

Intending to Act

Luke Wilson, *Theaters of Intention: Drama and Law in Early Modern England*. Stanford: Stanford University Press, 2000. Pp. x, 362. \$49.50.

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Theaters of Intention has the makings of a major book. Its far-reaching claims about the relationship between law and theater in early modern England are both intricately argued and meticulously substantiated. It is a demanding book, too; partly, of course, because of the often-attested resistance of common-law terminology to being translated into layman's terms, but also, I think, because, as Wilson points out, "discussions of intention" themselves must derive from "a range of disciplinary contexts."¹ The book proposes that what the institutions of law and theater primarily share in early modern England is a preoccupation with the problems of representing human action as intentional. Neither the discipline of literary criticism, nor that of legal history, however, has ever exactly theorized intention as a problem relating to the representation of action in this way. So the book's complexity arises from the fact that the relationship of similarity and difference between early modern legal and theatrical investments in representing intentional action can only be explored by using the analytical tools of a range of disciplines: literary criticism, poststructuralist literary theory, theater studies, legal history, sociology, anthropology, philosophy of language, and the history of classical rhetoric, to name just a few.

The idea that both the law and the theater might have an interest, in a certain historical moment, in representing human action as intentional is powerfully innovative in itself. It forces one to think of intention not as necessarily antecedent to and causative of human action, but as a *problem*. The idea runs against our common sense

1. LUKE WILSON, *THEATERS OF INTENTION: DRAMA AND LAW IN EARLY MODERN ENGLAND* 7 (2000).

ways of talking both about dramatic fiction and about legal liability. In the case of drama, especially Shakespearean drama, the remarkable post-Bradleyan and post-poststructuralist tenacity of character criticism attests to our investment in ascribing intentions to the agents of dramatic plot, rather than seeing their actions as rhetorically instrumental within the fiction (New Historicism, seeing characters as cultural symptoms rather than poetic achievements, hardly challenges this kind of common sense). Similarly, our tendency to think of homicide cases as mysteries on the models of Agatha Christie and *Inspector Morse* urges us to organize our ideas about evidence, proof, and legal liability around a reconstruction of motives and intentions—the revelation of the guilty mind that planned it all. In both instances it is assumed that actions—sometimes only retrospectively signified (by corpses, murder weapons, ghosts)—have agents, and that agents have intentions. So what does it mean to talk about the representation of intentional action as a *problem* for legal practice and dramatic composition in the sixteenth century?

Well, for one thing, such an approach forces us to discard the usual logic of cause and effect—the idea that actions derive from intentions. Instead, we must replace it with an appreciation of the work done by intention as a retrospective fiction that makes sense of action, or as a way of allocating liability, of connecting action with an agent. Even putting the idea this way makes it obvious how close the connection must be between legal discourse and literary composition. In sixteenth-century common law, Wilson shows, it became necessary to ascribe intention in order to prove guilt (in the case of homicide), or (in the case of “assumpsit”) in order to ascertain the existence of the implied promise on which any legal action must depend. At the same time, theater was moving from the syllogistic structure of the morality play, and from the ritualistic actor-audience relationship embodied in the clown, towards the illusory mimesis of Shakespearean drama. The mimetic structure of Shakespearean drama is based, as Joel Altman and others have argued, on rhetorical hypothesis, and so involves the elaboration of the circumstances of a particular story, rather than the morality play’s proof of a general thesis.² Shakespearean drama therefore requires that the audience be persuaded that the characters (no longer either allegorical personifications of morality drama or descendants of the fool of ancient ritual) harbor intentions, and thence that the dramatic action can be made sense of in terms of a reconstruction of those intentions, a working out of what each speaker and agent “meant” by saying or

2. See JOEL ALTMAN, *THE TUDOR PLAY OF MIND: RHETORICAL INQUIRY AND THE DEVELOPMENT OF ELIZABETHAN DRAMA* (1978).

doing a certain thing. A sixteenth-century legal concern with the way fictions of intention allocate liability, therefore, might intersect with the concern of an emergent professional drama to create plots that engage the audience in the belief that the *dramatis personae* are more than transparent agents of authorial intention. I have to say that Wilson does not state the law/theater relationship in quite these terms; I am inferring it from the argument that his book conducts largely at the level of detailed correspondences between specific cases and textual cruxes in plays.

Wilson begins with an exploration of the ways in which intention is conceptualized in *Hamlet* and in contemporary legal discourse concerning homicide. Critics have long been aware of the presence of legal language in the gravediggers' ludicrous discussion of Ophelia's suicide in Act 5, which garbles Plowden's report of the argument for the defence in the famous case of *Hales v. Petit*.³ This case was brought by Margaret Hales, widow of Sir James Hales, a justice of the Court of Common Pleas, who had committed suicide in 1554 by drowning. Margaret Hales's case was that she should not have had to forfeit her late husband's lands on the grounds that his suicide was felonious, because the felony could only be adjudged as such after his death, whereas her possession antedated that judgment. Petit's lawyers, however, won the case by arguing that the forfeiture must have occurred in Hales's lifetime. They thus derived the act's felonious quality from Hales's imputed *intention* to destroy himself. By way of this case and other fascinating cases, Wilson demonstrates the tendency of intentions to become "modular" and "detachable" in legal parlance. Legal thinking of this kind enters *Hamlet*, Wilson argues, at those moments when Hamlet appears to act spontaneously, and then to conceive intentions, or explanatory accounts, after the act. Wilson does not quite sum up the implications of this argument, but it is undeniably provocative and suggestive.

The sixteenth-century law of contract, no less than that of homicide, was, in Wilson's words, enabling a new "sophistication of legal conceptualizations of intention."⁴ Wilson's second to sixth chapters argue that there is a link between newly sophisticated concepts of dramatic temporality and a new awareness—evident in the triumph of the action of "assumpsit" over the ancient common law writ of debt—of the duration between the promise and its fulfillment (or non-fulfillment) as a legally accountable interval. These linked developments are further connected to the idea of the emergence of a subjective sense of self or of "interiority" as that which fills the con-

3. 75 Eng. Rep. 387 (K.B. 1562).

4. WILSON, *supra* note 1, at 43.

tractual interval—a retrospective or implied narrative of states of intention. Wilson discusses the triumph of “assumpsit” over debt, enshrined in the outcome of *Slade’s Case* in 1602,⁵ in terms of its effects on the way in which people thought about what he calls the “temporal shape” of their actions. He understands the old common law action of debt as essentially “atemporal,” whereas the action of “assumpsit” (being brought on the *promise* implied by a debt, rather than the debt itself) retrospectively generates a narrative of the defendant’s and plaintiff’s interior states, a narrative of “intentions, deceits, motives and considerations.”⁶ The triumph of “assumpsit” thus, Wilson claims, produced

the shift from a customary culture in which social actors operate in habitual ways without formulating accounts of their intentions and reasons for acting, to an assumpsit or contract culture in which . . . social actors are forced to assume a habit of constant self-examination, attending to their own consciousness and continually constructing intentional accounts of their actions.⁷

The argument then goes on, in a range of ways, to link the temporality of dramatic performance, producing the illusion of characterological coherence, with that of the contractual interval that now, apparently, stretches out or extends between all forms of collaborative action, and invades all kinds of relationship. In Chapter Four, *Promissory Performances*, Wilson considers the implications of the way in which the theatrical sense of the verb “to perform” emerges from its earlier sense of being transitively linked to a promise. In Chapter Five, *Contracting Damnation*, developments in the law relating to witchcraft are intriguingly demonstrated to have absorbed the new thinking on “assumpsit” and contract, raising questions about the apportioning of agency in transactions with the devil and offering a new perspective on Marlowe’s *Dr. Faustus*.⁸ There are illuminating moments, too, in Wilson’s discussion of contract and agency in *Bartholomew Fair*.⁹ I was struck by the rightness of the observation that the coney-catching tricks of Jonson’s fair are all constructed as contractual agreements involving exchange. A final chapter on the iconography of “Nemo” or “Nobody” in popular and Northern humanist culture (though disappointingly not forthcoming

5. *Slade v. Morely*, 76 Eng. Rep. 1074 (K.B. 1602).

6. WILSON, *supra* note 1, at 80.

7. *Id.* at 78.

8. CHRISTOPHER MARLOWE, *THE TRAGICAL HISTORY OF THE LIFE AND DEATH OF DOCTOR FAUSTUS* (1594).

9. BEN JONSON, *BARTHOLOMEW FAIR* (1614).

about Ulrich Von Hutten's contribution to this tradition¹⁰) considers the figure in relation to ideas of agentless action and characterological coherence developed in earlier chapters.

Finally, however, I was not entirely persuaded by the overarching thesis that a relationship exists between a Shakespearean and Jonsonian sense of the temporality of dramatic performance and a post-*Slade's Case* sense of interiority as contractual. I detect a problem with Wilson's assumption that, because the common law of debt did not rely upon the idea of a promise, implicit or spoken, it must follow that people prior to the triumph of *assumpsit* did not have sophisticated ideas about contractual duration. Studies of exchange in pre-capitalist societies, such as Paul Millett's *Lending and Borrowing in Ancient Athens* (1991), have shown that the credit system secured by gifts and services is distinguished from the capitalist system of transferable credit by its preference for temporal imprecision, but this is not the same thing as saying that credit relations in the gift economy are "atemporal." Rather, temporal imprecision, along with local specificity, was a measure of the extent to which a debt was also conceived as generating and manifesting a relation of trust, or good faith, between individuals and families. Conceptual inadequacies in the common-law writ of debt, then (such as its denial of the relevance of motive and intention to the question of whether or not a debt exists between two people), are less likely to prove that social actors had unsophisticated ideas about intention, or about promissory duration, than that the sophistication of their ideas manifested itself in spaces outside of the common law, such as in the spiritual action of *fidei laesio* or breach of faith, or in the regulatory power of their concepts of trust and friendship, and of what Marshall Sahlins has called "kinship distance."¹¹ Indeed, the absence from Wilson's book of any vocabulary that would recognize the spiritual and moral dimensions of promissory speech acts—the vocabulary of "faith," "trust," "troth," "troth-plight," and so forth—is quite remarkable. There is nothing in this book to suggest that the "social actors" of "customary" (that is, pre-*assumpsit*) culture had any emotional investment in the repayment or forgiveness of debts, in spite of the fact that a whole penitential literature associated with the confessional and with the ecclesiastical courts had, for centuries, articulated the importance for salvation of the restitution of goods. In spite of this curious omission, however, Wilson's book is clearly an achievement

10. ULRICH VON HUTTEN ET AL., *EPISTOLAE OBSCURORUM VIRORUM* (1517). This famous collection of anti-clerical satires, translated into English as *Letters of Obscure Men*, was the collaborative work of Von Hutten (1488-1523) and several other leading German humanists.

11. MARSHALL SAHLINS, *STONE-AGE ECONOMICS* 196-204 (Routledge 1988) (1972).

of great originality and erudition. I am sure that its influence on ways of thinking about agency, time, and character in Shakespearean drama will be profound.