A Power to Do Justice

JURISDICTION, ENGLISH LITERATURE, AND
THE RISE OF COMMON LAW, 1509-1625

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This book is a study of the intersection of the English legal and literary imaginations from Skelton to Webster. It takes as its subject the cultural meaning of "jurisdiction" during a transitional period when that technical category in law came under peak pressure, in immediate response to specific jurisdictional crises and as part of the long process of centralization and rationalization through which the common law achieved interpretive hegemony. Focusing on law's unstable practices rather than the image of its stability, I analyze the production of English juridical norms in relation to jurisdiction as the administrative principle that orders power as authority by defining the scope of a particular power over a given matter or territory.

Although the book develops several theses about the practical life of the law and its relation to English prose, poetry, and drama, my two central claims are simple. By pointing to a kind of hyper- or metalegality within a single legal system (or, indeed, between systems), jurisdictional variation helps signify for a culture not only the possibility that norms might have more than one source, but also the fact that law is fundamentally improvisational, unfolding into doctrine only as and through practice. My second claim is literary: during the sixteenth and early seventeenth centuries, as English law became more homogenized, literary fictions looked to instances of jurisdictional crisis and accommodation to explore how the fact and principle of jurisdictional heterogeneity specifies the implication of a given judicial order in alternative normative scenes; and to explore, in turn, how that dynamic might help articulate the terms in which literary writers authorize their own representations. In this double engagement with jurisdiction—as a principle that exposes law's
provisionality even as it opens a space of intensified literariness and literary authority—this study describes a relatively recent moment in which law and humanistic culture were in a complex but nonoppositional relation to one another. Such a description suggests a way of taking historical-cultural account of the law without depending on the tenacious binaries that, as Julie Stone Peters argues, have limited the interdisciplinary promise of "law and literature" by perpetually casting the relationship as some version of that between law and life, rule and exception, legal formalism and a more ample justice.1 My book looks to jurisdiction, on the one hand, to counter the idea of a discursive position beyond law, not least because jurisdiction to one or another jurisdiction was in fact the source of those historical rights and privileges that together constituted a free national or civic identity.2 On the other hand, I am interested in early jurisdiction as an inherently complex rather than simple reality, as one symbol of the possibility of finding within law the mobility that, subject as we are to a narrowed conception of sovereignty, we may too easily locate only in the phantasm of a "life" beyond law.

An uncontroversial historical premise of this book is that English law presented itself to Tudor and Jacobean culture less as a given whole than as, still, a system of shifting jurisdictional realities. Charles Gray, in his procedural history of the judicial writ of prohibition (with which the central common-law courts exercised control over cases being heard in other tribunals), usefully differentiates between two kinds of jurisdictional complexity relevant to early modern law. First, in addition to the central courts of King's Bench and Common Pleas (and to a lesser extent the Exchequer), there was "a considerable distribution of common law jurisdiction among lesser tribunals"; because this was a hierarchical complexity within the common law, however, there were "no serious and persistent problems about such courts' jurisdiction." More significantly for the history he traces, English law also included an array of non-common-law tribunals, including the ecclesiastical courts, equity courts, and High Court of the Admiralty, all of these having, in relation to matters within their purview, "power to compel attendance and apply sanctions as against all the King's subjects."3 Because they administered law that was doctrinally and procedurally distinct from common law, and because they were staffed by civilians (university-trained lawyers whose expertise in Roman civil and canon law distinguished them from the common lawyers trained at the Inns of Court), these tribunals were the chief locus of jurisdictional tension in England.

From a perspective internal to law, neither of the two species of complexity described by Gray is of any necessary theoretical interest. All authority operates within bounds, and if early modern English law was a heterogeneous field—comprising, among others, the extended system of common-law courts and ecclesiastical courts, the conciliar and equity courts, Duchy courts, Admiralty courts, municipal courts, guild courts, manorial courts, and market courts—it is certainly the case that the various jurisdictions functioned more or less well by functioning more or less together. In this sense, jurisdictional heterogeneity can be understood as a theoretical given, the unremarkable expression of the law's historical evolution, of differences in professional expertise among classes of lawyers, and of the practical realities of administering the law. Accordingly, the limitation of jurisdictional venue in light of the legal matter at hand (or equally a client's choice to follow one or another available jurisdictional venue for reasons of strategy or expediency) could well express a relatively flat complexity in the experience of law, with no attendant apprehension of a relation between venue and legal norm.4

And yet administration is not only a reflective cultural phenomenon, but also a productive one; venue shopping is the less theoretical part of the story. The major value of jurisdiction as an object for cultural analysis is that, as category and practice, jurisdiction identifies authority as power produced under the administrative recognition of the geographical or conceptual limits that exactly order it as authority. Jurisdiction amounts to the delimitation of a sphere—spatial (state, city, or manor; domestic, maritime, or foreign), temporal (proximate or immemorial past; regular or market days), or generic (matters spiritual or matters temporal; promise or debt)—that is the precondition for the juridical as such, for the very capacity of the law to come into effect. In relation to jurisdiction understood as that kind of conceptual object, the boundaries between the common law and other English tribunals—the internal boundaries that have been of most interest to historians of English law—can usefully be placed in relation to the more basic but also, technically speaking, less contestable jurisdictional boundaries between different national or sovereign spaces. Of particular interest to me here are the boundaries separating England from Ireland and France—places that for historical, social, and political reasons turn out, with an unsteadiness I take to be paradigmatic of jurisdictional discourse generally, to matter substantially for the internal configuration of the common law. In ways that demand both an inward and outward critical glance, law is inherently a jurisdictional project. Jurisdiction merits the attention of cultural historians and political theorists alike because it belongs to a realm of administrative distribution and organization responsible for reproducing law as a stable form.

Within this dynamic, the literary engagement with early modern jurisdiction becomes exemplary, not (according to a familiar historicist model)
because literature supports or resists particular developments in Tudor and Stuart law and governance, but because it is implicated in the same process of shaping unruly practice for which jurisdiction itself stands. In this sense, jurisdiction must be seen as a principle of analysis more than a literary theme or topic per se. Technically, the category of “jurisdictional law" is most coherent as an abstraction upward from a sphere of substantive law when the latter confronts, in practice, the question of its competence over a given case. Correspondingly, the fictions analyzed in this book look to legal vocabularies pertaining to rather different areas of law (including land law, family law, ecclesiastical law, constitutional law, and early international law) and to a wide array of legal scenes and problematics, including bureaucratic feudalism (chapter 1), the concept of equity and the conflict between church and state (chapter 2), the problem for English law of Ireland and France (chapters 3 and 4), and the peculiarly disruptive legalities of the ocean and mercantile city (chapters 5 and 6). If my texts do not share a single topic as legal topics are most often defined (for example, treason, slander, tenure, inheritance, debt, illegitimacy), that is a response to the status of jurisdiction itself. What unites my texts as more than a series of historical engagements with specific legal-jurisdictional events is their shared interest in the impact of the legal threshold on the constitution and configuration of meaning. A century of English literature is more intimately engaged with technical aspects of law than has been understood. (And it is worth noting, anecdotesally, that among my authors Skelton, More, and Spenser all had highly charged personal experiences of jurisdictional conflict, whether at Westminster or in Ireland.)

The texts I consider provide an intensified apprehension of the law—where the status of its norms is most under pressure. Even if jurisdiction is already a principle of distribution that dramatizes the law’s operations from within, still it is the fictive encounter with that principle that brings the drama to light and makes patent, also for the jurist, the always emergent law qua administrative reality. I take as theoretically full, and as pertinent to literature’s engagement with law, the definition of jurisdiction offered by the English civil servant. John Cowell in his 1607 legal dictionary, The Interpreter. "Jurisdiction," he writes, "is a dignity which a man hath by a power to doe Justice in causes of complaint made before him." To have jurisdiction is to have "a power to do justice," and in the indefinite article I hear the force of a term of art that remains open to greater or lesser degrees of rationalization: a power, because it is, conventionally, a power among others, and because, as such, it entails the fundamental juridical dynamic by which the distribution of a given authority both stabilizes and makes contestable that authority’s norms.

The Jurisdictional Norm

I will suggest in my introduction that the concept of jurisdiction allows for a productive historical perspective on legal ideology and the constitution of the state. Here I want to highlight its even more fundamental importance for the theoretical description of normativity. Jurisdiction makes visible a governing and productive instability in the law, both because a legal norm that emerges within a heterogeneous field can only be provisionally singular, and because jurisdiction marks any norm whatsoever as the recursive expression of an
ongoing, practical processing of disorder. For this reason, jurisdiction is more deeply implicated than has been understood in recent political-philosophical discussions of normativity in relation to the impossibility of grounding the juridical order within itself.

In his highly influential essay “Force of Law,” Jacques Derrida uses Walter Benjamin’s distinction between the positing violence that inaugurates law and the preserving violence that sustains it to describe the groundlessness of law, the purely “mythical foundation of authority” at the law’s discursive limit and “its very performative power.” As opposed to this vertical account of a juridical norm deconstructively in search of its origin, my book approaches the problem horizontally, in terms of the activity of law that engenders jurisdiction as a virtual proposition: virtual in the double sense that jurisdiction can be said to have force (Lat. virtus) but as an effect more than substantially. In countering Derrida’s model deconstruction of law’s legitimacy, I am partly following Giorgio Agamben, who in a brief critique of “Force of Law” suggests that Derrida’s description of law’s impossibility substitutes one paradox for another. This latter and more urgent paradox that for Agamben structures normativity is the root codependence of norm and exception, a dynamic according to which sovereign power emerges at the limit, or within the zone, between the juridical order and its own suspension. My account of law differs from Agamben’s by focusing on jurisdiction rather than sovereignty—this for a historical period in which, certainly, the question of indivisible sovereignty was a matter of debate and concern. For this reason I want to pause briefly over the terms of his argument so as to suggest the implications of my apparent shift to the minor key.

In describing the production of sovereignty at the boundary separating juridical life from the bare life that it opposes, Agamben means to refine Foucault’s attempt, in his late writings, to understand the encounter of two regimes of power that are theoretically distinct even if not fully separable historically: the juridical-political regime described by sovereignty, and the field described by the disciplinary and biopolitical technologies of domination exercised on the body. Corresponding to this historical focus on nonjuridical life, Foucault insists methodologically that only by looking past the “the old right of sovereignty” will it be possible to identify, in turn, an elusive “new right that is both antisciplinary and emancipated from the principle of sovereignty.”

As Agamben positions himself in relation to this project, the analysis of the juridical exception aims to identify, as the core of sovereignty, the “point of intersection between the juridico-institutional and the biopolitical models of power” as Foucault described them. In contrast to Foucault’s desire to move past the horizon of sovereignty, that is, Agamben reconceptualizes sovereignty by identifying within its structure the place where the two Foucauldian regimes fold into one another. To do this, Agamben extends Carl Schmitt’s definition of the sovereign as the one who decides on the exception (the suspension of the legal order expressive of the juridical norm). He defines the state of exception as a topological “zone of indifference” (zona di indifferenza) that, while “neither external nor internal to the juridical order,” in fact produces the possibility of legal order. At the political limit that separates political life from bare life, law constitutes itself in the dialectic between “two heterogeneous yet coordinated elements: one that is normative and juridical in the strict sense (which we can for convenience inscribe under the rubric potestas) and one that is anomic and metajuridical (which we can call by the name auctoritas).” In this way, Agamben argues, the central distinction underwriting sovereignty emerges from the juridical inclusion of the bare life that in Foucault’s account of biopolitics lies beyond the juridical and sovereign order as such: “the inclusion of bare life in the political realm constitutes the original—if concealed—nucleus of sovereign power,” Agamben explains. “It can even be said that the production of a biopolitical body is the original activity of sovereign power. In this sense, biopolitics is at least as old as the sovereign exception.”

To be sure, the Foucauldian threshold, redescribed by Agamben as generative both of law and of the excluded life form on which sovereignty depends, is far removed from the threshold between complementary areas of judicial competence, which is the legal focus of my book. Indeed, it is notable that neither Foucault nor Agamben (nor Derrida) finds the category of jurisdiction useful for their critical analyses of normative structures. The reason for this is not hard to find: as the infrastructure of the juridical order, jurisdiction is already inside the discourse and technology that critical genealogy means to count; already captive, one might say, to the order past whose horizon Foucault looks for the shape of a nondisciplinary and nonsovereign power. This book argues that law nevertheless has something to contribute to political theory; that, although jurisdiction belongs to the law in the sense of defining its operations, it remains a powerful index of just how unstable those operations are, and as such constitutes a limit within the law where critique does become imaginable. Nothing is more telling in this regard than the fact that, as the legal scholar Richard T. Ford points out, jurisdictional disputes and ambiguities continue even today to be a source of much “concern and embarrassment” for the law. For the law functions by keeping the source of its authority in fixed view as, insistently, the merely technical (and for that reason discursively unassailable) image of its own jurisdictional scope and operation.
Jurisdiction obliquely encounters the impossibility of grounding the juridical norm by remolding the problem and projecting it onto the manageable—that is, quantifiable—axis of competence or scope. The historian of medieval law Pietro Costa seems to me to get to the heart of the matter in his indispensable survey of medieval *iusdictio* as a symbol for a complex process of power.22 Most useful in the present context is Costa’s account of jurisdiction as it relates to the production of the legal norm in the twelfth-century writings of the earliest scholars (glossators) of the recently rediscovered Roman law. According to Paolo Grossi’s account of the medieval juridical mentality, this was a moment in which legal activity, at a certain remove from politics, could be understood always to be an interpretation of a preexisting and coherent order. For that reason, Grossi explains, jurisdiction was a speaking of the law (*iurisdictio*) in the sense that “speaking the law means presupposing it as already created and formed, means rendering it explicit, making it manifest, applying it, not creating it.”23 In excess of this fundamental point, however, Costa’s insight is that jurisdiction simultaneously functioned to produce law in the sense of giving normative formality to the informal equity (*aequitas rudis*) that, as a sustaining principle of ideal justice, chiefly embodied the preexisting order to which interpretation oriented itself.24 This creative process (creative in the sense of a productive activity, not a creation *ex nihilo*) Costa encapsulates in his description of the emperor’s role as judge: “The emperor serves (informal) equity by interpreting it and so translating it into norm.”25 As a speaking of the law, as interpretation, jurisdiction thus grounds the activity of producing normative meaning: “The genesis of the norm passes through *iusdictio*… At issue was not a created norm, but a gathered norm, reflected from the world’s order in a mirror (*iusdictio*) possessed preeminently by the emperor. *Iusdictio* is the symbolic locus of a norm that has received, not modified, the given reality… *Iusdictio* is nothing other than the place in which an informal given comes to be formalized: not changed, but expressed, not created, but mirrored back.”26 Most compelling in this description of what I would term the “jurisdictional norm” is its specification of jurisdiction’s force at so comprehensive a level. Although Costa is writing of a particular, and very early, moment in the history of Western jurisdiction, his analysis has broad theoretical implications.

Quite independent of the theological order that underpins the medieval operation of jurisdiction, Costa’s description of the historical concept draws an absolute distinction between the activities of creation and of other kinds of making (including interpretation and its functional institution of equity as norm). As his metaphor of the mirror implies, jurisdiction is dependent upon its lateral operation to produce the normative order it expresses. Jurisdiction is the language in which, all but impossibly, a juridical order enforces the world.27 Allowing Costa’s analysis of jurisdiction as a hierarchical process of power descending from the emperor to penetrate even the narrowest and most technical sense of the term, I would put the theoretical point in this way: jurisdiction is the principle, integral to the structure of law, through which the law, as an expression of its order and limits, projects an authority that, whatever its origin, needs functionally no other ground. At the jurisdictional threshold, the law speaks to itself, and in a mirror *reproduces* as administration the juridical order that it simultaneously *produces* as the implicit image back of the form I have called the jurisdictional norm.

My book looks to jurisdiction, then, partly to resist the terms of a conversation about sovereignty that, by excluding jurisdiction as a contributing term, has made sovereignty seem more stable than it is, even in so sophisticated an account of structure as that which Agamben gives. The problem to my mind is that an exclusive focus on sovereignty tends to collapse into a question of origins a conversation that might take place, instead, about the possible relations between the juridical *given*—the necessary conditions for juridical activity—and the juridical *ground*, or supporting frame and symbols for that activity. To put this differently, I contend that jurisdiction helps counter the almost irresistible tendency to make sovereignty have meaning only as political theology, by making it legible, instead, as the real effect of a more mundane process of administrative distribution and management. As the central expression of law’s grounding activity, jurisdiction must not be construed as simply another, and minor, name for the limit that separates an already sovereign order from what lies beyond it. It is, rather, the substance of the limit, that through which juridical power, in confronting its own inefficacies, fantasizes itself as sovereignty. In this sense, jurisdiction cannot be fully described from within the juridical conception of power it describes. It belongs instead, I am arguing, to the moment of invention that, in Foucault’s terms, allows a nonjuridical regime to issue from the juridical, or to that moment, in Agamben’s terms, that folds the zone of indifferentiation (*indifferenza*) into the juridical order precisely as sovereignty rather than indistinction. There is no sovereignty that is not enacted in the register of jurisdiction.

Two historical points are important to note here. First, the constitution of jurisdiction changes with the shift from sovereign interest to the more modern regimes of power that Foucault identifies. Second, and more pertinently for the history traced in this book, those later regimes expose within juridical sovereignty’s capacity to index its own forms a more complex process of
administration and projection than would appear from the law's naturalizing account of jurisdictional order. Jurisdiction half belongs to the law as to a discipline capable, in Foucault's terms, of generating a discourse not of "a juridical rule derived from sovereignty, but a discourse about a natural rule, or in other words a norm." As the primary symbol for the production of legal meaning, jurisdiction works to naturalize the particular juridical rule into norm. This is a process that absorbs the limit at which power begins to cease to function juridically into a fantasy of technical comprehensiveness, which ends by erasing the distinction between rule and norm or by allowing the rule practically to operate as norm.

As the product of a jurisdictional reality that is the virtual proposition and effect of law's operations, the technically comprehended norm is itself virtual, spectral in a way that neither Foucault's nor Agamben's divisions fully allow: present, natural, legally efficacious, but also haunted by the image of its own origins in a projected complex of possible beginnings. By exploring the dream of jurisdiction at the place where that category comes under technical pressure, this book thus takes on some of the work that Foucault imagines against disciplinarity and sovereignty, albeit on the wrong side of his line: namely, from within the juridical regime, rather than from the sacred space beyond the walls of that city which Foucault calls "sovereignty" and Agamben, "law." Jurisdiction is an inherent, grounding instability within the configuration of juridical authority. The literary investigation of jurisdictional normativity fits itself to this instability, and this haunting. As a power to do justice in a given case and within a particular sphere, jurisdiction paradoxically takes its critical force, as do the early modern literary texts that formally engage it, from the vistas onto which, already and again, it opens the law.

Jurisdiction may seem an odd category to find at the center of a book of literary history and criticism. Indeed, it is an odd category generally, since it so often comes to function invisibly, under the legal conceptual maps that help order experience. But it is this quality in jurisdiction that has drawn my attention to it as a productive site for thinking about the law and its relation to humanistic culture. As concepts in law and cultural history, jurisdiction and literature are similarly evasive analytical objects. Jurisdiction belongs to law less as a substantive problem for jurisprudential investigation than as the principle and force that makes the investigation possible but which, for that reason, rarely indexes its own potential as an order at law: either we ignore it and get on with the case at hand or we discover, usually at the hands of the legal expert, that the arcana of jurisdiction somehow, here or now, preempt the possibility of justice in the case at hand. Literature, for its part, belongs to a given historical culture as part and parcel of that culture, but also as a force that might disrupt the culture's relation to itself. For this reason, the "literary" (the apprehension of what counts as literature, what boundaries produce art) might also be said to be at once central and all but invisible. As part of that general dynamic, literary texts can seem temporally out of joint not only because texts produced for one culture or one moment are constantly being refashioned for others, but also because they offer ways of attending to experience that expose possibilities in the operative historical forms—social, political, and cultural—which they subject to analysis.

"We study change because we are changeable," Arnaldo Momigliano writes. A paradigmatic instance of that ratio at the heart of historiographic practice would seem to be the study exactly of the forms, at
Introduction

once stable and changeable, that so often are the locus of change as well as its index. A governing thought in this book is that jurisdiction and literature both evade easy analysis because they open the culture in which they function onto more complex orders than those through which they seem to do their work. In the following chapters, I venture to show how deeply engaged early modern literature was with the technical production of the legal order, and to define the ways in which jurisdictional topics provoked a metacritical perspective on the management of legal meaning and literary meaning both.

For an initial survey of the scope of this primary relationship between jurisdiction and its literary-fictional analysis, and as an example of my approach to the literary excavation and interrogation of legal form, I turn here to a particular case, a poem written toward the beginning of the historical period treated in this book. In my prologue, I have outlined jurisdiction's importance for the theoretical understanding of the juridical norm. In this more historically oriented introduction, I show the implications of jurisdiction for our understanding of both the temporal logic of legal ideology and the early constitution of the state, and for our very account of the literary and historical object.

THE POEM IN A JURISDICTIONAL FIELD

Shortly after his imprisonment in the Tower in the late 1530s or early 1540s, banished from Henry VIII's court and in internal exile on his estate at Allington in Kent, Sir Thomas Wyatt wrote a verse letter to his friend John Poyntz, putatively in answer to an inquiry over the reasons for his absence from life at the political center:

My owne John poyntz sis ye delight to know
the causs why that homeward I me drawe
and ile the presse of courtiers where soo they goo
Rathar then to lyve thrall under the awe
of lordly lackes wrappid within my cloke
to will and lust lerning to set a lawe
It is not for bakewse I skorne or make
the powar of them, to whome fortune hath lent
charge over us, of Right to strike the stroke,
But true it is, that I have allways mast
lesse to estime them then the comon sort
off owtward thinges that Juge in their intent.

An imitation in the Horatian mode of Luigi Alemanni's tenth satire, and reprinted in Richard Tottel's 1557 miscellany under the title "Of the Courtiers Life Written to John Poins," the poem entered the canon as both a virulent attack on court behavior (as catalogued in the main body of the poem) and an exaggerated performance of Wyatt's personal and political style: the stance of one committed to inward virtue and contemptuous both of "owtward" judgment and of the linguistic, social, and ethical distortions to which the courtier subjects himself.

Adjusting the ethical position from which the poet proclaims his own independence of mind, furthermore, is the suggestion, right at the center of Wyatt's critique and his celebration of rural leisure, that there is something a little paltry in the choice to distance himself from a life of action, especially since that choice seems not to be his at all:

this maketh me at home to houte and to hawke
and in fowle weder at my booke to sitt
In frost and snowe then with my bow to stawke
no man doeth marke where so I ride or goo
in lusty les at libertie I walke
And of these newes I feel not wele nor woo
sauf that a clogg doeth hang yet at my hele
no force for that, for it is ordered so
That I may lepe boeth hedge and dike full well.

An addition to the source poem in Alemanni, the irritant clog that hangs at Wyatt's heel might well be the mud that clings to one at leisure on his own soil. It is also the wooden block attached to the leg to restrict a prisoner's movement, and, as H. A. Mason argued, it almost certainly alludes to the king's continuing restriction of Wyatt's freedom. The passage registers Wyatt's characteristically uneasy engagement with the structures of Tudor power, notably echoing, for example, the poem's programmatic opening gesture, in which Wyatt insistently acknowledges the authority of those to whom fortune has given power over him, so as then to insist, with equal vehemence, that he does not so fully esteem them as others do (ll. 7-12). In the later passage, Wyatt's play of attachment and detachment is effected in the enjambment between lines 87 and 88, a device that allows the reader to hear in the poet a double reaction to his exile. The restrictive clog is of no force, first, in the
ironic sense that, as something “ordered so,” it is the simple effect of the royal or judicial will, in which, as obedient subject, Wyatt simply acquiesces: “no force for that, for it is ordered so.” Second, as one reads past the line-break, the clog is of no force because the restriction that would seem to forestall movement is itself so ordered as to define the very terms in which Wyatt counters the interdiction, allowing him to move, across hedge and dike, in the ways that most matter to his sense of his own liberty: “for it is ordered so / That I may lepe boeth hedge and dike full well.”

This “order” that makes the clog available to two complementary narratives dynamically structures Wyatt’s weighing of his confinement and liberty, as it gives force both to the power the poem makes its theme and to the poetic stance toward that power. As this book will argue, the best word to describe the order exemplified here is neither punishment nor discipline nor sovereignty, but jurisdiction, a familiar term for the juridical administration of authority and for the scope of a particular authority. It is also, as the historian of medieval law Pietro Costa minutely unfolds for a somewhat earlier European context, the controlling symbol generally for a shifting and hierarchical “process of power,” one whose life is shaped by the play between authority understood as a static form and authority understood as a processual form: “Jurisdiction is at once the symbol of an ordered power and of the process whereby society orders itself in relation to the one in power [Jurisdiction e simbolo iste del potere ordinato e dell’ordinarsi della società al potente].” This is a sentence to pause over. Like the order of the modest clog that qualifies Wyatt’s movement, jurisdiction can be construed globally and locally, as the order power takes and as the topographical expression of that order (here/there; this/that); as the image of an already efficacious order and simultaneously the topological effect that is an order’s coming so to express itself. In Wyatt’s poem, the clog symbolizes a given power’s givens and reproduces a social world, Wyatt’s, in orientation to that power; as juridical matter, moreover, it divides space by limiting movement to a here and not there, even as it folds the speaker’s body into the real but not fully coherent expression of that jurisdictional division.

What interests me for the moment is that, from the poem’s opening lines, this order should be defined in territorial terms. Poyntz is said to wonder why Wyatt has returned home, in flight from one space to another. And just as Wyatt’s sense of himself is powerfully the sense he has of his home in Kent, a principal expression of the king’s power is the capacity to order space and control the subject’s movement in space, such that Wyatt must feel the force of the king’s clogging presence, paradoxically, at the very moment of moving freely within the bounds of his estate. Conversely, when Wyatt asserts his continuous liberty, he expresses his authority as the absence of any person to “marke” the lord’s ride or walk over his land. That verb denotes both a watching and the technological work of plotting and setting out boundaries on land (OED v. l.1), with the effect that the poet’s resistance (always within bounds, of course) takes the form of a prodigiously itinerant relationship to land, alternative to the relationship instituted by the definitions (whether topographic, cartographic, or legal) that underwrite the king’s capacity to confine his subject and to say he has confined him.

The poem’s attention to the competing claims of overlapping territorial authorities has a logical historical reference to the consolidation of state power undertaken by the first Tudors and extended across Elizabeth’s long reign. As the poem begins to suggest, this process of administrative centralization, not fully straightforward in its organization of space, was, abstractly conceived, even more complicated in its re-encoding of various fiscal, legal, and cultural subjectivities. Such a historical-political formulation as this, however, fails to address the delicacy of Wyatt’s theoretical apprehension that, according to the very terms of territorialization, the exercise of centralized power can never attain the homogeneity it seeks. Certainly, the authority that emerges in the poem as an alternative to the centralizing fantasy might be understood as a residual form—a traditional way for Wyatt to be on the land, say, that the state or king cannot fully disrupt. But what is most striking in the poem is the sense that it is the attempt itself to organize life through the restricting definition of boundaries that activates the other experience of the threshold, giving meaning to Wyatt’s alternative account of his home and land not as something that was fully in place before, but rather as a political form emergent toward a dominant political form that is itself emerging. Kent is local, in other words, because centralization invents it as such. Wyatt’s movement is free because the king’s restriction of the subject’s movement and liberty makes that proposition available and audible as a political and affective reality.

So understood, even the concept of a territorial alternative to the dominant construction of royal power, as useful as it may be for describing the limits of centralization, fails to identify what the poem seems finally to be pursuing, which might instead be thought of as a ripple produced within power as an effect of its implementation in time. It follows that the liberty Wyatt experiences on his estate is similarly contested, an aspect of the structural dynamic that finds temporal and affective expression in the poet’s statement, already alluded to, that “no man doeth marke where so I ride or goe” (l. 83, emphasis added), a sentiment that registers both Wyatt’s satisfaction in his
Introduction

liberty and a melancholic regret that the terms of his liberty should, against liberty, preclude the public encounter with which he has been familiar. 11

The conclusion of Wyatt’s poem gives another version of the complexity inhering in the hierarchical process of territorialization. Immediately following the claim that, in spite of the restrictive clog, he yet “may lepe boeth hedge and dike” on his estate, Wyatt turns from the opposition between central and local to that between alternative centers, national jurisdictions that, predictably enough, all measure up badly in relation to home. “I ame not now in Frantce to Judge the wyne/ with saffry sauce the delicates to fele,” Wyatt proclaims, here re-invoking his work as the king’s diplomat on the continent; “[n]or yet in spaigne, where oon must him inclyne,” nor in bestial “Flanuers,” nor, most happily, “where Christe is given in pray/ for mony poisen and christendom” institutes social identity according to commune but, in relation to home. (II. 89-99). In the context of the preceding lines, this passage registers, in addition to its fulsome nationalism, the complementary and precisely diplomatic observation that the state over which Henry VIII exercises his territorial power is itself bounded, and in the same way that Wyatt’s estate and status are circumscribed by the king’s and state’s fuller authority.

This layering of territorial realities explains why, when the resolution to Wyatt’s nationalist comparison comes, it is not happy England he names but, according to a proverbial phrasing, two alternatives to that national space: “But here I ame in Kent and christendome among the muses where I rede and ryme” (ll. 100-102). Rhetorically, we have in the first clause a rather subtle zeugma, in which (near) unlikes are yoked together through a shared preposition. As an answer to the innovative operation of Tudor territorial power, the phrase “Kent and christendom” institutes social identity according to two jurisdictional relationships that neither contradict nor fully conform to the one constituted for Wyatt as the extension of the king’s English sovereignty. “Kent” insists, as I have already suggested, on the local identity that the process of centralization newly charges. “Christendom” works somewhat differently and with even greater effect. Insofar as the concept encompasses diverse territories, it disrupts the operative fantasy that English borders are fully real or fully constitutive of the real. Moreover, in announcing a spiritual unity (hence the zeugma), it disrupts the practice of territorialization itself, not by circumventing or suppressing the scope of temporal law, but rather by remembering the scope of canon law, the second of the two textual legacies (along with civil law) that together constituted the ins commune and grounded the western European legal tradition. 12 To be sure, this discursive move to include the ecclesia in the definition of English space is not the same as Sir Thomas More’s rather more forceful insistence, a few years earlier, that Christendom must be a jurisdictional reality also for England. From within a Protestant ethos and as part of a different jurisdictional event, however, Wyatt can be understood similarly to be invoking an image of Christendom as a functional order against which the claims of the centralizing Tudor state are yet measurable.

Wyatt’s attention to false Rome and, then, an authentic Christendom sets up his most surprising and polemical meditation on the territorial structure of the power to which he has been subjected. The poem ends as an invitation—a plea, even, disguised as something more casual—that Poyntz come for a visit. Registering in this way the limits of the pleasure he finds at home, Wyatt also uses the terms of the invitation to counter the state’s aggression by unsettling the terms that underlie its practice: “Where if thou list my poynz for to com/ thou shalt be Judge how I do spend my tyne” (ll. 103-4). Where the poem has followed the state in expressing authority as a species of power over territory, it thrusts forward as its final word a different category altogether, proposing that the fitting judgment of Wyatt’s life and practice will take place not within the order of space, but within the order of time. As familiar as the conceptual move to have time trump space might seem within, say, an Augustinian or Christian-Stoic philosophical framework, the gesture must startle us as a legal move. By remembering time in a poem whose legal-rhetorical argument is structured as an opposition between places and according to the idea of competing, complementary, and overlapping jurisdictions, Wyatt institutes time, too, as a jurisdictional order, positing hypothetically that an authority over time might be authority in the same way as that over space.

How can we understand the status of this peculiar order? First, the temporal might be thought of as a jurisdiction insofar as its production is dialectically coordinate with an intensified territoriality, whose increased visibility has made time available as an order. Time is not for that reason, however, merely a metaphorical order, but one that the law creates as supplement, a by-product of its own development and of the changing shape of its efficiencies. Pursuing its own ends, we might say, the law will turn out also to predict alternatives to its own ways of ordering experience. Second, time is presented as the order that disrupts the law’s normative claims from within, so that “my tyne” operates at the end of the poem as a reminder that the law, too, has a practical life that the image of a coherently efficacious law does not and cannot erase. Time, here, is not so much an alternative order to law as the principle according to which the law, which works to place Wyatt as legal subject otherwise than according
to his desire, turns out itself to be out of place, not yet or ever quite where it needs practically to be. In its attention to time, that is, the poem works not as an exposé of the law that collapses its normative claims, but rather as an analytic principle that makes visible the incompleteness of an administrative reality that is always only unfolding toward the image it will turn out to have (and even to have had) of itself.

However strange a temporal jurisdiction must seem, then, time points in Wyatt’s poem away from mystification and toward the utterordinariness of law—a system that in part functions by coming to seem more than ordinary. We can cast Wyatt’s move to remember time within the order of territoriality as a particularly potent element in the poem’s figuration of a local or minor jurisdiction as against the jurisdictional regime or imperium of Crown and Parliament. In retreating from the court to Kent, Wyatt has crossed between spaces that pertain differently to the developing common law, moving as he does from the place of the central, royal law into a place of custom (including, most famously, gavelkind, a mode of tenure and partitive inheritance that, in opposition to common-law primogeniture, was all but synonymous with Kentish law). As the rustic space of the leges terrae, the customary usages belonging to the so-called immemorial law (a notion partly invented by the common lawyers to authorize the status of a rationalized central law), Kent does not embody law outside common law, but rather a minor common law within the major one. For royal law grew exactly by absorbing local customs, sometimes voiding them, but most often annexing and internalizing them, acknowledging a given custom so as to control it. Abstractly conceived, this process at the heart of legal centralization means that the time of the dominant law, where historical present meets present history, cannot be single, but is knotted, a complex of temporalities irreducible to one another. Even when acknowledged and controlled by the center, the local will stand apart as a conceptually distinct jurisdiction and temporality, at once constitutive and disruptive of the flatter time of royal law. As I read Wyatt, time enters his poem as a jurisdictional complexity in relation to Crown territoriality because jurisdictional complexity, such as that linking Kent and Westminster, is the legal phenomenon that most powerfully makes the knotted, historical, practical time of the always changing law present to the law.

To take the implications of the poem’s disruption of legal order in another direction, I would argue that the muses are with Wyatt in “Kent” for much the same reason as time is. Poetic authority, understood and repeatedly discovered as such, can also be read as the by-product of a legal discourse to which it does not fully belong, but whose changing shape makes its different authority legible, if only imperfectly coherent. In the poem, Wyatt gestures toward this dynamic by spatializing poetry as a sphere of production. Finding himself among “the muses where I rede and ryme” (l. 101) means being in a local and local-temporal relationship to them. That representation of literary reception and production is thus in tension with the similarly expressive relationship that Wyatt has disavowed a few lines earlier in his rejection of Spain, “where oon must him inclyne / rather then to be owterweltly to seme / I rnedill not with wittes that be so fyne” (ll. 91–93). The posture of easy conversation with the muses answers this earlier scene, opposing the style of Wyatt’s attitude toward literary production to the inclination that, in Spain, doubly disfigures the subject, both as a physical sign of subjection to (absolute) power and as the specific psychological inclination toward seeming rather than being. As opposed to this mingling with foreign wits that are too “fyne” (refined) to weigh in as substantial in the sense that a good English “pownde of witt” is (l. 79), when Wyatt is “among the muses” he is in a place and scene that not only permits reading and rhyming, but is defined by those activities. For Wyatt to sit “at my booke” (l. 81, emphasis added) equates to his being “in France,” “in Spaine,” or “at Rome”; like these territorial states, the book is a place of action and a place for judgment according to alternatively comprehensive norms. Even if Wyatt represents his reading and rhyming, in Seth Lerer’s phrase, as “private poetic efforts,” the point is that this privacy should emerge, in the manner of the state’s order, also as a jurisdictional reality, the temporal-spatial projection of an activity into and as a sphere of judgment.

In this light, we can ask how the clog on Wyatt’s heel, which orders his free walking across his estate, might be related to the metrical foot that literally measures or “marks” out the space of the poem. I pose this question not for the sake of wordplay, but rather to pause briefly over its methodological implications. If, as part of our evaluation of Wyatt’s text in relation to the culture that produced it, we allow the poetic foot and political heel to belong to the same body, we will be saying only that it matters for our history that Wyatt responded to the territorial operation of royal authority upon him by writing a poem, and that the order of the poem—the specific range of its competence—has a central place in the game of orders instituted by the king and taken up by the subject. Wyatt’s poetry, in other words, must be seen as a reaction to, and action within, the jurisdictional scene it thematizes. Helping to specify this relation between poetic competence and political scope is the similarly multivalent force of the “causes” that Poyntz asks after at the poem’s beginning. This is the term that both structures the poem’s extended argument against the court’s deformations and produces, as poetic
privacy, Wyatt’s hyperbolic rejection of the court’s norms in favor of the
country’s: “I cannot I, no no it will not be / this is the cause . . . ” (ll. 76–77).
This “cause,” then, is Wyatt’s politico-personal motive for his retreat to Kent.
But it is also his story, “cause” in the sense of causa, the term used in classical
rhetoric for the hypothesis or set of circumstances from which a speech is
constructed for judgment.\textsuperscript{17} \textit{Causa} is also the substance of the argument
itself, such that the author of \textit{Ad Herennium} can speak of the forensic or
epideictic or deliberative cause that rhetorical invention helps put in order
(3.1.1); a “cause” therefore in the still familiar legal sense of a “matter for
consideration” or “case.”\textsuperscript{18} By extension into the literary field, finally, the
rhetorical cause is the outline of a plot and even the plot itself.\textsuperscript{19} Noting this
range of meanings in the term, we can see how tightly poetry and politics
are intertwined in the text, since the motive Wyatt presents as part of a
political defense (the “causse why that homeward I me drawe”) is the matter
and hypothesis that the poem subjects to judgment in the very form of the
poem.\textsuperscript{20} The flexibility of the rhetorical category thus helps Wyatt make
the poem available to judgment not only according to courtly reasoning, but also
according to those norms proper to it as poetic speech: proper, not because
they escape political and legal discourse, or merely analogize it, but because,
in an unpredictably ramifying jurisdictional field, they project a competence
that, in turn, must look to them for authorization. Wyatt’s “causes” name a
realm of authority that is the posterior effect of an activity’s coming to
constitute a sphere.

For this dynamic, time again is of the essence, since, as we have seen, the
judgment of the legal and rhetorical “cause” that the poem unfolds is a judgment
in time and of time: “thou shalt be judge how I do spend my tyme.”
This time is the duration of a life used in one way or another, for social good
or ill. But “tyme” is also the basic unit of metrical measurement (OED sb.10).
Lerer rightly points out that for Wyatt, here, to spend time is “not just to take
time reading and writing, but actually to make meters.”\textsuperscript{21} Spending becomes
especially charged as a “metaphor for making meter,” he further shows, in
the Parker Manuscript version of the poem, where the promise to Poyntz reads as “Thow shalt be judge how I dispense my tyme,” a Chaucerian
allusion to Harry Bailey’s accusation against Geoffrey that in his tale of Sir
Thopas “thou dost noght elles but despentes tyme.” In the Chaucerian
tradition of Tudor courtiership that Lerer charts more generally, Wyatt’s
satire thus becomes a defense of poetry that justifies “the spending, or the
dispending, of time.” Generally, time’s place in the poem means that Poyntz
is being asked, along two axes, to judge, first, whether reading and rhyming
are good ways to expend one’s time in the political world, and, second, whether
Wyatt’s spent rhythms specifically measure up, according now to some
norm of metrical distribution. But the poem’s most striking expression of the
peculiarly nuanced loyal contention that Wyatt invents is that he should bind
his tale together, as complements, discourses that may seem to have been posited
only as alternatives. For in light of the poem’s descriptive extension of the
field of judgment, spending time in a poet’s way becomes directly political,
rather than only indirectly so, a distinct instance and sphere of administration
and distribution that is nevertheless cognate with the courtly administration
of life from which Wyatt retreats. Even as the poem deploys the traditional
division between the active and contemplative orders, there appears in time’s
relation to the cause of judgment another order underlying both. We can call
this last order jurisdiction, the principle in a political world to which poetry
also belongs that represents authority to itself as the effect of its management
and distribution in time and space.

\textbf{JURISDICTION AND CRITICAL PRACTICE}

I now step back from my reading of Wyatt’s poem to reflect briefly on the
preceding pages as critical work, since they exemplify my interest, apparent
across the book, in the cultural reaction to the configuration of power at the
jurisdictional threshold. They also reflect my sense that a close engagement
with literary texts can help us track for a particular historical moment the
cultural usefulness of the discovery that law is constituted, at limits at once
necessary and contestable, as the processing of an unruliness it cannot quite
put in order. If we treat the two parts of this summary reflection as one, we can
ask why so arcane a subject as jurisdiction might benefit from so differently
arcane an approach as close reading. This can be addressed in terms of my
claims in this book for the literary and the historical as categories of analysis.

In the study of law and literature, the status of the literary has been problematic for two reasons: first, because literature can so readily be seen merely
to reflect the law, understood as a repository of cultural forms whose central­
ity resides in their social and political instrumentality; second, because the
law, as a hermetic discipline protective of its rules of textual production and
interpretation, is so conservative in relation to what it takes to be
its social and political orbit. At its worst in practice, literary-legal interdisciplinarity might be fairly
emblematized as literature’s deference and the law’s wry smile.\textsuperscript{22} Jurisdiction
opens up a more interesting conversation by making law and literature differ­
ent conceptual objects in relation to one another. The literary texts that, like
Wyatt’s poem, have drawn my interest in this book all ponder their relationship to law, and they do so not least by zeroing in on jurisdiction as the locus of the law’s own most self-reflexive operations. In this regard, literature might be said to have a heuristic function. The literary is for me primarily a mode of attention, one made possible by opening a space that, like the space of law, is oriented toward an effect (though not necessarily an instrumental one). In offering close readings of texts as familiar as More’s Utopia, Spenser’s Faerie Queene, or Shakespeare’s Cymbeline, I am attending to literary fictions that themselves are attending to how the law, in turn, attends to its operations.

At the same time, literature does not function only heuristically. Wyatt’s poem is like the other texts I treat in that, as noninstrumental discourse, it engages and represents the law also by burrowing into forms and categories, such as territoriality, to reflect outward an intensified version of the work that, less audibly, such categories do at law. It is not easy to predict where and how a literary text’s orientation toward law will, critically, express itself as a meditation on the mechanics of legal authority (or of its literary counterparts). My method, consequently, has been to follow texts from within, listening for where their technical and nontechnical vocabularies may be charged by the juridical scene of which they are a part. This is not the equivalent of identifying and unfolding literary allusions to the law, even if such an allusion is often the starting point for analysis. Far from being a history of compelling literary reflections of a stable legal reality, my readings are primarily instances of slowed encounter with the complex discourse of law as that was shaped by the shifting effects of jurisdiction. As such, notably, a particular reading does not provide a template for the next one. Because jurisdiction is the book’s conceptual object without being, in any narrow sense, its exclusive theme, my readings are best imagined as open-ended engagements with jurisdiction’s different horizons. And this legal point is continuous with a literary one: I make no claim that either my readings or the texts that are their objects offer a universalizing account of literature’s relation to law. The chapters develop, each along its own trajectory, more local claims about how different kinds of literary production grappled with kinds of legal discourse and legal problems—always, however, in relation and in theoretical response to jurisdiction as a fundamental dynamic for the production of legal-cultural meaning.

Inside my approach is an implicit account, too, of the historical object. Among other things, this book of criticism might be thought of as a minor institutional history of an everyday, a history of legal routine seen through moments of deroutinization (though not of rupture). As such, my argument about jurisdiction resembles a social history of everyday practices that, in Jacques Rancière’s phrasing, follows “the barely perceptible movement that tore those activities from the order of routine to throw them into the universe of invention.”22 Far from being mere violations of routine, however, the jurisprudential encounters I am tracking are also subjective encounters with the law, cases legible, in Lauren Berlant’s terms, as epistemological events in law, marking the place where subjectivity and impersonality are indistinguishable.24 To adjudicate between the institutional and subjective objects that present themselves to the historical gaze, I employ jurisdiction as one symbol that pries open a hardening institutional reality to make it meaningfully available for subjective encounter. Rancière’s notion of his own historical practice as a “poetics of knowledge” is useful here: although my book is not a study, in that sense, “of the set of literary procedures by which a discourse [in my case, law] escapes literature, gives itself the status of a science, and signifies this status,” it shares with Rancière’s project an “interest in the rules according to which knowledge is written and read, is constituted as a specific genre of discourse.”25 What I resist in the account of his method, however, is the particular mode of privileging the literary as analytical ground, a foundational starting point for thought. Although I spend much time with the particulars of literary texts, and although literature does seem to me to offer a perspective on law’s processual life as productive as that offered by jurisdiction itself, my supposition is not that literature is a repository of procedures that either bestowed on law its privileged status as science or is able now to return the law to its discursive origins.26 Like law, literature is for me, rather, the space of an effect compelled by a temporality that (although alternative to that of legal routine) belongs to history, as history. In my readings of poetry’s and drama’s shifting encounters with law, literature does not detach to become an autonomous jurisdiction, except perhaps metaphorically. Whatever the apparent concession here, my point is thus to insist on poetry’s deep centrality to law, and not allow its claim to become only nontechnical. For the time of literature and the time of jurisdiction are, I think, similarly alive to the history of practical knowledge that is the law.27

By looking to literature for an intensified account of the practical dynamic through which the law itself emerges, this book presents literature fully as legal matter. The texts I analyze may seem theoretically modest, because essentially nonagonistic in their legal address. But by tracking how literary fictions engaged jurisdiction as the complex scene of the law’s own making, I am asking for a view of literature as having direct ethical purchase on law, by being a force for and in the law, and not only against it.
JURISDICTION AND LEGAL IDEOLOGY

If certain periods make more available than others the full force of the perception that law reproduces itself as jurisdiction, that is because the root liminality of a given law (and of its norms) becomes most visible when, historically, the law engages a novel question, one to which it has not been fitted, but to which, in response to a changing political or social reality, it must now fit itself: as when, for example, a central court comes under internal or external pressure to hear a matter that traditionally has belonged to another forum; or when a law developed in one country and for one people comes to be applied in and for another; or when, in the face of changing trade practices, a law that binds relationships on and of the land is required in some measure now to control the sea. In the context of sixteenth- and early seventeenth-century England, we can think of the attempts to extend the common law into ecclesiastical and equity jurisdictions, or to extend English law generally over colonial Ireland and over the North Sea fisheries and eastern trade routes. While legal and literary engagements with all such questions necessarily implicated England's status as a nation and empire, they did so chiefly as a problem of technical reason and administration, and thus in a register not exactly favored by recent, cultural historical discourse. A study like this one of how jurisdictional authority was imagined during the emergence of the administrative state cannot ignore the reality of ideology, but it can also usefully suggest how ideology itself might emerge, in a reversal of the usual logic of prior and posterior, as the artifact of technical practice.

In its attention to the law as an emergent system, this book departs from an account of legal ideology often given by literary historians. Although students of literature have proven able at troubling the idea of literature as a separate and coherent discursive field, they have often looked to the law of a given historical period as though it were already coherent, whether as a storehouse of categories and norms that the culture at large might re-present by absorbing or resisting them, or as a stable constitutional reality rather than a set of constitutional hypotheses. As I have been arguing, the category of jurisdiction troubles this version of how the law discovers and confirms its meanings. In an extended description and analysis of the ideological claims of jurisdiction, the legal scholar Richard T. Ford argues that "jurisdiction is itself a set of practices, not a preexisting thing in which practices occur or to which practices relate."

Ford takes as his starting point the covert operation of modern jurisdictions on social identity, and he locates the historical emergence of jurisdiction as a motor for ideology in the conjunction of cartographic technology and the administrative centralization of the state. Arguing that jurisdiction as it is now understood and practiced arose as a "tool" for instituting a modern subjectivity "amenable to a new and more comprehensive form of institutional knowledge, management and control," Ford describes this jurisdictional subjectivity as a new kind of status relationship, one invented, he proposes, just as other status relationships were being displaced, according to Henry Sumner Maine's classic thesis, in favor of contract relations.

This is a powerful account of jurisdictional ideology, and its clarity derives in part from its focus on territorial jurisdiction to the near exclusion of, say, a generic conceptual jurisdiction over a matter at law. Ford focuses the argument in this way, first, because territorial divisions instituted and conditioned the modern political and social identities he is interested in describing. Second, in contemporary parlance the territorial jurisdiction has become prototypical, in the sense that, even when a jurisdiction marks legal authority over a particular kind of question or thing, it will always, in Ford's formulation, "be defined by area": "An entity could, in theory, have authority over 'all oil, wherever it is found.' Such an entity would not be a jurisdiction but an authority of another kind. A jurisdiction is territorially defined."

If this last sentence is tautological as a statement about territorial jurisdiction, in the era of the nation-state it is nonetheless perfectly legible as a conceptual statement about the operation of jurisdiction generally. From a historical standpoint, however, and I think also from a theoretical one, the elevation of territoriality in the description of jurisdiction troublingly narrows the principle by substituting species for genus. In the past, as Ford himself knows, legal authority over a kind of question or thing was not always understood as being modeled on, or secondary to, a territorially defined authority. This notion is difficult for us to contemplate as meaningful, not only because of the relative solidity of our own territorial borders, but also because of the increasing distance of the ecclesiastical jurisdiction, with its special relation to conscience, as a substantive legal reality. In the dynamic of the two laws that grounded Western jurisprudence, the principle that geographical boundaries might be secondary to other boundaries pertained most in the sphere of canon law. The basic point is neatly summarized by Paul Vinogradoff, who, with respect to early ideas of international law, gives prime importance to "the extra-territorial jurisdiction of the Canon Law in relations which affect some of the most important sides of social life—e.g. marriage, succession, testaments, trusts, charities, corporations, agreements, &c. The adjustment of the juridical ideas and institutions which had grown up on the extra-territorial
soil to the Common Law of England ... was a task of great importance, productive of incessant conflicts. More abstractly, the legal theorist Pierre Legendre has related this nonterritorial jurisdiction to the later, secular form of the administrative state, pointing to the medieval maxim *Ecclesia non habet territorium* ("The Church does not have a territory") as the canonists' purest expression of an "idea of centralism" energized by the concept of the Church's claim of universal *imperium*. For the impact of this maxim in the temporal sphere, Legendre does not look, as he might have, to the theories and practices of *imperium* through which medieval and early modern temporal authorities protected their borders by restricting the deterritorialized claims of the Church. Instead, and more radically, he links the centralist maxim to an emergent state centralism that, in his account, similarly "instituted the concept of an ideal governance without frontiers," effectively absorbing the Church's jurisdictional claims into an image of the law as a *symbolic* order, rather than essentially a territorial one.

What are the implications of my insisting that one name, jurisdiction, should continue to stand for both kinds of authority, the territorial and the extraterritorial or personal or symbolic? As my opening account of territoriality in Wyatt's verse epistle has suggested, the reason to hold onto a relative amplitude in the concept, and not to conceive of jurisdiction only territorially, is that the theoretical dominance of territorial jurisdiction emerged as part of the ideological process Ford describes so well. At a higher level of abstraction, that is, the hegemony of territorial jurisdiction reflects a further rationalization of the very rationalizing process for which, in Ford's account, the symbol "jurisdiction" *qua* mode of administrative practice generally stands. So understood, territorialization is the limit expression and limit resolution of the normativization of power. While in Ford's view territorialization is a productive cover for the arbitrariness and inequalities of juridical power, I am arguing that it can also be understood in the more mundane but *ultimately* no less ideological sense as one sign of the law's continuous desire to close the gap between its practical efficiencies and its evolving theoretical apprehension of itself.

There is a danger, then, in supposing that jurisdiction is always already ideological. As I have suggested, however, jurisdiction is also the kind of category or principle whose operations can become invisible by coming to seem merely technical, devoid of explicit ideological content. In an attempt to take account of the doubled orientation of the law's practical and administrative life, this book places jurisdiction on a theoretically charged historical axis, investigating it as an ongoing legal process punctuated and motivated by particular moments of crisis. In the long history of English jurisdiction, the sixteenth century was an unusually important period for the rationalization of English common law and the legal system as a whole. This is not to say that the minor jurisdictions disappeared; indeed, most non-common law jurisdictions at English law were formally incorporated into the common law only with the reforms of the nineteenth century. That said, while at the beginning of the Tudor period it was possible to imagine English law substantially in terms of interrelated spheres of judicial activity, by the mid-seventeenth century the common law of the central royal courts was fully present to the culture as the dominant source of juridical norms. Charles Gray concisely describes the middle period of the sixteenth and early seventeenth centuries in terms of a change in both the content and the felt urgency of "jurisdictional law": "In the pre-Reformation era, the law of jurisdiction was largely concerned with defining and protecting the sphere of English secular courts as against the organs of the international Church. In the 'mature common law' period [the law of Blackstone], compared to the middle stage, the credit of ecclesiastical courts was considerably eclipsed, the structure of the whole non-common law system had been revised by legislation coming out of the mid-17th century revolutionary period, and the dominance of the common law throughout the English legal order was conceived in subtly different terms." Like Gray, I focus on the Tudor and Jacobean periods as a transitional moment in the development of a national law and a rationalized legal discourse, a moment in which, necessarily, the question of jurisdictional heterogeneity was messier than in either the earlier period, when legal orders alternative to the common law were more efficacious, or the later period, when the dominance of common law received more formal expression.

It is essential to the history of this middle period that the common law was Janus-faced. Far from only attacking the scope of alternative jurisdictions, for example, common lawyers and common-law judges were often the ones to delineate the force and scope of an ecclesiastical rule or local custom. There is no paradox here, just as there is none in the notion that, as I have argued in my reading of Wyatt, the idea of the local depends dialectically for its emergence on the emergence of the national or central. For if the common lawyer's delineation of local custom in effect protected a juridical norm alternative to the central law, it also worked to define the former's claim and so circumscribe its legal future. In this period, in other words, the common law came to see alternative legal frameworks as possessed of an authority that could be said to be valid just to the extent that the common law itself acknowledged and controlled those alternatives. Such an account of legal development naturally downplays the a priori ideological significance of the
central law's administrative oversight of other jurisdictions, but only so as to locate the production of ideology squarely within a process of administration that might otherwise seem ideologically neutral.

The question remains how one can best track the ideological import of developments that are understandable also in terms of an ad hoc practice. The legal historian and theorist Peter Goodrich provides one answer, arguing that early jurisdiction lies at the center of the history of legal ideology, since it is at the various thresholds where the common law met its rivals that the law's artifice is most visible, and its discourse most clearly in conversation with other, potentially liberatory, discourses. For Goodrich, jurisdictional heterogeneity stands for the possibility of alternative relationships between life and law, and in particular for the possibility that the intimate life, whose complex shape the law continuously restricts in order to produce its judgments, might secure legal status under a jurisdictional order fitted to its particulars. As part of this valuation of the minor jurisdiction, and following the attempts of Legendre to subject legal-administrative discourse to psychoanalytic critique, Goodrich has worked to uncover the "positive unconscious" of the common law: the internalized history of the law's historical encounters with other discursive traditions (such as the civil and ecclesiastical laws, but also logic and rhetoric), as well as the history of irrationality and contingency that the law tends to exclude from the rationalized scope of its self-theorization. In spite of the law's drive to disavow, Goodrich argues, these engagements through which the law successfully articulated its insular identity remain integral to the law's own logics. In consequence, legal analysis becomes critical by reopening the exclusionary discourse of law onto a more complex scene than that remembered as the image the law produces through and as its own historiography.

Although I adopt neither a psychoanalytic nor a genealogical approach to administrative life, my work is in sympathy with the remarkable and ground-breaking project that Goodrich has developed in dialogue with Legendre. If my historical topic is the middle stages of that centralization of authority through which the modern state emerged, my focus on the jurisdictional limit foregrounds within that process both the tendency away from plurality toward homogeneity, and, consequently, the ordering of life increasingly in terms of a subject and the single legal order rather than in terms of the relationship among alternative juridical spheres. In this framework, jurisdictional complexity might be said to answer and perform social complexity by giving it expression, by giving priority at law to the relational question of the respect in which a person or action or condition is to be understood. With regard to critical historiography, such a model of jurisdictional complexity means that a given jurisdictional development at common law will potentially belong to diverging stories. Let us take two general examples from the history of the common law's protection of the subject's liberties. In the sixteenth century, the common-law courts moved to grant manorial tenants (that is, tenants in "copyhold," whose whose tenures were recorded or copied onto the manorial roll) access to the common law as opposed to those local courts that, falling within the individual lord's jurisdiction, operated in potentially prejudicial ways. More tentatively, in the late Elizabethan and Jacobean periods, the central courts issued prohibitions to protect the subject from evidentiary formalisms associated with the ecclesiastical courts, including both the two-witness rule (on the ground of excessive burden) and, on the ground of self-incrimination, the general, ex-officio oath that ecclesiastical defendants were routinely asked to swear, sometimes without even knowing the scope of questions to follow. Neither jurisdictional process allows us to speak fully of a common-law takeover. In the case of copyhold, the common law essentially absorbed and oversaw bodies of customary law that, in one formulation, were too firmly in place for the central courts to "sweep away" by application of a "uniform system of land law." In the case of ecclesiastical evidentiary standards, Gray shows that the courts were quite restrained in their use of prohibitions (especially during Coke's tenure as chief justice), preferring to delineate the conditions under which a prohibition would stand, rather than asserting the injustice of the alternative standards per se. That said, the cautious technical reasoning everywhere present in the decisions operated with a familiar force, with the common law exercising control over the alternative system by administering the limits of its operation, according, for example, to the criterion of some common-law interest in the ecclesiastical case or the likelihood that the defendant might, under oath, be forced to disclose something to his "shame and infamy." Such tentative jurisdictional moves can and should be understood in terms of the common law's tendency across time to protect the subject against procedures prejudicial to the liberties that the common law itself defines as most relevant to and constitutive of the subject (preeminently, rights over property). At a slight theoretical remove, however, the same jurisdictional changes can be understood as part of the process through which a juridical order, emerging as dominant, came to occupy a more immediate, and necessarily less ironic, relation to its object. The process that allowed the common law to stand as a law-made-more-efficacious-for-life also instituted that law, according to the logic of a consolidating legal formalism, as a substitute for life, as, formally, life-made-efficacious-for-the-law.
This second part of the dialectical story tells how law became preeminently the discourse that, in the interest of legal efficiency, takes cognizance of one sort of fact but not another, agreeing to know something about the life it measures or, alternatively, refusing that acknowledgment. It is not surprising that the common law’s own histories have better attended to the first of the narratives to which I point than the second, since case law itself functions instrumentally and as such is dependent for its efficacy on a continuous process of moving past questions of how it became normative.48 Literary engagements with jurisdiction can fit themselves to both narratives, listening to where the law is going or what the law means to do, but also holding on, for longer than the law does, to the implications of what is being managed and so displaced. In this last sentence I mean to suggest a final variation of my general theme that literature critically opens law onto the complex temporality that is the scene of the law’s own jurisdictional activity. The literature with which this book is concerned might be called the law’s prospective or future elegiac mode, not because it exists in a nostalgic relationship to what the law moves past in order to get where it is going, but rather because, by intensifying the apprehension of law’s relation to the time of its own production, it construes the activity of the law as always also looking back onto the scene of its own instability. Understood as a spatio-temporal dynamic, jurisdiction can thus be related to the tragic imaginary that Jacques Ehrmann gives in his account of the figuration of exile, flight, and return in Sophocles’ Oedipus Rex and Racine’s Phèdre. In his essay, Ehrmann defines the place of tragedy as a dislocation that, within the temporality instituted by tragedy as suspended destiny, disrupts the relative claims of inside and outside. The “structure of tragic thought,” he writes, is “the spatio-temporal figure described by the lag, the dis-location of one place relative to another, by the sliding of one place to another . . . connected and separated by a consciousness which, in order to live and think them together, as inside and outside, must explode them, thus disintegrating both them and itself. For at the very moment when knowledge becomes inside, when it finally is integrated as knowledge, this accumulation of a finally-recovered past causes it to be lost.”47 Put in these terms, the jurisdictional activity that inscribes power as juridical authority is the ongoing process of bringing the law (which is in a lag relation to itself) inside itself as knowledge and acknowledgment, in consequence of which process the law’s past is “lost” by being reordered toward its future.

To take this thought a step further, jurisdictional space—a by-product of the jurisdictional process, but one that can be easily conflated with it, such that “jurisdiction” comes to be identifiable with the area over which a law extends—can be seen to function, paradoxically, in the manner of those spaces designated by Foucault as heterotopias. These are the social “counter-sites” (including sacred places, places of representation like the theater and cinema, and colonies) that are real and yet “outside of all places,” “absolutely different from all the sites that they reflect and speak about.”48 Although jurisdiction can hardly be said to be outside the dominant order it is responsible for ordering, jurisdictional space does, at a higher level of abstraction, operate very precisely as counter-measure, working like Foucault’s heterotopia “of compensation” to “create a space that is other, another real space, as perfect, as meticulous, as well arranged as ours is messy, ill constructed, and jumbled.”49 My point in making this counter-intuitive argument about Foucault’s category is not to dismantle the idea of the heterotopic, but to ask whether the possibility of the counter-site might not depend on the dominant site’s being itself a fantasy object, real but also different from the real it stands for. Following Ehrmann and Foucault, then, I am suggesting that we might define jurisdiction as the process through which the law aims to reproduce a heterotopic order within or alongside the other real, this by means of an ongoing “tragic” encounter with its own jumbled present.

Implicit in this account of the ideological relation between the law and its own efficiencies is one way my legal and literary projects differ in emphasis from Goodrich’s. He locates the continuing promise of law in the historical fact of jurisdictional variation—so that, for example, the “literary” courts of love delineated by Andreas Capellanus and Martial d’Auvergne achieve theoretical importance as a minor jurisdiction, a real forum for the adjudication of the intimate life.50 In contrast, I identify the promise of jurisdictional heterogeneity with its making vividly present the disorienting practical life of law, along with the recognition that, subject as one may be to the law, the law becomes patent, too, by having subjected itself to an act of containment, an imperfect delimitation. Correspondingly, as opposed to Goodrich’s stance toward the law’s positive unconscious, my method is more oriented to the description of the historical everyday of juridical deliberation and practice. Finally, while literature or rhetoric for Goodrich points to an order with which the law was once continuous until it disavowed those discourses, the literature I treat is most impressive for registering, precisely in terms of an intensified literariness, a critical potential in the law’s own invention, in its capacity both coherently and incoherently to produce through its jurisdictional activity the forms it needs.
THE STATE OF JURISDICTION

As a project in literary and cultural history, this book insists on the visibility of jurisdiction as a significant category in sixteenth- and early seventeenth-century political culture and statecraft. Of course, the legal changes in that period were only one stage in the common law’s long rise to ascendency, and they may most of all have clarified gains the common law had made across the previous four centuries. In this respect, it is unsurprising that medievalists have been at the forefront of recent efforts to make jurisdiction count as a category for English literary and political-cultural analysis. In his formidable study of late medieval literature in relation to the changing conceptualization of “trouthe,” Richard Firth Green demonstrates how deeply engaged fourteenth-century literary texts were with the transition from local to central justice and with the absorption of folk-law by king’s law. Pushing the question back to the time of Bracton, Bruce Holsinger situates the thirteenth-century Owl and the Nightingale in the context of contemporary juridical contestation, especially between the royal and ecclesiastical laws. He decisively unfolds the poem as an instance of what he calls “vernacular legality,” a “subgenre of legal writing” that, in addition to exploring “a specialized realm of authoritative legal knowledge” in Latin, helped writers “manipulate and transform the law in the service of vernacular poetics.” For James Simpson, who frames his important study of the periodization that divides “medieval” from “early modern” (and “reform” cultural practices from “revolutionary” ones) as an argument, too, about the continuities between the literary and administrative cultures, the jurisdictional plurality that matters is, similarly, medieval, with the Tudors playing the role only of spoiler. “In the first half of the sixteenth century,” he writes, “a culture that simplified and centralized jurisdiction aggressively displaced a culture of jurisdictional heterogeneity.”

The institutional simplifications and centralizations of the sixteenth century provoked correlative simplifications and narrowings in literature. If literary history and criticism is... ancillary to the complex history of freedoms, this is a narrative of diminishing liberties.

Without wanting to challenge the analytical descriptions of medieval jurisdictional complexity in such studies, I do want to resist the picture of Tudor legal or literary culture as, comparatively, only diminished or impoverished. There is, certainly, a positive (and Whiggish) argument to be made that the developments described by Simpson, centralizations though they be, represented measurable gains for due process and the status of the legal subject. My point, however, lies elsewhere. I mean to insist only that the effect of those earlier complexities extends into the later period from which Simpson exiles them, and not just for the formalist reason that Tudor centralization worked, less aggressively than Simpson has it, rather to limit than to displace the earlier, more heterogeneous legal culture. Most pertinently for the present argument, the sixteenth century remains integral to the story of literature’s complex response to the jurisdictional field that was English law because the historical pressure of particular crises brought jurisdiction to new theoretical prominence, as the common law’s attempt to accommodate new problems continuously underscored the processual nature of legal meaning generally. A juridical dynamic that makes the work of law imaginable, jurisdiction thus became a symbol driven into the culture at large. In literature, I would argue, there was a corresponding increase in pressure: mine is a story of concentration rather than of simplification.

The raising of the theoretical stakes of jurisdiction was in part the legacy of the Reformation, and in a limited sense my book is an account of that event’s century-long ripple effect across the whole of English legal culture. One result of the assertion of England’s legal and constitutional autonomy from Rome was to give even deeper roots to the idea of a sovereign justice centered in the king and royal courts, a development that was all the more important in light of the disorienting effect of the fifteenth-century wars on the institution of royal justice throughout the realm. With the Reformation, the practice and even idea of interpretation became more centralized, and not just during the few years in the early 1530s when Henry VIII’s cesarо-papist construction of his authority seemed a plausible conceptualization of the break with Rome. Most important, statute had a new place in the constitution, and the proliferation of written law in the wake of the Reformation effected a corresponding change in how the central law was understood, since the need to mediate between the unwritten and written law allowed the law theoretically to take on the shape of its own interpretation in the central courts. In Robert Weimann’s account of the Reformation generally, the new centering of meaning in scripture allowed textual representation to emerge as the principal source of authority in the European sixteenth and seventeenth centuries: “Modern authority, rather than preceding its inscription, rather than being given as a prescribed premise of utterances, became a product of writing, speaking, and reading, a result rather than primarily a constituent of representation.” In the more specialized realm of law, this is the same process that sustained the early Tudor state’s increased use of interpretation as the principal means of legal centralization and control. Interpretation became the motor through which the center organized the absorption of the ecclesiastical, the marginal, and the exceptional.
Especially important for the intellectual developments that bound together juridical and interpretive centralization is the work of the early Tudor lawyer Christopher St. German, whose treatises on the status of conscience at common law helped reconfigure conscience as equity, understood as an interpretive principle of supplementary justice internal to the law, rather than as an ethical principle of exceptional and conscientious justice corrective of the law. J. A. Guy and others have shown the importance of St. German's description of equity as hermeneutic for the future of English jurisdiction by elevating the status of common-law interpretation, that descriptive shift came, namely, to identify judicial authority with but one of several traditionally integrated judicial spaces. In other words, the reconfiguration of conscience as equity raised the prestige of the common-law courts relative to the courts of extraordinary justice (such as Chancery) and the ecclesiastical courts, the juridical relevance of whose interest over matters of conscience could only decline once conscience itself was refitted in technical terms that allowed for its management at common law.

That the idea of jurisdiction entered Tudor and Stuart discourse more fully than before was a consequence, too, of explicitly professional interests. The growth of the common law in the period involved its extension into legal spheres overseen by lawyers trained in alternative traditions. In relation to ecclesiastical law, R. H. Helmbold explains that, even after Henry VIII banned the study of canon law, the civil lawyers who continued to practice in the ecclesiastical courts retained a distinct identity continuous with their pre-Reformation colleagues: "In 1569 Archbishop Parker wrote to Sir William Cecil about the civilians: 'Sir, I think these lawyers keep but their old trade.' The Archbishop was telling the unvarnished truth. Far from acquiring a 'common law mind,' the Elizabethan and Jacobean civilians remained tied to the traditions of Roman canon law." Civilians were equally protective of their professional identity in the Admiralty court, a second important forum for Roman law in England. The civilians who in the later sixteenth century found their livelihoods threatened by the common-law courts were quick to assert the integrity of the jurisdictions under their management and thereby protect them from the control that the central courts attempted to exercise by prohibition, the legal writ that halted a proceeding in another tribunal by querying the court's competence to hear the matter. The treatise on the jurisdiction of the Court of Requests written by Sir Julius Caesar, a prominent civilian and Master (judge) of Requests, is an example from the 1590s of one such defense. In the early seventeenth century, the reaction to the aggressive use of prohibitions became even more focused, and jurisdiction assumed an even stronger cultural presence. One of the most important legal writers to take up the question of English jurisdiction was William Fulbecke, whose Parallele or Conference of the Civill Law, the Canon Law, and the Common Law (1601) delineated the theoretical unity of the three interlocking systems as a way to defuse growing tensions among the courts. Fulbecke's 1603 Pandects of the Law of Nations, a volume whose title deliberately invokes the Justinian Pandects, similarly attempted to place English common law within the broader European legal heritage of which the English civil-law jurisdictions were the critical sign and symbol.

In the rise of jurisdiction as a category of importance for Tudor and Stuart culture, the most important factor, perhaps, was the shifting constitutional relationship between king and common law. Along with the Reformation, the early Tudor experiment in fiscal feudalism made the royal prerogative present in a new way, effectively reshaping the prerogative, not by retheorizing it, but by continuously testing its limits as part of the Crown's invariable pursuit of money. Much important work on the relation between early literature and law has focused on the prerogative as a way to explore the cultural organization of basic constitutional questions concerning the relation of king and state. In such accounts, royal authority is often pitched against that of the common law and Parliament, a discourse of absolutism (as embodied, for example, by King James) against that of constitutionalism (as embodied, for example, by Sir Edward Coke). My understanding of the relationship between king and law differs from such accounts, in that this book describes royal authority and the common law as essentially going hand in hand. This difference, however, seems to me more a matter of historical orientation than a theoretical claim per se for a revisionist legal history as opposed to a progressivist one. In his magisterial survey of the medieval state, Alan Harding describes developments in political theory across the sixteenth century as a dialectical response to earlier legal achievements. "By the end of the middle ages," he writes, "the expansion of royal government from its base in the administration of justice had identified the state of the commonwealth with the state of the king. A number of factors would then start to detach the idea of the state from both legal order and specifically monarchical rule." Within the dialectic Harding outlines, my work can be said to focus on the ongoing centralization of common law as royal justice, attending only secondarily to the ongoing process of detachment that allowed the state, the centralized law, and the king to be imaginable as separate. Although the jurisdictional crises I explore here...
all question or disrupt the nature of royal power, the narrative I tell concerns the bureaucratic manipulation of the prerogative as part of the law, rather than the pulling of law away from its royal center.

The discourse of jurisdiction does have a place, however, in that second process. Put simply, the complex relationship between royal power and the common law was mirrored in an equally complex relationship between jurisdictional consolidation and royal authority. On the one hand, the king’s authority and that of the common law could be seen as coterminous. The prerogative was acknowledged to be part of the common law, and the common-law courts, as explicitly royal courts, intruded on alternative jurisdictions in the service of a more uniform, national law strictly identifiable with the idea of royal justice. On the other hand, Elizabethan and Stuart defenses of weaker jurisdictions against the common law located royal authority most powerfully in the idea of a system of distinct jurisdictions united under the monarch, a move that resists an exclusive identification of the king’s authority with the central law. One such textual polemic on behalf of England’s minor jurisdictions is usefully evocative of the larger constitutional questions that lie mostly in the shadow of the history this book explores.

In his 1607 defense of the civil and ecclesiastical laws against the use of common-law prohibitions, the civilian Thomas Ridley positioned himself as an advocate “for those parts of your Majesties Laws, which are lesse known unto your people.” His book aimed to “set out” the “whole sum of both the Lawes to the view of the people,” in order to redress “such grievances as have bin of late offered by one Jurisdiction unto the other, and in consequence, to all your subjects, who follow any suits in the Civill or Ecclesiastical Courts.”64 Ridley compares the conjunction of common-law and civil-law jurisdictions to the relationship between two kingdoms: “for now as things are, neither Jurisdiction knowes their owne bounds, but one snatcheth from the other, in manner, as in a batable ground lying betweene two Kingdomes; but so that the weaker ever goeth to the worse, and that which is mightier prevails against the other: the professors thereof being rather willing to give Lawes and interpretations to other, than to take or admit of any against themselves. For which, the weaker appeales unto your Highnessse, humbly desiring your Majesties upright and sincere Judgement to discerne where the wrong is, and to redresse it accordingly.”65 The association of legal jurisdiction and state territoriality is interesting as part of the process of rationalization I have evoked in my reading of Wyatt, and because it implies as a model for jurisdictional relation an equitable, political accommodation between neighboring kingdoms, similar to that between Scotland and England as that particular relation was being newly effected through their union in James’s person, with no correlating union at law. Indeed, the comparison of English courts and royal kingdoms underlines the central feature of Ridley’s argument, namely, that common-law writs of prohibition against other English courts derogate from the king’s personal authority: “to deny a free course to the Civile and Ecclesiasticall Law in this Land, in such things as appertaine to their profession, or to abridge the maintenance thereof, is to spoil his Majestie of a part of his Honour.”66

Royal authority, here, is seen to depend on the maintenance of the boundaries that separate distinct spheres of legal activity and legal authority. Thus, in his discussion of the conflict between the common law and Admiralty over marine jurisdiction, Ridley defines the space of law doubly, locating justice metajuridically, first, in the conceptual separation of judicial powers and, then, in the reintegration of those powers within the prince. Law, he remarks, has “set” the “bounds and limts” of the two jurisdictions: “which they shall not passe: which, as it is the good provision of the Law, so ought either Jurisdiction in all obedience to submit itselfe therunto, for that the diminishing of either of them is a wrong to the Prince from whom they are derived, who is no lesse Lord of the Sea than he is king of the Land.”67 The implication that legal centralization and jurisdictional assimilation are prejudicial to royal authority is fundamental to Ridley’s (admittedly defensive) sense of the legal world, as though a greater jurisdictional homogeneity were, for him, allowing the common law to detach itself from the royal authority that alone properly moors it. Such a formulation brings us, of course, back to Harding’s observation that political modernity begins with the gradual unraveling of the medieval knot of state and king and royal justice. (And it is interesting that if, as opposed to Ridley’s negative construction, we apply a positive spin to his picture of common-law prohibitions against other jurisdictions, we effectively generate the classically liberal account of the strong common law as a safeguard against royal absolutism, understood as an indivisible sovereignty [Lat. maiestas] too much split off from the law that alone properly moors it.)

For the conceptual argument of my book, it is especially significant that in Ridley’s metonymic figuration of a jurisdiction’s “obedience” and submission, he allows England’s distinct jurisdictions themselves to absorb the agency of the judges whose pronouncements and prohibitions helped constitute English legal authority. This abstraction of jurisdiction into a function is symptomatic of the larger shift in the political imaginary that Harding describes, and it powerfully underlines the value of jurisdiction as a historical frame for thinking about the realignment of juridico-political meanings. The model of royal authority that Ridley puts on paper is inflected differently from even the centralized
power delineated under the early Tudors (most spectacularly by Henry VIII in the early 1530s), insofar as Ridley places the king above the jurisdictional field rather than at its center. This move is possible, I think, only after jurisdiction has hardened as a category, has itself begun to split off from the juridical “process”—the formulation is Costa’s—it stands for, a development that correlates with what happens to the associated categories of king and law. In one sense, Ridley’s account of a judicial authority’s being “derived” from the king is only traditional, jurisdiction being the order of distributing a shared authority that is expressed fully only in the prince. But the formulation Ridley gives to the particular jurisdictional crises his book is addressing suggests also a less traditional understanding of that order: one in which the prince’s authority has been fully split off from jurisdiction as process, such that *derivation*, once a concept that signified the process of legal power itself, now links two orders, king and legal jurisdiction, that as *relata* are increasingly fixed and static. As a version of Harding’s argument, then, I am suggesting that the jurisdictional compression coincident with the process of rationalization through which judicial authority was consolidated as royal justice paradoxically reproduced the king as an imaginable order external to the state. To that extent, jurisdiction is an indispensable lens through which to track the historical precipitation of those dichotomies—king and Parliament, prerogative and law—that have energized the most tenacious of Anglo-American constitutional narratives.95

**A LITERATURE OF JURISDICTION**

In my prologue and in this introduction, I have argued that, properly understood, the category of jurisdiction usefully disrupts a default account of sovereignty in relation to the genesis of the juridical norm, as well as our critical descriptions of the literary and historical object, the temporality of legal ideology, and the early constitution of the state. Although each of these thoughts informs the literary analyses that follow, my readings do not attempt so much to prove such ambitious claims as to exemplify them by tracking their various inflections in historical time, this by showing how a series of literary texts mediated on jurisdiction as a fundamental principle for the ongoing process of instituting the real. Just as I conceive jurisdiction to be a process of legal order rather than a stable fact, I locate jurisdiction in literature chiefly as a frame for, and enabling principle of, aesthetic production. Through close consideration of textual detail and through a form of cultural analysis attentive to contemporary technical developments at law, each chapter works to disentangle the philosophical or legal implications of a particular literary engagement with an emergent jurisdictional problem. Because of its concentrated textual focus, my work may seem to be principally formalist or rhetorical in orientation. But it is neither, at least not in the usually restricted and instrumental current usages of those terms. When I track the details of a legal argument or a literary one, I am not primarily interested in the rhetorical shape of the argument or in the literary remapping of a technical meaning. I mean rather to reveal the jurisdictional limit at law as a place where legal doctrine is sufficiently destabilized to allow us to see the two discourses, law and literature, as pertaining to a single order and practice of imaginative thought.

This book comprises six case studies in the early history of the literary engagement with the idea of jurisdiction. Organized chronologically, these also present a range of jurisdictional scenes, and in so doing describe a particular arc among the questions under which jurisdiction was confronted in the rapidly changing social and political field of the sixteenth and early seventeenth centuries. The book consists of three parts, each motivated by one of three mutually reinforcing categories—centralization, rationalization, and formalization—that mark desires at law more than achieved realities, none existing except as a tendency or dynamic in search of its own completion. Chapters 1 and 2, on early Tudor political culture, posit two proximate origins for sixteenth-century jurisdictional discourse, looking to the impact on royal law, first, of bureaucratic centralization and, second, of the remapping of ecclesiastical jurisdiction at the Reformation. Chapters 3 and 4 concern the cultural organization of England’s encounter with the territorial other, a problem I address in terms of the attempts to rationalize the very different meanings at common law of colonial Ireland and of historical France. Chapters 5 and 6 offer alternative endpoints for the project as a whole, looking to two peculiarly intense legal venues—the zone of the threshold itself and the microlegal space of London—whose organization opens legal culture onto forms alternative to those imagined by a centralizing, rationalizing law.

Chapter 1 treats John Skelton’s *Magnificence* (ca. 1519–20) as a response to the bureaucratization of royal authority under the early Tudors. Traditionally read as a warning about excessive expenditure in the royal household, Skelton’s play emerges instead as an act of political theory, a meditation on the nature of royal identity inside a rapidly evolving administrative culture. This culture abstracted authority from any fully coherent origin and relocated it in a more quantitatively oriented process of management and measurement, the chief sign of which was an anxious proliferation of documentation insufficient
to the fantasy of order for which it stood. In my reading of the play's discursive mode, dramatic representation and political representation meet as forms of distribution and embodiment for the consolidation of authority. Skelton describes and analyzes the forms of political delegation in three ways: most simply, he charts the royal household's aggressively bureaucratic pursuit of royal privilege on feudal lands; second, he analyzes legal writing, the material embodiment of delegation, as a site of vulnerability in the state's reproduction and extension of its power; third, he externalizes the idea of royal intention by bringing it in proximity to the idea of equity as a nonarcanic principle of legal interpretation and the de facto motor for judicial centralization.

In chapter 2, on Sir Thomas More, I step back from the details of the bureaucratic organization of authority to reflect on the theoretical implications of centralization for the very idea of a legal norm. To elucidate More's general understanding of English law as a meeting of different jurisdictions, I analyze two of his fictions in relation, respectively, to his defense of the ecclesiastical jurisdiction against intrusions by the temporal courts and to his analysis of the fundamental relation between equity and law. More's commitment to the principle of jurisdictional heterogeneity, I argue, points not only to his conservative allegiance to Rome, but also, inside that conservatism, to a potentially critical understanding of the relation between law and life. As a mode of probative hypothesis, fiction works within More's analysis of jurisdiction to expose the same contingency as the experience of jurisdiction does: it casts the normative claim of law back onto a complex of grounds and logics. After briefly treating a parable of the temporal and spiritual orders told by More during his imprisonment in the Tower, I turn to *Utopia* (1516), which I see not only as a philosophical argument about the possibility of worldly justice, but also as a practical and local legal analysis of the procedural relation between English common law and English equity. As such, More's supreme jurisdictional fiction anticipates the work undertaken by Christopher St. German in the 1520s to reconfigure conscience as equity and so subordinate conscience to common law. In the dialectical movement between Books 1 and 2, between worldly and ideal, positive and negative, *Utopia* emerges as a lawyer's analysis of legal rationalization as a process of managing rather than erasing the disruptive potential in law.

Part 2 moves the study forward to the late Elizabethan period and to a different stage in the consolidation of English law, attending to the impact of alternative territorial authorities on an ever more professionalized and nationalistic common law. This shift in the domain of my argument allows jurisdiction to enter more directly into dialogue with the concept of sovereignty as a political reality produced at the jurisdictional threshold between the state and some version of its other. Chapter 3 treats Books 5 and 6 of Spenser's *Faerie Queene* (1596) in light of the Elizabethan attempts to imagine in colonial Ireland a place for English common law. It focuses on the pressure applied by England's colonialist policy on two terms, common and custom, through which English lawyers celebrated the common law as it operated in England. Early modern Ireland presented a special problem in this regard, in that the customary Breton law, which the colonizers were eager to displace for both symbolic and practical reasons, had to be imagined in opposition to English common law, whose authority was grounded exactly in its status as custom. Equally, the notion of the "common" that underlay the nationalist construction of centralized royal justice in England was troubled by the very different conception of "common" tenure in Gaelic Ireland. In light of these categorical tensions, which encouraged, as I argue, a strongly positivist account of common-law jurisprudence, Spenser deploys the generic resources of pastoral to rethink the status of property, this being one step in a program to implement the imperfectly coherent law through which English appropriations of Irish land could be rationalized. In the same vein, Spenser's allegorical mode comes to stand for the system of interpretive coercion that transformed law's accommodation of jurisdictional difference into an administrative initiative to identify a distinct Irish legal identity only in order to suppress it.

Chapter 4, on the question of English legal nationalism, turns from Ireland to France, and thus from a legal tradition that the developing common law looked to incorporate to one it needed, rather, to disavow. Grounding the general question of England's relation to France in terms of competing accounts of law French, the much-ridiculed professional language of the common law, I argue that legal Normanism can best be understood as the historical and structural internalization of France in English institutional life and, indeed, in the English language. Legal humanists and common lawyers worked to overpower the potentially embarrassing implications of law French for English national law by relating the common law to an exemplary classical past and, most impressively, by remaking the Norman Conquest itself as its own reiteration and reversal in the Anglo-French wars of the fourteenth and fifteenth centuries. According to this embarrassed legal nationalism, France was positioned jurisdictionally as a space simultaneously external and internal to English legal identity. As engagements with this troped history of conquest and counter-conquest, I argue, Shakespeare's English histories (specifically *Richard III* and the second tetralogy) draw powerfully on their own metadramatic resources to represent France as a continuous historical presence within England, a shadow
jurisdiction to the centralizing royal authority they represent in the person of Hal/Henry V. As these plays argue it, national sovereignty, like the power of the stage itself, emerges as the hypothetical projection of jurisdiction in and through its alternatives.

In two chapters, one global in outlook and one parochial, part 3 extends the book's argument by charting out the consequences of jurisdiction for the shaping of legal identity within two zones: the jurisdictional threshold and the nation's mercantile center. Chapter 5 on Shakespeare's Pericles (1609) and Cymbeline (ca. 1610) turns from a virtual jurisdiction constitutive of national identity (the France that is England's legal past) to another that is constitutive of empire. Shakespearean tragicomedies emerge here as an extended engagement with the idea of jurisdiction as it came under pressure in consequence, first, of the union of the Scottish and English Crowns in 1603, and, second, of the changing status of the ocean as an international space of trade. Shakespeare's plays belong to a moment when transnational authority was imagined as the legal effect not of dominium (ownership) but of imperium, a jurisdictional relationship and process. Accordingly, I argue, they engage the scene of international politics by taking up the shape of jurisdictional crisis itself, as that is produced at the threshold between sovereign spaces, and as it finds resolution in the reconfiguration or reimagining of the same threshold. Analyzing this highly flexible and unstable language of power as a language of personal relation, I describe the impact of transnational distance both on the subject, whose obligations to the monarch helped constitute imperium across distance, and on the monarch himself, who could discover his new authority only when it was projected into a beyond. At the edge of the modern, global nomen, these plays reach toward a theoretical account of the jurisdictional principle they thematize, at the same time as they represent, at the temporal and spatial threshold (which the plays distend into the nonspace of the ocean), a derritorialization of legal identity that transforms jurisdiction into a principle to serve a new kind of power.

Chapter 6, on Webster, Rowley, and Heywood's Cuckold (1624), returns to the question of jurisdictional complexity internal to English law even as it extends the work of chapter 5 by tracking how the sea's disruptive energies, which are the energies of the limit itself, implode, claustrophobically, into the space of London. Alongside the tragicomic turn to empire, this final chapter on urban comedy thus represents a second endpoint for the book's argument about the practical and theoretical life of the law, finding the legal form of the irrational and unprocessed returned to the center as the law's own contestable image of itself. The subplot of the dramatists' too little known collaboration involves Compass, a sailor who refuses to acknowledge what his neighbors and the law might tell him, that his wife's illegitimate son is not properly his own. Describing Compass's response to the illegitimate order by invoking a labyrinth of complementary jurisdictional orders (including canon law, civil law, common law, manorial law, and municipal law), the play produces in Compass's evasions a consequentialist ethics that is grounded, first, in a splitting off of effect from cause and, second, in the dramatic projection of a jurisdictional imaginary capable of sustaining a norm alternative to the law's own jurisdictionally constituted norms. As the logical expression of a process of legal rationalization, the law's authority formally produces in Compass and his odd family the mirror image of its own homogenizing order. With this radically local fantasy, then, the play returns us in a new register to Utopia and to More's insistence on the necessarily ironic gap between law and the life that it orders. Structurally, this gap is the topological expression of the plurality that the law encounters and controls in order to function effectively. Legal comedy is the genre that makes visible that topology and the temporal dynamics it continues to represent.

These six chapters on the inventiveness, in the face of legal change, of poetry and drama, romance, pastoral, utopian fantasy, comedy, and tragicomedies, all speak to the resources of fiction as a source of legal-cultural meaning. James Simpson offers an unusually powerful thesis in contending that the jurisdictional centralisms of the sixteenth century produced a cultural field of "diminished liberties" relative to the medieval world. But in light of the literary engagements with law that are the focus of my book, that jurisdictional compression must, I think, be understood rather to have charged the possibility of literature as idea and practice, since it is only against a homogeneous norm, or against the fantasy of such, that poetic or dramatic discourse could claim for itself anything like normative force, only there that literary authority might invent itself as such by drafting off its juridical counterpart. The various and provisional literary subjectivities indexed in this book, obliquely rather than directly reactive to the state, are not so much subversive of their juridical-political counterpart as continuous with it: at once by-products, vivid supports, and dialectical partners of the political in formation.

It is not coincidental that, within the jurisdictional framework this book describes, the charged expression of poetic or dramatic authority in relation to the political consolidation of juridical authority can be seen to analogize the growth of temporal authority in relation to the spiritual. In his classic essay on the origins of the modern state, Joseph Strayer points to the Investiture Conflict of the eleventh century as an important event for the emergence of
secular authority, since the Church's successful assertion of its independence produced the possibility of new definitions elsewhere in the political culture.

Like all victories, the victory of the Church in the Investiture Conflict had unforeseen consequences. By asserting its unique character, by separating itself so clearly from lay governments, the Church unwittingly sharpened concepts about the nature of secular authority. Definitions and arguments might vary, but the most ardent Gregorian had to admit that the Church could not perform all political functions, that lay rulers were necessary and had a sphere in which they should operate. They might be subject to the guidance and correction of the Church, but they were not a part of the administrative structure of the Church. They headed another kind of organization, for which there was as yet no generic term. In short, the Gregorian concept of the Church almost demanded the invention of the concept of the State.

Extending as this book does the work of jurisdiction beyond the historical and theoretical horizon that state sovereignty seems to mark allows us to see that the dynamic Strayer describes is in reality an ongoing, always shifting process of political and cultural reproduction: one according to which literary texts might, jurisdictionally, emerge as immediately political by reason of their relative autonomy as fiction; or, to take a differently modern example, one according to which a theocratic order might, jurisdictionally, be predicted to reorganize itself within the state as the dialectical response to the incomplete consolidation of state authority. To the question, then, why one now would write a book on the legal and literary negotiation of jurisdiction, a punning answer runs as follows. In cultural history and political theory alike, jurisdiction has been overlooked as a merely technical matter. But exactly as a principle of mere distribution—undilutedly [OED a², Lat. mereus, "undiluted"], the administration and management of juridical boundaries [OED b², OE gemæorc, "boundary"] themselves—jurisdiction holds out for critique all the odd promise of a dynamic that orients us in the world through the disorienting force of its potentiality.
NOTES


shares, from within legal studies, my focus on jurisdiction as both the condition of normative order and a source of law’s potentiality. Our converging interests highlight jurisdiction as an important category and frame for social, political, and cultural work across various disciplinary boundaries.

5. Important analyses of early modern law and literature have of course been organized around more narrowly defined legal topics. Among recent studies, see, for example, Karen Cunningham, Imaginary Betrayals: Subjectivity and the Discourses of Treason in Early Modern England (Philadelphia: University of Pennsylvania Press, 2002); Elizabeth Hanson, Discovering the Subject in Renaissance England (Cambridge: Cambridge University Press, 1998); Rebecca Lemon, Treason by Words: Literature, Law, and Rebellion in Shakespeare’s England (Ithaca: Cornell University Press, 2006); Charles Ross, Elisabethan Literature and the Law of Fraudulent Conveyance: Sidney, Spencer, and Shakespeare (Aldershot: Ashgate, 2005).


8. Ibid., 33.


10. John Cowell, “Jurisdiction,” The Interpreter (Cambridge, 1607), Ooqv. Beneath Cowell’s sense of jurisdiction as a dignity (dignitas) that an officer “has” is the question, long debated in medieval law, whether administrative officers possessed imperium by right or always only by delegation. Relevant in this regard is the medieval distinction between ordo and iurisdicte. In the period leading up to the conciliarist moment, the limitation of the former to a sacramental function allowed canonists to limit the bishop’s claim to possess a jurisdiction equivalent to the pope’s. See Constantin Fasolt, Council and Hierarchy: The Political Thought of William Durant the Younger (Cambridge: Cambridge University Press, 1991), 203–4. More generally, Fasolt’s book gives an exemplary account of the intersection of the local, national, and ecclesiastical forces underwriting late medieval discourse around jurisdictional plurality. For ordo and iurisdicte, see also Brian Tierney, Foundations of the Conciliar Theory: The Contributions of the Medieval Canonists from Gratian to the Great Schism (Cambridge: Cambridge University Press, 1955), 23–36, at 32–33.

11. When scholars in law and political science today speak of norms in relation to law, “norm” is usually understood, in opposition to the force of a judicial rule, as an informal code of behavior that emerges in the sphere of practice as a source of legitimacy complementary to that of law. See, for example, the essays collected in Norms and the Law, ed. John N. Drobak (Cambridge: Cambridge University Press, 2006). My study concentrates on norms in the sphere of judicial practice itself, but “norm” in my usage should not for that reason be narrowly understood as a synonym for judicial rule. On the contrary, my focus is on the normalization of an as yet unsettled sphere, whereby a genuinely open question at law gets closed in practice by jurisdictionally fixing the question, by shaping it anew, and, in the very process of making it legible, naturalizing it. Normativity is not a fact, but the process of giving contingent practice retrospectively and in effect the aspect of necessity.


13. Agamben responds to Derrida’s reading of Benjamin’s essay in two places. See, first, Giorgio Agamben, Homo Sacer: Sovereign Power and Bare Life, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998), 64. In a fuller critique, Agamben points out that the very phrase “Force of Law,” which in Derrida speaks to the impossible ground of law’s authority, is not accurately applied to the law at all, but rather to the nonlegal order that operates as though with the force of law; it belongs, that is, to the state of exception. See Giorgio Agamben, State of Exception, trans. Kevin Attell (Chicago: Chicago University Press, 2005), 37–39.


18. Agamben, State of Exception, 29. The translator’s “zone of indifference” does not adequately render Agamben’s zona di indifferenza in the original: Stato di eccezione: Homo Sacer, 11.1 (Turin: Bollati Boringhieri, 2003). Agamben’s sophisticated pun may ultimately point to ethical indifference, but it chiefly identifies an instability in the primary categorical structures underlying the law. As such, it can be better translated.
as "zone of indiffrerentiation"—the zone that disrupts the structure of difference that makes meaning and ethical differentiation possible.

22. Pietro Costa, Jurisdictio: Semantica del potere politico nel pubblicistica medievale (1100–1333) (1969; Milan: Giuffré Editore, 2002). I thank Julius Kirshner for pointing me to this study. Costa's analysis of jurisdiction has remained underappreciated by historians of both medieval and early modern literature and culture, having had only slightly more impact in the field of legal history. The 2002 reissue of the original edition (along with two essays by Ovidio Capitani and Bartolome Clavero) should bring Costa new readers in several fields. Costa's work offers a profound entry into medieval and early modern literary engagements with legal culture, and should be more widely taken up by literary historians. In relation to Dante, for example, Capitani has written of the relevance of Costa's work for the exploration of papal and imperial power in the De monarchia, with some attention paid to relevant juridical-political passages in the Convivium. See Ovidio Capitani, "Spigolature Minime sul III della Monarchia" (1978), in Chiese minime Dantesche (Bologna: Pitron, 1983), 57-82.

23. Paolo Grossi, L'Ordine giuridico medievale (Rome-Bari: Laterza Editore, 1995), 131. "Orbene se v'è un concetto logicamente estraneo all'juridico e la creazione del diritto: dire il diritto significa presupporsi già creato e formato, esprimere, esplicitarlo, rendere manifesto, applicarlo, non crearlo." As suggested by the quotation, Grossi's study recuperates a nineteenth-century organic conception of legal, political, and civic development.


25. Costa, Jurisdictio, 139. "L'imperatore serve l'equità (rueda) interpretandola e costituendola in norma."

26. Costa, Jurisdictio, 142-43. "La gestiordel norma passa per l'juridicio." "Non si pensava ad una norma creata, ma ad una norma raccolta, riflessa dall'ordine del mondo sull'equipolo (juridicio) posseduto in modo eminennte dall'imperatore. "Juridicio" non è il luogo simbolico di una norma modificativa dei dati reali, ma recezionale di essi. "Juridicio" non è altro che il luogo in cui un dato informale viene formalizzato: non mutato, ma espresso, non creato, ma rispecchiato."

27. In respect of its reconfiguration or capture of the real, jurisdiction is thus analogous (and, as this book argues, not only analogous) to literal representation.


INTRODUCTION

1. On the disruptive temporality of early literature, see Paul Strohm, Theory and the Premodern Text (Minneapolis: University of Minnesota Press, 2000), especially chaps. 5-6. Strohm uses Ernst Bloch's concept of "nonsynchronous temporalities" to theorize how, in response to the "complexity of the Now," literature can offer an "imaginative escape from time's apparent domination" (67).


7. Giorgio Agamben uses the distinction between the topographical relation and the topological relation to specify the relation of sovereignty to the state of exception: "The suspension of the norm does not mean its abolition, and the zone of anomic that it establishes is not (or at least claims not to be) unrelated to the juridical order. Hence the interest of those theories that, like Schmitt's, complicate the topographical opposition [inside/outside] into a more complex topological relation, in which the very limit of the juridical order is at issue" (State of Exception, trans. Kevin Attell [Chicago: University of Chicago Press, 2005], 29). As my prologue suggests, I use Agamben's distinction, here and elsewhere in the book, not to subsume jurisdiction under sovereignty, but rather to suggest the value of supplementing the critique of sovereignty with an analysis of jurisdiction.

8. For the ideological configuration of space in the early modern period in relation to literary representations of the land, see, for example, Andrew McRae, God Speed the Plough (Cambridge: Cambridge University Press, 1995); Garrett Sullivan, The Drama of Landscape: Land, Property, and Social Relations on the Early Modern Stage (Stanford: Stanford University Press, 1998).

9. The antiquarian production of knowledge, in books such as William Lambard's Perambulation of Kent (London, 1576), speaks to the historical emergence of the local in dialectical relation to the national, a point of legal interest in that Elizabethan antiquarianism focused so much of its energies on the excavation of custom within


15. It is relevant for Wyatt’s analogy that, like the poet’s being “among” the muses (OE gemangan, “to mingle”), the “meddling” in Spain speaks, etymologically, to a mixing or mingling (OF mester, “to mix”).


19. Alongside Trimpi, Muses of One Mind, the fullest account of the relation between literary fiction and legal argument is Kathy Eden, Poetic and Legal Fiction in the Aristotelian Tradition (Princeton: Princeton University Press, 1986). For Eden, Sir Philip Sidney’s defense of the value of the hypothetical fiction he calls poetry is paradigmatic. Sidney argues that the reader “uses the narration but as an imaginative ground-plot of a profitable invention,” which is to say that the reader receives the poet’s elaborated hypothesis as, also, a hypothetical starting point, a “cause” or “plot” for action. For the relevant passage, see Sidney’s The Defence of Poesy and Selected Renaissance Literary Criticism, ed. Gavin Alexander (London: Penguin, 2004), 34–55.

20. In light of the poet’s territorial scheme, the “cause” may also be heard as the geometrical hypothesis (in the manner of a groundplot) through which the poet encounters the measurement that both makes him unfeud and makes him free.


26. Work on law and literature that adopts a rhetorical approach has often continued literature as returning law to its disavowed past, to its human rather than scientific origins. Important studies include James Boyd White, The Legal Imagination (Boston: Little, Brown, 1973); Richard Weisberg, Poetics and Other Strategies of Law and Literature (New York: Columbia University Press, 1992).

27. My argument about jurisdiction differs substantially, therefore, from an adjacent theoretical model in which the distinction between space and time maps onto that between law and literature, as it does in Wai Chee Dimock, “Time against
Territoriality: National Laws and Literary Translations,” in The Place of Law, ed. Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey (Ann Arbor: University of Michigan Press, 2009). Working from the case of Osip Mandelstam reading Dante in the early Soviet Union, Dimock proposes that “while law is spatially predicated, most often operating within the limits set by geopolitics, literature is much less so.” This is so because, in Mandelstam’s case, against the “brute fact of national borders,” “the time of literary culture, an extended and continuously evolving duration,” constitutes, extraterritorially, “a tribunal that pits the transmission of words against the location of law” (91). This argument that literature is in excess of where and how the law makes its meanings complements Dimock’s important earlier thesis, as developed in Residues of Justice: Literature, Law, Philosophy (Berkeley: University of California Press, 1996). There, Dimock holds that literature works by carrying forward the “residues of justice” left behind by the law. In both versions of the argument, the binary that Dimock puts in place may actually limit the content of the legal critique that literature can be imagined to do. It does so by downplaying the extent to which law itself becomes “located” through a “transmission of words,” the always freighted, ongoing negotiation of the legal present with the history and practice of its language. For a critique of the binaries that influence work in law and literature generally, see Julie Stone Peters, “Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion,” PMLA 120 (2005): 442–53.


32. Pierre Legendre, “The Masters of Law,” in Legendre, Law and the Unconscious: A Legendre Reader, ed. and trans. Peter Goodrich (New York: St. Martin’s, 1997), 129–33. Spiritual jurisdiction, of course, was not itself singular, and the “universal jurisdiction” of the Church was always inflected, from the bottom up, by a de facto territorial organization of episcopal and parochial jurisdiction. In speaking of the universal jurisdiction implied by the competence of the canon law, I do not mean to minimize the plurijurisdictional reality of canonical practice. It may be said, indeed, that the canonical universalism to which Legendre points is, at least in part, a back formation, the historical product of a later secular order that sought there an image of the indivisible sovereignty it looked to claim for itself.

33. In pre-Reformation England, the fourteenth-century statute of praemunire, under which Wolsey’s fall was managed by his successors at Westminster, became the principal expression of a juridical discourse pitting the temporal authority of the state against the felt intrusiveness of a transnational ecclesiastical authority.


37. For the common law’s engagement with threatening discursive orders other than its own, and especially with that of the civil law, see Peter Goodrich, Languages of Law: From Legics of Memory to Nomadic Marks (London: Weidenfeld and Nicolson, 1990).

38. For Peter Goodrich’s work on the legal shape of an intimate public sphere, see especially his Law in the Courts of Love: Literature and Other Minor Jurisprudences (London: Routledge, 1996); and his Laws of Love: A Brief Historical and Practical Manual (Houndmills: Palgrave, 2006).

39. For an introduction to Legendre’s difficult project, see Legendre, Law and the Unconscious; also the critical essays in Law, Text, Terror: Essays for Pierre Legendre, ed. Peter Goodrich, Lior Barshack, and Anton Schütz (New York: Routledge-Cavendish, 2006).


41. For copyhold and its movement from manorial jurisdiction to equity jurisdiction and thence to common law, see Charles M. Gray, Copyhold, Equity, and the Common Law (Cambridge, Mass.: Harvard University Press, 1985).

43. For the case history, respectively, of evidentiary prohibitions and of the closely related prohibitions on the grounds of self-incrimination, see Gray, Writ of Prohibition, 2:207-8, 328-30. See also R. H. Helmholz et al., The Privilege against Self-Incrimination: Its Origins and Development (Chicago: University of Chicago Press, 1997).

44. Gray, Writ of Prohibition, 2:207–8, 328-30.

45. According to this same pattern of institutional absorption and conquest, Constable notes that the 1583 statute that formalized the unofficial use of mixed juries also marks a shift in the function of the mixed jury and in the meaning of law itself, substituting a central law for personal law by dissociating the jury's knowledge from any status as law: "Juries may still have special knowledge, but it is not that of the law. The common law is distinct from custom and community, that of which and from which the jury speaks. Instead the jury now speaks about facts" (Law of the Other, 102). For an account of the literary engagement with the changing construction of legal community analyzed by Constable, see James Landman, "The Laws of Community, Margery Kempe, and the "Canon's Yeoman's Tale," Journal of Medieval and Early Modern Studies 28 (1998): 389–425.

46. This is the view of law as practice that Stanley Fish takes as reasonably underpinning the very possibility of law: "Forgetfulness," in the sense of not keeping everything in mind at once, is a condition of action, and the difference between activities—between doing judging and doing literary criticism or doing sociology—is a difference between differing species of forgetfulness." See his "Martinez and the Uses of Theory," in Fish, Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies (Durham, N.C.: Duke University Press, 1989), 397.


49. Ibid., 27.


54. For positive arguments about the shift in jurisprudence that favored the common law over the ecclesiastical law, see, for example, Gray, Writ of Prohibition, 1:22; Lorna Hutson, "From Penitent to Suspect: Reformation and Renaissance Drama," Huntington Library Quarterly 65 (2002): 305-19. Hutson's essay takes issue with Stephen Greenblatt's argument concerning drama's relation to Catholicism in Hamlet in Purgatory (Princeton: Princeton University Press, 2001), by arguing that post-Reformation drama does not as ideological compensation but as an epistemological project in which the audience comes to evaluate evidence in the mode of a common-law jury. For a recent reinvigoration of Whig history-making, see Annabel Patterson, Nobody's Perfect: A New Whig Interpretation of History (New Haven: Yale University Press, 2002).

55. On the theoretical emergence of judicial interpretation in the wake of the reconfiguration of statutory law, see Samuel E. Thorne, ed., A Discourse upon the Exposition & Understanding of Statutes with Sir Thomas Egerton's Additions (San Marino: Huntington Library, 1942), 1-100. The principle that the common-law courts alone could interpret statute was itself controversial. The civilians who oversaw the ecclesiastical jurisdiction opposed that view, claiming for themselves the right to interpret statutes affecting the spiritual courts. See R. H. Helmholz, Roman Canon Law in Reformation England (Cambridge: Cambridge University Press, 1990), 174-75. In his chap. 5, Helmholz describes the impact of statutory law on the ecclesiastical jurisdiction and the professional authority of the civil lawyer.


59. Helmholz, Roman Canon Law, 154. The quotation is from Correspondence of Matthew Parker, ed. John Bruce and Thomas Verowme (London: Parker Society, 1853), 351–52.


65. Ibid., 33r.

66. Ibid., 296.

67. Ibid., 120.

68. Relevant here is Jesús Vallecillos's extension of Pietro Costa's work, in which he suggests that the latter privileges, within the symbol *jurisdiction*, the image of a hierarchical process of power relative to more horizontal representations of the plurijurisdictional reality. In this context, Vallecillos links the ultimate emergence of the prince's uniquely superior jurisdiction with a reshaping of the traditional juridical theory (a genuinely distributive phenomenon) into a set of structures "whose substantial rigidity was not troubled by the accidental variations produced in jurisprudence," with the paradoxical result that the traditional "theory of jurisdiction ... became a factor of stability" in the reproduction of a differently sovereign order ("Power Hierarchies in Medieval Juridical Thought: An Essay in Reinterpretation," *Ius Commune* 19 [1993]: 1-29, at 24). In *Council and Hierarchy: The Political Thought of William Durant the Younger* (Cambridge: Cambridge University Press, 1991), Constantin Fasolt describes for the early fourteenth century the same reconfiguration of jurisdiction—first, in terms of the impact of a distinction between private property and sovereignty on the order of autonomous lordships (166); and second, in terms of the development of historical attitudes (dating back even to the twelfth-century canon lawyer Gratian) that split the sanction of historical custom from the "unconditional command" of the pope and thereby supported (alongside the decline of jurisdiction into sovereignty) a "transformation of jurisprudence into legal history" (279).


### CHAPTER ONE


