

Review: *The Invention of Suspicion*, Lorna Hutson. Oxford: Oxford University Press, 2007.

As proponents of the field of literature and law continue to define the relationship between the two subjects, it can sometimes seem as if they agree on little beyond the mere idea that a relationship exists. For example, Ronald Dworkin would have it that both lawyers and literary critics participate in a similar process of interpretation, and that these interpretations build on previous interpretations in the manner of a “chain gang.”¹ In a response to that essay, Stanley Fish not only agrees that this is the case, but also shows, *contra* Dworkin, that the chain in question has no beginning—neither the lawyer nor the critic can either write or interpret the writing of other people without subscribing to certain rules established by the “interpretative community” to which he or she belongs.² Such debates can be helpful in trying to make interdisciplinary connections in the abstract; however, neither Dworkin nor Fish takes time to consider possible parallels between the rhetoric employed by lawyers in the courtroom and the rhetoric employed by characters in literary texts.

This parallel is the subject of Lorna Hutson’s *The Invention of Suspicion*. She herself describes her book as being “primarily about the impact of evidential awareness on drama;”³ more specifically, it attempts to show how changes in the legal system of late sixteenth-century England influenced the development of a new kind of theater with a new interest both in producing truth and in distinguishing it from falsehood.

In order to do this, Hutson must engage not only in literary analysis of specific sixteenth-century plays, but also in a historical investigation of Elizabethan legal procedures. The second of these two tasks brings her into conflict with Michel Foucault’s thesis in *Discipline and Punish*, namely, that we can trace the roots of the modern psychological subject not only to the disciplinary measures taken by the early modern state, but finally to the medieval system of confession. The problem, for Hutson, is geographical—Foucault’s story holds up well as long as one is thinking about trials in France, but it begins to unravel when one tries to use it to explain the English jury system. A trial by jury requires that the parties involved use dramatic effect in order to convince their peers of certain facts (Hutson explains that even the word “fact” carries a stronger sense of objectivity for us than it would have for sixteenth-century ears), whereas any convincing that has to be done in a “penal investigation,” as Foucault himself calls it, has to be done behind the scenes.

Hutson argues that defendants trying to win the jury’s sympathy, and playwrights trying to win the audience’s sympathy, relied on the same rhetorical techniques, techniques that erudite Elizabethans learned as schoolboys from classical handbooks such as Cicero’s *De inventione* and Quintilian’s *Institutio oratoria*. In case this drawing of a relation between Cicero and sixteenth-century drama should fail to persuade the reader, Hutson introduces Roman New Comedy as an intermediate link in the chain. We know that Shakespeare based his *Comedy of Errors* on Plautus’s *Menaechmus*, but when it

¹ See Dworkin, “How Law Is Like Literature,” in *Law and Literature: Text and Theory*, ed. Lenora Ledwon (New York: Garland Publishing, 1996), pp. 29-46.

² See Fish, “Working on the Chain Gang: Interpretation in Law and Literature,” in Ledwon, pp. 47-60.

³ Hutson, p. 45.

comes to tragedies like *Titus Andronicus* and *Hamlet*, we tend to look to Seneca as a source of influence rather than to Terence and Plautus. And yet, Hutson argues, even revenge tragedies have more in common with classical comedies than with Senecan tragedies—just like the characters in plays such as Plautus’s *Mostellaria* and Terence’s *Phormio*, Hamlet acts out of his need to determine who is telling the truth and who is not. (Can he trust Gertrude? Claudius? The ghost?) Neither is Hamlet the only character in the play whose actions are motivated by epistemological concerns: whether we think of Polonius as he sends his servant to spy on Laertes; of Claudius as he summons Hamlet’s friends to watch him; or of the hapless Rosencrantz and Guildenstern themselves as they try to question the hero, it is plain that the play relies on its characters’ desires to discover what lies behind appearances. According to Hutson, Shakespeare puts not only his characters, but also the members of his audience, in the position of a jury who is charged with the responsibility of reconstructing, on the basis of various claims by various witnesses, what really happened at a given moment (or moments) in the past.

At this point, critics will be quick to charge Hutson with the fault into which Romantic readers of Shakespeare, beginning with Coleridge, fell—that is, the fault of ascribing to Shakespeare’s characters motivations that transcend the words of their speeches. After all, we know from Roland Barthes that all we have is the text itself. Hutson is, however, alert to the possibility of such criticism. (Also, she has read Barthes.) In a thorough and fair account of recent Shakespeare studies, she distinguishes her argument from the nineteenth-century tendency to assume that characters like Lear or Hamlet have a world of thoughts beyond the world of the play. She acknowledges her debt to three different camps of Shakespeare criticism, all of them anti-Romantic in the sense that the scholars who comprise them take care to guard against indulging in psychological interpretations—à la A.C. Bradley, notably—of characters who exist only through the written and spoken word. The difference, though, between Hutson’s undertaking and that of the critics whose works she discusses is that Hutson wants to explain why we are prone to romanticize these characters in the first place. That is, what is it about these plays in particular that tempted Coleridge and Bradley, among others, to interpret the idiosyncrasies of a character’s language as indications of his or her individual psychology?

In answer to this question, Hutson invokes authorial intention. And here—lest the thought of intention should set off alarm bells—Fish is helpful: “[O]ne cannot read [...] independently of intention, independently, that is, of the assumption that one is dealing with marks or sounds produced by an intentional being, a being situated in some enterprise in relation to which he has a purpose or a point of view.”⁴ Hutson contends that late sixteenth-century playwrights knew what they were doing when they gave their characters speeches in which, confronted by the questions of other, disbelieving characters, they must make a case for themselves. These writers knew that truth—at least dramatic truth—establishes itself through inquiry and persuasion. Not only this, but their “invention of suspicion” is, ironically, what makes us as spectators believe in these characters as more than mere characters.

Hutson’s book will interest not only scholars of early modern theater, but also anyone engaged in the problem of relating literature to law, and law to literature. For the

⁴ Ledwon, p. 56.

second of these audiences, the advantage of her study lies in her willingness to wrestle with the concrete details of that relationship. *The Invention of Suspicion* serves as a successful example of how knowledge of both legal discourse and legal procedures can help us better understand what is at stake in a literary text: namely, in the case of Elizabethan theater, that everyone, from Prince Hal to Falstaff to Mistress Quickly, is responsible for his or her own defense. If Hutson is right, the critic would do well to learn from the lawyer.