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Women on Trial: representation of women in the courtroom in Elizabethan and Jacobean drama

Sara Deutch Schotland

As is well known, women labored under severe disabilities in the Renaissance court system. It was especially difficult for married women to litigate on their own behalf. Widows litigated more frequently, often to address issues of property or inheritance. To date, little attention has been given to the depiction of women at trial in the plays of the period. Unexpectedly, when we look at the trial scenes in the plays, the women are anything but shy and retiring. In the trial scenes examined, married women litigants prove to be forceful advocates of their position, often accusing hegemonic figures of injustice and unfair process. In conclusion, it is suggested that through the vehicle of presumptively vulnerable women defendants, the playwrights could dramatize the problem of overbearing, partial judges, and other problems that plagued the Renaissance legal system.

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Women labored under severe legal disabilities in the courts of Tudor and Stuart England. It was especially difficult for single women to litigate¹ due to lack of resources, and for married women to litigate due to the doctrine of coverture. Widows litigated more frequently, often to address issues of property or inheritance. In an excellent historical study of the Court of Requests, Tim Stretton shows that this court was relatively hospitable to women litigants, even allowing married women to litigate, for example, to enforce maintenance orders.² As one might expect, examination of records from the Court of Requests shows that women's pleading strategies reflected a greater sense of vulnerability than did those of male litigants.³ Women typically began modestly, emphasizing their poverty, helplessness, and need for protection.

Women are frequently portrayed in courtroom settings in English Renaissance plays. Surprisingly, the female litigants and defendants are anything but shy and retiring. Consider five plays in which women have prominent roles in extensive trial scenes, *The White Devil*, *Appius and Virginia*, *The Devil's Law Case*, *Henry VIII*, and *The Winter's Tale*. The women in these plays are far from the demure figures that we would expect based on patriarchal opposition to women's participation in the public arena and the pleading records of the Court of Requests. Three of the women—Vittoria, Queen Katherine, and Queen Hermione—begin their defense by emphasizing their vulnerability and need for protection. However, each of the three prove to be forceful advocates, accusing hegemonic figures of injustice and unfair process. How do we explain the paradox that the women litigants and defendants in the plays are portrayed as articulate, strong, and effective? This essay explores the portrayal of women in the trial scenes, a topic that has received little examination since recent scholarship has focused on historical participation of women in the courts. I suggest that the answer to the apparent paradox lies in the determination of the playwrights to convey the strongest possible critique of the legal system.

Contemporary Views on the Appropriate Behavior of Women Litigants

As is well known, women in Renaissance England, especially married women, faced an array of obstacles to the exercise of legal rights.⁴ In *The Law's Resolution of Women's Rights* (1632), T.E. observes that women 'make no Lawes, they consent to none. All of them are understood either married or to bee married and their desires [are] subject to their husband. I know of noe remedy though some women can shift it well enough.'⁵ The treatise, apparently tongue-in-cheek, suggests that women should welcome divorce or widowhood as the woman who had been in subjection to her parents or husband now gains liberty, at last free to pursue her legal remedies independently.⁶

As several scholars have shown, women in fact did go to court in Renaissance England—predominantly in the Chancery courts and the Court of Requests (known as 'the Poor Man's Chancery'), where the barriers were less imposing.⁷ While women were underrepresented in the courts, widows litigated relatively frequently, comprising almost 50% of the female litigant population even though

they represented only about 9% of the population.⁸ Widows accounted represented 5–6% of litigants in the Court of Requests, Common Pleas, and the Queen's Bench.⁹

Laura Gowing has shown that the London Consistory Court, a court that adjudicated a high percentage of 'bawdy' or sexually-related cases, saw a steady increase in litigation, especially cases brought by women plaintiffs:

Telling stories gave women both a formal cultural agency—a time in which their words were written down—and a way of putting themselves as actors, center stage. The act of testifying gave a weight to women's point of view that was rarely accorded them in law or in culture.¹⁰

In view of the hostility to woman litigants and numerous legal, institutional, and financial barriers, most women approached litigation with trepidation and caution. There was a wrong way and a right way to go to court: a woman who spoke loudly and boldly was likely to irritate the court, while the wise female litigant was modest, demure, and content to have counsel plead on her behalf. Women litigants emphasized their poverty and helplessness more than their male counterparts, doubtless in hopes of attracting the judges' sympathy.¹¹

The brief trial scene in *The Fair Maid of the Inn* illustrates the type of modest pleading strategy that was likely to propitiate a trial judge. This play, first licensed in 1626 and included in the Beaumont and Fletcher Folio of 1647, is a collaborative work attributed to Webster, Massinger, Ford, and Fletcher. In the main plot, a blood feud arises between two Florentine families, who were formerly close friends. To save the life of her son, Mariana who believes her husband to be dead, goes to court *pro se*. Mariana falsely claims to the Duke that Cesario is not the son of her absent husband Alberto and that her daughter is his only true child. Mariana appears as a courageous but reluctant litigant, who apologizes for appearing in court:

[I]n my weeds
Of mourning, emblems of too deer misfortunes,
Badges of griefes, and Widowhood, the burthen
Of my charg'd soule must be layd downe before you;
Wherein if strict opinion cancel shame,
My frailty is my plea. (3.2.40–45)¹²

Mariana is a savvy litigant in that she talks the talk of modesty, avoiding any appearance of brazenness or impudence. The issue of female decorum in the courtroom is confronted by each of the women defendants in the plays that I examine: even the queens must grapple with expectations that women will plead modestly.

Historicizing Problems in the Renaissance English Trial System

As background to examining the depiction of women in trial scenes, it is useful to review the landscape of Elizabethan and Jacobean trials. There was a significant increase in litigation in Elizabethan and Jacobean England which C. W. Brooks,

an acknowledged expert on litigation levels, attributes to the wealth of the gentry and the yeomanry, the relative cheapness of legal process, the decline of local institutions, and an excess of legal advisers, among other factors.¹³ Between 1580 and 1606, the business of the King's Bench and Common Pleas nearly doubled.¹⁴

We should interpret this rise in litigation as a consequence of the growing commercialization of English society, and a practical need to resolve disputes without bloodshed, rather than as a ringing endorsement of the court system. Generalization is difficult given the multiplicity of courts and types of proceedings; differences in court jurisdiction and the character's procedural posture; and imbalance in the thoroughness of records depending on the court, time period, and type of proceeding. While a comprehensive review of deficiencies in the Elizabethan legal system extends beyond the scope of this article, the salient point is that problems of judicial partiality and inadequacy of procedural safeguards plagued the legal system in treason trials, criminal trials, and civil proceedings.

The problem of judicial partiality was one of many interrelated problems with the legal system. Stephen Landsman has noted the shortcomings of English procedure prior to 1700:

The judge was clearly an active inquirer (perhaps even prosecutor) rather than a neutral arbiter. The defendant was not represented by counsel [in criminal felony trials] and, indeed, was specifically prohibited from having legal representation. . . . All sorts of evidence could be used in the proceedings, including potentially misleading and prejudicial material such as the out-of-court statements read by the justice of the peace.¹⁵

Sir Walter Raleigh's infamous treason trial in 1603 exemplifies the procedural problems with trials at that time. Raleigh's trial is today remembered as a blight on Sir Edward Coke's career and a low watermark in English legal procedure.¹⁶ Despite eloquent and persistent demands, Raleigh was never allowed to confront his chief accuser, nor was he successful in his argument that, by custom, conviction for treason required that two witnesses testify to a defendant's treason. When Coke began to expound on Latin names for various types of treason, Raleigh interrupted and protested that he could not understand the charges due to the lawyer's gibberish. Coke also engaged in extensive prosecutorial bullying and directed against Raleigh a steady stream of invective, calling him 'the notorious traitor that ever came to the bar . . . a monster . . . the absolutest traitor that ever was', and a 'viper'.¹⁷ The defendant lacked the power to resist such invective. Raleigh's personal history—a lifetime of opposition to Spanish interests—was insufficient to avoid conviction. Raleigh was condemned in a quarter of an hour, then saved from death by a dramatic, last-minute reprieve. While Raleigh had the wit, brilliance, and education to stand up to Coke's merciless prosecution, his dexterity did not save him from conviction. Concern over judicial partiality was not limited to the legal world or to the social elite. Raleigh had been attacked by mobs after he appeared against the Earl of Essex, but when he was convicted in turn for

treason he became a popular hero, adulated by a general public that was tired of political and judicial abuses.¹⁸

John Lilburne's 1649 treason trial similarly illustrates the absence of procedural safeguards.¹⁹ Lilburne had no counsel, no rules of evidence, and no right to see the indictment beforehand. Lilburne vigorously protested that he had no counsel to plead for him:

I earnestly entreat you, that now you will be pleased to give me a copy of my indictment, or so much of it, as you expect a plea from me upon, and an answer unto, and counsel assigned me, and time to debate with my counsel, and subpoena for witnesses.²⁰

The judges denied Lilburne's request for counsel since 'Counsel lies in matters of law, not of fact.'²¹ The rationale was that no counsel was needed in presenting facts because the defendant had superior knowledge of the facts concerning his case. However, under the logic of the day it did not follow that the defendant had his own counsel even as to legal issues because the judge served as defense counsel on matters of law. Lord Kreble assured Lilburne that 'Your life is by law as dear as our lives and our souls are at stake if we do you any wrong.'²² Despite this disingenuous assurance, far from serving as Lilburne's counsel on legal issues, Judge Kreble told the jury: 'I hope the jury hath seen the evidence so plain and so fully that it doth confirm to them to do their dirty duty and find the prisoner guilty of what is charged upon him.'²³ Lilburne's trial, like Raleigh's, lasted less than an hour. It was possible to be tried, convicted, and hanged in a single day.

These procedural deficiencies pervaded the court system and were by no means limited to trials for treason. Sir Thomas Smith's *De Republica Anglorum* (c.1565) provides a reliable source of contemporary evidence about the conduct of a criminal trial.²⁴ Smith describes a hypothetical felony trial held at a provincial court of assizes. The trial was conceived as an 'altercation', at the end of which the judge told the jury how they should vote. Judges had virtually unlimited power, especially as they were not cabined by today's doctrine of binding precedent, restrictions on hearsay, or other rules of evidence. Given the absence of defense counsel in felony trials,²⁵ and other procedural checks, the defendant was virtually at the judge's mercy.

Writing about criminal felony and treason trials, Langbein observes that 'without counsel to order the proofs and to examine and cross-examine witness and [the] accused', the role of the trial judge was especially prominent, as the judge 'examined witnesses and the prisoner and commented upon their testimony as it was being given'²⁶ From this all-powerful vantage, the judge could prompt the prosecutor, facilitating his proof of the prisoner's guilt. The judge's awesome power did not diminish in relative terms until the rise of the adversary system in the eighteenth century, as the scope of the judge's power receded in the presence of counsel and the concomitant rise of procedural safeguards. In the early modern period, by contrast, the judge was so extremely powerful that a partial judge posed an enormous threat to the integrity of the proceedings.

Impartiality was of course the ideal.²⁷ In his essay ‘On Judicature’, Sir Francis Bacon emphasized judicial integrity as the judge’s cardinal virtue:

Above all things, integrity is their portion and proper virtue. . . . One foul sentence doth more hurt than many foul examples. For these do but corrupt the stream, the other corrupteth the fountain. . . . A judge ought to prepare his way to a just sentence as God useth to prepare his way, by raising valleys and taking down hills: so when there appeareth on either side taken, combination, power, great counsel, then is the virtue of a judge seen, to make inequality equal: that he may plant this judgment as upon an even ground.²⁸

Lacking a fixed salary, judges were susceptible to corruption.²⁹ Henry Brinkow complains: ‘The rich filleth the purse of lawyers which the poor is not able to do and therefore his case is heard’.³⁰ In *The Spanish Curate*, a tragicomedy by Fletcher and Massinger first performed in 1622, the corrupt lawyer Bartolus recommends that his client Henrique grease the wheels by bribing judges. Bartolus tells Henrique that he will prevail because ‘You give good Fees and these beget good Causes’ (3.1.12–13), while the pleas of the penurious ‘have poor issues’ (3.1.21). To succeed in litigation, money is wanted for witnesses who when fed with funds ‘will swear any thing’ (3.1.29); ‘for variety the witnesses may swear truth, else ’tis not much look’d after’ (3.1.30).³¹ Lawyers and judges were regarded as greedy, dishonest, and corrupt: the butcher’s immortal line during Cade’s Rebellion in *2 Henry VI*, ‘first, let’s kill all the lawyers’ (4.2.70), marvelously captures public frustration. The lawyers, of course, defended themselves. In a ‘device’ performed before Queen Elizabeth in 1588, the gentlemen of Gray’s Inn presented a speech in which they described themselves as followers of Astraea, the goddess of justice:

They with attentive mindes and serious wits,
Revolue records of deepe Judiciall Acts,
They waigh with steady and indifferent hand
Each word of lawe, each circumstance of right,

One doubt in mootes by argument increasc’d
Cleares many doubts . . .
The language she first chose, and still retaines,
Exhibites naked truth in aptest termes.
Our Industrie maintaineth vnimpeach’t
Prerogatiue of Prince, respect to Peeres,
The Commons libertie, and each mans right.³²

Whether or not the audience accepted the players’ speech, their insistence on honesty and impartiality suggests that the issues related to integrity were fraught questions.³³

Judicial partiality is a pervasive concern for the playwrights. Taking Shakespeare as an example, the question of judicial probity recurs in several of his plays and is a central preoccupation in *Measure for Measure*. In *Henry VIII*, the questionable treatment of Buckingham prefigures the bias shown against Queen Katherine:

Buckingham's trial is tainted by the false testimony of his accuser, the Surveyor, who has likely been bribed by Buckingham's enemy, Cardinal Wolsey. In *2 Henry VI*, Lord Say in a vain attempt to save his life at the hands of Jack Cade pleads: 'Justice with favour have I always done; Prayers and tears have moved me, fits could never' (4.7.62–63).³⁴

John Webster's Treatment of the Partiality of Judges

John Webster in particular was very concerned about the topic of judicial impartiality. Webster likely received a legal education at the Middle Temple; certainly he had friends and patrons among lawyers and law students.³⁵ In 'Characters', a series of poetic sketches, Webster and his friend Overbury define a good judge: 'A Reverend Judge hates to wrong any man; neither hope, nor despair of preferment can draw him to such an exigent: he thinks himself most honourably seated, when he gives mercy the upper hand'.³⁶ In three plays, Webster squarely attacks the topic of judicial partiality through the perspective of women in court. In *The White Devil*, the woman is the defendant in ecclesiastical court; in *Appius and Virginia*, a woman's legitimacy is adjudicated in a kangaroo proceeding; and in *The Devil's Law Case*, a widow is the plaintiff in an equity court.

The White Devil: Vittoria's rebuke of the partial judge

The trial scene in *The White Devil* (1612) considers the pernicious effect of a biased judge determined to convict. The woman defendant gives a stunning performance as she rebukes the judge for his aggression—a defense that is even more dazzling when we consider that Vittoria is guilty of the charges.³⁷

In this tragedy, Duke Bracciano and Vittoria Corombona are ardently in love, an adulterous relationship fostered by Vittoria's brother Flamineo in hopes of his own advancement. In a dream that Vittoria recounts to Bracciano, she imagines the death of his wife Isabella and of her husband Camillo. Shortly thereafter, Bracciano and Flamineo kill Isabella and Camillo. Webster does not inform us about the extent of Vittoria's complicity in these murders, but it is at least arguable that Vittoria, having suggested indirectly to Bracciano the desirability of murdering her husband and his wife, is an accessory.

Cardinal Monticelso, who is Camillo's uncle, and Francisco, Duke of Florence, who is Isabella's brother, decide to arraign Vittoria on a charge of slander. They seek to prove 'her black lust' (3.1.7) and 'make her infamous/To all our neighbouring kingdoms' (3.1.7–8) because they have 'nought but circumstances/To charge her with, about her husband's death' (3.1.4–5).³⁸ Thus the slander accusation is opportunistic; they lack the evidence necessary to charge her with murder. At the beginning of the arraignment, Monticelso accuses Vittoria of being a 'whore', a status he compares to 'rotten sweet-meats', 'poisoned perfumes', 'shipwrecks', 'alchemy', 'dead bodies', and a host of other evils (3.2.78–96). As Dympna Callaghan observes, 'In misogynistic name-calling, woman becomes foul language:

“strumpet”, “Haggard”, “fitchew”, or “whore”.³⁹ Women ‘metamorphose into a list of evils ranging from subzero temperatures to fire and brimstone and rotten bodies of executed felons’.⁴⁰

Does the trial scene bear out a misogynist reading of Vittoria’s character? Is she punished for being outspoken? I suggest that, on the contrary, several aspects of the trial scene invite the reader’s admiration for Vittoria and portray her courage in standing down the malevolent cardinal.

From the outset of the trial scene, we are struck by the unfairness of the proceedings. Vittoria insists that the lawyer speak in English instead of Latin: ‘I will not have my accusation clouded/In a strange tongue; all this assembly/ Shall hear what you can charge me with’ (3.2.17–19). This emphasis on intelligibility recalls Raleigh’s protest about the use of Latin mumbo jumbo at his trial. Vittoria seeks to publicize the trial in hopes of exposing its unfairness; she must play to the audience of public opinion. Especially in the absence of defense counsel, this was one of the defendant’s few weapons. Of course this is a situation of boxes within boxes, as a playwright trying to mold public opinion was also playing to the gallery.

When the prosecutor proves inept, Monticelso, although supposedly the judge, assumes the prosecutorial function. Vittoria can match the Cardinal tit for tat. Monticelso engages in clumsy, mannered use of euphuism, excessive alliteration and far-fetched similes.⁴¹ Although Vittoria seems ‘goodly fruit’ she is like the apples that grow in Sodom and Gomorrah: ‘I will but touch her and you straight shall see/She’ll fall to soot and ashes’ (3.2.66–67). Vittoria is compared to Eve, whose league with the devil led to the Fall: ‘Were there a second paradise to lose/This devil [Vittoria] would betray it’ (3.2.68–69). Vittoria’s retort to Monticelso’s exaggerated style is simplicity itself: ‘O poor charity!/Thou art seldom found in scarlet’ (3.2.70–71). Serving the function of a Greek chorus, the French and English ambassadors signal the appropriate response to Vittoria’s testimony at the trial: ‘She hath lived ill’ (3.2.106), comments the French Ambassador. The English Ambassador responds, ‘True, but the Cardinal’s too bitter’ (3.2.107).

Undeterred by the lack of direct evidence, Monticelso charges Vittoria with murder, charging that she ‘comes not like a widow; she comes armed/With scorn and impudence. Is this a mourning habit?’ (3.2.120–121). He is bested by Vittoria’s retort: ‘Had I foreknown his death as you suggest, /I would have bespoke my mourning’ (3.2.122–123). Skillfully, Vittoria in her defense undermines the accusation that she is brazen: ‘Humbly thus, /Thus low, to the most worthy and respected/Lieger ambassadors, my modesty/And womanhood I tender’ (3.2.130–133). She explains that she has no choice but to take on the role of the strong male advocate to save herself: ‘So entangled in a cursed accusation/That my defence, of force . . . /Must personate masculine virtue’ (3.2.134–136). The choristic English ambassador exclaims in admiration, ‘She hath a brave spirit’ (3.2.140). Vittoria’s eloquence contradicts the assumption that women in Webster’s dramas are verbally suppressed:

Terrify babes, my lord, with painted devils;
 I am past such needless palsy. For your names
 Of whore and murd'ress, they proceed from you,
 As if a man should spit against the wind,
 The filth returns in's face. (3.2.148–152)

Instinctively aware that the best defense is a good offense, Vittoria seeks to undermine the legitimacy of the prosecutor/judge and thus of the trial.⁴² She charges Monticelso with misconduct in serving as judge and prosecutor: 'If you be my accuser/Pray cease to be my judge; come from the bench; /Give in your evidence 'gainst me, and let these [ambassadors]/Be moderators' (3.2.225–228). When Monticelso sentences Vittoria to a house for penitent whores, Vittoria gets in the last word: 'A rape, a rape. . . . You have ravished justice, /Forced her to do your pleasure' (3.2.273–274). Again turning the tables, Vittoria, accused of whoredom, accuses Monticelso and Francisco of sexual outrage. Our admiration reaches its zenith when she exits the scene with a literally brilliant closing line after she has been sentenced: 'Know this, and let it somewhat raise your spite: /Through darkness diamonds spread their richest light' (3.2.293–294).

White Devil arises in the context of debate about the church courts, criticized for their procedural deficiencies in comparison with common law courts.⁴³ Vittoria's challenge to Monticelso's partiality raises the incongruity of a lawyer serving as judge. 'Charity' is not to be found 'in scarlet' robes (3.2.71). 'It doth not suit a reverend Cardinal/To play the Lawyer thus' (3.2.63–64). Given the injustice with which she has been treated, Vittoria asks to 'appeal then from this Christian Court/ To the uncivil Tartar' (3.2.132–133).

By the end of the trial scene, the audience focuses on the wrongs done by the biased judge rather than the wrongs done by Vittoria. Webster here has fashioned a female (anti-) heroine to portray glaring weaknesses in the legal system: the judge who doubled as prosecutor; the use of invective; reliance on rhetorical tricks; and absence of defense counsel. While Vittoria fortunately was gifted in her wit and eloquence, the reader or theatergoer can only imagine the plight of the intimidated, tongue-tied, or poorly educated defendant.

Appius and Virginia: the bloody outcome of a corrupt trial

Compared to *The White Devil*, *Appius and Virginia* (c.1625–27) is a lesser play with more black-and-white characterization; however, this tragedy considers important questions about the role of the judge.⁴⁴ Here Appius, a lustful ruler/judge, contrives a false charge that Virginia, the beautiful daughter of his valiant general Virginius, is an illegitimate bond slave, so that Appius can possess her. Virginius kills his daughter rather than allow her to be dishonored.

Appius rules as a demi-God; he is a 'Gyant, the high Colossus that bestrides us all' (3.1.72–73).⁴⁵ Hypocritically, Appius expounds ideals of justice, none of which he upholds: 'My Lords, he that must steer at th' head of an Empire, ought to be the/Mirror of the times for/Wisdome and for Policie' (1.1.14–16). With equal insincerity, he proclaims: 'Justice should have/No kindred,

friends, nor foes, nor hate, nor love/As free from passion as the gods above' (1.1.109–111). Appius is driven by passion, partial to his own interest and friends, and hell-bent on abusing the trial process to obtain possession of Virginia.

At the trial in which Virginia's legitimacy will be determined, the prosecutor contends that Virginius's dead wife feigned pregnancy and purchased Virginia from a bondswoman for a thousand drachmas. When Virginius produces as a witness the nurse who attended at Virginia's birth, her testimony is discredited. Virginius protests: 'O injustice! / You frown away my Witness; is this Law? / Is this uprightness?' (4.1.160–162). Appius points to depositions—that he and his henchmen forged—in support of their claim of Virginia's paternity. As an adverse sentence is imminent, Virginius kills his daughter to 'free her' from Appius's lechery, and surrenders her to the court of heaven: 'Thus I surrender her into the Court Of all the Gods. And see, proud Appius see, Although not justly, I have made her free' (4.1.343–347).

Because Virginia is virtually silent in the trial scene, she is usually presented as a suppressed female litigant who lacks all agency.⁴⁶ However, Virginia is earlier presented as a strong figure. During the preliminary arraignment, she forcefully expresses her independence: 'Ignoble villaine, I am as free as the best/King or Consull since Romulus' (3.3.76–77). She is not afraid to stand up to Appius; in fact she has the courage to curse him in court:

Remember yet the Gods, O Appius,
Who have no part in this. Thy violent Lust
Shall like the biting of the invenom'd Aspick
Steal thee to hell. So subtle are thy evils,
In life they'll seem good Angels, in death devils. (4.1.225–229)

To today's reader, it is troubling that Virginia is slain by her father to avoid dishonor. However, Virginia prizes chastity: she has not only authorized her father to kill her but begged him to, rather than surrender her 'noble freedom' to Appius's lust: 'take the life you gave me/And sacrifice it rather to the gods/Than to a villain's Lust' (4.1.32–34).

The fact that Virginia has died at the hand of her father does not obscure that Appius's villainy is the but-for cause of Virginia's death; her body bleeds in the presence of her murderer, Appius—even though she was slain by her father. The moral of the play is the horrific evil that a partial judge can cause. At the end of his life, Appius acknowledges that he deserves execution: 'Judges are term'd/Gods on earth; and such as are corrupt/Read me in this ruine' (4.2.140–142). It is worse to be a dissolute judge than an evil man: 'Better had Appius been an upright Judge, /And yet an evil man, than honest man, /And yet a dissolute Judge: for all disgrace/Lights less upon the person than upon the place' (5.2.81–84).

The Devil's Law Case: *an unnatural lawsuit*

Thus far we have examined the representation of women defendants; in the tragicomedy *The Devil's Law Case* (1623), a woman is the plaintiff. This is a most unnatural lawsuit, in that a spiteful mother seeks to establish that her son is a bastard. The subtitle of the play, 'When Women Go To Law The Devil Is Full Of Business', ostensibly announces an outright condemnation of notorious suits involving litigation brought by women.⁴⁷ At least one critic has noted that the insolence of women was a controversial topic in the period 1615–21 after scandalous incidents in which three prominent figures were brought down by their jealous, spiteful wives—Robert, Earl of Somerset, the Earl of Sussex, and Thomas Lake. A fourth, Chief Justice Edward Coke, was involved in a notorious feud with his wife.⁴⁸ I argue that the play is less an outright condemnation of litigation instigated by women than a vehicle to explore judicial integrity.

In the first half of the play, Romelio, an arrogant merchant, attempts to marry his sister Jolenta to Ercole rather than to Contarino, an indebted young man whom both Jolenta and her mother Leonora love. A duel ensues between Contarino and Ercole in which both men are wounded and believed dead; in fact, both survive. Leonora seeks revenge against Romelio by instigating a lawsuit to disinherit him. Leonora claims that Romelio is a bastard sired years earlier by a Spanish gentleman. Coincidentally, the man whom she has falsely identified as Romelio's father is the judge presiding at trial, Crispiano. Knowing that he did not father Romelio, Crispiano steps down from the bench and gives the lie to her story.

Leonora embodies a triple threat: an aggressive, lustful, and litigious widow. Linda Woodbridge argues that 'the conjunction of charges of lust with widowhood's inherent freedom of action . . . suggest that the charge of lechery was a smear tactic against assertiveness and liberty.'⁴⁹ Laura Gowing comments, 'In a culture where a host of prescriptions limited women's words, and where women's participation in the law was explicitly restricted, sexual insult and legal action represented particular opportunities.'⁵⁰ When Leonora boasts that 'Here begins/My part i' th' play' (3.3.380–381), she in effect as a widow claims a role in the public sphere that ordinarily is closed to women. One of the leading characters in the play, Crispiano, vows that he 'will never sit upon the bench more, /Unless it be to curb the insolencies of these women' (3.1.29–30). Crispiano comments on the unnaturalness of a woman's publication of her own adultery: 'A most strange suit this: 'tis beyond example, /Either time past or present, for a woman, /To publish her own dishonor voluntarily . . .' (4.2.254–258). In a society where women's chastity was a prize beyond value, Leonora has gone to court and publicized her infidelity; it is in the nature of things for mothers to nurture their young, yet Leonora seeks her son's ruin. Sexual desire has supplanted a mother's innate love for her own child (4.2.58–63). In a moving soliloquy, the aging widow laments: 'There is no plague i' th' world can be compared /To impossible desire, for they are plagued /In the desire itself' (3.3.261–263). She compares her late love for Contarino to the 'Last merriment 'fore Winter . . .' (3.3.276).

Ariosto, like Crispiano an honorable jurist, also chastises Leonora for bringing a suit unbecoming to womanhood and Christianity (4.1.52–53). ‘Vile suits’ such as Leonora’s ‘Disgrace our courts. . . . May like cause inn any Christian Court never find name: Bad suits and not the law breed the Law’s shame’ (4.1.65, 72–73). However, I read the play not so much as a diatribe against the woman litigant as a condemnation of vexatious suits that are brought for unworthy motives. Women are less to blame for going to court than for bringing unnecessary and vindictive suits.⁵¹ As C. W. Brooks comments, in the late Elizabethan and early Stuart period, many men engaged in this abuse:

Social critics pointed to men who engaged in litigation simply as an aggressive pastime, pugnacious gents who seemed to take it for granted that they should spend money on suits at law just as they would spend it on flashy suits of clothes.⁵²

Significantly, Ariosto chides Leonora for bringing a case that will deprive widows, orphans, and other more deserving female litigants of their day in court (4.1.25–32).⁵³ Although Leonora is rebuked for instigating unnecessary litigation, she receives the mildest of sentences (she must endow a monastery); and she is allowed to marry the man whom she adores, Contarino.⁵⁴

In the money-grubbing world of *The Devil’s Law Case*, it is no surprise to find lawyers who love money, such as the worldly-wise Crispiano, who revels in taking clients’ fees.⁵⁵ Despite his mercenary legal career, when called to serve as judge he shows himself a paragon of fairness. Crispiano insists that Romelio must be informed of the charge against him and have time to prepare his defense (4.2.76–78). Crispiano’s questioning of litigants and witnesses never degenerates into the aggressive inquisition of the vindictive Cardinal Monticelso. For example, Crispiano carefully questions Leonora’s witness about the particulars of her accusation, the precise time period and circumstances of the alleged adultery. While Monticelso sought to convict Vittoria on the basis of the vituperative charge of whore, Crispiano distinguishes between ‘stale declaiming ’gainst the person’ and hard evidence (4.2.156–157). For Crispiano, accusations must be backed up by proof (4.2.347). While Monticelso and Appius violate Coke’s maxim that no man should be a judge in his own cause, Crispiano withdraws midway through the trial based on the mere allegation that he is Romelio’s father, although Crispiano knows it to be false. Crispiano’s recusal exemplifies Webster’s message that there can be no justice if the judge is partial, or even perceived to be interested in the outcome.

How are we to interpret the transformation of Crispiano from a cynical and money-grubbing lawyer to an impartial and insightful judge? John Lucas questions the consistency of Webster’s characterization of Crispiano.⁵⁶ Goldberg explains this inconsistency as an effort by the playwright to show that ‘the legal system need not be predicated upon the existence of perfectly virtuous men.’⁵⁷ I think that a better explanation lies in Webster’s own legal training: he understood that actual courtroom experience is a sine qua non to being a good judge; it is not a position for a Platonic philosopher. Crispiano knows all of the lawyer’s tricks. He

is aware that plaintiffs and witnesses can lie, either out of vindictiveness or out of financial self-interest; thus, he insists on evidence. He understands that an accusation is not proof but only a display of verbal dexterity. In another context, earlier in the play, Romelio says to Leonora's maid:

There is no wariier keeper of a park,
To prevent stalkers, or your night-walkers,
Than such a man as in his youth has been
A most notorious deer-stealer. (1.2.202–205)

Crispiano's own experience and cynicism enable him to avoid being duped by either Leonora or Romelio.

On the one hand we are comforted at the end of *The Devil's Law Case*, in that Webster presents an affirmative image; on the other hand, but for the coincidence that Crispiano happened to be the judge in the case, Leonora's false allegations of bastardy might have succeeded. The plot comes within a hair's breadth of disaster, revealing the precariousness of litigation and the uncertainty of trial outcomes.

We can interpret *The White Devil*, *Appius and Virginia*, and *The Devil's Law Case* as a series of discourses about the problem of the partial judge. Cardinal Monticelso, the judge in *The White Devil*, is determined to convict; for private vengeance he oversteps the bounds of his judicial role and religious calling. Appius, like Angelo in *Measure for Measure*, is a ruler/judge driven by lust, with the difference that in Webster's tragedy, the result of Appius's lechery is the death of an innocent girl. In *The Devil's Law Case*, in contrast, Crispiano is an upright judge who appropriately recuses himself when he is alleged to be personally involved. Through the interaction between his women leads and the judges, Webster provides both positive and negative examples of judicial conduct.

Queens on Trial

The stakes are high for the defendants in *Henry VIII* and *The Winter's Tale*: the trial of Queen Katherine pertains to divorce and thus to her regal status; Queen Hermione is accused of infidelity and thus of petty treason. Katherine and Hermione courageously challenge the partiality of their judges and the perceived unfairness of their trials.

In the trial scene in *Henry VIII*, Queen Katherine begins her defense by asking that the King do her right and justice and show her pity. She not only pleads her weakness as a woman but also her alien status:

Sir I desire you do me right and justice,
And to bestow your pity on me, for
I am a most poor woman and a stranger,
Born out of your dominions, having here
No judge indifferent nor no more assurance
Of equal friendship and proceeding. (2.4.11–16)⁵⁸

Katherine asks the King to tell her how she has offended him, pointing out her long devotion to his interests and his person. As Gordon McMullan points out

in the introduction to the Arden edition, Shakespeare subtly modifies Holinshed's versions of Katherine's speeches to make the bias more apparent. These changes emphasize that the decks are stacked against Katherine because Wolsey is her implacable foe. In Holinshed, Katherine says she will be content to depart to her shame and rebuke if anything can be said against her, but in *Henry VIII*, the Queen dares the King not only to report, but also 'to prove' any charge against her honor:

If, in the course
 And process of this time, you can report,
 And prove it too, against mine honour aught,
 My bond to wedlock, or my love and duty
 Against your sacred person, in God's name
 Turn me away and let the foulest contempt
 Shut door upon me, and so give me up
 To the sharpest kind of justice. (2.4.35–42)⁵⁹

Katherine acknowledges, but subverts, the expectation that a fragile woman will cry and quake before a powerful tribunal:

I am about to weep; but thinking that
 We are a queen, or long have dreamed so, certain
 The daughter of a king, my drops of tears
 I'll turn to sparks of fire. (2.4.68–71)

Katherine has the strength to take on the dominant cardinal and rebuke his partiality:

[Y]ou are mine enemy, and make my challenge
 You shall not be my judge. For it is you
 Have blown this coal betwixt my lord and me,
 Which God's dew quench. Therefore, I say again,
 I utterly abhor, yea from my soul,
 Refuse you for my judge, whom yet once more
 I hold my most malicious foe and think not
 At all a friend to truth. (2.4.75–82)

Against this litany of accusations, Wolsey denies that he is guilty of 'spleen' or 'injustice' and offers the familiar retort that she is '[o]er-topping woman's power' (2.4.86–87). Wolsey directly attempts to silence Katherine: 'I do beseech/You, gracious madam, to unthink your speaking, /And to say no more' (2.4.101–103). Katherine takes the audacious step of appealing to the Pope for judgment and quits the chamber.

Katherine is the moral victor in this scene. The King cannot restrain his admiration for Katherine after her departure: he refers to her familiarly as 'Kate' and says no man can 'report he has/A better wife'. He comments on her noble birth and deportment; he praises her as 'The queen of earthly queens' (2.4.130–132, 138). Remarkably, this list of virtues even includes Katherine's meek saintliness, wife-like deportment, and obedience (2.4.135–136). Henry has been impressed by his aging wife's masterful performance at her trial.⁶⁰ When the cardinals visit

Katherine in her boudoir, she rejects their request to speak to her in private: 'Truth loves open dealing' (3.1.29). Katherine mocks and rejects the prelates' use of Latin. She says of the cardinals, 'all hoods make not monks' (3.1.22–23), a criticism that closely resembles Vittoria's rebuke of Monticelso. She pleads to be judged not by her enemy Wolsey but in a heavenly court where 'sits a judge/That no King can corrupt' (3.1.97).⁶¹

In *The Winter's Tale*, Queen Hermione must defend her chastity in a trial instigated and presided over by her husband, King Leontes. Hermione stands alone without support from legal counsel or from her family. She has no defense 'but what comes from myself' (3.2.24):

Since what I am to say must be but that
Which contradicts my accusation and
The testimony on my part no other
But what comes from myself, it shall scarce boot me
To say 'not guilty;' mine integrity being counted falsehood. (3.2.21–25)⁶²

There is no doubt that the audience is meant to rebuke Leontes' pig-headed charges against Hermione. Lynn Enterline comments that Hermione 'constructs Leontes as a tyrant for bringing her forth in a courtroom where no words can acquit her.'⁶³ '[T]he inevitable misfiring of her "Not guilty" turns Leontes' court into a mockery, the ruse of a tyrant who has already determined the verdict.'⁶⁴ Carol Neely argues that language has 'doubly failed Hermione':⁶⁵ after hearing the charges against her, Hermione tells Leontes that 'You speak a language that I understand not' (3.2.78); at the same time, the Queen knows it will 'scarce boot me/To say "Not guilty"' (3.2.24–25). I read Hermione's defense as sending a double-edged message about the power of her speech. On the one hand, Hermione protests that she has no effective words that can contradict her accusation, given that Leontes is deaf to her defense. On the other hand, language does not fail Hermione, who is a most sympathetic and convincing advocate. Hermione offers a cool and persuasive defense while Leontes sounds emotional, hyperbolic, and out of control. The courage and purity of Queen Hermione and Queen Katherine provide a foil against which to display the injustice and obtuseness of their judge/husbands. Although Hermione and Katherine are condemned despite their consistent fidelity, their courage at trial provides fine dramatic moments and a devastating critique of judicial partiality

What Happens When a Woman is a Judge?

Of course, a woman could not be a judge in Renaissance England, but three plays give a glimpse to what would happen if a woman served as judge. It is worth noting that two women who exercise quasi-adjudicatory roles—Portia in *The Merchant of Venice* and Isabella in *Measure for Measure*—are both partial judges. By coming in disguise as Balthasar, Portia pretends to be a man and pretends to be a judge; she pretends to favor Shylock's suit when in fact she will transform Shylock into the defendant. Portia not only conceals her gender, a practical necessity, but also

her interest in the case. Her partiality is not as egregious as that of Monticelso, in that she allows Shylock the opportunity to escape and avoid condemnation if only he will exercise mercy and repudiate the bond. However, in another sense, Portia is more insidious in her partiality than Monticelso, as her identity is concealed. No one in the courtroom is aware that she is Bassanio's wife and thus allied with Antonio. In a play riddled with thought-provoking twists and ambiguities, Shakespeare resists unfolding to his audience a straightforward verdict on Portia's partiality. Unlike the other judges in this essay, Portia's concealment of her interest in the case—an example of her great cleverness and a high point of the dramatic tension in the play—resists binary classification as laudable or disingenuous.

There is no formal trial scene in *Measure for Measure*. Isabella is neither on trial, nor is she formally a judge. However, the question of partiality is central since Angelo, like Appius, will stop at nothing to satisfy his desires. Angelo goes beyond using his dominant position as substitute ruler to exercise sexual coercion; he is the ur-corrupt judge, who solicits sex as a bribe to alter the outcome of a criminal case. When Angelo torments Isabella with a choice between her chastity and her brother's life, Isabella expresses her wish that the tables were turned and that she and not Angelo were the ruler/judge:

I would to heaven I had your potency,
And you were Isabel! should it then be thus?
No; I would tell what 'twere to be a judge,
And what a prisoner. (2.2.66–69)⁶⁶

Isabella here specifically evokes the Renaissance ideal of the self-disciplined judge, who exercises his authority with restraint: 'O, it is excellent/To have a giant's strength; but it is tyrannous/To use it like a giant' (2.2.107–109). As it turns out, improbably, Isabella will in fact become the *de facto* judge at the end of the play, when Duke Vincentio returns to Verona and Angelo is called to reckoning for his crimes. Isabella, at the behest of Angelo's promised wife Mariana, calls upon the Duke to spare Angelo's life, excusing Angelo on the basis of her belief that 'A due sincerity governed his deeds, /Till he did look on me. Since it is so, /Let him not die' (5.1.444–446). Isabella would of course be expected to condemn Angelo in so far as he has attempted to extort sexual favors from her and has killed her brother (or so she believes when she recommends leniency). Yet Isabella is able to rise above her own inclinations and urge a merciful 'judgment'. While many critics have commented that Isabella's plea for Angelo's life evokes Christian concepts of pardon, Isabella adopts very legalistic discourse.⁶⁷ She notes that Claudio committed the act for which he was punished, and that Angelo did not do the evil act which he intended (5.1.446–452) (if only because the substitution of Mariana precluded consummation (of his lecherous act). I suggest that the legalism with which Isabella defends Angelo underscores the juridical role that she assumes: she reasons like an impartial and merciful judge as she decides that his life should be spared.

In a lesser-known play, *The Queen of Corinth*, a woman ruler is called upon to judge at the trial of her own son. The *Queen of Corinth*, written c.1616–18, was published in the first Beaumont and Fletcher Folio of 1647. The trial scene, generally attributed to John Fletcher, adjudicates the appropriate punishment for the queen's son, Theanor, who is accused of raping two women. Theanor first raped Merione, the ward of the queen to whom he was originally betrothed before the queen promised Merione to a foreign prince, Agenor, incident to a treaty. Merione is devastated by the rape and pronounces herself a poison and pestilence unfit to be married to Agenor now that she has been dishonored (2.3.90–108).⁶⁸ Theanor is later charged with rape of a court lady named Beliza, who is betrothed to a handsome courtier, Euphanes.

The trial scene is unusual: a crime against women is adjudicated, and the presiding judge is a woman. The queen opens the trial by reading the law of Lycurgus against the rape of virgins. This law in effect allows the victim to decide the rapist's fate: marriage or execution. In *The Queen of Corinth*, three women participate in the judging since the queen takes advice both from Merione and Beliza when she determines her son's sentence. Merione, wearing white, seeks Theanor for her husband and kneels 'for mercy'; while Beliza, dressed in black, asks that Theanor be killed in the name of 'justice' (5.4.66, 64). Merione accuses Beliza of being 'bloody' in her demand for Theanor's execution (5.4.117). Merione pleads that the Court should be 'the image of Jove's throne'. She asks the queen to impose a 'mild[] sentence', as befits the ruler in her status as mother and as queen (5.4.102–106). Beliza stands for a strict application of the law. Shylock-like, she 'demand[s] but what/The Law allowes me' (5.4.67–68). She argues that it would be an outrage were a recidivist rapist able to escape punishment; she warns Merione that a rapist is likely to prove a poor husband. As Beliza and Merione continue in their respective pleas for 'mercy' and 'justice', the courtiers compliment the queen on her gravity and 'masculine constancy' (5.4.129). While for the modern reader the courtiers' compliment about the queen's dignified 'masculine constancy' raises a red flag, in fact the portrait of the queen as justice is laudatory. The courtiers go so far as to compare the queen to the Roman Cato (5.4.136).

The queen's sentence is fair and wise. She has the intelligence to consider the purpose behind the law of Lycurgus, and finds that the marriage option is inapplicable to her son, who has been so villainous as to rape two women. Begging forgiveness, Theanor accepts his fate, asking only to be allowed to marry Merione before he dies so that he can restore her honor. A happy ending is assured when Euphanes reveals that the second 'rape' involved a bed trick in which Merione took the place of Beliza unbeknownst to Theanor. Since Theanor has, as it turns out, 'only' raped one woman, he is joyfully married to Merione. Each of the women achieves a happy ending, as Beliza is wed to her love Euphanes and the lusty queen will marry Prince Agenor.

We are not invited to criticize the queen for sitting as a judge where her son was a defendant. Apparently, recusal is not an option. The fact that the queen presides over the trial of her own son heightens dramatic interest and spotlights her

integrity.⁶⁹ In this tragicomedy, law is restorative, healing the wounds of rape. The play has three strong, positive female figures. Violence occurs against women but it is reprovved and the perpetrator is sincerely repentant. The women not only receive fair treatment in court, but the queen serves as a paragon in her role as judge.

Examining the woman judge provides a useful complement to analyzing the posture of the woman defendant. The portrayal of the woman judge subverts the misogynist view that women should be distanced from the public sphere of the court proceedings. Isabella and the Queen of Corinth are as partial as the male judges in the trial scenes we have studied but they wear their partiality very differently from their male counterparts. In her gracious if not saintly advocacy that Angelo's life should be spared, Isabella shines as a foil to Angelo. Similarly, the Queen of Corinth garners praise for her dispassionate decision in condemning her own son to death at a point when it appears that he has raped two women.

Conclusion

The women on trial in Renaissance plays are not disparaged. Rather, they articulate serious concerns about judicial partiality that vexed the playwrights and their audiences. While at first glance the vituperative epithets that Monticelso employs in his trial of Vittoria sound misogynistic, Coke slandered Raleigh by calling him 'vile' and a 'traitor'. When Monticelso unleashes a tirade of abuse against Vittoria, Webster signals disapproval of abuse of prosecutorial power whatever the gender of the defendant. Monticelso, Appius, and Cardinal Wolsey are presented as overbearing in their personal style, and so domineering in their handling of the trials that the defendants are not fairly treated.

Why do so many trial scenes feature women defendants? There are several reasons. Vittoria, Queen Katherine, and Queen Hermione elicit sympathy in that each woman stands alone before her accuser, thus highlighting procedural shortcomings. As presumptively helpless females, these defendants appear more vulnerable, more sympathetic, and more heroic in these plays even as the legal system appears more tyrannical. At the same time, these women stir the audience with their wit, persuasiveness, and brilliance. Then and now, laymen feel vulnerable to the judicial system because of the impenetrability of legal technicalities, complicated rhetoric, and unfamiliar jargon. Women typically lacked training in Latin and rhetoric.⁷⁰ Through the vehicle of women defendants, the playwrights could illustrate the quandary experienced by uneducated defendants in the face of bewildering, obfuscating language.

We are now in a position to consider the role of class, procedural posture, and genre in the portrayal of women in the trial scenes. When a woman enjoys elevated status like the queens or Vittoria, it is to be expected that she would be articulate and forceful. Marianna in *Fair Maid at the Inn* adopts the 'weak and modest' pleading posture as befits her humble stature when she testifies (falsely) that her son is a bastard in order to save the boy's life. Marianna may more closely resemble the lower and middle class women who pleaded in the Court of Requests.

Procedural posture also matters. Women are less likely to be criticized for engaging in civil litigation where they are defendants rather than plaintiffs, or where they are vindicating a legitimate interest rather than instigating a frivolous suit. However, even Leonora is gently treated: despite instigating a spurious suit, she is only lightly sanctioned and is ultimately married to the man who is her heart's desire. As we would expect, the genre of the play directly affects the outcome for the women in the trial scenes. The fates of Katherine and Virginia are foreordained by history and/or by the tragic genre.

Why do the women appear so bold in the trial scenes? Most of the plays that I have examined date from after 1610. Woodbridge has noted a great decline in bitter antifeminist satire during this period, which she attributes to pressure applied by female playgoers.⁷¹ I suggest additional reasons. Vittoria and the queens are prominent and educated. The stakes were high for the women defendants in these plays (Vittoria and Hermione were on trial for their lives). These defendants are exceptional women and appear heroic largely because they dare to break the expectation of modesty, subservience, and silence. Most important, I believe that the women's forceful protests provide a vehicle through which the playwrights send a message about problems in the judicial system: partiality of judges, unreliability of witnesses and other proof, lack of counsel, and establishment of guilt through verbal abuse in lieu of reliable evidence. The plays utilize a presumptively vulnerable woman to advocate more forcefully the infirmities of legal procedure. Some women defendants (such as Queen Katherine and Queen Hermione) are portrayed as sympathetic throughout the plays but even those who are not (such as Vittoria) earn our admiration at trial. Far from denigrating or attempting to subordinate women, the plays present women litigants and defendants as strong and courageous.

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Notes

- [1] The term 'litigant' properly applies to a plaintiff or defendant in civil litigation, rather than to a judge or other personnel. In criminal cases, the individual who is prosecuted by the state is referred to as the defendant. It is appropriate to refer to Leonora in *The Devil's Law Case* as a plaintiff or litigant as she initiates a civil suit, and to Vittoria in *The White Devil* as a defendant as she is charged with a crime. It is a gray area whether to call Hermione a defendant in *The Winter's Tale*, where her husband presides over a mock trial in which she is charged with unchastity. Katherine of Aragon in *Henry VIII* is also called upon to defend the validity of her marriage but she is not strictly speaking a defendant. In Appius and Virginia, Virginia is neither litigant nor defendant: her status as a bond slave *vel non* is adjudicated.

- [2] Tim Stretton (2003) *Women Waging Law in Elizabethan England* (Cambridge: Cambridge University Press). For a discussion of the relationship between crime and gender, see Garthine Walker (2003) *Crime, Gender and Social Order in Early Modern England* (Cambridge: Cambridge University Press), which revises earlier works that addressed crime in early modern England with less emphasis on the female experience, such as J. A. Sharpe (1999) *Crime in Early Modern England 1550–1750* (London and New York: Longman) and J. S. Cockburn (Ed.) (1977) *Crime in England 1550–1800* (Princeton: Princeton University Press).
- [3] *Ibid.*, pp. 177–180.
- [4] In many respects the married woman had the status of an infant: she could not own or inherit goods or control lands, was incapable of making contracts, could not sue or bring a writ in her own right, and could not write a will without her husband's consent.
- [5] T.E., *The Law's Resolution of Women's Rights*, Norton Anthology Online: Early Seventeenth-Century (accessed November 4, 2008). http://www.wwnorton.com/college/english/nael/17century/topic_1/laws.htm
- [6] Women's participation in the courts elicited a spectrum of reactions. For Juan Vives, women 'shulde ever be under the rule of theyr fathers, and brotherne, and housbandes and kynsmen', staying away from the world of business and law. *A Very Fruitful and Pleasant Boke Callyd the Instruction of a Christen Woman* (London, 1529), ed. Virginia Walcott Beauchamp (2002) (Champaign, IL: University of Illinois Press), p. 172. Sir Thomas Smith regarded women as 'those whom nature hath made to keep home and to nourish their family and children, and not to meddle with matters abroad'. *De Republica Anglorum*, ed. Mary Dewar (1982) (Cambridge: Cambridge University Press), p. 28. Richard Brathwait suggested that the wronged widow who has business with the court should look to Christ for intercession. *The English Gentlewoman* (London, 1631), cited in Stretton, *Women Waging Law*, p. 49. While a cynic about the quality of the legal system, Bishop Hugh Latimer in 1562 took a contrary view, and recognized the right of women to go to court. He relied on the parable of the impecunious widow who persistently begged for justice in Luke 18:1–8. *The Sermons of Hugh Latimer* (1824), 2 vols (London: William Clowes), p. 111.
- [7] See Amy Erickson (1993) *Women and Property in Early Modern England* (London and New York: Taylor & Francis), pp. 114–128; Mary Cioni (1985) *Women and Law in Elizabethan England with Particular Reference to the Court of Chancery* (New York and London: Garland); Laura Gowing (1994) Language, Power and the Law: women's slander litigation in early modern London, in Jenny Kermode & Garthine Walker (Eds) *Women, Crime and the Courts in Early Modern England* (Chapel Hill: University of North Carolina Press); Stretton, *Women Waging Law*, pp. 70–98.
- [8] Stretton, *Women Waging Law*, pp. 108–109.
- [9] *Ibid.*, p. 109.
- [10] Gowing, 'Language, Power and the Law', p. 234.
- [11] *Ibid.*, pp. 177–180.
- [12] Quotations come from *The Fair Maid of the Inn* in *The Dramatic Works in the Beaumont and Fletcher Canon*, ed. Fredson Bowers (1996), vol. 10 (Cambridge: Cambridge University Press).
- [13] C. W. Brooks (1986) *Pettyfoggers and Vipers of the Commonwealth: the 'lower branch' of the legal profession in early modern England* (Cambridge: Cambridge University Press), p. 111.
- [14] *Ibid.*, p. 107. Brooks (1998) presents additional research, disaggregated by court and time period in *Lawyers, Litigation and English Society since 1450* (London: Hambleton Press), pp. 63–128.

- [15] Stephan Landsman (1983) A Brief Survey of the Development of the Adversary System, *Ohio State Law Journal*, 44, p. 728. For further background on the early modern legal system, see John H. Langbein (2003) *The Origins of Adversary Criminal Trial* (Oxford: Oxford University Press) and J. H. Baker (1979) *An Introduction to English Legal History* (London: Butterworth).
- [16] Allen D. Boyer (2005) The Trial of Sir Walter Raleigh: the law of treason, the trial of treason, and the origins of the confrontation clause, *Mississippi Law Journal*, 74, p. 887; Kenneth Graham (2005) Confrontation Stories: Raleigh on the Mayflower, *Ohio State Journal of Criminal Law*, 3, p. 209.
- [17] T. B. Howell (Ed.) (1809–21) *A Complete Collection of State Trials and Proceedings in High Treason and Other Crimes and Misdemeanors*, 33 vols (London), vol. 2, pp. 7, 9, 20.
- [18] David Jardine, *Criminal Trials*, 2 vols (London: M.A. Nattali, 1847), vol. 1, p. 61.
- [19] For a thorough account of Lilburne's trial, see Robert McWhirter (2007) How the Sixth Amendment Guarantees You the Right to a Lawyer, a Fair Trial, and a Chamber Pot, *Arizona Attorney*, 44, p. 12.
- [20] T. B. Howell (1809–21) *A Complete Collection of State Trials and Proceedings in High Treason and Other Crimes and Misdemeanors*, 33 vols (London), vol. 4, p. 1296.
- [21] McWhirter, 'How the Sixth Amendment', p. 20.
- [22] *State Trials*, vol. 4, p. 1298.
- [23] *Ibid.*, p. 1382.
- [24] Thomas Smith tells us that the victim-prosecutor testified on oath: 'thou robbest me in such a place, thou beatest me, thou tookest my horse from me, and my purse, thou hadst then such a coat and such a man in thy company'. *De Republica Anglorum*, p. 114. The defendant simply denied the charge: 'the thief will say no, and so they stand a while in altercation'. *Ibid.*
- [25] Defense counsel might be available in misdemeanor trials. The explanation for this paradox is the lesser importance that the state attached to conviction in more minor cases.
- [26] Langbein, *The Origins of the Adversary Criminal Trial*, p. 15.
- [27] John Barclay's *The Mirrour of Mindes* warns that the office of judge carries with it the power to abuse; judges must 'bridle their desires' if they wish to 'avoyd flowtes and reproaches', Thomas May, translator (1631) *The Mirrour of Mindes, or Barclay's Icon Animorum* (London), p. 173.
- [28] Sir Francis Bacon, *Selected Writings of Francis Bacon*, ed. Hugh G. Dick (1955) (New York: Modern Library), pp. 139–140.
- [29] Bertill Johansson (1967) *Law and Lawyers in Elizabethan England as Evidenced in the Plays of Ben Jonson and Thomas Middleton* (Stockholm: Almquist & Wiksell), p. 48. The corruptibility of judges and the venality of lawyers was frequently satirized in the plays of the period.
- [30] Quoted in Johansson, *Law and Lawyers in Elizabethan England*, p. 50. Other contemporaries were also concerned over the problem of judicial corruption. Bishop Hugh Latimer (1562) warned in his *Twenty Seven Sermons* that even '[I]f the judge be good and upright, he [the Devil] wyll assay to deceave hym, eyther by the subtile suggestion of craftye Lawyers, or els by false wytnesse, and subtile uttering of a wrong matter'. Quoted in Stretton, *Women Waging Law*, p. 15.
- [31] Quotations come from *The Spanish Curate* in *The Dramatic Works in the Beaumont and Fletcher Canon*, ed. Fredson Bower (1996), vol. 10 (Cambridge: Cambridge University Press).
- [32] Thomas Hughes and others, *The Misfortunes of Arthur* (1587); reprint, New York: AMS Press, 1970, cited in Craig Bernthal (2002) Jack Cade's Legal Carnival, *Studies in English Literature, 1500–1900*, 42(2), pp. 259–265.

- [33] For a discussion of the venality of the bar in general and of judges in particular, see Wilfrid R. Prest (1991) *The Rise of the Barristers: a social history of the English Bar, 1590–1640* (New York: Oxford University Press).
- [34] References are from *King Henry VI Part Two* (1999), The Arden Shakespeare, Third Series, ed. Ronald Knowles (London: Thomson Learning).
- [35] Charles R. Forker (1986) *The Skull beneath the Skin: the achievement of John Webster* (Carbondale, IL: Southern Illinois University Press), p. 31.
- [36] Quoted in *The Complete Works of John Webster*, ed. F. L. Lucas (1927), 4 vols (London: Chatto and Windus), 4.38.
- [37] Scholars have noted that Vittoria evokes Lady Penelope Rich, who offered a stirring defense in the Star Chamber when she was accused of allegedly forging her second husband's will. She was also accused of being an adulteress and a whore. Penelope castigated the bias of her accusers: '...the sayde Bull of complaynte exhibited unto this honorable Courte against her and others is contrived and prosecuted of Malyce and for vexation, and not upon any juste cause or grounds of Suite, the same being stuffed with scandalous ymputations, against her this defendant and the other defendants, taxing her this defendant and them moste unjustly with def-famacon and discredit ... (The National Archives, Public Record Office. Star Chamber, James I, May 1607, Testimony of Lady Penelope. TNA: PRO, May 19, 1607, STAC 8/108/10). Penelope's situation differed, however, from Vittoria's in that Vittoria's accuser is her judge: thus Monticelso is at once the instigator of the charges, the judge who will preside over the trial, and a self-interested decision maker with a stake in the outcome. The comparison between Vittoria and Penelope Rich is addressed in Sylvia Freedman (1988) *The White Devil, the Fair Woman with a Black Soul*, in Clive Bloom (Ed.) *Jacobean Poetry and Prose: rhetoric, representation and the popular imagination* (New York: Saint Martin's Press), pp. 151–163 and M. C. Bradbrook (1980) *John Webster: citizen and dramatist* (New York: Columbia University Press), pp. 47–68.
- [38] Quotations come from John Webster, *The White Devil*, ed. John Russell Brown (1996) (Manchester: Manchester University Press).
- [39] Dympna Callaghan (1989) *Women and Gender in Renaissance Tragedy: a study of King Lear, Othello and the White Devil* (New York: Harvester Wheatsheaf), p. 124.
- [40] Ibid.
- [41] See H. Bruce Franklin (1961) The Trial Scene of Webster's *The White Devil* Examined in Terms of Renaissance Rhetoric, *Studies in English Literature, 1500–1900*, 1(2), pp. 35–41; here, p. 40.
- [42] As M. C. Bradbrook has commented, through her courage—not her innocence—Vittoria has transformed 'the Cardinal's trial of her into her trial of the Cardinal. ... Prisoners may gain ascendancy over their jailers, and Vittoria demonstrates the disgraceful political role of a corrupt Church'. *John Webster: citizen and dramatist*, p. 132.
- [43] In 1604, for example, a vigorous opponent of church courts and canon law, William Stoughton noted the absence of express scriptural authority for the Church's administration of ecclesiastical jurisdiction. William Stoughton, *An Assertion for True and Christian Church Policie* (London, 1604), p. 12.
- [44] Thomas Heywood is recognized as co author with the most likely signs of Webster's presence in 4.1, the principal trial scene, among other scenes. See D. Gunby (2002) Webster and Heywood's *Appius and Virginia*: further borrowings from Livy, *Notes and Queries*, pp. 258–259; MacD. P. Jackson (1985) John Webster and Thomas Heywood in *Appius and Virginia*: a bibliographical approach to the problem of authorship, *Studies in Bibliography*, 38, pp. 217–235.

- [45] Quotations come from *Appius and Virginia* in *The Works of John Webster*, ed. David Carnegie, David Gunby & MacDonald P. Jackson (2003), vol. 2 (Cambridge: Cambridge University Press).
- [46] To Erin Roland-Leone (1995) the sacrifice of Virginia is 'a strategy which ultimately defeats the evil Appius' and a means to an end for the noble Virginius to effect a public good. 'Women Undone: the mutilation and murder of women in Renaissance drama' (Ph.D. dissertation, Lehigh University), p. 137. Roland-Leone argues that Virginia has no autonomy; she is killed not because she deserves to be punished but just because she is female: she is property that her father can dispose of as he sees fit, p. 136.
- [47] Quotations come from *The Devil's Law Case*, ed. Frances A. Shirley (1972) (Lincoln: University of Nebraska Press).
- [48] Gunby, *Works of John Webster*, critical introduction to *The Devil's Law Case*, vol. 2, pp. 9–11.
- [49] Linda Woodbridge (1984) *Women and the Elizabethan Renaissance: literature and the nature of womankind, 1540–1620* (Urbana: University of Illinois Press), p. 178.
- [50] Gowing, 'Language, Power and the Law', p. 28.
- [51] Women initiated 70% of slander cases in consistory courts. *Ibid.*, p. 27.
- [52] Brooks, *Pettifoggers*, p. 108.
- [53] In contrast to Ariosto's reaction, the corrupt Contilupo is eager to take Leonora's case which he praises as a 'precedent to all the world' (4.1.106). Of course, Contilupo has that lesson backwards: to the extent that Leonora's suit is novel, the problem is that her case will spur yet additional vexatious litigation, further spreading the malignancy of lawsuits initiated out of domestic spite.
- [54] Romelio must marry a woman he has impregnated and Jolenta is happy to be married to Ercole.
- [55] Crispiano poses a rhetorical question:
- Can the fing'ring taffeties, or lawns,
Or a painted hand, or a breast, be like the pleasure
In taking clients' fees, and piling them
In several goodly rows before my desk?' (2.1.57–61)
- [56] Lucas, *Webster*, 2.331.
- [57] Dena Goldberg (1987) *Between Worlds: a study of the plays of John Webster* (Waterloo, Ontario: Wilfrid Laurier University Press), p. 124.
- [58] Quotations come from William Shakespeare, *Henry VIII*, ed. Gordon McMullan (2001), The Arden Shakespeare, 3rd ser. (London: Arden).
- [59] To take another example, while Holinshed reports Katherine's statement that Katherine 'loved for your sake all them whome you loved whether they were friends or enemies', Shakespeare subtly modifies Katherine's speech to ask, 'which of your friends/Have I not strove to love, *although I knew/He were mine enemy?*' (2.4.27–29) (emphasis added).
- [60] Katherine elicits our admiration both before the trial, when she expresses concern to the king about the impact of excessive taxation (1.2.18–22), and after the trial, when Anne Boleyn praises her as a good lady never known to do wrong (2.3.2–5). The queen's criticisms of the unfairness of her trial are credible because they have been foreshadowed by claimed irregularities in Buckingham's treason trial (1.1.154–156, 183–190).
- [61] The play validates Katherine's criticism of the trial process by endowing her with strong moral authority throughout the play. Katherine attains her apotheosis in the deathbed scene (4.2), where she is compared to the Virgin Mary. She is clad in white and gold, participates in a dance with angels, and is associated with the

- lily. As Ruth Vanita (2000) points out, Mary was worshiped as a protectress and Queen of Heaven, as a protector of victims rather than as a victim. Mariological Memory in *The Winter's Tale* and *Henry VIII*, *Studies in English Literature, 1500–1900*, 40(2), pp. 312–313.
- [62] Quotations come from William Shakespeare, *The Winter's Tale*, ed. John Pitcher (2008), The Arden Shakespeare, 3rd ser. (London: Arden).
- [63] Lynn Enterline (1977) 'You Speak a Language That I Understand Not: the rhetoric of animation in *The Winter's Tale*, *Shakespeare Quarterly*, 48(1), p. 34.
- [64] *Ibid.*, p. 35.
- [65] Carol Thomas Neely (1975) *The Winter's Tale: the triumph of speech*, *Studies in English Literature, 1500–1900 Elizabethan and Jacobean Drama*, 15(2), p. 328.
- [66] References to *Measure for Measure* are from the Arden Shakespeare, ed. J.W. Lever (1965) (London: Methuen).
- [67] Ernest Schanzer (1963) *The Problem Plays of Shakespeare: a study of Julius Caesar, Measure for Measure, Antony and Cleopatra* (New York: Schocken), p. 101.
- [68] Quotations come from *The Queen of Corinth* in *The Dramatic Works in the Beaumont and Fletcher Canon*, ed. Fredson Bowers (1992), vol. 8 (Cambridge: Cambridge University Press).
- [69] The Queen of Corinth resembles Euarchus, Philip Sidney's ideal of a just king in *Arcadia*, who does not alter a death sentence for Pyrocles' sexual violence even when he learns that he is his own son. Philip Sidney, *The Countess of Pembroke's Arcadia (The Old Arcadia)*, ed. Katherine Duncan-Jones (1999) (New York: Oxford University Press), p. 356.
- [70] A rare exception is Sir Thomas More's daughter. See Lisa Jardine (1987) Cultural Confusion and Shakespeare's Learned Heroines: 'These Are Old Paradoxes', *Shakespeare Quarterly*, 38(1), p. 1.
- [71] Woodbridge, *Women and the Elizabethan Renaissance*, pp. 250–252.