-legal texts and how widely disseminated legal works were spread outside of the Inns of Court. Kathy Eden, James McBain, and Quentin Skinner focus on the extent to which there was an early modern knowledge of the law outside of the legal sphere. Eden’s ‘Forensic rhetoric and humanist education’ shows how the early modern English schoolboy was well-versed in legal ideas early in life, through the study of rhetorical texts such as Thomas Wilson’s Art of Rhetoric (1553). Skinner’s essay examining the trial scene in Act IV of The Merchant of Venice identifies Shakespeare’s use of forensic rhetoric in describing the crucial turn in Shylock’s case, thus assuming a general awareness of these legal particulars. Similarly, McBain highlights how both literary and legal works were represented in Early Modern performances, borne from the earlier university education of many who went on to attend the Inns
of Court.

The other two chapters in this section, by Margaret McGlynn and Ian Williams, paint a more insular picture of the Inns of Court. McGlynn’s ‘Idiosyncratic books and common learning’ describes how the messy, irregularly sorted manuscript compilations of readings and statutes, derived from the notetaking tradition of the later medieval English common lawyers, resulted in a ‘common learning’ among the men of the early modern Inns of Court, albeit one which was ostensibly impenetrable to those outside of the Inns. Williams highlights how important oral learning was at the early modern Inns of Court and why in many ways this isolated common law scholarship not just from wider society, but also from other Inns as circulation of such readings was often limited to a single Inn. Though English common lawyers were aware of non-legal material and broad ideas about the role of law, equity, and justice in English society, these materials rarely featured within the Inns of Court, seen by some as a sign of inadequacy.

Part two (‘Literature and the legal profession’) turns its focus to the literary output of early modern legal minds, and how the men of the Inns of Court engaged with the literary world. Using The Tragedy of Ferrex and Porrex (alias Gorboduc) as a case study, Paul Raffield argues that the revels put on by the Inns of Court were conscious claims of communal political semi-autonomy described by Patrick Collinson as an Elizabethan ‘monarchical republic’. Martin Butler also touches on how Inns of Court masques were an opportunity for English common lawyers to examine and critique wider political decisions, but also to debate legal themes. Crucially, these masques were an opportunity to address these themes outside of the physical confines of the Inns of Court before a predominantly non-legal audience. Jessica Winston looks at how lawyers were able to address and critique changes in the legal profession through literary works. Her analysis of John Davies’ Epigrammes shows a work that was both the product of the major transformations in the size and structure of the legal profession in the late 16th century and a commentary on the profession’s lack of a respectable public and professional ethos in light of these changes. Peter Goodrich’s chapter looks instead at the unwritten narratives of the legal emblem in works such as John Selden’s Titles of Honor (1614), as a possible means for the Latin culture of law to infiltrate the insular learning of the common lawyers.

A lecture given by the late Christopher Brooks concludes this section, though it could equally serve as a conclusion to the whole volume, incorporating comparisons between the three disciplines of law, literature and history from the late-16th century through to the end of the 17th. Brooks frames his talk with comparisons between the language of Shakespeare – emotive, metaphorical, witty – with the more straightforward language of the common law, as depicted in William Wycherly’s The Plain Dealer (1676). Brooks also addresses the cause and effects of the decline of the Inns as sites of legal education, political engagement, and legal and literacy cross-fertilisation that occurred towards the end of the 17th century.

The chapters in part three (Administering the Law) more broadly examine the English legal landscape in the early modern period. Both James Sharpe and Norma Landau challenge persistent views of English legal officials at this time. Sharpe’s ‘Law enforcement and the local community’ looks at the contributions of constables, churchwardens and manorial jurors in executing justice at a local level, countering the ‘familiar literary stereotype of inefficient and comic parish officers in the shape of Dogberry and Verges’ (p. 226), while Landau challenges the view that the character of the Justices of the Peace was unchanging from their 14th-century origin to their partial replacement by county councillors at the end of the 19th century. Barbara J. Shapiro’s article examines the several aspects of the early modern trial, particularly the role of oaths and the credibility of witnesses, to show the many tools justices had at their disposal to create as true a story as humanly possible. Part three concludes with a chapter by Virginia Lee Strain, which looks at Shakespeare’s 2 Henry IV in light of early modern legal reform, arguing that Shakespeare uses the play to outline the reformed relation between legal authority and the monarch’s person, rather than the New Historicist view that the play presents law and government as cynical constructs of the elite.

Part four examines how the secular and spiritual spheres influenced each other, the extent to which spiritual life eluded jurisdiction, and to which religious life was beyond the secular law. Joshua Phillips takes three
plays depicting the reign of King John – by John Bale, George Peele, and Shakespeare – and notes how each
comments on the jurisdictional threat posed to the polity by monastic immunity. Keeping on the topic of the
Church’s uneasy relationship with legislation, enforcement, and jurisprudence in the early modern period,
Ethan H. Shagan argues that the English Reformation’s inability to create coherent ecclesiastical law created
a number of anomalies and ambiguities within ecclesiastical law, and prompted the writing of texts such as
Richard Hooker’s *Of the Lawes of Ecclesiastical Politie*, conceived in the 1590s and published sporadically
between 1595 and 1662. Alan Cromartie re-examines the intellectual history of common law equity in ‘
*Epieikeia* and Conscience’, beginning with the Aristotelian view of *epieikês* as a rectification of legal justice,
when shortcomings in the law required ad hoc adjustments, and tracing it through to the early modern period.

Two chapters in part four analyse John Selden’s relationship with and opinion of the early modern English
Church, and how his views shaped legal discourse and thought in the period. Jason P. Rosenblatt studies
three aspects of Selden’s relationship with the Church: his clashes with the Presbyterians on the issue of
excommunication, his victory over the meaning of the Hebrew word for ‘excommunication’ or expulsion
from the synagogue, and his insistence that a man’s fitness to receive the sacrament could not be the subject
of judicial knowledge. Elliott Visconsi continues this analysis of Selden’s anti-clericalism, arguing that
Selden did not necessarily object to an established Church, which was a kind of national legal tradition, but
did object to the overreaching of the church authorities.

Part five (‘Legal and literary imagining’) looks at how contemporary legal developments were presented and
interpreted in the literary sphere. Essays by Tim Stretton, Carolyn Sale, and Henry S. Turner demonstrate
how works of literature were influenced by changes in the law. Stretton’s essay on ‘Contract and Conjugalit
in Early Modern England’ argues that the prominence of marriage plots, marriage contracts, and legal
trickery in English Renaissance drama resulted in part from a tension between new developments in
economic relations and marriage practice occurring in the early modern period. Sale provides a new reading
of the mock ‘wyll’ in the third section of Isabella Whitney’s *Sweet Nosgay* in light of the Statute of Wills
(1540) and Dyer’s Reading (1552). Thirdly, Turner’s ‘Corporate persons, between law and literature’
explores the early modern interpretations of the corporation, not just in the legal cases of Coke and Bacon,
particularly in the case of *Sutton’s Hospital* (1612) but also how literary figures such as Spenser and
Shakespeare understood corporation, adapting the legal theory for a literary purpose.

Luke Wilson’s ‘Contract’ also looks at how literary figures interpreted and understood the law, using the
diaries of the theatrical entrepreneur Philip Henslowe to demonstrate how those outside of the common law
adapted their interpretation of legal forms such as contract as was functional to them. Contract should thus
be understood in literary terms as an element, like riddle or prophecy, that structures literary genre, rather
than regarding the literary text as a ‘highly sensitive seismograph registering every cultural signal that
crossed its path’. Finally in this section, Frances E. Dolan’s ‘Witch Wives’ interrogates the popular view of
the witch as old, female, and unmarried, through an examination of those women – both real and literary –
accused of witchcraft who were married, of their alleged motives and the relationship to their husbands, also
implicated in such accusations.

The essays in part six move on to the legal developments that most closely influenced the literary world,
those of libel and censorship. David Ibbetson’s essay examines the alleged links between the English law of
libel and Roman law, before turning to Edward Coke’s understanding of it as it applied to the defamation of
the monarch. Alastair Bellany’s ‘The Torture of John Felton, 1628’ also looks at libels, though from the
perspective of the legality of torture. Bellany questions whether (or not) the use of torture was debated in the
case of John Felton, the Duke of Buckingham’s assassin, in 1628, focusing on whether the portrayal of
Felton as a martyr to a tyrannical regime in contemporary newsletters and ‘libels’ polarised political feeling.
Joad Raymond argues, using Milton’s *Areopagitica*, that though the Whig history of seventeenth century
censorship, as a draconian, systematic control of public speech, has rightly been discredited, this did not
mean that it was not used by the authorities for ideological use. Finally in this section, Martin Dzelzainis
analyses a key moment in the history of censorship, the Printing Act of 1662, demonstrating the effect it had
on journeyman printers, stationers, and authors, highlighting in particular how the investigative procedures
entailed by the Act endangered the position of early modern journeyman printers.

Part seven (‘Liberties, slaveries, and English law’) investigates how the English common law began to be viewed in the later medieval and early modern period as superior to other laws, and how this in turn related to wider views on liberty and slavery in the 17th century. Both Bernadette Meyler and Mary Nyquist address the representation of slaves in early modern literature. Meyler asks why Philip Massinger’s play *The Bondman*, a play about slave rebellion, appealed across the spectrum of 17th-century political society, from royalists to republicans, whereas Nyquist looks at the history of slavery in literature across the period, concluding with an analysis of Shakespeare’s deployment of war slavery in *Cymbeline*. Paul D. Halliday and Nigel Smith’s chapters analyse the notions of birthright and the freeborn Englishman in the early modern period. Halliday traces how birthright migrated from theological to legal discourse as it became an expression of lay desire for more specific legal protections. Smith examines the rhetoric of the freeborn Englishman in the work of John Lilburne, arguing that Lilburne’s interpretation of chapter 29 of Magna Carta was of a guarantor to all freeborn Englishmen, who did not necessarily have to be subjects.

The final – and longest – part of the *Handbook* casts its focus outside of England, looking at how ideas of law and literature analysed in the previous sections applied to the rest of Britain and the colonies. Both Lorna Hutson, the editor of the *Handbook*, and Christopher N. Warren examine Shakespeare’s *Henry V*, to see how the history play was affected by and influenced ideas of sovereignty, justice, and overlordship in Scotland and the rest of Europe. Warren’s chapter looks at *Henry V* in light of Alberico Gentili’s *De armis Romanis* (1599), a play which debated the justice of the Roman Empire and – Warren argues – was known by Shakespeare. In this light, Shakespeare’s play engages far more with contemporary international law and legal scrutiny. Hutson’s analysis demonstrates how Shakespeare interpreted and adapted his sources to divert focus away from the legality of England’s overlordship over Scotland and instead ask more personal questions about the mind-set of Henry, thus covertly asserting English sovereignty over Scotland. Robert A. Houston also looks at Scotland, presenting a history of early modern Scottish poetry that was directly influenced by the Scottish legal environment in which it was created. In his chapter, Andrew Zurcher turns his attention to early modern Ireland, providing a reading of Spenser’s *The Faerie Queene* in the context of the common law conceptualisation of the deodand, the agency attributed to a material object which brings about the death of an individual, and showing how these ideas were applied to *A View of the Present State of Ireland*.

The final chapters in the *Handbook*, by Daniel J. Hulsebosch and Edward Holberton, examine the literature and legal cultures of early America, and how English law and literature were applied in this new world. Hulsebosch looks at how the formulae of ‘liberties’, ‘privileges’, and ‘immunities’, developed largely from the Tudor migrations to France and Ireland, were repurposed to fit the colonisation of America. Holberton provides a reading of John Dryden’s *Conquest of Granada* (1670), highlighting Dryden’s contrast between English imperial claims and Spanish papal dominion and how this tied into his views on sovereignty and empire.

The greatest challenge faced by the editor and contributors of *The Oxford Handbook of Law and Literature 1500–1700* is how to present a truly interdisciplinary work which reflects the intermingling of early modern law and literature. In this regard the *Handbook* is a great success. Each section highlights in some way the overlap between literature and law, and how they both contributed to the politics of the era. Contributors have made an effort to engage with scholars from across the three disciplines, and detailed bibliographies at the end of each chapter encourage further reading. The outcome of this is that there is much to be gained by scholars of history, legal history, and literature in *The Oxford Handbook of Law and Literature 1500–1700*, and a closer examination of chapters contributed by authors of different disciplines to their own will undoubtedly reap dividends, and enrich future research into early modern law, literature, and ‘law and literature’.
Notes


The editor is happy, on behalf of all the contributors, to accept this review and does not wish to comment further.

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