Introduction

ELIZABETH S. ANKER AND BERNADETTE MEYLER

The university today is abuzz with talk of interdisciplinarity, including discussion of its virtues and its limits. Law and literature represents one of the most enduring of the many interdisciplines that are now commonplace within the university. It claims a long and storied history, traceable at least to the work of John Wigmore, longtime dean of Northwestern Law School, at the beginning of the twentieth century.[1] In the approximately 100 years since, it has been taken up by some of the academy's most prominent literary critics as well as influential legal scholars and judges. Developments like the legal storytelling movement have shaped received views about both legal interpretation and the everyday operations of law, just as the status of legality and the juridical have frequently been at the forefront of questions within literary theory and criticism. For almost a century, the separate disciplines of law and literature have, in various ways, conspired, sparred, and joined forces.

By many accounts, the 1970s and '80s marked the heyday of law and literature, the era during which it evolved into a full-fledged movement engaging both law and literature faculties. Since law and literature's emergence, scholars have recurrently debated how best to explain and justify the interdisciplinary traffic between the two fields. Especially in its early guises, law and literature was often credited with endowing the study of literary texts with a much-needed real-world, practical focus, especially in the wake of the formalism that characterized the New Criticism. Conversely, the interdiscipline was seen as humanizing law, returning overly utilitarian

or legal realist modes of legal study to their humanistic, ethically minded origins. Yet virtually since its institutional founding, law and literature has inspired contention and dissent. The discipline's death knell has often been sounded; indeed, almost as soon as it was born in its institutional form, law and literature was diagnosed as dead or dying.[2]

But the reality is far different, as this volume demonstrates: law and literature is currently thriving. In the past decade, the interdiscipline has experienced something of a renaissance. Despite cries of its lagging fortunes, new methodological questions, inquiries, and approaches proliferate. The field is expanding in new geographical and temporal directions, whether to previously understudied regions of the world or to the futuristic scene of science fiction. Just as climate change and spiraling geopolitical conflict tied to the war on terror have introduced unprecedented juridico-political challenges, the internationalization of law and literature has opened up an array of evolving issues, controversies, and debates. And while some critics gaze into the horizon of looming socio-environmental threats, historical approaches to law and literature have also flourished, demonstrating the deep connections among law, sovereignty, and early modern drama, as well as the imbrication of the Victorian novel with nineteenth-century legal culture and writing.

Meanwhile, innovations in literary criticism and theory have engendered fresh methodological grounds for conjoining literature with law. With those new methodologies have come new rationales for interdisciplinarity, as well as new accounts of the law and literature nexus. The time is therefore ripe for a reevaluation both of the nature of the interdisciplinary encounter and of what scholars and students alike can gain from it.

It is in the midst of an abundantly fertile, generative episode in the story of law and literature, then, that this Introduction and volume set out to assess recent developments within the field. We aim to make sense of where law and literature has been; where it is now; where it might be heading; and what we consider its most urgent challenges and questions, questions that the chapters in this volume take up.

THE INSTITUTIONAL SETTING

One might be tempted to cynically attribute recent enthusiasm for law and literature to troubling institutional, professional, and other factors. It is increasingly hard to dispute the view that the golden age of the modern university is ending, if not already over. Shrinking job markets, budget

cuts, and other forms of belt tightening have placed heightened pressures on many academic fields, including practice-oriented disciplines like law. While the long-term consequences of these changes are impossible to predict, by some accounts they have rendered interdisciplinary expertise and other forms of "credential inflation" newly attractive, whether to hiring committees or exacting administrators. In this climate, there is furthermore little doubt that the humanities face the greatest threat, and humanists have not surprisingly voiced some of the loudest and most embittered complaints about what is often deemed the "corporate" or "neoliberal" university. As skeptics argue, calls for interdisciplinarity risk becoming instrumentalizing moves that forebode the obsolescence or marginalization of specialized knowledge and disciplinary autonomy.[3] Doomsaying over the future of the university has thus fanned mistrust of the very kinds of interdisciplinarity embodied in law and literature.

This volume, however, adopts a very different attitude toward the recent flowering of interdisciplinary activity. Regardless of the current institutional crisis, the present moment can also be characterized as a time of widespread methodological rethinking and rejuvenation. Precisely such a burgeoning of innovative ideas, theories, and approaches within law and literature is what this volume aims to tackle.

Within literary studies, established ways of "doing theory" and interpreting texts have come under reexamination in recent years. Many core intellectual positions and premises—whether the antinormativity bias, constructivist theses about the subject, the overriding value of negative critique, or the linguistic turn—are increasingly being displaced. As critics newly evaluate those orthodoxies, some have devised emergent theoretical paradigms and alternate frameworks for interpreting texts.[4] Those novel approaches—including, among others, actor-network theory, performance studies, affect theory, distant reading, and attention to the reparative aspects of theory—inform a number of the chapters in this volume. It is not accidental that many of those inventive perspectives within literary studies were catalyzed by interdisciplinary encounters, whether involving Bruno Latour's work on the history of science, theater and the visual arts, or anthropologies of law in the postcolony and global South. If anything, the current fashion of relatively new conjunctions like "science and literature" and "the digital humanities" risks eclipsing the longer, more complex history and influence of a longstanding interdiscipline like law and literature. Yet most importantly, what some decry as a mounting backlash against critical theory in language and literature departments not only has inspired pioneering new insights and analytics but also has been productively incited by interdisciplinarity from the beginning.

Meanwhile, the legal academy has experienced a rising tide of professors hired with joint degrees, which reached a highwater mark with 68 percent of entry-level hires at top schools from 2013 to 2015 holding JDs/PhDs. This trend heralds more than the prestige or influence of interdisciplinarity within law; it also marks a growing disciplinary specialization within legal scholarship, which had previously tended to conceive itself in more generalist terms.[5] In view of the contracting market for both academic and practice-based jobs in law, this narrowing of expertise might appear ironic. In addition, it stands in contrast to the increasing emphasis by the American Bar Association, state bars, and law schools themselves on experiential learning delivered through vehicles like law school clinics and externships with legal organizations.[6] In a saturated legal market, progressive job scarcity has also motivated repeated media attacks on the structure as well as the goals of legal education, with visible calls for law schools to justify the debt their students incur and to explain away aspects of their curricula that might appear tangentially related to actual legal practice.[7] Here, too, prioritizing multidisciplinary expertise in both hiring and scholarship might appear to contradict those demands.

Although this increasing specialization of the legal professoriate might suggest fertile ground for law and literature scholarship, very few of the PhDs hired in recent years hold degrees in fields related to literature.[8] For legal scholars working within the humanities, degrees in history and philosophy instead dominate, and the vast majority of JDs/PhDs entering the legal academy have been trained in the empirical social sciences.[9] Meanwhile, pressures within legal education have further sidelined law and literature, on both the pedagogical and scholarly fronts. While the growing onus of demonstrating the practical relevance of legal education has jeopardized the existence of law and literature courses, many law and literature scholars seem to have internalized the perceived need to devise skill-based rationales for that intellectual focus. Justifications for law and literature that foreground legal storytelling, rhetoric, or the value of literary analysis to legal writing and argumentation have consequently gained currency, arguably overshadowing and, by extension, demoting other bases for the interdiscipline.

The status of critical theory and continental thought within law schools has often been intertwined with that of law and literature, and that story, too, has largely been one of progressive marginalization. The critical legal studies (CLS) movement, one of law and literature's initial fellow travelers, had largely dissipated by the early 1990s, leaving behind more disparate strands of critical thought pursued by splinter groups or individual legal academics.[10] Although CLS fragmented into a range of subfields including

critical race studies, feminist legal studies, and more recently work on settler colonialism, the influence of those approaches has likewise been circumscribed. But if CLS and its offspring receded into the background of legal education and scholarship, recent events promise to newly galvanize leftist, humanities-based forms of critique and to revitalize their role within the study of law. For instance, the rise of the Black Lives Matter movement and corresponding law students' activism have led to renewed calls to offer courses on critical theory and to include critical race studies across law school curricula.[11]

What the foregoing has at times meant is that those scholars with backgrounds in literary study have tended to mask or downplay their reliance on the tools of literary and theoretical analysis, even while they actively employ them. Hence, Jeannie Suk's book *At Home in the Law* reads the figure of the home as a trope to illuminate a range of Supreme Court cases, yet never mentions law and literature.[12] Likewise, Elizabeth Emens has drawn from literary, anthropological, and philosophical sources to envision alternatives to contemporary family arrangements but rarely explicitly invokes law and literature as informing her methodological approach.[13] Others, like Simon Stern, have enlisted varieties of historical analysis derived from literary studies in order to wrestle with the genesis and derivation of specifically legal concepts like copyright.[14] In this way, literary criticism and theory have entered the mainstream of legal scholarship, even though the magnitude and scope of their formative influence can be hard to detect. While often unannounced, the debt to law and literature held by many legal scholars and within multiple areas of legal scholarship is a profound one—a debt that the chapters included in this volume consider.

TAXONOMIES OF LAW AND LITERATURE

In the decades since its inception, law and literature has, with remarkable frequency, prompted two noteworthy and interrelated impulses. First, it has spawned an unusual number of taxonomies: efforts to devise conceptual frameworks for identifying, differentiating, and classifying the various kinds of scholarship that make up the interdiscipline. Critics have asked: Is law and literature scholarship united by shared questions, interests, or commitments? What are the key features that distinguish one basis for analyzing literature alongside law from the next? As an enterprise, is law and literature composed of different variants or genres, and how do those categories meaningfully diverge from and/or intersect with one another? What assumptions about law and literature alike do alternate types of

scholarship implicitly marshal? Second, law and literature has met with an exceptional volume of internal objections and critique—critique that has often forecasted the field's obsolescence or even its demise.

These dual impulses tell us a lot about the preoccupations, concerns, and points of friction that have driven the field—as well as the hopes and uncertainties that have colored it. Classification, no doubt, can serve an authorizing or justificatory function; it can shore up bodies of knowledge with legitimacy, intelligibility, and verifiability. One story of the origins of law and literature cites to a sense of mutual lack: to anxieties about the perceived deficiencies and insularities of the two disciplines. The classificatory impulse might seem perfectly geared to quell those anxieties, although it has simultaneously instilled law and literature with a proclivity for often reflexive self-examination. Nonetheless, the sheer profusion of attempts to categorize law and literature over the past two decades invites its own scrutiny—the need to dissect and examine (or, we might say, to taxonomize) the taxonomic impulse. Of multiple delineations of law and literature, four have prevailed, and it is one item of this Introduction's agenda to evaluate them.

One frequent approach to mapping the variants of law and literature has been historical; critics have developed genealogies of law and literature over the years following James Boyd White's landmark 1973 *The Legal Imagination* in order to understand the interdiscipline. A second common angle has been to furnish a typology of the relationship between literary and legal objects, relating literary forms, genres, and structures to particular legal constructs, practices, or innovations. A third approach instead moves between the poles of "similarity" and "difference"; here, scholarship focuses on the extent to which law is viewed as symmetrical or complementary to literature and culture or instead should be contrasted with and opposed to those domains. And finally, a fourth approach emphasizes audience, asking about the relevant audience for and intended benefit from the interdisciplinary encounter. Each approach boasts some merits but also carries with it considerable drawbacks.

Jane Baron (addressing a largely legal audience from the pages of the *Yale Law Journal*) and Julie Stone Peters (speaking primarily to literary scholars in *PMLA*'s section on the profession) both described the early trajectory of the law and literature movement or enterprise as consisting of three principal strands.[15] The first was "humanist" and, in Julie Peters's words, expressed a "commitment to the human as an ethical corrective to the scientific and technocratic visions of law that had dominated most of the twentieth century."[16] Exemplified by the work of Richard Weisberg and James Boyd White, humanist law and literature scholarship often sought

to shed light on the imaginative, cultural, and ethical dimensions of law and legal process. Martha Nussbaum's many interventions in the field, with their emphasis on empathy, compassion, and the significance of emotional life to the law, have similarly embodied the investments of humanistic variants of law and literature.[17] The recent turn to human rights within literary study might also be seen as a manifestation of this focus. Nonetheless, for many language and literature scholars working during the prime of postmodern and poststructuralist thought, "humanism" has carried more complicated associations, often signaling what theory foremost sets out to denaturalize and interrogate.

The second, "hermeneutic," strand drew on the interpretive turn within the humanities to study the techniques for meaning making within law.[18] While Ronald Dworkin analogized the common law to a chain novel in which each successive judgment and judge responds to and modifies the course of the plot, others considered the commonalities and distinctions between literary and constitutional interpretation.[19] Finally, what Peters and Baron describe as the third, or "narrative," strand of law and literature emerged in part out of feminist legal studies and critical race theory's efforts to expose the historical subject of Anglo-American law as white, male, straight, and economically entitled. Storytelling by individuals and groups structurally excluded from those privileged categories, it was believed, could remedy the biases and resultant injustices inscribed within the law, expanding the protections of rights and citizenship.[20]

Historicizing accounts of law and literature like Baron's and Peters's, however, tend to leave off around the turn of the millennium, neglecting subsequent developments within law and literature. In addition, these ways of subdividing the interdiscipline, while they capture much, tend to offer a rather partial portrait of the wide spectrum of eclectic methods that have characterized law and literature. Rarely does a given instance of law and literature scholarship fall neatly or tidily into only a single one of the foregoing categories, as they risk muting or discounting the variety, novelty, and excitement of the interdiscipline in its many incarnations.

Another common basis for categorizing the varieties of law and literature scholarship eschews this historical genealogy and instead considers the primary focus of the research—namely, whether its principal object of study involves legal or instead literary texts. For Guyora Binder and Robert Weisberg, there are two principal approaches, "law in" and "law as":

> The Law and Literature movement embraces two distinct forms of scholarship. What is often called Law *in* Literature scholarship is a species of conventional literary history and criticism that treats works of imaginative literature that

> contain legal themes or depict legal practice. . . . Law *as* Literature . . . employs the techniques and principles of literary criticism, theory, and interpretation to better understand the writing, thought, and social practice that constitute legal systems and offer these techniques and principles as tools for reforming those legal systems.[21]

In addition to this dichotomy between "law in" and "law as,"[22] some include a third classification, "law of." "Law of" scholarship typically investigates the dynamics of laws that regulate the production and circulation of literature, whether obscenity laws or copyright restrictions.[23] Work in this vein demonstrates how legal rules both mold and constrain literary creation, just as those rules positively and negatively impact societal views about literature and culture.[24]

Such a classificatory framework helpfully highlights important features of law and literature scholarship that might otherwise go unremarked, asking about a scholar's priorities and the ramifications of that focus. However, these conceptual schemes can tend to circumscribe the complex, multifarious traffic between literature and law, imagining the route connecting the two disciplines to be something of a one- or two-way street. They can likewise presume that any given piece of scholarship will claim a primary audience, whereas much work in law and literature instead strives to intervene equally within both legal and literary studies.

To such ends, others have sought to categorize work in law and literature by asking how the ultimate relationship between the two disciplines is configured. In particular, scholars draw a distinction between assimilating law and literature, understanding those domains to be integrated or overlapping, and holding them apart, emphasizing their differences; indeed, assertions of and disputes about similarity and difference between law and literature as discrete modes of reasoning, thought, and discourse proliferate in law and literature scholarship.[25] This tendency may be connected to what Kenji Yoshino identifies as a divide between particularizing and generalizing conceptions of literature. Drawing on Timothy Reiss's historical account of the term "literature," Yoshino contrasts a "generalizing" view that literature "encompasses all texts of scholarly value or, in its fullest ambit, all texts" with the "particularizing" one that arose in the late seventeenth century and "held that literature was a belletristic discourse, containing 'works having formal beauty and emotional effect.' "[26] Whereas a generalizing perspective might incline a critic to emphasize the resemblances between law and literature, attention to the particularity or singularity of literature would amplify their divergences.

Other competing orientations within literary and especially critical theory over the decades since the emergence of the law and literature movement can help us further grasp such tensions. On the one hand, certain schools of theory have, in varying ways, contended with the larger political, social, and institutional structures—like law—that enable or constrict literary-cultural production and are themselves in turn shaped by cultural artifacts. For some critics, Michel Foucault's mode of genealogy has provided a model for demonstrating how legal and literary developments were forged under the same historical conditions, rendering their dual evolutions enmeshed.[27] Hence Foucault's classic 1975 *Discipline and Punish: The Birth of the Prison*, which charts the evolution of modern philosophies of criminal punishment and their role in the production of disciplinary knowledge, proved formative for innumerable law and literature scholars.[28] Along other lines, Marxist theorists have long insisted on the invariably economic or materialist and hence political or legal aspects of art, literature, and aesthetics. Whereas Walter Benjamin famously called for the Marxist politicization of art in response to both its commercialization and the rise of fascism in mid-century Europe in his 1936 essay "The Work of Art in the Age of Mechanical Reproduction," Fredric Jameson's analysis of the commodification of culture in his seminal *Postmodernism: The Cultural Logic of Late Capitalism* begins with the caution that "as throughout class history, the underside of culture is blood, torture, death, and terror."[29]

On the other hand, alternate schools of theory including poststructuralist thought have often asserted literature's difference or separation from the spheres of politics and law. For example, some deconstructive accounts of ethics have celebrated the singularity or Otherness of literature and "justice" in ways that segregate or oppose them to legal and other institutions. Such variants of thought have reinforced the common view that law and literature not only furnish radically different versions of truth but also represent competing discourses and registers of thought. In fact, literature and art are frequently understood to acquire ethical value through their capacity to disrupt legal regimes—rules, norms, and the status quo—and thereby disclose what those systems of thought exclude or repress.[30] Such accounts of the ethics of literature thus valorize (rather than lament) its opposition to law as precisely what endows aesthetic experience with bearing upon and relevance to social justice. Literature's alterity to law and politics is what allows it to generate insight into law's constitutive failures and negative limits. Theorists have employed various terminologies to elucidate this difference—at times drawing on (and occasionally misappropriating) Jacques Derrida's language of impossibility, incalculability, untranslatability, and aporia.[31] Such a conceptual grammar, for example, is central

to both Judith Butler's and Gayatri Spivak's highly influential thought.[32] Within the legal storytelling movement, deconstructive variants of ethics similarly offered one important model for explaining how encounters with narrative literature can expose law's historical crimes and omissions, laying bare those offenses while creating an ethical awareness of law's excluded Others.

The similarity/difference dyad for categorizing law and literature thus concentrates attention on what can seem like important fault lines within law and literature scholarship. And indeed, those contrasting views about the relationship between literature and law are often mirrored not only in conflicting justifications for the interdisciplinary encounter—or arguments about what is gained by bringing literature and law into conversation, whether in research for scholars or pedagogy for students—but also in defenses of the humanities. During an era witnessing increasingly dire threats to most humanities fields, one response has understandably been to buttress conventional arguments for the merits of humanistic inquiry. However, many literary and critical theorists have simultaneously been reluctant to resort to instrumental justifications, framed in strategic, pragmatic, or utilitarian terms.[33] To be sure, this reluctance importantly safeguards the crucial experimental, imaginative, reflective, and creative elements of critical inquiry and humanistic thought, qualities that do meaningfully distinguish the humanities from the sciences and other applied disciplines like law. But there is growing pressure to reassess those common explanations for the value of the humanities, asking whether they have somehow sanctioned or accelerated the humanities' institutional marginalization and diminishing relevance. It is within appraisals of interdisciplinarity, then, that such tensions come into especially high relief. By defining literature as separate or different from law, do we inadvertently enfeeble its ability to serve as an agent of resistance, change, and reform? Or instead, must art and aesthetics remain outside and dissenting from law in order to preserve their oppositional and visionary capacities?

By no means last, law and literature scholarship has also, although less explicitly, been classified according to the audience or audiences it aims to address, as well as its goals for those audiences. These goals have often involved forms of consciousness raising. From the movement's beginnings, one ambition of law and literature has been to reform the souls of legal practitioners, whether by rendering judges and lawyers aware of the emotions that law occludes or by revealing its hidden and disavowed subjects.[34] Such an ambition frequently unites what might otherwise appear to be divergent approaches, aligning, for example, what Peters and Baron differentiate as humanist versus narrative strands of law and literature.

Analogously, some such scholarship sets out to raise questions of justice in a manner salient for not only academics but also students, and accordingly it has proven especially influential in law-and-literature pedagogy. As Ian Ward has noted, law and literature has maintained an educative function since its institutional inception, one that he suggests should become the focus of the field.[35] A central project of many law and literature courses involves cultivating student awareness of the dark undersides and contradictions that haunt certain legal rules and procedures, whether to dramatize the problematically gendered dimensions of witnessing and testimony or how the institution of slavery fashioned the legal constructs of both property and citizenship.

Whereas certain law and literature scholarship tries to affect the attitudes of students, practitioners, or scholars, other research instead presents itself as explicitly engaged in programs of institutional reform, whether those programs are understood to complement or to supersede the goal of individual improvement. For some critics, the very genesis and evolution of certain literary forms and genres—like the novel—demand to be historicized as involving both reformist and consciousness-raising objectives. Hence, intellectual historians have recently connected the eighteenth-century rise of the novel and the modes of sympathy novel reading fosters to advancing awareness of legal and political principles tied to liberty, freedom, and equality.[36] Contemporary literature scholars have similarly documented how twentieth- and twenty-first-century cultural texts can fulfill the function of promoting public sympathy for issues such as human rights or the plight of refugees. For instance, Kay Schaffer and Sidonie Smith's *Human Rights and Narrated Lives: The Ethics of Recognition* studies a series of concrete scenarios in which human rights activism succeeded due to the public circulation and reception of first-hand stories of victimhood and abuse.[37]

Frequently scholars working in this vein have derived concrete inspiration directly from literature to suggest how law and legal norms might be altered.[38] Henry Turner's *The Corporate Commonwealth: Pluralism and Political Fictions in England, 1516–1651* provides one recent example of such an approach; Turner investigates the roots of the fiction of the corporation in early modern England in order to devise socially progressive alternatives to dominant legal definitions of the corporate form today.[39] This kind of work inherits many emphases of critical legal history, including awareness of the mutually constitutive relation of law and its sociopolitical contexts as well as how legal and cultural spheres collaborate in their joint evolutions.[40] While demonstrating law's alliance with politics and society in generating an array of core legal principles, such as sovereignty, contract, and intention, projects in this vein often leverage historical analysis to

simultaneously render normative prescriptions aimed at unseating established understandings of law and exposing them as myths. As Brook Thomas explains, works of literature "can help us identify stories about national membership and national values that are only implied by citizenship laws," thereby enabling us to recognize the "civic myths" that underlie our legal cultures.[41] The hope often is that, once the contingent underpinnings of legal doctrines are revealed, better alternatives will become apparent and thus available as resources for institutional reform.

THE CRITIQUES

Over the years, the law and literature enterprise has met with a number of objections, often articulated in the same breath as its various strands are taxonomized. Hence, Jane Baron laments that much scholarship in law and literature takes as a given what law is, endowing law with a stable ontology to which literature can be either connected or juxtaposed.[42] In other words, there has been a tendency to define law in terms of a finite, unchanging, clearly identifiable set of institutions and doctrines, imagining law as a foil or antithesis to the indeterminacy, multiplicity, and heterogeneity of literary expression and experience. Yet as critics like Baron argue, such frameworks not only lead to simplistic, falsified ideas about law but also encourage overly celebratory, idealized portraits of literature.

A related complaint is that law and literature scholarship has often glorified narrative and storytelling as inherently ethical or salvific, failing to attend sufficiently to the potentially distortive effects of narrative within law. Yoshino, for instance, points to the deployment of victim impact statements in criminal sentencing to illustrate such a concern.[43] As these objections suggest, law and literature scholarship has at times imagined that law disproportionately benefits from the interdisciplinary encounter, or that it needs the superior insights of literature as a corrective to its errors and failings—hence, more than literature needs law.

Another way to construe the foregoing concerns is to say that law and literature scholarship as practiced in its first several decades has too often vacillated between the dual poles of what Binder and Weisberg refer to as sentimentalism and skepticism. As discussed above, law and literature scholars have often insisted on the inherently ennobling effects of literature for legal subjects, treating literature as a natural antidote to the many liabilities of law. On the one hand, one might thus be tempted to censure work predicated on notions about the radical Otherness of literature for beholdenness to such sentimentalizing tendencies. On the other hand,

purified ideas about literature have often been partner to problematically skeptical, suspicious understandings of law and legality. Either law comes to be construed as inherently biased and corrupt or its negative limits are seen to overshadow its virtues and accomplishments. This instinct to vilify law is manifest in a range of contemporary theory, wherein a frequent premise is that legality and the juridical are effectively synonymous with injustice.[44] But as Binder and Weisberg argue, such expectations can betray "a facile sophistication that mistakes *skepticism* for criticism and dishonors good causes with bad arguments."[45]

This claim that law and literature scholarship suffers from a surfeit of skepticism echoes recent debates within literary and critical theory about the limits of what Rita Felski labels "critique" and what Eve Sedgwick famously termed "paranoid" styles of reading.[46] Indeed, one might say that law and literature has been regulated by its own hermeneutics of suspicion, a phrase coined by Paul Ricoeur. For Ricoeur, suspicious hermeneutics are governed by the onus to demystify, or to reduce "illusions and lies of consciousness."[47] Whereas Ricoeur identified Marx, Freud, and Nietzsche as the three primary architects of this style of analysis, suspicion of law has become—perhaps ironically—a hallmark of much law and literature criticism, leading to the overwhelming presumption that virtually all laws and legalities are invariably constituted through a series of distortions or fabrications of reality that become the critic's responsibility to unmask and denaturalize. This pervasive skepticism about law is, with great frequency, also internally self-directed, or targeted back at the law-and-literature critic through autocritique, a phenomenon Caleb Smith considers in chapter 2 of this volume. But even more centrally, it has generated the presumption that law and its procedures should, first and foremost, be objects of negative misgiving and even condemnation. Conversely, it has created the corresponding (if tacit) suggestion that to avow faith, hope, or belief in the normative or world-making capacities of law is to be somehow naïve or misguided—to be either oneself deluded by law's mystifications or, even worse, an apologist for law's historical crimes. As both Janet Halley and Wai Chee Dimock suggest in their contributions (chapters 7 and 21, respectively), that dominance of suspicion in humanities-based legal scholarship has resulted in what Dimock characterizes as overly "muscular theories" and Halley diagnoses as a tendency to read power and other struggles in terms of Manichean dualisms that elide the nuances and complexities of many legal and social practices. As Sedgwick herself put it, overemphasis on suspicion can have "unintentionally stultifying side effect[s]" that turn paranoid styles of reading into "a mandatory injunction rather than a possibility among other possibilities."[48]

Another problem with much existing law and literature scholarship has been what critics have described as its resolutely Anglo-American compass. As Greta Olson, writing as an American expatriate in Germany, explains, many American law and literature scholars have tended to extrapolate from the particularities of their own legal experiences as though they were universal. At the same time, many European critics have relied too narrowly on the groundwork established within an Anglo-American context.[49] A number of the interdiscipline's core debates, critics thus complain, have been generated with reference to the peculiarities of the Anglo-American legal scene. As such, it is not just a matter of expanding law and literature scholarship to other geographies or to comparative work on the legal systems of the global South. Rather, there is a need to provincialize the field's basic assumptions within a globalized frame.[50] The turn to internationalize law and literature thus promises not only to enlarge the field's ambit but also to challenge some of its entrenched priorities and preconceptions about the scope and nature of law, literature, and their intersections, as Elizabeth Anker argues in chapter 12 of this volume.

Finally, one of the most frequent and trenchant objections to existing configurations of law and literature has questioned the exclusivity of that pairing. For instance, both Austin Sarat and Julie Peters have argued that the field's difficulties stem not from an excess of interdisciplinarity but rather from the fact that it has not been interdisciplinary enough.[51] Hence, Peters concludes her influential essay "The Vanishing Real" by gesturing toward the idea of "law, culture, and the humanities"—the name of a now-prominent conference and association—as having the potential to rescue law and literature alike from their respective errors, which for Peters derive from unproductive efforts to locate the "real" within the contrasting discipline's purview.[52] In a similar vein, Binder and Weisberg have advocated for the need to situate law and literature within a broader conception of culture.[53]

REIMAGINING LAW AND LITERATURE

These critiques, taken in conjunction with the wealth of recent and emerging scholarship in law and literature, suggest that extant taxonomies are insufficient to describe the state of the field today. There are, however, several criteria that any new account of the field must meet. First, it must be capable of registering the vast diversity of excellent scholarship being produced under the rubric of law and literature. Second, such a framework must capture the ever-shifting, mutating, dynamic operations of literature

and law alike, both independently and as those fields interact with one another in evolving ways. Third, it must keep in sight the variegated range of methods and techniques that make up the interdiscipline's toolkit. And, by extension, there is a need to pluralize the rationales that have conventionally justified law and literature as an enterprise. Those are the overarching goals that have also informed the organization and content of this volume.

As considered above, established typologies of the interdiscipline tend to produce rather limiting portraits of it, implicitly sidelining, overlooking, or minimizing important scholarship that fails either to display specific attributes or, by extension, to conform to their corresponding classifications. One frequent worry that has been voiced about law and literature over the years is that of lagging or lukewarm interest, as the movement has seemed to proceed in merely episodic, temperamental fits and starts. We might blame the very impulse to taxonomize for, ironically, creating this syndrome that can deplete law and literature of energy—in other words, for causing the field to look far more uniform and prosaic than it actually is. The reigning diagrams for making sense out of the interdiscipline have often seemed to pigeonhole scholarship into exaggerated categories, as different variants of law and literature are imagined to exist in binary or opposing relationships to one another: a critic posits either similarity or difference but not both; approaches law either narratively or hermeneutically; and so on and so forth. But in practice, law and literature criticism is far more ecumenical and heterogeneous than these frameworks conceive. Most law and literature scholars sample from a catholic mix of theories and approaches, merging perspectives and analytics that the field's dominant taxonomies have insisted must be held apart. In consequence, those rigid categories not only will be of minimal use for deciphering the actual tenor and texture of the scholarship they purport to diagnose but also have worked to dampen enthusiasm for law and literature in the very ways their proponents decry. To be sure, simplification might be explained as an inevitable byproduct of the basic effort to taxonomize. *New Directions in Law and Literature*, however, aims to reconceive law and literature in terms that do better justice to its motley, miscellaneous, creative assortment.

The second challenge facing any attempt to craft a typology of current law and literature scholarship is to resist the urge to impose what Baron referred to as a "stable ontology" on either discipline. That is, both law and literature must separately be recognized as the mobile, fertile, fluid, restless phenomena that they are. Yet at times, scholars have defined law, in particular, in terms that deceptively flatten, arrest, or curtail its actual operations. In practice, law and literature alike are active sites of innovation,

transformation, and generation, and their boundaries are neither static nor finite nor readily discernable. In fact, the scope and parameters of law as well as literature and culture are perpetually under negotiation. Nor can the dynamism of law and literature easily be separated out from other disciplines and spheres of influence. The lives of literature as well as those of law depend on the capacity to be responsive: to move, to bend, to accommodate, to perceive, to react. Their synergies cannot possibly be comprehensively summed up in a single dyadic or triadic scheme, yet they are the essence of what has rendered law, literature, and their cross-pollinations fruitful, vibrant, and energetic.

In *Forms: Whole, Rhythm, Hierarchy, Network*, Caroline Levine describes the "iterability" of both literary and political forms in terms that can further elucidate these dynamics of law and literature.[54] In the book, Levine questions the tendency of some critics to define literary structures in overly totalizing, monolithic, and unyielding ways. To the contrary, Levine argues, literary and other forms are inherently aleatory, unstable, and composed of internal tensions, even while they endure and are portable in meaningful ways. For Levine, it also makes little sense to think of forms—whether juridico-political or aesthetic—as singular or unitary. Rather, in any given time or context, a multiplicity of forms coexist and vie with one another for authority, entering into collision and contestation. Those collisions are what enable institutional and other forms and structures to mutate, evolve, and undergo transformation over time, a process that Levine explains in terms of their inherent "affordances." Importantly, Levine's description of these mobile interactions constitutive of forms contains within it a model of sociopolitical—and, for our purposes, legal—change, suggesting how the individual can intervene with agency in such processes. Jacques Rancière's insistence on the aesthetic dimensions of politics is here important to Levine, allowing her to examine how "aesthetic and political forms may be nested inside one another, and . . . each is capable of disturbing the other's organizing power."[55] Levine's description of the multiple and heterogeneous forms and formal migrations that together propel literary history and analysis as well as the operations of politics and law thus offers an analytic lens through which to refract the spectrum of working paradigms that have comprised law and literature. Beyond how law and literature alike resist stabilization or pinning down, *Forms* suggests why their multiform interactions will continually mutate and travel. Taking inspiration from Levine's analysis, it makes little sense to speak of a single or comprehensive basis for categorizing law and literature.

Third, it is crucial to recognize that the sporadic, fluctuating liaisons that comprise the interdiscipline are not constant or invariable across either

geography or history, as a number of this volume's chapters likewise suggest. It is a truism that law is a situational, problem-solving, practice-based discipline that answers to the specific conflicts that enter its jurisdictional arena. While also forward-looking, its practitioners ultimately employ and perfect the law's rules, techniques, and precedents with reference to the particularity and happenstance of circumstance. It goes without saying that a legal scholar or judge will enlist different precedents and methods of analysis depending on the issue or question at hand, and no single decision, rule, procedure, or mode of reasoning and jurisprudence could possibly tackle or resolve even a small percentage of the full gamut of legal problems and cases. Something similar is true of literary study: it would make little sense to apply the conventions of lyric poetry, for instance, to explicate contemporary science fiction, at least without substantially rearranging one's hermeneutic expectations. So the techniques of literary analysis are also, to a great degree, contingent on the peculiarities of text, form, genre, history, and location.

Fourth, what this all means is that our rationales for combining literature with law must be equally reactive and receptive; they must equally adjust to the accidents they chance to encounter. Insofar as any taxonomy will marshal implicit justifications for law and literature, those reasons must also be attuned to the vagaries of time, place, and context. No single basis or explanation for the interdisciplinary encounter will capture every, or even most, examples of scholarship within the field. This is also to say that method can be a tactical choice, or a strategy for approaching the unique problems, issues, and concerns that present themselves.

THE NEW DIRECTIONS

With these guiding principles in view, it becomes possible to describe a number of new directions that have recently engaged law and literature scholars, as each chapter in this volume traverses one or more of those paths. These new directions are not discrete or capable of being partitioned off from one another but rather include several itineraries tracing intersecting routes. The numerous critiques of the law and literature enterprise have motivated some adjustments of course, requiring critics to shift their goals and expectations for literature as well as law. Perhaps most notably, the pathways forged within the interdiscipline have branched and extended beyond narrow conceptions of either law or literature. Nevertheless, the old roads long shaping law and literature scholarship

remain visible and influential, even as they continue to be recharted and reworked.

New Directions falls into three sections. The first, "Genealogies and Futures," accounts for the past, present, and future of law and literature, asking about its histories, its current formations, and its ongoing possibilities. It highlights the continuities but also the breaks characterizing these different stages or episodes within the interdiscipline. The next, "Methods," focuses on the diversity of methodological approaches to law and literature over the years, and it explores both established and more recently developed frameworks. The final section, "Cases," investigates specific questions or sites of analysis to which the methods of law and literature have been applied. Overall, many of the ensuing chapters follow similar paths, just as their inquiries require them to pursue more than one of the new directions this Introduction maps. Among those many avenues traveled by law and literature, five emergent directions have become particularly visible and salient. Those directions include work that is shaped by history and political theory, that questions either the textual basis of law and literature or the hermeneutics of legal texts, that globalizes the field or considers it from a comparative perspective, that seeks to transcend a hermeneutics of suspicion, and that revisits and reinvents the role of the imagination in law and literature.

In recent years, law and literature scholars have often adopted historical approaches, drawing on developments in New Historicism and post–New Historicism within literary studies, as well as the ascendancy of legal history in research about law. Early modern and Victorian studies have been perhaps most heavily influenced by these historiographical developments, as Bernadette Meyler's "Law, Literature, and History: The Love Triangle" (chapter 9) discusses. Scholarship that adopts a historical frame often delves deeply into the mechanisms of the relation between legal and literary institutions, in a sense fulfilling Brook Thomas's call to cross-examine literature and law. For example, Lorna Hutson's *The Invention of Suspicion* both investigates the role of forensic rhetoric in the development of early English drama and situates developments in English neoclassical plotting within the fertile institutional context of the Inns of Court, whose members were simultaneously adapting Latin plays, studying law, and participating in parliamentary politics.[56] Here the relation between law and literature is concretized into particular episodes where techniques from one field are drawn into the other and the intersection of personnel between institutions produces complicated and fascinating results. In chapter 8 of this volume, "Proof and Probability: Law, Imagination, and the Form of Things Unknown," Hutson traces the movement of legal conceptions of human

motive or *causa* to the imaginative world of sixteenth-century drama and, ultimately, Shakespeare's plays, which themselves in turn engendered new cultural understandings of human inwardness.

A longer overview of this historical orientation within law and literature is offered by Brook Thomas in chapter 1, "Minding Previous Steps Taken." Revisiting the 1980s, Thomas describes how growing interest in legal rhetoric and continental theory merged with a larger shift in literary studies from formalism toward history to help precipitate the law and literature movement. Turning to contemporary law and literature scholarship in "Who Wouldn't Want to Be a Person? Histories of the Present in Law and Literature" (chapter 2), Caleb Smith relatedly emphasizes the various modes of historicism that inform law and literature. In so doing, Smith in particular demonstrates how historicist work has called into question the category of legal personhood; as he submits, "[L]aw and literature make persons who are neither masterfully self-possessed (autonomous subjects) nor stripped of all agency (socially or civilly dead)."

The histories that gave rise to the interrelated legal constructs of the person, subject, and citizen also feature prominently in several of the other chapters that follow. In "Ornament and Law" (chapter 13), Anne Anlin Cheng investigates the strange role played by bodily adornments and sartorial choices in generating an understanding of legal personhood through examination of the nineteenth-century habeas corpus and immigration case of *Chy Lung v. Freeman* (1875). Focusing instead on the present, Imani Perry's "The Flowers are Vexed: Gender Justice, Black Literature, and the Passionate Utterance" (chapter 14) draws on Colin Dayan's *The Law Is a White Dog* to suggest that "[r]ecognition [as a person] disciplines as it excludes" and "demands a capitulation to the order of the society"; Perry asserts by contrast the need to develop "the alternative grammars and reordering that emerges from embodied truths."

As these explorations of personhood illustrate, political theory has exerted a powerful influence over recent work in law and literature. Among other developments in political theory, the concepts of biopower and sovereignty have commanded increased interest since the publication of Michel Foucault's late seminars and Giorgio Agamben's writings, from his 1995 *Homo Sacer* to the 2005 *State of Exception* and beyond.[57] Debates about biopolitics are central to the two chapters in this volume that address intellectual property law. Paul Saint-Amour's "Copyright and Intellectual Property" (chapter 19) illuminates how "copyright has enacted, over the course of its history . . . the biologization of property" and suggests that scholarship in copyright should enlarge its focus on the individual author to consider the study of populations proposed by Foucault's late work.

Adopting quantitative methods, for Saint-Amour, might further display the mechanisms through which intellectual property establishes the parameters of legal formulations of life. Looking instead to the issues surrounding the patentability of living organisms, Priscilla Wald's chapter 20, "Replicant Being: Law and Strange Life in the Age of Biotechnology," draws on science and technology studies to chart how the 1982 film *Blade Runner* critiques the law's response to scientific advances that altered legal definitions of and ideas about the human.

Wald's attention to the genre of science fiction highlights another characteristic of recent work in law and literature, which has inquired in more detail into the specificity of disparate literary genres while also broadening the range of work conventionally characterized as law and literature. This scholarship has responded to the critiques of law and literature that insist, on the one hand, that it takes the object of law for granted and, on the other, that it conflates a particularizing with a generalizing understanding of literature. One such approach has involved expanding the reference of "literature" beyond the novel or poem to include studies of law and performance or law and the image. These efforts to enlarge the purview of literature likewise challenge conceptions of what law is, showing that examining law through its appearance or performance can alter our understanding of its nature.

Along these lines, in "Law as Performance: Historical Interpretation, Objects, Lexicons, and Other Methodological Problems" (chapter 11), Julie Stone Peters asks what we might learn about law from investigating it not simply through legal texts or literary performances but instead the course of legal events as they have unfolded. While the attempt to reconstruct distant legal occurrences can pose difficulties from a historical vantage point, Peters demonstrates how studying law as performance can enable both historically situated and transhistorical insights into law.

Attending to the visual dimensions of law, Peter Goodrich argues in "Pictures as Precedents: The Visual Turn and the Status of Figures in Judgments" (chapter 10) that courts' increasing reliance on imagery has ushered in new habits of legal reasoning that have not been reckoned with fully. In particular, for Goodrich, the precedential value of pictures and other images should be recognized and understood in a manner that respects the uniqueness of the visual. As both Peters and Goodrich demonstrate, the object called "law" is constituted differently when examined in light of either its scopic or its performance-based aspects, as opposed to its strictly doctrinal and textual elements.

Legal hermeneutics, a methodological approach that typically concentrates on legal texts, has displayed interest in recent years both in the

distinctiveness of legal as opposed to other styles of interpretation and in the variety of techniques for analyzing law. Martin Jay Stone's "There's No Such Thing as Interpreting a Text" (chapter 4) hence resists the prospect that a single thing called "interpretation" can elucidate the operations of both literature and law. He argues instead that "one always interprets for a reason," and that different reasons distinguish not only literary and legal analysis but also varying types of legal interpretation. Hence, authorial intention might be irrelevant in some legal contexts but matter for analyzing legislation, since the legitimacy of statutes' applications is predicated on the notion that the appropriate body intentionally passed the relevant laws.

Seizing more on parallels connecting literary with legal texts, Peter Brooks's "Retrospective Prophecies: Legal Narrative Constructions" (chapter 5) evaluates the various techniques that literary criticism brings to law and legal scholarship. Brooks wrestles in particular with the role of narrative in legal decision making, as well as its frequent disavowal by legal practitioners. For Brooks, the law therefore needs a narratology, and his chapter demonstrates how such a narratology can illuminate the narrative structure of the Fourth Amendment doctrine of "inevitable discovery," which "involve[s] a 'retrospective prophecy,' a construction of the story of the past by way of its outcome."[58]

Another related basis for conceiving the often unacknowledged literary or fictional components of law and legal texts can be found in recent work on legal fictions, which for Annelise Riles "bring to light . . . the technical source of law's agentive power."[59] In his "Legal and Literary Fictions" (chapter 18), Simon Stern analyzes the resemblances between legal fictions and literary fictions. Whereas some scholars locate the power of legal fictions like corporate personhood and civil death in their narrative structure, for Stern legal fictions instead should be explained by their peculiar ability to engross and maintain attention.

Taking another new direction, much recent law and literature scholarship has expanded to a global or international arena. Whereas some such work enlists a comparative perspective to analyze the laws of different domestic nations or regions alongside one another, other critics have contended with the role of law in the intertwined institutions of slavery, empire, and settler colonialism—both from a historical viewpoint and with reference to neo-imperial practices continuing into the present. Much scholarship within this vein employs literature as a mechanism for critiquing the racialized, gendered, and other violence that underwrites different legal institutions and practices, as in Caleb Smith's discussion of legal personhood in American law and literature and Imani Perry's examination of

the passionate utterance. In "Genocide by Other Means" (chapter 15), Eric Cheyfitz and Shari M. Huhndorf likewise confront the ways that federal Indian law has historically served as an instrument of both oppression and colonial expansion. Their chapter understands Louise Erdrich's award-winning novel *The Round House* as both an attempt to reckon with the legal and political disempowerment of Native American tribes and a defense of tribal law as the sole path to justice in a settler colonial context.[60]

Just as Cheyfitz and Huhndorf demonstrate why federal Indian law is a product of settler colonialism in the Americas, other law and literature scholars have shed light on the imperial or colonial designs of other legal institutions and constructs, whether in local or global settings. For instance, scholars of international human rights have shown how rights discourses and principles remain haunted by the long history of empire.[61] Importantly, scholarship on law, literature, and religion has ventured analogous critiques of secularism as a legal regime. Just as recent work reanimates questions that critical legal studies scholars earlier raised about the nature, scope, and desirability of rights, debates about the status of the veil contemplate the extent to which rights principles should protect individual choices tied to self-presentation or attire.[62] As Cheng's chapter about immigration suggests, scholarly disputes over the veil erode many of the clear-cut distinctions on which law often relies, whether between surface and depth or public and private. In "Pluralism, Religion, and Democratic Culture" (chapter 16), Elliott Visconsi extends these debates through a reading of British-Pakistani novelist Nadeem Aslam's *Maps for Lost Lovers*, a novel that grapples with shifting legal protections for religious free expression in Europe under the jurisprudence of the European Court of Human Rights. As Visconsi maintains, Aslam's novel addresses the failures of democratic pluralism within an incompletely secularized polity, even while it imagines viable alternative routes to sociopolitical change.

Some law and literature critics have lately responded to Binder and Weisberg's charge of an excessive skepticism about law, while simultaneously taking cues from efforts to move beyond or rethink the influence of negative critique and hermeneutic suspicion under way in literary circles. Elizabeth Anker's "Globalizing Law and Literature" (chapter 12) appraises the growing orientation toward the global South within law and literature from such an angle, asking why law and literature critics working within postcolonial studies have frequently envisioned law as the oppressing force and literature as the liberator. As Anker argues, through a reading of Nuruddin Farah's novel *Gifts*, the multiple and crosscutting sovereignties and legalities that comprise "law" within the postcolony "suggest an alternate framework for explaining the law-and-literature nexus in the midst

of intensifying globalization" that, moreover, challenges assumptions implicit to much scholarship on neoliberalism by instead imagining law as potentially capacitating and generative.

Janet Halley's "Paranoia, Feminism, Law: Reflections on the Possibilities for Queer Legal Studies" (chapter 7) similarly questions the frequent emphasis on suspicion, although through an engagement with Eve Sedgwick's thought and life as well as Halley's own dialogue with queer theory over the course of her career. For Halley, Sedgwick's late work on the reparative suggests a "plural, sliding, additive, '. . . and others,' middle-term, midrange, horizontal aesthetic" that provides one model for transcending the chronic paranoia about law that has at times characterized work within the interdiscipline. Halley regrets, however, what she views as Sedgwick's own blind spot regarding law, which remained an object of suspicion despite her insistence on the reparative labor of criticism. Taking the example of current debates over sexual assault on campuses, Halley instead contends that "legal-realist understandings of law . . . can carry the plenitude of Eve's sliding lists into legal life."

It is with similar goals in mind that Wai Chee Dimock builds upon Sedgwick's appeal to the reparative to envision the workings of reparative justice, which Dimock contrasts with punitive justice (chapter 21). For Dimock, reparative justice "multiplies complexities and prolongs the input process, thanks to a multilayered and multivariable commutating network." Drawing on Bruno Latour's actor-network theory, Dimock considers how literature can facilitate such an endeavor through her analysis of novelist William Faulkner's reparative project, which aimed to redress both the humiliation of Japan after the Second World War and the displacement of American indigenous populations. For Dimock, efforts like Faulkner's succeed when they are "crowd-sourced over time" into weak networks, something her essay achieves by thereafter looking to Native poet Jim Barnes.

For some scholars, affect theory has provided a framework for departing from exclusively critique-based modes of analysis (although many affect theorists are invested in suspicion and other "negative" affects).[63] While there is a long tradition of law and literature criticism that examines the relevance of different emotions to law, affect studies often explicitly distinguishes affect from emotion, as Ravit Reichman explains, by "focus[ing] not on emotions strictly defined, but on the relations between mind and body, culture and individual subjectivity." In "Law's Affective Thickets" (chapter 6), Reichman explores the role of "reasonableness" as not only a powerful legal concept with potentially grave consequences, such as sanctioning police brutality, but also a specific affect accompanied by a distinct style and tone. To assess these dual senses of reasonableness, Reichman

analyzes three seemingly distant legal and literary examples; she reads the ostensible absence of affect in Kazuo Ishiguro's *The Remains of the Day* in conjunction with both episodes from the HBO serial *The Wire* and the 2015 Supreme Court decision *Mullenix v. Luna*, which granted qualified immunity to an officer who shot a fleeing suspect six times after the majority of the Court judged his actions to be reasonable.

What many of these shifts and new directions augur further invites being described as a return to the imagination within law and literature. Given how James Boyd White's *The Legal Imagination* helped to catalyze the emergence of law and literature as a movement, recent appeals to the imagination might seem to signal forestalled progress or a mere revisiting of the interdiscipline's origins. As White announced almost forty years ago, the main focus in his book was "the life of the imagination working with inherited materials and against inherited constraints."[64] But whereas White was focused on "develop[ing] a way of thinking about the activities of mind and imagination that lie at the heart of the law—at what happens when a lawyer or judge is faced with a real problem in the world,"[65] the contributors to *New Directions* extend White's focus on legal actors to consider how legal imaginaries affect literary and cultural ones and how the legal and literary imagination intersect and work together. Indeed, recent attention to the imagination is a testament to the countless ways that legal imaginaries can and do continue to shape literary ones and vice versa—as well as to the elaborate interplay of both fields within other domains of culture. This is to say that current work on literary and legal imaginations alike points to the mobile, evolving, animated nature of these respective disciplines and their meaning-making capacities.

Responding to the seeming routinization of law and literature, Austin Sarat, in chapter 3 of *New Directions*, foresees three potential futures for the interdiscipline. The first, normalization, would treat law and literature as a kind of "normal science," thereby segregating it from other interdisciplinary approaches to law while scholars would continue to investigate further dimensions of established questions. Another possible future would conceive of law as performance, seeing law as a collection of collaborative performance processes and events. In addition, Sarat considers how future work in law and literature might understand the literary life of law as encompassing a broader definition of culture—or of "the imagination, invention, creativity, and improvisation that are culture itself." Several chapters included in this volume relatedly defend expanded ideas not only of culture but also of the imagination: they urge more elaborate, nuanced accounts *both* of the cultural terrain of law *and* of the vibrant, dynamic contours of the literary imagination. Many of

the new directions explored in this collection chart untraveled routes for venturing into and navigating that widening landscape. The numerous methodological and other approaches developed in this volume—approaches that are both well trodden and more recently forged—all in their different ways propose techniques for negotiating the workings of the imagination, as a component of literature as well as of law. Hence, Lorna Hutson investigates how forensic rhetoric shapes the dramatic imagination, and, in turn, how Shakespeare's intervention into the dramatic tradition affected later cultural imaginings of interiority. Likewise, Elizabeth Emens's "Regulatory Fictions: On Marriage and Countermarriage" (chapter 17) seeks to supplement relatively impoverished views about the structure and nature of marriage with alternatives to marriage derived from literature. Emens enlists literature as a vehicle for enhancing the legal imagination with the hope that it will inspire the creation of new legal forms.

Taken together, the chapters in *New Directions in Law and Literature* offer a wide range of perspectives on the imagination and its countless pathways, as those routes continue to cross-section the varying jurisdictions of law, literature, and culture in unexpected ways. Those shifting domains at times overlap; at others are contiguous; and at yet others can appear rigidly separated or even segregated. Their many parallels, frictions, symmetries, tensions, fault lines, and gaps are the province of the imagination. They also alert us to the insurrectionary nature of the imagination: to why the imagination will always be poised to break down unhelpful barriers and borders, to refuse intellectual and other kinds of quarantine. And as such, these many intersections between law and literature further return us to the basic goals of interdisciplinarity, with its abiding promise to unsettle—to unsettle whatever boundaries and confines may unwittingly restrain us. It is in such a spirit of imagination that this volume invites you to participate.

NOTES

1. For a helpful bibliography of early work on law and literature, including that of Wigmore, see David R. Papke, "Law and Literature: A Comment and Bibliography of Secondary Works," *Law Library Journal* 73 (1980): 421–37. Richard Weisberg's "Wigmore and the Law and Literature Movement," *Law and Literature* 21 (2009): 129–45, discusses in more detail the nature of Wigmore's contribution to thinking about law and literature, as well as that of Benjamin Cardozo's influential 1931 essay "Law and Literature," in *Law and Literature and Other Essays and Addresses* (New York: Harcourt, Brace, 1931).

2. Peter Goodrich addresses claims of the death of law and literature; see "Screening Law," *Law and Literature* 21 (2009), 1–3.
3. Debates over the digital humanities, a field emerging at the intersection of computing and the humanities, have often provided a forum for negotiating such tensions. See, for example, the critique of the field in Daniel Allington, Sarah Brouillette, and David Golumbia, "Neoliberal Tools (and Archives): A Political History of Digital Humanities," *LA Review of Books* (May 1, 2016), https://lareviewofbooks.org/article/neoliberal-tools-archives-political-history-digital-humanities/; and the response by Matthew Kirschenbaum, "Am I A Digital Humanist? Confessions of a Neoliberal Tool," https://medium.com/@mkirschenbaum/am-i-a-digital-humanist-confessions-of-a-neoliberal-tool-1bc64caaa984#.m43nryfc8.
4. For a few influential examples that have helped to inaugurate such debates, see Sara Ahmed, *Strange Encounters: Embodied Others in Post-Coloniality* (New York: Routledge, 2000); Eve Kosofsky Sedgwick and Adam Frank, "Shame in the Cybernetic Fold: Reading Silvan Tomkins," *Critical Inquiry* 21 (1995): 496–522; Jacques Rancière, "The Misadventures of Critical Thought," in *The Emancipated Spectator* (New York: Verso, 2009), 25–50; Ann Cvetkovitch, *Depression: A Public Feeling* (Durham, NC: Duke University Press, 2012); José Esteban Muñoz, *Cruising Utopia: The Then and There of Queer Futurity* (New York: New York University Press, 2009); Bruno Latour, "Why has Critique Run out of Steam? From Matters of Fact to Matters of Concern," *Critical Inquiry* 30 (2004): 225–48; Stefano Harney and Fred Moten, *The Undercommons: Fugitive Planning and Black Study* (New York: Autonomedia, 2013); Heather Love, "Close Reading and Thin Description," *Public Culture*, 25 (2013): 401–34; Sharon Marcus, *Between Women: Friendship, Desire, and Marriage in Victorian England* (Princeton, NJ: Princeton University Press, 2007); and Stephen Best and Sharon Marcus, "Surface Reading: An Introduction," *Representations* 108 (2009): 1–21.
5. See Orin Kerr, "The Rise of the Ph.D. Law Professor," *Washington Post*, October 22, 2015; Lynn LoPucki, "Dawn of the Discipline-Based Law Faculty," *Journal of Legal Education* 65 (2016): 506–42.
6. For example, in 2014, the American Bar Association adopted a new requirement that law schools mandate "six credits of instruction in an experiential course or courses. To qualify, the experiential course or courses must be a simulation, law clinic, or field placement"; see American Bar Association, Section of Legal Education and Admissions to the Bar, "Explanation of Changes from 2014 Comprehensive Review of the Standards," available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201408_explanation_changes.authcheckdam.pdf: 7. In 2013, the State Bar of California approved an even more rigorous set of requirements for those wishing to be admitted to the California Bar, including either taking "at least 15 units of practice-based, experiential course work" or "participat[ing] in a Bar-approved externship, clerkship or apprenticeship at any time during or following completion of law school"; see http://www.calbar.ca.gov/AboutUs/BoardofTrustees/TaskForceonAdmissionsRegulationReform.aspx.
7. For a representative chiding of the legal academy, see David Segal, "Law School Economics: Ka-Ching!," *New York Times*, July 16, 2011: BU 1.
8. Only seven of the 102 JD/PhDs Lynn LoPucki analyzed (including a 2010 faculty sample and 2011–15 entry-level hires) received PhDs in fields related to

literature (including American Culture, English, Classics, Germanic Studies, and Linguistics); LoPucki, "Dawn of the Discipline-Based Law Faculty," 40.

9. LoPucki, "Dawn of the Discipline-Based Law Faculty," 40
10. As Martha McCluskey writes in "Thinking with Wolves: Left Legal Theory after the Right's Rise," *Buffalo Law Review* 54 (2007): 1194–95: "CLS quickly lost its influence and visibility—which had rarely reached far beyond the margins of a few elite law schools. Later-formed branches of critical legal theory have survived and even thrived by focusing on particular problems of race, gender, and sexual identity. However, it seems that these often fragmented offshoots have not succeeded in building and disseminating a jurisprudence that comprehensively challenges the foundations of centrist or right law and policy." Janet Halley and Wendy Brown themselves assert, in the introduction to their volume surveying the post-CLS heritage, that "The work gathered here indicates that left internal critique is alive and well, if dispersed and perhaps undervalued," Brown and Halley eds., *Left Legalism/Left Critique* (Durham, NC: Duke University Press, 2002), 34.
11. See, for example, Sameer Ashar's call for increasing critical engagement within law schools: Sameer M. Ashar, "Deep Critique and Democratic Lawyering in Clinical Practice," *California Law Review* 104 (2016): 227–229.
12. Jeannie Suk, *At Home in the Law: How the Domestic Violence Revolution Is Transforming Privacy* (New Haven, CT: Yale University Press, 2009).
13. See, e.g., Elizabeth Emens, "Monogamy's Law: Compulsory Monogamy and Polyamorous Existence," *New York University Review of Law and Social Change* 29 (2004): 277–376.
14. Simon Stern, "From Author's Right to Property Right," *University of Toronto Law Journal* 62 (2012): 29–91.
15. See Julie Stone Peters, "Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion," *PMLA* 120 (2005), 442–53; Jane B. Baron, "Law, Literature, and the Problems of Interdisciplinarity," *Yale Law Journal* 108 (1999): 1059–85.
16. Peters, "Law, Literature, and the Vanishing Real," 444; see also Baron, "Law, Literature, and the Problems of Interdisciplinarity," 1064.
17. See, for example, Martha C. Nussbaum, *Poetic Justice: The Literary Imagination and Public Life* (Boston: Beacon Press, 1995).
18. Peters, "Law, Literature, and the Vanishing Real," 445–446; Baron, "Law, Literature, and the Problems of Interdisciplinarity," 1064–65.
19. Ronald Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986), 228–75. Sanford Levinson and Steven Mailloux, eds., *Interpreting Law and Literature: A Hermeneutic Reader* (Chicago: Northwestern University Press, 1988), conveys the range of related approaches to the enterprise.
20. Peters, "Law, Literature, and the Vanishing Real," 446–48; Baron, "Law, Literature, and the Problems of Interdisciplinarity," 1065–66. Robin West and Richard Delgado are among the most prominent exemplars of the narrative school of law and literature.
21. Guyora Binder and Robert Weisberg, *Literary Criticisms of Law* (Princeton, NJ: Princeton University Press, 2000).
22. Ian Ward discusses in depth both "law in" and "law as" in the first chapter of his book *Law and Literature: Possibilities and Perspectives* (Cambridge: Cambridge University Press, 1995), 3–27.

23. See Paul K. Saint-Amour, ed., *Modernism and Copyright* (New York: Oxford University Press, 2010); Paul K. Saint-Amour, *The Copywrights: Intellectual Property and the Literary Imagination* (Ithaca, NY: Cornell University Press, 2003); Robert Spoo, *Without Copyrights: Piracy, Publishing, and the Public Domain* (New York: Oxford University Press, 2013).
24. See Thomas Morawetz, "Empathy and Judgment," *Yale Journal of Law and the Humanities* 8 (1996): 518.
25. For a discussion of this quality in law and literature scholarship, see Bernadette Meyler, "Law, Literature, and History: The Love Triangle," chapter 9, below.
26. Kenji Yoshino, "The City and the Poet," *Yale Law Journal* 114 (2005): 1837 (citing Timothy J. Reiss, *The Meaning of Literature* [Ithaca, NY: Cornell University Press, 1992]). Brook Thomas makes a similar point in his introduction to *Cross-Examinations of Law and Literature: Cooper, Hawthorne, Stowe, and Melville* (Cambridge: Cambridge University Press, 1987), 15, about the initial union of "law-and-letters" and the subsequent "establishment of disciplines each with its own criteria for legitimate knowledge."
27. For example, see, Joseph Slaughter, *Human Rights, Inc.* (New York: Fordham University Press, 2007); Inderpal Grewal, *Transnational America: Feminisms, Diasporas, Neoliberalisms* (Durham, NC: Duke University Press, 2005).
28. Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1995).
29. Walter Benjamin, "The Work of Art in the Age of Mechanical Reproduction," in *Illuminations: Essays and Reflections*, ed. Hannah Arendt, trans. Harry Zohn (New York: Schocken, 1969), 219–53; Fredric Jameson, *Postmodernism: The Cultural Logic of Late Capitalism* (Durham, NC: Duke University Press, 1991), 5.
30. See Derek Attridge, *The Singularity of Literature* (New York: Routledge, 2004); Derek Attridge, *J. M. Coetzee and the Ethics of Reading: Literature in the Event* (Chicago: University of Chicago Press, 2004); Gayatri Chakravorty Spivak, *An Aesthetic Education in the Era of Globalization* (Cambridge, MA: Harvard University Press, 2012).
31. See Jacques Derrida, *Sovereignties in Question: The Poetics of Paul Celan* (New York: Fordham University Press, 2005), 87.
32. See Gayatri Chakravorty Spivak, "Righting Wrongs," *South Atlantic Quarterly* 103, nos. 2–3 (2004): 523–81; Judith Butler, *Undoing Gender* (New York: Routledge, 2004); Butler, *Giving an Account of Oneself* (New York: Fordham University Press, 2005); Butler, *Antigone's Claim: Kinship between Life and Death* (New York: Columbia University Press, 2002). See also Drucilla Cornell, "Post-Structuralism, the Ethical Relation, and the Law," *Cardozo Law Review* 9 (1988): 1587–628.
33. As Richard Howells writes, "There is . . . something of a backlash brewing over both the economic and instrumental justifications of the arts and humanities in both practice and research." "'Sorting the Sheep from the Sheep': Value, Worth, and the Creative Industries," in *The Public Value of the Humanities*, ed. Jonathan Bate (London: Bloomsbury, 2011), 239.
34. For such an argument see Peters, "Law, Literature, and the Vanishing Real," 447.
35. Ian Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge: Cambridge University Press, 1995), 22–25.
36. Lynn Hunt, *Inventing Human Rights: A History* (New York: Norton, 2007).
37. Kay Schaffer and Sidonie Smith, *Human Rights and Narrated Lives: The Ethics of Recognition* (New York: Palgrave Macmillan, 2004). Schaffer and Smith describe

the Holocaust as the "premier instance of traumatic remembering." Ibid., 21. In *That the World May Know: Bearing Witness to Atrocity* (Cambridge, MA: Harvard University Press, 2007), James Dawes similarly considers the many impediments to humanitarian advocacy.

38. Thomas Morawetz describes a fourth category of law and literature scholarship as "law *as influenced by* literature (examination of the role of literature in affecting legislation, judicial practice, political attitudes, and so on)"; Morawetz, "Empathy and Judgment," 518.
39. Henry Turner, *The Corporate Commonwealth: Pluralism and Political Fictions in England, 1516–1651* (Chicago: University of Chicago Press, 2016).
40. For a discussion of the impact of critical legal history, see Christopher Tomlins, "After Critical Legal History: Scope, Scale, Structure," *Annual Review of Law and Social Science* 8 (2012): 31–38. Robert Gordon announced the approach in "Critical Legal Histories," *Stanford Law Review*, vol. 36 (1984): 57–124.
41. Brook Thomas, *Civic Myths: A Law-and-Literature Approach to Citizenship* (Chapel Hill: University of North Carolina Press, 2007), 13.
42. As she argues, in many versions of law and literature, " 'law' is treated as a largely empty domain composed mainly of rules, a barren realm of technocratic doctrinal manipulation. This depiction resonates strongly with a widely accepted story of law's development as an 'autonomous' discipline." Jane Baron, "The Rhetoric of Law and Literature: A Skeptical View," *Cardozo Law Review* 26 (2005): 2274.
43. See Yoshino, "City and the Poet," 1868–1885. Yoshino expresses sympathy for the Platonic critique of poetry as potentially destructive of the state and views the role and effect of victim impact statements as confirming the continued salience of this critique.
44. For a complicated discussion of this link, see Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive*, trans. Daniel Heller-Roazen (New York: Zone, 1999); Alexander G. Weheliye, *Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human* (Durham, NC: Duke University Press, 2014).
45. *Literary Criticisms of Law*, 16. As they put it, law and literature also risks "a *sentimentalism* in which passion is never cruel or self-indulgent or muddle-headed, invention is never destructive or dishonest, and civility is always inclusive and never elitist."
46. Rita Felski, *The Limits of Critique* (Chicago: University of Chicago Press, 2015); Eve Kosofsky Sedgwick, *Touching Feeling: Affect, Pedagogy, Performative* (Durham, NC: Duke University Press, 2003).
47. Paul Ricoeur, *Freud and Philosophy: An Essay on Interpretation*, trans. Denis Savage (New Haven, CT: Yale University Press, 1970), 32.
48. Sedgwick, *Touching Feeling*, 124.
49. Greta Olson, "De-Americanizing Law and Literature Narratives: Opening Up the Story," *Law and Literature* 22 (2010): 339.
50. For such a claim about the field of history, see Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference*, 2nd ed. (Princeton, NJ: Princeton University Press, 2007).
51. Austin Sarat, Matthew Anderson, and Cathrine O. Frank describe and praise the move from law and literature to law and the humanities in their introduction to *Law and the Humanities: An Introduction* (Cambridge: Cambridge University Press, 2010), 1–46.

52. Peters, "Law, Literature, and the Vanishing Real," 453.
53. Binder and Weisberg, *Literary Criticisms of Law*, 463–464.
54. Caroline Levine, *Forms: Whole, Rhythm, Hierarchy, Network* (Princeton, NJ: Princeton University Press, 2015).
55. Levine, *Forms*, 16.
56. Lorna Hutson, *The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama* (Oxford: Oxford University Press, 2007).
57. As Vernon Cisney and Nicolae Morar explain, "the disciplinary power mechanisms of the body and the regulatory mechanisms of the [population] constitute the modern incarnation of power relations, labeled as *biopower*"; "Why Biopower? Why Now?," in *Biopower: Foucault and Beyond*, ed. Vernon Cisney and Nicolae Morar (Chicago: University of Chicago Press, 2016), 5.
58. Brooks, chapter 5, 137–138; Peter Brooks, "Narrative Transactions—Does the Law Need a Narratology?," *Yale Journal of Law and the Humanities*, vol. 18, no. 1 (2006): 1–38.
59. Annelise Riles, "Is the Law Hopeful?," in *The Economy of Hope*, ed. Hiro Miyazaki and Richard Swedberg (Philadelphia: University of Pennsylvania Press, 2017), 125–46; for a volume that explores legal fictions, see Maksymilian Del Mar and William Twining, eds., *Legal Fictions in Theory and Practice* (Cham: Springer International, 2015).
60. See also Christopher L. Tomlins and Bruce H. Mann eds., *The Many Legalities of Early America* (Chapel Hill: University of North Carolina Press, 2001); Gregory Ablavsky, "The Savage Constitution," *Duke Law Journal* 63 (2014): 999–1089.
61. See Elizabeth Anker, *Fictions of Dignity: Embodying Human Rights in World Literature* (Ithaca, NY: Cornell University Press, 2012); Pheng Cheah, *Inhuman Conditions: On Cosmopolitanism and Human Rights* (Cambridge, MA: Harvard University Press, 2007); Joseph Slaughter, *Human Rights, Inc.: The World Novel, Narrative Form, and International Law* (New York: Fordham University Press, 2007).
62. For contrasting perspectives on this question, see Richard Thompson Ford, *Rights Gone Wrong: How Law Corrupts the Struggle for Equality* (New York: Farrar, Straus and Giroux, 2011), and *Racial Culture: A Critique* (Princeton, NJ: Princeton University Press, 2005); and Kenji Yoshino, *Covering: The Hidden Assault on Our Civil Rights* (New York: Random House, 2006).
63. As Emma Mason writes, "Affect theory has helped to shift the hermeneutics of suspicion that surrounded authenticity by working with phenomenology, psychology, [and] ethnography . . . to address how emotions circulate and adapt to material spaces and places, as well as how they are transmitted, expressed, constructed, and felt"; Mason, "Religion, the Bible, and Literature in the Victorian Age," in *The Oxford Handbook of Victorian Literary Culture*, ed. Juliet John (Oxford: Oxford University Press, 2016), 347.
64. James Boyd White, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression* (Boston: Little, Brown, 1973), xii.
65. James Boyd White, "The Cultural Background of *The Legal Imagination*," in *Teaching Law and Literature*, ed. Austin Sarat, Cathrine O. Frank, and Matthew Anderson, 29–39 (New York: Modern Language Association, 2011).