WOMEN ON TRIAL:
REPRESENTING WOMEN LITIGANTS
IN ELIZABETHAN AND JACOBEAN DRAMA

A Thesis
submitted to the Faculty of the
Graduate School of Arts and Sciences
of Georgetown University
in partial fulfillment of the requirements for the
degree of
Master of Arts
in English

By

Sara D. Schotland, J.D.

Washington, D.C.
February 3, 2009
Copyright 2008 by Sara D. Schotland
All Rights Reserved
ACKNOWLEDGMENTS

I am deeply grateful for the generous assistance that I have received in the completion of this project, especially from my husband Roy and my thesis advisor Professor Lena Cowen Orlin. Additionally, my warm thanks to the faculty who have mentored me over the past two years including Kathy Temple, Leona Fischer, Jason Rosenblatt, as well as to Lindsay Kaplan who participated on my orals committee.

This thesis is dedicated to my two favorite M.A.s, Rebecca Schotland Wolsk and Joseph Deutch Schotland, who have so enthusiastically supported my graduate studies in literature.
# Table of Contents

Introduction and Scope ....................................................................................................... 1  
The Structure of the Thesis ................................................................................................. 4  
Chapter I: Contemporary Views on the Appropriate Behavior of Women Litigants ........... 6  
Chapter II: Historicizing Problems in the Renaissance English Trial System............... 12  
Chapter III: Webster’s Treatment of the Partiality of Judges ........................................... 22  
Chapter IV: Summary Justice: Queens on Trial ............................................................... 48  
Chapter V: Exemplary Women Judges ............................................................................. 58  
Conclusion ........................................................................................................................ 71  
Bibliography ..................................................................................................................... 75
INTRODUCTION AND SCOPE

Women are frequently portrayed in English Renaissance plays in courtroom settings. Tim Stretton, Laura Gowing, and others have done impressive work with court records to illuminate the types of women most likely to litigate, the most frequent causes of action, the procedural posture, and the courts that were most likely to hear such causes. However, to date little attention has been given to the depiction of women at trial in the plays of the period. (Stretton devotes part of a chapter to this topic.)

As is well-known, women labored under severe disabilities in the Renaissance court system. Legal institutions in Tudor and Stuart England imposed numerous restrictions on women’s participation in the courts: women could not serve as judges or on juries. It was especially difficult for married women to litigate in their own behalf. Widows litigated more frequently, often to address issues of property or inheritance.

In his study of pleadings in the Court of Requests, Tim Stretton shows that women’s pleading strategies reflected a sense of vulnerability. Women typically began modestly, emphasizing their need for protection. Women litigants emphasized their poverty and helplessness more than their male counterparts (177-80). However, when we look at the trial scenes in the plays, the women are anything but shy and retiring. In many instances, while the women begin their defense by emphasizing their vulnerability and need for protection, they finish strong. In the trial scenes that I examine, women litigants prove to be forceful advocates of their position, often accusing hegemonic figures of injustice and unfair process.
My study addresses two questions: (i) How do we explain the positive portrayal of women in the trial scenes in these plays? (ii) What do the plays tell us about the problems that vexed the contemporary legal system?

My thesis provides a close examination of the ways in which women are represented at trial—not only to examine the attitude towards women in litigation but also to illuminate contemporary concerns with the justice system and in particular the problem of the partial judge. Plays with trial scenes are likely to reflect serious consideration of problems that vexed the legal system of the period. Moreover, trial scenes test when, whether, and under what circumstances women litigants are silenced, humbled, or find a voice. Finally, trial scenes are points of high drama and typically are significant in terms of characterization, themes, and plot resolution. My examination of these plays will consider: Do the women litigants have a voice? What is their fate? Are their concerns portrayed with sympathy? Does class status matter? Does genre matter?

I examine the role of women at trial and the treatment of judicial partiality in The White Devil, Appius and Virginia, The Devil’s Law Case, Henry VIII, The Winter’s Tale, The Famous History of Sir Thomas Wyatt, The Merchant of Venice, and The Queen of Corinth. I will also refer briefly to the treatment of the partial judge in Measure for Measure, although the play does not contain a formal trial scene. My review is not limited to a single author or genre; rather my concern is to investigate the representation of the woman litigant.
In the plays of the period, women on trial are surprisingly articulate. Vittoria in 
The White Devil, Lady Jane Gray in Sir Thomas Wyatt, and Queen Katherine in Henry 
VIII offer stirring, even if unsuccessful, defenses of their positions. In each of these 
plays, the women are stronger and more admirable than their vindictive accusers. In 
some of the plays, the women prevail in court, while in the history plays and the tragedy 
of Appius and Virginia, they are doomed. Often the women begin their pleading by 
acknowledging that their appearance in court poses a threat to modesty, yet they out- 
argue and out-litigate the men. Virginia is silenced, however, and Queen Katherine 
leaves the courtroom. While some of these portraits of women in court are quite 
favorable, Webster provides a damning portrait of the litigious woman plaintiff in The 
Devil’s Law Case: When Women Goe to Law the Devill is Full of Businesse. This play 
has its misogynist moments: it is historically rooted in a few well-publicized instances 
of litigation initiated by women plaintiffs arising out of domestic disputes. At the other 
extreme are portraits of strong women judges, the Queen of Corinth and Portia.

Some critics deplore the characterization of female characters in Elizabethan 
drama as misogynistic, while others observe a trend towards a more complex portrayal 
in the Jacobean period with its evolution from the all good/all bad characterization of 
women heroines in Elizabethan drama (Stretton 62-63). I hope that my study of the 
portrayal of women in courtroom settings will contribute to this debate.
THE STRUCTURE OF THE THESIS

In the first chapter, I discuss contemporary views of women litigants. In the second chapter, I summarize a series of procedural deficiencies that plagued Renaissance English trials, deficiencies that were perceived by contemporaries and explored in the plays. In the third chapter, I discuss the treatment of judicial partiality and related deficiencies in the trial process in three plays by John Webster. Given his legal training, it is no surprise that Webster would focus so much of his oeuvre on problems with judicial process. In two plays, The White Devil and Appius and Virginia, Webster explores the evil of the partial judge. In The Devil’s Law Case, Webster offers a contrasting portrait of two fair and well-trained judges. In the fourth chapter, I consider trial scenes in three plays where the stakes are high for women defendants: Henry VIII (the divorce trial of Queen Katherine), The Winter’s Tale (the treason trial of Queen Hermione), and Sir Thomas Wyatt (the treason trial of Lady Jane Grey). Queen Katherine and Queen Hermione expressly protest the impartiality and unfairness of the process by which they are tried; in the case of Lady Jane Grey, the unfairness of the trial is manifest when the charges against the heroine are changed halfway through the summary trial. In the fifth chapter, I review two plays with women judges, The Merchant of Venice and The Queen of Corinth, as well as Measure for Measure, where Isabella is called upon to “judge” Angelo’s conduct in a mock trial scene at the end of the play. In my conclusion, I claim that in many instances the playwright uses the harsh treatment of women not to locate women in a subordinate status but rather to comment
on deficiencies in legal process or on dangerous misbehavior that transcends the issue of gender.
CHAPTER I

CONTEMPORARY VIEWS ON THE APPROPRIATE BEHAVIOR OF WOMEN LITIGANTS

As is well known, women in Renaissance England faced a barrage of obstacles to the exercise of legal rights. T.E.’s *The Lawes Resolution of Womens Rights* (1632) reviews common law sources concerning the rights, immunities, duties, and advantages of women. The treatise covers the treatment of dower, the wife’s entitlement should her husband predecease her, and the legal advantages of widows. The author 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.” The married woman has the status of an infant: she loses property, is incapable of making contracts, cannot sue or bring a writ in her own right, and cannot inherit or make a will:

> Whatsoever the husband had before coverture either in goods or lands, it is absolutely his own …If any thing when he is married be given him, he taketh it by himself distinctly to himself. … The very goods which a man giveth to his wife are still his own; her chain, her bracelets, her apparel, are all the good-man’s goods. … A wife how gallant soever she be, glistereth but in the riches of her husband, as the moon hath no light but is the sun’s.

The treatise, apparently tongue-in-cheek, suggests that women should welcome divorce or widowhood as the woman who has formerly been in subjection to her parents or
husband now is at liberty, under the control of no man and at last free to pursue her legal remedies.

Women’s participation in the courts elicited a spectrum of reactions. For Juan Vives (1541), women “shulde ever be under the rule of theyr fathers, and brotherne, and housbandes and kynsmen” (fol. 136), staying away from the world of business and law. Sir Thomas Smith (1562-1565), 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” (28). Richard Braithwait (1631) suggested that the wronged widow who has business with the court should look to Christ for intercession (111). While a cynic about the quality of the legal system, Bishop Latimer (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 (fol. 45).

Notwithstanding the consensus ideal that a proper woman stayed away from court, as Amy Erickson, Laura Gowing, and others have shown, women in fact did go to court in Renaissance England. What happened to the woman who needed to go to court to redeem her reputation or vindicate a financial claim on her own behalf or that of her children? The problem with the suggestion that women rely on husbands and male family members is that in many instances a woman lacked a close male relative who had the inclination or ability to sue on her behalf. As a practical matter, notwithstanding the ideal of otherworldliness, some women were able to go to court to vindicate their
rights—especially in those courts like the Court of Requests or the Chancery courts, where the barriers were less imposing.

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 in her behalf. Stretton’s studies of pleadings in the Court of Requests show that women typically began modestly, emphasizing their vulnerability and need for protection. Women litigants emphasized their poverty and helplessness more than their male counterparts, doubtless in hopes of attracting the judges’ sympathy (177-80). Then as now, each litigant sought to claim the moral high ground; in many cases, the merits of the dispute receded into the background while litigants engaged in character assassination against their adversaries. The authorities drew a line between accommodating acceptable and unacceptable behavior for women litigants:

Judges, lawyers, and moralists … were unsure how to accommodate and protect the “poor honest widow” without giving free reign to the “boisterous, unruly wife” but these difficulties partially dissolved as long as women followed the advice of conduct book writers and let qualified lawyers plead on their behalf. Women who did this protected their modesty by placing their trust in reliant males … and they maintained silence by having those males speak on their behalf. It was only when
women ignored this script and stepped out from behind their counsel to speak on their own behalf that the idealised picture was upset. For those women in effect pleaded their case at the bar. They moved away from playing an acceptable role as female litigants dependent on male counsel, and towards assuming the unacceptable role of female lawyers dependent on no one and acting on an equal footing with men. (68)

*The Fair Maid of the Inn* illustrates the type of modest pleading strategy that was likely to propitiate the 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, the scions of two Florentine families, who were formerly close friends, draw swords on each other in the aftermath of a horse race. The quarrel leads to a blood feud between the two families. To save the life of her son, Mariana goes to court pro se, falsely claiming to the Duke that Cesario is not the son of her absent husband Alberto and that her daughter is his only true child. When the Duke tests her story by compelling her to marry Cesario, she protests that although he is a prince it is against his prerogative “To force a woman’s choice against her heart” (3.2.170-71). Acknowledging her appeal to a higher justice, the Duke declares that Alberto is an adopted son, thereby allowing him to inherit. When Mariana’s long-lost husband, who was believed lost at sea, reappears, he unfairly chastises his wife for proclaiming their son a bastard (5.3.85-94). Alberto’s rebuke of his faithful wife Mariana is manifestly unjust. Mariana has acted as best she could in her husband’s
absence to save her son’s life. Matters are resolved with a comedic ending in which the families bury the hatchet and Cesario, confirmed as Alberto’s son, is wedded to the girl he loves.

Mariana appears as a courageous but reluctant litigant, who apologizes for appearing in court although a woman. She is “divided,” caught “between the Laws of truth and modesty,” yet prays the Duke to let her “griefes have vent;” she throws herself on the court’s mercy in her “necessity” (3.2.37-40). It is as a widow and a mother that she appears, without the protection of a husband, ostensibly to secure inheritance for her daughter, in reality to save the life of her son.

[I]n my weeds
Of mourning, emblems of too dear 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)

The Duke allows her to present these grievances without an advocate. Mariana is a woman whose courage we admire although she is hardly an audacious advocate or proto-feminist role model. The fact that Mariana, who believes herself a widow, goes to court is based on historical reality. While women were under-represented in the courts, widows were far more frequent litigants, comprising almost half of the female litigant populations in Requests, Common Pleas, and the Queens Bench (Stretton 108-09).
While widows accounted for about 9% of the population, they represented 5-6% of litigants in these courts (109). Mariana is a savvy litigant in that she talks the talk of modesty, avoiding any appearance of brazenness or impudence. The play is of interest because Mariana is an effective litigant whose success depends on a posture of demureness.
CHAPTER II

HISTORICIZING PROBLEMS IN THE RENAISSANCE ENGLISH TRIAL SYSTEM

As a background to the depiction of women in trial scenes, it is useful to review the procedural landscape of Elizabethan and Jacobean trials. As discussed below, the problem of judicial partiality was one of many interrelated problems with the legal system. First I will discuss contemporary accounts of problems in trial procedure, and then I will consider contemporary ideals of judgeship and concern over partiality.

PROCEDURAL PROBLEMS WITH RENAISSANCE TRIALS

Stephen Landsman has noted the shortcomings of English procedure prior to 1700 in an article surveying the development of the adversary system:

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.

Although the jury was ostensibly neutral and passive, its deliberations were likely to be influenced by the judge’s remarks and instructions. The judge was free to urge a verdict upon the jury and, up until 1670, jurors who refused to follow the judge’s directions could be jailed or fined.

Finally, there was no appellate procedure by which the litigants could secure review of the decision. (728)
Two infamous treason trials, that of Sir Walter Raleigh in 1603 and that of John Lilburne in 1649, exemplify the procedural problems with trials in early modern England. Sir Walter Raleigh’s trial is today remembered as a blight on Edward Coke’s career and a low watermark in English legal procedure. Despite eloquent and persistent demands, Raleigh was never allowed to confront his chief accuser, Cobham, 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 notoriest traitor that ever came to the bar. … Thou art a monster; thou hast an English face, but a Spanish heart. … Thou art the absolutest traitor that ever was. There never lived a viler viper. … Thou hast a Spanish heart, and thyself art a spider of hell. (State Trials, 2:7, 9, 20, 26)

When Raleigh protested Coke’s vituperative accusations—“You speak indiscreetly, barbarously and uncivilly”—Coke replied by reiterating his charge of “viperous treason” (2:26). The defendant lacked the power to resist such invective. Even more damaging, the prosecution was able to build its case on a string of rhetorical questions, false syllogisms, and character assassination (Boyer 887). 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.

Although Raleigh was not a popular man when arrested for treason, the unfairness of his trial and the brilliance of his defense turned popular sentiment in his favor. Raleigh appears to have performed his part like an actor in a play. According to Dudley Carleton, a spectator at the trial:

Sir Walter Raleigh served for a whole act, and played all the parts himself... He answered with that temper, wit, learning, courage and judgement, that, save it went with the hazard of his life, it was the happiest day that ever he spent. And so well he shifted all advantages that were taken against him, that ... in the opinion of all men, he had been acquitted. (Cayley 2:11-12)

It appears that Raleigh knew how to “shift,” an important trait for both male and female litigants. While Raleigh had the wit, brilliance, and education to stand up to Coke’s merciless prosecution, his dexterity did not save him from conviction.

John Lilburne’s 1649 treason trial similarly illustrates the absence of procedural safeguards. Lilburne had no counsel, no rules of evidence, and no right to see the indictment before hand. 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. (State Trials 4:1296)

The judges denied Lilburne’s request for counsel since “Counsel lies in matters of law,
not of fact” (McWhirter 20). 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” (State Trials 4:1298). 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” (State Trials 4:1382). Lilburne’s trial, like Raleigh’s, lasted less than
an hour. It was possible to be tried, convicted, and hung in a single day.

These procedural deficiencies pervaded the court system and were by no means
limited to state trials for treason. While the best records we have of trials of the period
relate to treason trials, we have a very reliable source of contemporary evidence about
the conduct of a criminal trial from Sir Thomas Smith’s De Republica Anglorum (c. 1565). Smith describes a hypothetical criminal 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.
The altercation began as soon as the defendant pleaded not guilty and the sheriff called the local jury. Although the defendant could challenge a juror if he had cause, this rarely happened. The jury was sworn and began to hear evidence, usually from a justice-of-the-peace who read to the court and jury his written record of the defendant and witness’s statements. The witness and especially the defendant then gave their statement; it was not testimony because the defendant or his witnesses were not allowed to take an oath. During their statements, the judge interrogated them. (McWhirter 17)

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.” The trial was described as an altercation because the unsworn defendant simply denied the charge: “the thief will say no, and so they stand a while in altercation” (Smith, De Republica 114).

Apart from Lilburne’s protest, we have evidence of numerous contemporary complaints about the absence of counsel. A criminal defendant, John Udall, complained about being denied counsel in the Croydon Assizes (1590), as did Christopher Love in the High Court (1651). In The Jesuit’s Memorial for the Reformation of England (1596), Robert Parsons protested:

No Man is suffered to defend, instruct, or speak for the accused: which is the greatest injustice that can be devised; and no doubt but innocent
Blood is shed by this means and lyeth upon the heads of our Judges [and] Juries. (250)

Langbein (11) collects juristic literature expounding the prohibition on counsel as a rule of law, citing William Staunford (1557), Fernando Pulton (1609), and Edward Coke’s Third Institute (1620s-1630s). Counsel was denied for the very reason that we today insist on the right to counsel: in Renaissance England, it was desired that the defendant testify and become the chief informational resource for the court. Edward Coke, as Chief Justice, defended the rule denying defense counsel in R. v. Walter Thomas, 2 Bulstrode 147, 80 Eng. Rep. 1022 (K.B. 1613). As Pulton explained in 1609

If counsel learned should plead [the defendant’s] plea for him, and defend him, it may be that they would be so covert in their speeches, and so shadow the matter with words, and so attenuate the proofs and evidence, that it would be hard or long to have the truth appear. (193)

Paradoxically, misdemeanor cases represented the exception to the rule that the defendant was denied counsel: it was perceived as more important that the court have unfettered access to the defendant charged with capital crime without the interference presented by defense counsel (Langbein 39). Of course, there was no privilege against self-incrimination. Prosecution witnesses were sworn. While generally defendants could produce unsworn witnesses, they did not have the ability to subpoena those unwilling to testify nor did the testimony that defense witnesses presented carry equal weight to prosecution witnesses, since the latter testified under oath.
Judges had virtually unlimited power in all courts, but especially in ecclesiastical courts, in which the prosecution was not required to present definite charges and could conduct inquisitorial examinations to trap defendants into admitting guilt (Goldberg 44). The judges were not cabined by the doctrine of binding precedent that today prevails in the Anglo-American common law system. The judge’s latitude was further increased by his ability to admit hearsay and by the lack of rules of evidence. (Rules of evidence did not emerge until defense counsel became a matter of routine in the eighteenth century.) Given the absence of defense counsel and other procedural checks, the judge in such a system wielded enormous power.

IDEALS OF JUDICIAL INTEGRITY

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. … In causes of life and death the judges ought (as far as the law permitteth) … to remember mercy; and to cast a severe eye upon the example, but a merciful eye upon the person. (139-40)
Judges had no lesser mission than to “imitate God in whose seat they sit” (140). Bacon assigns the judge four tasks: to direct evidence; moderate length, repetition, and impertinence of speech; to summarize main points; and to give sentence. Judges should not overstep these roles: “an overspeaking judge is no well-tuned cymbal” (140).

William Lambarde was one of several eloquent advocates of the need for judicial impartiality. He observed that the primary duty of the judge was “Investigare Verum, to trace out the verie truthe of the cause in Judgement before him: Et secundum veritatem sententiam dicere, and (according to that truthe) to pronounce his sentence upon it” (Prest 468). The judge must not “respecte the person of any: but decide disputes based only on the merits of the case.” Lambarde urged judges to reject private solicitation by those who sought to exercise improper out-of-court influence on the outcome of court proceedings. Barnabe Rich’s treatise, Four Books of Offices (1606) urges that judges prioritize justice over “private affection” (140). Barclay’s The Mirror of Minds (1631) 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” (May 173). Judges might be partial either because of financial conflict or personal affection. Coke’s famous dictum, “no man shall be a judge in his own cause,” was not yet universally applied; in any event, this restriction applied only to circumstances where the judge was disqualified because he would benefit from the fine imposed or because he sought to evict a tenant from property in which he had an interest. As God’s deputy, the ruler/judge had special obligations to do justice. In Basilikon Doron, James I advises his
son to do justice “only for love to justice and not for satisfying any particular passions of yours under color thereof: otherwise, how justly that ever the offender deserve it, you are guilty of murder before God” (20).

Lacking a fixed salary, judges were susceptible to corruption (Johansson 48). Henry Brinkow complains: “The rich filleth the purse of lawyers which the poor is not able to do and therefore his case is heard” (50). Other contemporaries were also concerned over the problem of judicial corruption. Bishop Hugh Latimer warned in his Twenty Seven Sermons (1562) 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” (qtd in Stretton 15). Coke expressed concern in De Libellis Famosis (1605) about accusations that justices of the peace were corrupt and wicked:

For what greater scandal of Government can there be than to have corrupt or wicked magistrates to be appointed and constituted by the King to govern his subjects under him? And greater imputation to the State cannot be, than to suffer such corrupt men to sit in the sacred seat of justice or to have any meddling in or concerning the administration of justice. (255)

As we could expect, the corruptibility of judges and the venality of lawyers was frequently satirized in the plays of the period. For example, in The Spanish Curate, a tragicomedy by Fletcher and Massinger first performed in 1622 and published in the Beaumont and Fletcher Folio in 1647, 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, the client must “supply the Lawyer” (3.1.25). The money is wanted for witnesses who when fed with funds “will sweare any thing” (3.1.29); “for variety the witnesses may swear truth, else ’tis not much look’d after” (3.1.30).

Webster in particular was very concerned about the topic of judicial impartiality. 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” (qtd in Lucas 4.38). In Webster’s plays, the legal system is more accusatorial than adversarial. The judge is not independent of the prosecution and the quality of the evidence is not tested through evidentiary standards or aggressive questioning by defense counsel. Where judges frankly assumed the role of prosecutors, as in The White Devil or Appius and Virginia, especially in the absence of defense counsel, the fairness of the judicial process is illusory, both because there is no bilateral tug of war and because the prosecutor’s knowledge of the law is superior to that of the unrepresented defendant.
CHAPTER III
WEBSTER’S TREATMENT OF THE PARTIALITY OF JUDGES

We can interpret Appius and Virginia, The White Devil, 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. Webster thus provides both positive and negative examples of judicial conduct.

THE WHITE DEVIL: VITTORIA’S REBUKE OF THE PARTIAL JUDGE

The trial scene in John Webster’s The White Devil 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. Following a brief discussion of the charges against Vittoria, I will describe her rhetorical duel with Cardinal Monticelso at trial and discuss the problems with the legal system treated in the play.

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. Flamineo arranges for the two lovers to meet, fooling Vittoria’s sexually
under-performing husband Camillo so that the lovers’ privacy will not be disturbed. In a
dream that Vittoria recounts to Bracciano she imagines the death of his wife Isabella and
of Camillo. Shortly thereafter, Bracciano and Flamineo kill Isabella and Camillo. Apart
from Vittoria’s recounting of her dream to Bracciano, Webster does not inform us about
the extent of Vittoria’s complicity in Bracciano’s murder of Camillo or Isabella. Based
on the facts as we know them before the trial, 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,
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). Thus the slander accusation is opportunistic; they lack the
evidence necessary to charge her with murder. “Vittoria’s judges and accusers will not
be concerned with clarifying circumstances or determining guilt, but with obscuring
facts and applying … labels” such as “whore,” “strumpet,” “fury,” “murderess”
(Bromley 57). At the beginning of the arraignment, Monticelso accuses Vittoria of
whoredom:

    Shall I expound whore to you? sure I shall;
    I’ll give their perfect character. They are, first,
    Sweet-meats which rot the eater; in man’s nostril
Poisoned perfumes. They are coz’ning alchemy,
Shipwrecks in calmest weather. What are whores?

They are the true material fire of hell,

They are those brittle evidences of law
Which forfeit all a wretched man’s estate
For leaving out one syllable. What are whores?

They are worse,
Worse than dead bodies, which are begged at gallows ….

(3.2.78-96)

As Dympna Callaghan has observed, misogynistic discourse “is both a dramatic agent of violence and a vital instrument of gender differentiation” (123-24). Women “metamorphose into a list of evils ranging from subzero temperatures to fire and brimstone and rotten bodies of executed felons” (124). “In misogynistic name-calling, woman becomes foul language: ‘strumpet,’ ‘Haggard,’ ‘fitchew,’ or ‘whore’” (124).

Does the trial scene bear out a misogynist reading of Vittoria’s character? Is she punished for being outspoken? I suggest that, contrary to these misogynist interpretations, several aspects of the trial scene invite the reader’s admiration for
Vittoria and portray her strength: her protest against unfair legal procedures, her skill in rhetoric, and 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 so that she can understand the nature of the charges against her instead of unintelligible Latin: “Pray, my lord, let him speak his usual tongue— / I’ll make no answer else” (3.2.12-13). When Francisco responds that Vittoria understands Latin, she stands her ground and points out that half or more of her audience may be ignorant 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 English recalls Raleigh’s protest about use of Latin mumbo jumbo at his trial. Vittoria seeks to publicize the trial in hopes of exposing its unfairness. Vittoria’s insistence that the trial be conducted in English is not indicative simply of a defendant’s concern about intelligibility. Rather, the defendant 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.

From the outset of the trial, the prosecution counsel betrays that the goal of the trial is the conviction of Vittoria. She is not the defendant but the target. When the prosecution says to Vittoria “Well then have at you,” she bravely responds by saying that she is “at the mark” and ready for him to shoot (3.2.23-24). The prosecutor’s English is no more intelligible than his Latin and much more absurd. He invites the
judges and lords “to connive your judgments to the view / Of this debauched and diversivolent woman” who has effected a “black concatenation” of mischief (3.2.27-29). Vittoria teasingly replies that the lawyer has “swallowed / Some pothecary’s bills or proclamations, / And now come the hard and undigestible words / Come up like stones we use give hawks for physic. / Why, this is Welsh to Latin” (3.2.35-39).

Taking over from inept counsel, Monticelso aggressively pursues the case against Vittoria. However, Vittoria can match the Cardinal tit for tat. Monticelso engages in clumsy, mannered use of euphuism, excessive alliteration and far-fetched similes drawn from unnatural natural history (Franklin 40). While 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). We can read “scarlet” as a reference to the cardinal’s robes but it could also apply to the scarlet of a justice’s robes and need not be limited to an adverse comment on ecclesiastical justice. Monticelso’s next argument is an example of enthymeme (Franklin 42): because Vittoria has riotous parties at night, she must be a whore, for such are the ways of whores.

The play contrasts Vittoria’s clear speech with the type of foolish rhetoric that Jane Anger ridiculed in Protection for Women (1589): Anger condemned male writers
who “run so into Rhetoric as oftentimes they overrun the bounds of their own wits and go they know not whither” (qtd in Blessing 32). 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).

Monticelso now frankly accuses Vittoria of murder. Undeterred by the lack of direct evidence, Monticelso charges that Vittoria “comes not like a widow; she comes armed / With scorn and impudence. Is this a mourning habit?” (3.2.120-21). Again he is bested by Vittoria’s retort: “Had I foreknown his death as you suggest, / I would have bespoke my mourning” (3.2.122-23). Skillfully, Vittoria in her defense emphasizes her femininity and 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” (3.2.130-33). This is a clever effort to neutralize one of the principal charges against her, that of unwomanly, immodest behavior. Lest her advocacy be regarded as unnatural or offensive, 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 like Perseus / Must personate masculine virtue” (3.2.134-36). When she invites her accuser “To the point: / Find me but guilty, sever head from body” (3.2.136-37), the choristic English ambassador exclaims in admiration “She hath a brave spirit” (3.2.140).
The eloquence of Vittoria’s next speech contradicts the assumption that women in Webster’s dramas are verbally suppressed.

You are deceived;

[Y]our strict-combined heads,

Which strike against this mine of diamonds

Shall prove but glassen hammers; they shall break,—

These are but feigned shadows of my evils.

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. (3.2.143-52)

The prosecution gains ground on the adultery charge when Bracciano, looking for an alibi from the murder charge, admits that he lodged with Vittoria when her husband died; it is difficult to credit Bracciano’s excuse that he came to Vittoria to comfort her because he heard her husband was indebted (3.2.157-59). After Bracciano storms out of court, Vittoria stands alone, defenseless against the Cardinal’s relentless accusations except for her wit. Once again, she invokes her femininity to her advantage. In a not-too-subtle effort at intimidation, Monticelso observes: “Your champion’s gone” (3.2.179). Vittoria’s retort, “The wolf may prey the better” (3.2.180), turns adversity to strength.
Like a prosecutor who does not believe he can prove the most serious charge and falls back to a lesser included offense, Francisco admits that there is “no sound proof” who did the murder, although there is “great suspicion” (3.2.181-82). He suggests that Vittoria be charged with a reduced count, incontinence. Monticelso pulls out of the hat evidence he has reserved until after Bracciano’s departure, her letter agreeing to a tryst at a summerhouse. Vittoria’s responses remain clever but they become disingenuous: “Grant I was tempted; / Temptation to lust proves not the act” (3.2.198-99). “Condemn you me for that the duke did love me? / So may you blame some fair and crystal river / For that some melancholic distracted man / Hath drowned himself in’t” (3.2.203-06). Vittoria derides the prosecution’s case as nothing but circumstantial. All she is guilty of is “beauty and gay clothes, a merry heart, / And a good stomach to a feast” (3.2.208-09). She admits to peccadilloes in an effort to deflect more serious charges.

Vittoria turns the table on the Cardinal by accusing him of 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 / Be moderators” (3.2.225-28). Instinctively aware that the best defense is a good offense, Vittoria seeks to undermine the legitimacy of the prosecutor/judge and thus of the tribunal. She calls upon the ambassadors and again, implicitly, the audience and the reader to condemn the biased proceedings. We should interpret Vittoria’s complaint that Monticelso is a prosecutor falsely disguised as a neutral judge as Webster’s criticism of a legal regime
that not only denied defendant counsel but also allowed the judge to double as prosecutor.

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” (3.2.273-74). Again Vittoria plays on her helpless femininity; far from being guilty of sexual misconduct, she accuses Monticelso and Francisco of sexual outrage. Having shown her verbal prowess, Vittoria ironically laments “O woman’s poor revenge / Which dwells but in the tongue!” (3.2.283-84). Our admiration of Vittoria 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” (3.2.293-94).

At the close of the trial, Vittoria protests her innocence when she says that her mind will make the house of convertites “honester to me / Than the Pope’s palace, and more peaceable / Than thy soul, though thou art a cardinal” (3.2.290-92). There is much irony here, given that Vittoria is certainly not honest in the sense of chastity and not altogether spotless with regard to Bracciano’s murder of her husband. The criminologist Paul Reiwald suggests that criminals who have a sense of having been the victim of injustice and who see judges as malevolent opponents come to believe in their own innocence when in fact they are guilty of the crime of which they are charged (qtd in Goldberg 58). Goldberg suggests that this phenomenon may be at work in Vittoria’s insistence on the purity of her soul. I would extend this argument to say that at the end
of the trial scene, the attention of the audience is as focused on the wrongs done by the partial judge as it is on the wrongs done by Vittoria.

Vittoria’s trial illustrates three glaring weaknesses in the legal system: The judge is vindictive and inquisitorial; the judge engages in a pattern of verbal abuse; the defendant must rely on her own wit and ingenuity, as she stands alone, without counsel. The legal regime of Elizabethan England differed greatly from our own in its close connection to private vengeance. The criminal trial resembled a private litigation; although during this period the Crown had begun public prosecution of criminal cases, the injured party or, in the case of a murder, the decedent’s representative could take charge of the litigation (Goldberg 34). Coke advocated that no man ought to be a judge in his own cause. The White Devil illustrates this phenomenon, as Francisco and Monticelso admit before the trial that they want to bring down Bracciano (2.1.394-98).

The name-calling and character assassination portrayed in The White Devil are typical of contemporary trials—both for male and female defendants. I think we can read The White Devil as a reaction against this kind of verbal abuse, and assume that Webster found such invective repugnant regardless of the gender of the defendant. Vittoria’s response to the accusations against her is to denigrate the character of her accusers. Monticelso makes us recall Coke’s misconduct at the trial where, lacking strong evidence, he reasoned that Raleigh must be guilty of treason based on rhetorical tricks, false syllogisms, and ad hominem aspersions (Boyer 887).
Without their own counsel, defendants were required to rely on their own wit and verbal skills. 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.

Vittoria’s performance at trial has, in my opinion, shown a woman’s strength in court, not her weakness. This does not mean that we are to exonerate Vittoria. For all her intellect and courage, Vittoria, even “if innocent of any direct connection with the death of her husband … in spirit sought his demise; if she bested her prosecutors by a brilliant display, this only points up the depth of her guile” (Sensabaugh 353). 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 ascendency over their jailers, and Vittoria demonstrates the disgraceful political role of a corrupt Church” (132).

**APPRIUS AND VIRGINIA: THE BLOODY OUTCOME OF A CORRUPT TRIAL**

In comparison to *The White Devil*, *Appius and Virginia* offers a simpler, more classical plot and less-developed characterization; however, the play mediates important questions about the role of the judge. In this tragedy, 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 as ruler/judge is a “Gyant, the high Colossus that bestrides us all” (3.1.72-73). The characterization of Appius as a demi-God is consistent with the
Jacobean understanding that rulers sitting in judgment were God’s deputies.

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 Mirrour of the times for Wisdome and for Policie

Justice should have No kindred, friends, nor foes, nor hate, nor love As free from passion as the gods above. (1.1.14-16, 109-11)

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.

An early camp scene sets up the striking contrast in the characters of Virginius and Appius. While Appius allows the troops to starve, Virginius quells a rebellion by hungry soldiers by reaching into his own pocket. The scenes set in the soldiers’ camp should not be seen as a distraction from the play’s central preoccupation with justice and the qualities of the good ruler. Rather, the suffering of the soldiers in the play calls to mind real-life abuses in the treatment of under-supplied Jacobean soldiers. In 1624-25, 12,000 men pressed to serve under Count Mansfield to recover the Palatinate were not given adequate food or pay. They appealed in vain to the Duke of Buckingham that they were starving to death (Lucas 125-26). Appius is similarly indifferent to the soldier’s
plight. Against Virginius, who is ready to sacrifice all of his means to the public good, Appius represents the polar opposite in his solipsistic obsession with lust and power.

In the two “courtroom scenes,” Appius’s villainy exceeds even that of Monticelso, both because Appius feigns sympathy for the defendant and because he conspires with his henchman, Clodius, to manufacture evidence. In the first “preliminary hearing,” Appius initially appears to side with Virginia in Clodius’s suit, claiming that Virginia is a bondswoman (3.3.150-60, 184-204). Appius and his henchman seek to establish that Virginia is a child of one of Clodius’s dead slaves, whom Virginius’s dead wife substituted as his daughter. Virginius’s friends crave delay of the trial until Virginius can attend. Disingenuously, Appius offers to stand as “father of the Innocent” and save poor old Virginius “needless travel” (3.3.245). More outrageously, he offers to take Virginia into his “guardianship” and “use” the virgin “in all kindness as [his] wife” (3.3.276).

During the trial scene, Virginius disdains a lawyer because “Truth needs no Advocate” unlike “the unjust Cause” that “Buyes up the tongues that travel with applause” (4.1.59, 60). The lawyer for the prosecution contends that Virginius’s dead wife feigned pregnancy and purchased Virginia from a bondwoman for a thousand drachmas. Appius pretends to find the tale suspicious, until Clodius produces what purports to be the dead woman’s deposition. Icilius notes the “practis’d Dialogue” between Appius and his confederate Clodius (4.1.127). Virginius protests that, had the “spruce Orator” first been fed with fees by his side, he would have told “as smooth a
“tale” for the defense (4.1.144, 145). Voicing an age-old complaint against lawyers as hired mouthpieces, Virginius comments that the lawyer deals in “formal glosses, cunning showes, / And cares not greatly which way the Case goes” (4.1.149-150). When Virginius produces as a witness the nurse who attended at Virginia’s birth, her testimony is discredited. Appius protests: “O injustice! / You frown away my Witness; is this Law? / Is this uprightness?” (4.1.160-62). Appius is deaf both to Numitorius’s arguments that his wife was present at the birth and to Virginius’s argument that had his wife wished to deceive him she would likely have produced a male heir (4.1.217-219). Appius points to depositions that he and Clodius forged. Icilius counters by producing Appius’s lustful letters to Virginia and charges Appius with perverting the Office of Justice. As the lectors lead Icilius away, Virginius warns that the gods will avenge the wrongs that Appius perpetrates (4.1.255).

As the 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.
And if thy Lust with this act be not fed,
Bury her in thy bowels, now shee’s dead. (4.1.343-47)
James VI and I, in Basilikon Doron, stressed the necessity for the ruler to be an exemplar of virtue not in spite of, but because of, his status as God’s deputy on earth. In the first book, “Of a Kings Christian Duetie Towards God,” the King says

As he cannot be thought worthy to rule and command others, that cannot rule ... his own proper affections and unreasonable appetites, so can hee not be thought worthie to governe a Christian people, knowing and fearing God, that in his owne person and heart, feareth not and loveth not the divine majesty. ... Therefore (my sonne) first of all things, learne to know and love that God to whom ye have a double obligation; first, for that he made you a man; and next, for that he made you a little GOD to sit on his Throne, and rule over other men. (12)

The problem posed by the corrupt ruler judge was not only that his status magnified the consequences of abuse but also that he failed in monarchical exemplarity. When Appius surrenders Virginia to the court of heaven, he in effect makes an appeal to God as judge, given the utter failure of Appius as ruler to live up to his obligations as God’s deputy.

Does Virginia have a voice? Does her silence in the trial scene reflect the suppression of the female litigant? Virginia is initially presented as a strong figure. She upbraids Clodius when he advocates that she abandon Icilius in favor of Appius: “Let thy Lord know, thou advocate of Lust, / All the intentions of that youth are honourable, / Whil’st his are fill’d with sensuality” (2.1.77-79). 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). Just as she is not intimidated by Clodius, neither is she 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. (4.1.225-29)

To Erin Roland-Leone, 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 (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 (136). It is troubling of course to today’s reader 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).

While it is plausible to read the play as extolling Virginius’s nobility and condoning the slaying of Virginia as additional evidence of a father’s right to quite literally dispose of his daughter, I believe that such an interpretation reads out of the
play Virginius’s own heartfelt anguish (4.2.120-35) as well as Icilius’s counterdiscourse over the necessity of slaying Virginia:

Old man, thou hast shewed thy self a noble Roman
But an unnatural Father: thou has turned
My Bridal to a funeral. What divel
Did arme thy fury? … (5.2.37-40)

When Virginius at the end of the play delays in executing Appius, it is Virginia’s corpse, her bleeding wounds (5.3.91) that “speak” to Virginius and resolve her father to execute Appius.

The fact that Virginia has died at the hand of her father should not obscure that Appius’s villainy is the but-for cause of Virginia’s death. Consistent with the conventions of early modern tragedy, Virginia’s 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 can result from a partial judge. At the end of his life, Appius acknowledges that his sentence is deserved: “Judges are term’d / Gods on earth; and such as are corrupt / Read me in this ruine” (4.2.140-42). It is worse to be an evil man than a dissolute judge: “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: Model Judges Resolve 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 in a most unnatural
lawsuit in which a 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 jealous women. “Devil’s Law Case” was inspired by scandalous incidents in which three prominent figures were brought down by their 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 (Gunby, Introduction 10-11). I will first describe Webster’s treatment of Leonora’s vexatious litigation and then discuss the presentation of two exemplary judges who preside in Leonora’s “ungodly” suit.

In the first half of the play, an arrogant merchant, Romelio, 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 seeking to disinherit him—a severe blow to Romelio, who has since lost his fortune at sea. 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. Ercole intervenes to accuse Romelio of killing Contarino. Just as another duel is about to occur, this time ordered by the court, Contarino reveals that he is alive. Despite the malignity of Romelio and the perjury of Leonora, the ending is surprisingly benign:
Romelio is sentenced to marry a woman he has impregnated; Jolenta is married to Ercole, whom she has grown to love; and Leonora, after much chastisement for abuse of the court system, is wedded to Contarino. Leonora’s penalty is that she must endow a monastery.

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” (178). 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” (28). When Leonora boasts that “Here begins / My part i’ th’ play” (3.3.380-81), 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). Another lawyer, the honorable Ariosto, refuses to take the case: never in his lengthy legal career did he “shake hands / With a cause so odious” (4.1.21-22). The “devil takes such fees” (4.1.33). Ariosto chastises Leonora for bringing a suit unbecoming to womanhood and Christianity (4.1.52-53). “Vile suits” such as Leonora’s “Disgrace our courts. … Bad suits and not the law breed the Law’s shame” (4.1.65, 72). However, I read the play not so much as a misogynist condemnation of the women litigant as a
condemnation of vexatious suits that are brought for vengeance or other unworthy motives. Women are to blame less because they are litigating in court than because women brought a higher percentage of suits that the play condemns as unnecessary and vindictive. Women initiated 70% of slander cases in consistory courts (Gowing 27). Significantly, Ariosto chides Leonora for bringing suits that will deprive widows, orphans, and other female litigants of their day in court (4.1.25-32). Ariosto’s stress on the need for the Chancery Court to resolve litigations involving widows, orphans, and divorces suggests that the reader should not condemn women litigants because they are women, but rather condemn suits that prevent redress of legitimate grievance by women who have genuinely been wronged.

In contrast to Ariosto’s reaction, Contilupo is eager to take Leonora’s case. A caricature of the corrupt lawyer, he is “struck with wonder, almost ecstasied, / With this most goodly suit” (4.1.103-04). Contilupo praises Leonora as a trendsetter:

'Tis a case shall leave a precedent to all the world
In our succeeding annals, and deserves
Rather a spacious public theater
Than a pent court for audience; it shall teach
All ladies the right path to rectify their issue. (4.1.106-10)

Of course, Contilupo has that lesson backwards: we are to condemn and not applaud Leonora’s suit. To the extent that it 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.

Crispiano is cynical and wise in the ways of the world, but even he is appalled by Leonora’s “strange suit” (4.2.53); he suggests that she is veiled because “she is ashamed / To look her cause i’ th’ face” (4.2.55-56). Crispiano’s commentary on Leonora’s suit touches on the novelty and 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,
Without being called in question, some forty years
After the sin committed,

’Tis most strange:
Or why with such a poisoned violence
Should she labor her son’s undoing? (4.2.254-63)

Through use of the charged poison metaphor, Crispiano’s speech emphasizes the perniciousness of the litigation and its unprecedented abnormality. In a society where women’s chastity was a prize beyond value, Leonora has gone to court; it is in the nature of things for mothers to nurture their young, yet Leonora seeks her son’s ruin. The world order is topsy-turvy: “Obedience of creatures to the law of Nature / Is the
stay of the whole world; here that law is broke …” (4.2.264-65). Crispiano charges Leonora with being an unnatural mother, since sexual desire has supplanted a mother’s innate love for her own child (Goldberg 116). In a moving soliloquy, the aged widow laments: “There is no plague i’ th’ world can be compared / To impossible desire, for they are plagued / In the desire itself” (3.3.261-63). She compares her late love for Contarino to the “Last merriment ’fore Winter …” (3.3.276).

Leonora threatens a social order in which the legitimacy of children is a subject of acute anxiety. At the trial, Romelio emphasizes that his mother’s suit “Springs from a devilish malice,” and he compares it to high treason, the Gunpowder Plot (4.2.312-16). Widows have the potential to destabilize the social order by disowning the paternity of their children. Bastardy was a contemporary preoccupation and a repeated subject of contemporary plays, including A Cure for the Cuckold and A Fair Maid at the Inn. Crispiano condemns women’s adultery because it threatens the stain of “Inheritance of land falsely possess’d, / The husband scorn’d, wife sham’d, and babes unblessed” (4.2.472-73).

While there is no doubt that the reader should disapprove of suits by women that arise from domestic strife, several aspects of the play lessen our censure of Leonora. Whatever shock the audience feels at a suit initiated by a mother against her son, the audience has no sympathy for Romelio. Leonora’s soliloquy on the power of “impossible desire” (3.3.261-76) elicits sympathy. At the close of the trial, Leonora expresses remorse and proposes to become a nun. Webster does not consign Leonora to
a nunnery; rather, she gains the prize she has sought, marriage with Contarino. As in a tragicomedy like Measure for Measure, the marriages that occur at the end do not reassure the audience that all dilemmas have been solved. Civilized society breaks down when litigation of the sort that Leonora has initiated is filed, but this breakdown is equally attributable to the unbridled pursuit of gain by Romelio, who is without moral scruple.

In the mercenary world of The Devil’s Law Case, it is no surprise to find lawyers who love money, like the caricature Contilupo, who sycophantically praises his client’s suit, or the worldly wise Crispiano, who revels in taking clients’ fees. 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)

Crispiano, who has amassed 30,000 ducats, contends that there is “no pleasure in the world” comparable to law (2.1.51); the noise of clients at his chamber door “was sweeter music” than “all the hunting in Europe” (2.1.71-72). Ariosto is singled out because he tries to settle rather than prosecute cases and takes no fees: he is, according to Crispiano, “the very miracle of a lawyer” (2.1.106) who longs to become a judge (2.1.114-115).
Although distinguished critics such as F.L. Lucas have characterized The Devil’s Law Case as a play in which Webster has become resigned to or disillusioned with the legal process, in fact it is this play in which—in sharp contrast to The White Devil and Appius and Virginia—Webster presents us with two good judges. Crispiano insists that Romelio must be informed of the charge against him and offers to adjourn the trial so Romelio can prepare his defense (4.2.76-78). His questioning of Leonora never degenerates into the aggressive inquisition of the vindictive Cardinal Monticelso. Unlike Vittoria, Leonora can bring witnesses and state her case. Crispiano carefully questions Leonora’s witness Winifred 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 (4.2.156-57). Again in contrast to Monticelso, who dispenses with the need for evidence, Crispiano rejects Contilupo’s claim that he should decide the case based on Leonora’s say-so, that there is no more “lawful proof” than the “oath of a mother” (4.2.183-84). For Crispiano, accusations must be backed up by proof (4.2.347). Crispiano comes to an accurate judgment about Leonora’s accusations: they savor of “a woman’s malice deeply”: she has practiced “most devilishly” on her son (4.2.278-79). While Monticelso and Appius violate Coke’s maxim that no man should be a judge in his own cause, Crispiano withdraws 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? Lucas questions the consistency of the portrait of Crispiano, a corrupt lawyer who becomes a model judge (2.331). 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” (124). 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 Winifred:

There is no warier 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 of two fine judges; 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 play came within a hair’s breadth of disaster, revealing the precariousness of litigation and the uncertainty of trial outcomes.
CHAPTER IV

SUMMARY JUSTICE: QUEENS ON TRIAL

In three of the plays that I consider, Henry VIII, The Winter’s Tale, and Sir Thomas Wyatt, the woman defendant is a queen or purports to be a queen. Queen Hermione and Lady Jane Grey are on trial for treason; their lives are at stake. While the trial of Katherine of Aragon pertains to divorce and thus to her regal status, accusations of treason overhang the play. Despite the obvious differences in genre and outcome, there is a common concern that the outcome of these trials is foreordained. Katherine and Hermione in particular challenge the partiality of their judges and the perceived unfairness of their trials. Jane Grey’s accuser/judges give her no due process: her death sentence is a foregone conclusion.

HENRY VIII: QUEEN KATHERINE’S REBUKE OF WOLSEY’S PARTIALITY

Katherine of Aragon emerges as a very strong character in the trial scene in Henry VIII (2.4), which is generally believed to have been written by Shakespeare. While the statements made at the trial are closely based on Holinshed, as Gordon McMullan notes, at several points Shakespeare makes alterations in a manner that strengthens Katherine’s character. The Queen presents herself as an effective advocate and earns the King’s admiration.

Katherine begins 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 (the same difficulty that Shylock confronted).

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)

Katherine asks the King to tell her how she has offended him, pointing out her long devotion to his interests and his person. 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) (my emphasis). This change emphasizes that the decks are stacked against Katherine because Wolsey is her implacable foe. While Henry claims that the Queen has friends in court to defend her, in fact she must appear pro se against the dominant Cardinal. Katherine elicits our sympathy by reminding those at court and in the theater audience that she has been an obedient wife for 20 years and a willing partner in the King’s bed, producing several children although no living son. 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)

Katherine offers several arguments that resemble Hermione’s defense in The Winter’s Tale: Katherine is friendless and foreign-born; she requires her husband’s protection; she has been a devoted wife; and her honor is impeccable. Katherine specifically requests that her cause be deferred until she can consult her friends in Spain. When Wolsey and Campeius reject her plea for delay, Katherine announces that she will fight with fire:

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 thus acknowledges but subverts the expectation that a fragile woman will cry and quake before a powerful tribunal. 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)

Katherine accuses Wolsey of harboring prejudice against her, of sowing discord between herself and her husband in violation of God’s commandments, of being unfit to be a judge. 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” (2.4.101-03).

As in the case of Vittoria, who accuses her accuser, so too Katherine attacks Wolsey where he is most vulnerable: his arrogance and ambition. Katherine implies that Wolsey in effect sets himself up as high as the King and neglects spiritual humility: “[Y]our heart / Is crammed with arrogancy, spleen and pride. / … You tender more your person’s honour than / Your high profession spiritual ” (2.4.107-08; 114-15). While Katherine accuses Wolsey of false humility, she portrays herself disingenuously as “a simple woman, much too weak / T’express your cunning” (2.4.104-05). Katherine takes the audacious step of appealing to the Pope for judgment (2.4.117-18) and, rejecting the
King’s court, departs from the courtroom. Nevermore will she appear in the King’s court upon the divorce issue (2.4.129).

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.” She comments on her noble birth and deportment; he praises her as “The queen of earthly queens” (2.4.130-32, 138). Remarkably this list of virtues even includes Katherine’s meek saintliness, wife-like deportment, and obedience (2.4.135-36). Henry has been wowed by his aging wife’s masterful performance at her trial.

We see in this play a reprise of other themes involving women on trial. For example, 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 is performing her housewifely task of sewing when she is surprised in her boudoir by the cardinals’ unwelcome entry. 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).

Katherine elicits our admiration both before the trial, when she expresses concern to the King about the impact of excessive taxation (1.2), and after the trial, when Anne Boleyn praises her as a good lady never known to do wrong (3.1). The Queen’s criticisms of the unfairness of her trial are credible because they have been
foreshadowed by irregularities in Buckingham’s treason trial (2.1). Katherine attains her apotheosis in the deathbed scene (4.2), an invention of the playwright(s), where Katherine 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 points out, Mary was worshiped as a protectress and Queen of Heaven, as a protector of victims rather than as a victim (312-13). The play validates Katherine’s criticism of the trial process by endowing this heroine with strong moral authority throughout the play.

**THE WINTER’S TALE: QUEEN HERMIONE’S BOOTLESS DEFENSE**

In *The Winter’s Tale*, Queen Hermione must defend her chastity in a trial instigated and presided over by her husband, King Leontes. Hermione is (falsely) accused not only of adultery but also of high treason. Although *The Winter’s Tale* is a romance, it engages a serious legal problem—the inadequate safeguards attendant upon trials for treason.

Hermione stands alone without support from legal counsel or from her family. She has no defense “but what comes from myself” (3.2.24). Lacking advisors and witnesses, Hermione is a solitary and vulnerable defendant. Her trial highlights the problems that plague the legal system: a judge who has already decided the case against her, no counsel, no witnesses—even a queen finds herself alone when she stands in the dock.

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)

Hermione follows Queen Katherine in calling upon divine justice for assistance to vindicate her innocence:

[I]f powers divine Behold our human actions—as they do—

I doubt not then, but Innocence shall make False Accusation blush, and Tyranny Tremble at Patience. (3.2.28-31)

With no defense but her own wit, Hermione (like Katherine) asks the king to consider her blameless past life: “You, my lord best know, / Who least will seem to do so, my past life / Hath been as continent, as chaste, as true, / As I am now unhappy” (3.2.31-34). Leontes chides her “impudent denial” (3.2.60)—words he will come to regret since, as Lindsay Kaplan and Katherine Eggert point out, it is ultimately Leontes who is most seriously damaged by the false accusations of slander that he makes against his wife.

As with Vittoria, who is grouped by her accuser among a class of whores, so too Hermione is charged as if she were a member of a class of sinners: “As you were past all shame,— / Those of your fact are so,—so past all truth” (3.2.84-85). Like Queen Katherine, Hermione alludes to her royal lineage:

The Emperor of Russia was my father,

Oh that he were alive, and here beholding

His daughter’s trial! That he did but see
The flatness of my misery; yet with eyes
Of pity, not revenge! (3.2.117-21)

There is no doubt that the audience is meant to rebuke Leontes’ pig-headed charges against Hermione. Lynn Enterline suggests that Hermione’s commentary on the inefficacy of saying “Not guilty” “constructs Leontes as a tyrant for bringing her forth in a courtroom where no words can acquit her” (34). “[T]he inevitable misfiring of her ‘Not guilty’ turns Leontes’s court into a mockery, the ruse of a tyrant who has already determined the verdict” (35). Viewed in this light, the courtroom scene of The Winter’s Tale resembles the kangaroo court scenes in The White Devil and Appius and Virginia as well as those in the closely comparable Henry VIII. Trial is a mockery when the judge has already pre-determined the outcome in advance, whether through jealousy, vindictiveness, or lechery.

Carol Neely argues that language has “doubly failed Hermione” (328): 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. This is another trial scene that, far from demeaning women, presents a woman as the moral victor.

**THE FAMOUS HISTORY OF SIR THOMAS WYATT: THE VERDICT IS TREAISON WHATEVER THE EVIDENCE**

This early play (1607), likely a Webster-Dekker collaboration, ends with the trial of Lady Jane Gray and her husband Guildford, who are beheaded when Mary takes the throne and Wyatt’s rebellion fails. Although the trial scene and the discussion of partiality is less developed than in the other plays, *Sir Thomas Wyatt* is worth considering because of the determination of Winchester to convict regardless of whether the charges are proved; if needed, the charges will simply be changed.

When Lady Jane is commanded to raise her hand at the bar she boldly proclaims that hand “as pure from treasons Innocence, / As the white liverie, / Worne by the Angels in their makers sight” (5.1.19-21). To the indictment Lady Jane and Guildford simultaneously plead guilty and not guilty. As Guildford explains, they “sought no Kingdome … desired no Crowne, / It was imposed upon us by constraint / Like golden fruit hung on a barren Tree, / And will you count such forcement treacherie?” (5.1.69-72). Guildford is outraged that the very lords who earlier had cried out “God save Queen Jane” now arraign her. He warns the lords that “what sentence on our heads you lay, / Upon your own, may light another day” (5.1.91-92).

When two of the lords, Arundel and Norfolk, quail at executing innocents, the more vicious Winchester changes his tack and condemns Lady Jane and Guildford as heretics. Jane responds that they “are Christians, leave our conscience to ourselves: / We
stand not heere about Religious causes, / But are accused of Capitall Treason” (5.1.112-114). It is hard to imagine a greater violation of fair process in a capital trial than to alter the indictment in the middle of the trial. Again, this abuse is based on the Raleigh trial: his religious beliefs were cited against him. Winchester ignores their defenses and announces that they will be executed on Tower Hill. As the loving couple bid farewell, Jane meets her death nobly and confidently: “To a prepared minde death is a pleasure, / I long in soule till I have spent my breath” (5.2.50-51). We see Jane through Guildford’s eyes: “Patience has blancht thy soule, as white as snow” (5.2.68)—here “patience” may also recall the Latin root “to suffer,” pati. When Jane dies in her innocence it will “add Angels to heavens happinesse” (5.2.71). When the guilty die, the law is served, “but when the innocent creature stoops his neck / To an unjust doome, upon the judge they checke” (5.2.73-74). Guildford now repeats the warning that the lords who stand in judgment “[m]ay to the axe of justice one day bowe” (5.2.86). As Lady Jane fearlessly prepares to die, she comments on her silken garments, indicative of worldly pomp and pride. In a reversal of the historical order of death, Lady Jane dies first in the play, thus enabling Guildford to view her severed head and once again praise his wife’s beauty and innocence.

Jane Grey is given the least “process” of all the women defendants: in Alice-in-Wonderland fashion, she is to be beheaded regardless of the evidence; if needed, the charges are changed to assure conviction.
CHAPTER V

EXEMPLARY WOMEN JUDGES

In two plays, a woman appears as judge: Portia disguised as Balthasar and the Queen of Corinth in her own persona as ruler. Despite the great differences in genre and reputation, The Merchant of Venice and The Queen of Corinth deserve to be studied together because of the leading role that the woman plays at each trial, literally occupying the hegemonic position. In both plays, the women judge thoughtfully and self-consciously fulfill their roles. They consider not only the letter of the applicable statutes but also the purpose that law is intended to serve as they render their verdicts. Below I discuss the trial scenes in these two plays as well as the judgment rendered by Isabella in Measure for Measure.

MERCHANT OF VENICE: PORTIA’S FLEXIBLE APPLICATION OF THE LAW

The trial scene begins with the obvious proposition that the Duke of Venice cannot fail to enforce a valid bond. In a commercial state it is critical that the law be enforced.

It must not be. There is no power in Venice

Can alter a decree established.

’Twill be recorded for a precedent,

And many an error by the same example

Will rush into the state. It cannot be. (4.1.215-19)

Portia has two main strategies for saving Antonio without violating the law of Venice. She offers Shylock payment in an amount that is thrice the value of the bond, an offer
that any rational litigant would accept. He rejects the offer, saying that it is his
“humour,” as a man cannot tolerate a pig or a cat (4.1.43). Portia also urges Shylock to
eexercise mercy not only in the interest of Antonio but also in his own interest:

The quality of mercy is not strained,
It droppeth as the gentle rain from heaven
Upon the place beneath. It is twice blest;
It blesseth him that gives and him that takes:
’Tis mightiest in the mightiest, it becomes
The throned monarch better than his crown.

It is enthroned in the hearts of kings,
It is an attribute to God himself,
And earthly power doth then show likest God’s
When mercy seasons justice. (4.1.181-94)

As it turns out, Shylock will suffer the most from his failure to exercise mercy.

Why does Shylock rely on the literalness of the law? Is it a rejection born of the
spite and vengeance that he has learned from the Christians in Venice? Is it a misguided
insistence on the letter of the law rather than the spirit? Shylock’s literalness may be
understood by reference to the alien’s fear of the exercise of arbitrariness and bias.
Shylock as a Jew “would mistrust a jurisprudence that gave judges a broad discretion to
mitigate the rigors of legal rules, for he could expect any discretion to be exercised
against him” (Posner 97). A Jew in Renaissance Europe would prefer to rely on the letter of a contract: contracts “shift[] the focus away from one’s inherited status by way of family or religion” (Kornstein 37). Irony of ironies: while Shylock invokes his status as an alien when he advocates Venice’s need to preserve the integrity of contractual enforcement as a commercial necessity, the merchant will be destroyed by his alien status when Portia applies a statute specific to the commission of attempted murder by aliens.

Some critics have argued that since a contract must be construed to include necessary acts, Shylock could have argued that shedding blood is necessary to enforcement of the bond. However, Portia cleverly extracts from Shylock a key admission that when he cuts, there will be blood; this occurs when Shylock rejects Portia’s suggestion that a surgeon be provided to save Antonio’s life. Shylock is doomed by this concession, because the right to take the penalty in the bond necessarily involved the doing of something forbidden by statute.

Portia could have offered several arguments against enforcement that she did not raise. Portia could have refused to enforce the bond without doing violence to the laws of Venice, by arguing that a contract to do an illegal act such as murder is not enforceable. Since the typical merchant’s transaction does not involve performance of an act prohibited by law, such a ruling would not have impaired Venice’s reputation for honoring ordinary commercial contracts. In addition, Portia could have argued that equity does not provide an additional remedy where a plaintiff may recover damages.
Once Antonio (thanks to funds supplied by Portia) could compensate Shylock in damages, Shylock should not have been able to invoke the pound of flesh remedy. While Kornstein, Keeton, and others have suggested that the bond was also void for fraud, I disagree that as a sophisticated merchant Antonio could successfully claim that Shylock’s reference to a “merrie sport” (1.3.144) was deceptive. Shylock’s characterization of the bond as “merrie” was not sufficiently specific to qualify as a fraudulent representation. Moreover, when Bassanio expresses anxiety about the bond, Antonio does not dismiss the contract as a “merrie” jest but tells his friend not to worry; he expects ships to come in with a value three times that of the bond.

When Shylock rejects Portia’s appeal to mercy and an offer to be repaid a multiple of his loan, Portia solves what appears to be an intractable dilemma by mitigating the harshness of the law. As Gordon Zeeveld points out, the tract “Divinity and Student,” espousing principles of equity, was extremely popular and reprinted many times (143-44). Christopher St. German drew from both classical and Christian traditions that required the tempering of the letter of the law with its spirit. Equity is associated with the Aristotelian concept “epicaia,” that sometimes laws should not be interpreted literally. “[E]quytie rather followeth the intent of the law than the wordes of the law” (Dialogue 1, Ch. 16, 95-96). William Fulbecke (1600) advised students at the Inns of Court that “Justice is rightly administered … when hatred is away and conscience is present, when rigor is tempered with mercy” (qtd in Zeeveld 144). In 1574, the jurist Plowden observed:
It is not the Words of the Law, but the internal Sense of it that makes the Law, and our Law … consists of two parts, viz. of Body and Soul, the Letter of the Law is the Body of the law, and the Sense and Reason of the Law is the Soul of the Law. … And Equity which in Latin is called Equitas enlarges or diminishes the Letter according to his discretion. (75 ER 695; 2 Plow 465)

Judge Posner admiringly characterizes Portia as personifying “the spirit of equity—the prudent recognition that strict rules of law, however necessary to a well-ordered society, must be applied with sensitivity and tact so that the spirit of the law is not sacrificed unnecessarily to its letter” (109).

Portia has come to personify the accomplished female advocate who triumphs in the trial scene by her wit and knowledge. However, Lisa Jardine observes that Portia’s achievement in mastering the law is attributed to Bellario (15-16). Jardine cites as an example of this chauvinistic containment of the educated woman a letter that Thomas More wrote to his learned daughter. More simultaneously praised his daughter for the “marvelous” quality of her Latin literacy and for her modesty: “You do not seek for the praise of the republic” but regard “your husband and myself as a sufficiently large circle of readers for all that you write” (Rogers 154-55). I would qualify Jardine’s observation by noting that, as the trial unfolds in unexpected ways, Portia must think on her feet and react to Shylock’s maneuvers. We can see Bellario as a necessary pretext to enable Portia to explain her presence in the court in the disguise of Balthasar.
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. The fact that Portia is in disguise can be seen as an emblem for mistaken perception that clouds the decisions made by the Venetians in the play. 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. However, in another sense, Portia is more insidious in her partiality than Monticelso, as she appears in disguise. 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 study, Portia’s concealment of her interest in the case—an example of her great cleverness and a highpoint of the dramatic tension in the play—resists binary classification as laudable or dishonorable.

**The Queen of Corinth: A Judge of “Masculine Constancy” in the Court of Love**

The Queen of Corinth, published in the first Beaumont and Fletcher Folio of 1647, is now attributed to Massinger (Acts 1 and 5), Fletcher (Act 2), and Field (Acts 3 and 4). The trial scene 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 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). Theanor is later charged with rape of a court lady named Beliza, who is betrothed to a handsome courtier Euphanes. Theanor commits these violations not only out of lust but also out of *ressentiment*. Crates, the older brother of Euphanes, who resents the fact that his younger brother is a favorite of the Queen, encourages Theanor in this criminal course. Although Crates tried to frame Euphanes by providing him with a ring taken from Merione during the rape, eventually Theanor is apprehended as the rapist. As the trial begins, Crates, who has nearly died in a duel, has repented of his complicity in Theanor’s misconduct.

The trial scene is of great interest first because a crime against women is adjudicated and second because 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. *The Queen of Corinth* can be seen as a play with three judges in the sense that the Queen takes advice both from Merione and Beliza. Ultimately, however, it is the Queen who will determine her son’s fate.

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.” “To intercede between [Theanor] and his Justice,” she seeks a “mild[] sentence,” as befits the judge in her status as mother and as queen (5.4.102-06). 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 wed to Merione while Beliza is married to her love Euphanes. The lusty Queen is also satisfied, as she proposes to Prince Agenor who with all joy agrees to marry her.

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. 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.

In this tragicomedy, law is restorative and heals the wounds of rape. The play contains three strong and positive female figures. Violence occurs against women but it is reproved and the perpetrators are presented as sincerely repentant. The women not only receive fair treatment in court, but the Queen serves as a paragon in her role as judge.

**Measure for Measure: Isabella’s Judgment of Angelo**

Unlike other plays in this study, there is no formal trial scene in Measure for Measure. Isabella is neither on trial, nor is she formally a judge. However, it is important to consider this play because the question of partiality is central. Angelo, like Appius, will stop at nothing to satisfy his desires. Angelo goes beyond using his dominant position to exercise sexual coercion; he is the ur-corrupt judge, who solicits sex as a bribe to alter the outcome of a criminal case.

The object of his lust, Isabella, prizes her chastity (like Virginia) above all else; beyond the ignominy of loss of chastity, fornication is a mortal sin to Isabella as a novitiate:

As much for my poor brother as myself:

That is, were I under the terms of death,

The impression of keen whips I'd wear as rubies,
And strip myself to death, as to a bed
That longing have been sick for, ere I’d yield
My body up to shame. (2.4.99-104)

Isabella is shocked by Angelo’s proposition, appalled that a man of “seeming” virtue
(2.4.154) turns out to be a lustful hypocrite. Like other women who are subject to sexual
duress by authority figures, she faces the dilemma that no one will believe her:

To whom should I complain? Did I tell this,
Who would believe me? O perilous mouths,
That bear in them one and the self-same tongue,
Either of condemnation or approof;
Bidding the law make court’sy to their will:
Hooking both right and wrong to the appetite,
To follow as it draws! (2.4.171-77)

In her anguish, and in a proleptic moment, 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)

Angelo is guilty of “monstrous ransom,” the scenario in which the woman is offered the
chance to save a loved one only by forfeit of her body, agreeing to have sex with the
judge (Kamarelli 52). Isabella is forceful in her indignation and in her diatribe against Angelo. She 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. (2.2.107-09)

As it turns out, improbably, Isabella will in fact become the de facto judge at the mock trial of Angelo, when in Act 5 he is called to reckoning for his crimes. At the behest of Mariana and in spite of her belief that Claudio is dead, she calls upon Duke Vincentio to spare Angelo’s life:

Most bounteous sir,

Look, if it please you, on this man condemned

As if my brother lived. I partly think

A due sincerity governed his deeds,

Till he did look on me. Since it is so,

Let him not die. (5.1.440-45)

Angelo, who admits his fault, is publicly rebuked and wedded to Marianne, an ending that restores the wrong that he had done her. Isabella’s action is the height of mercy: as in The Queen of Corinth, by virtue of a bed trick the rapist is wed to the woman whom he ravished but who nevertheless loves him.
Measure for Measure treats the theme of partiality from two perspectives, that of the lustful judge Angelo who conceals his corruption and that of the forgiving paragon Isabella who pleads for Angelo’s life. Isabella is personally interested in the outcome insofar as Angelo 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 give a merciful “judgment.” There is also a double treatment of mercy versus strict application of the law, both with respect to the judgment on Claudio’s fornication and with respect to Angelo’s abuse of office.

We see several important similarities in these plays, where the woman serves in a judicial, or quasi-judicial capacity. In each of these plays, the woman judge issues a judgment that is praised as a wise solution to an intractable dilemma. In each of the three, there is a debate over literal application of the law versus the extension of mercy to forgive the severity of the law. In each of the three, the woman judge is partial and has an interest in the outcome of the trial—an interest that is disguised in The Merchant of Venice but patent in The Queen of Corinth and Measure for Measure.

Examining the woman judge provides a useful complement to analysis of the posture of the woman defendant. The portrayal of the woman judge does not denigrate the status of women or further the misogynist view that women should be distanced from the public sphere of the court proceedings. Rather, the Queen of Corinth and Isabella are exemplars of impartiality and restraint.
In this study, I have argued that partiality was a central concern of the playwrights, yet in each of the three plays where women function as judges, the woman is partial and has an interest in the outcome. I believe that these three plays illustrate exceptions and do not undermine the rule. In *Measure for Measure*, Angelo personifies the evils of the partial judge, resembling Monticelso in his abuse of position and Appius in his lustfulness. Isabella is called upon to give a judgment as to whether Angelo’s life should be spared at a point in the play where she believes that he has killed her brother as well as attempted to extort sexual favors. In her gracious if not saintly advocacy that Angelo’s life should be spared, Isabella rises above considerations of partiality. Far from personifying the evil done by the partial judge, Angelo, Isabella shines as a foil, an exemplar in that she prizes mercy above self-interest and vengeance. 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. Portia represents an exception in that she issues a decision in a case where she through her husband has a strong personal interest. However, in contrast to *Measure for Measure*, judicial partiality does not appear to be a central concern of *The Merchant of Venice*. 
CONCLUSION

Based on my study of women on trial in Renaissance drama, I conclude that the women in these plays are not disparaged but rather articulate serious concerns with the trial process that vexed the playwrights and their audiences. While at first glance the vituperative epithets that Monticelso employs in his trial of Vittoria sound misogynistic, Attorney General Edward Coke slandered Raleigh by calling him “vile” and a “traitor.” When Monticelso unleashes a tirade of abuse against Vittoria, Webster signaled not misogyny but rather disapproval of abuse of prosecutorial power. Monticelso, Appius, Cardinal Wolsey, and Jane Gray’s accusers are presented as overbearing in their personal style and so domineering in their handling of the trial that the defendants are not fairly treated.

Why are women so often depicted in leading roles in the trial scenes of Elizabethan and Jacobean plays? I suggest several possible reasons rather than a single explanation that applies across the plays. First, Vittoria, Queen Katherine, Queen Hermione, and Lady Jane Gray 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. Moreover, women defendants, especially strong figures who dazzle with their wit, persuasiveness, or brilliance, like Vittoria and the Queens, would stir the audience in the trial scene. 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. It is a fine
dramatic moment and a devastating critique of judicial partiality when Hermione and Katherine are condemned despite their consistent fidelity.

Then and now, laymen feel vulnerable to the judicial system not only because of the coercive force of the tribunal but also because of the impenetrability of legal technicalities, complicated rhetoric, and unfamiliar jargon. Women typically lacked training in Latin and rhetoric notwithstanding exceptions among the elite (for example, Sir Thomas More’s daughter). Through the vehicle of women defendants, the playwrights could illustrate the quandary experienced by uneducated defendants in the face of bewildering, obfuscating language.

The subject matter of the play could also drive the selection of women protagonists in the trial scenes in which women defendants fight for their future and/or their very lives—Queen Katherine, Queen Hermione, Lady Jane Grey, and Virginia. *The Devil’s Law Case* is rooted in a perceived contemporary abuse, several infamous cases in which women brought litigation against their husband or other male relatives. It is logical that women litigants would feature prominently in the many trial scenes that address the themes of bastardy: *Appius and Virginia*, *The Devil’s Law Case*, *Fair Maid at the Inn*, *Cure for the Cuckold*, and *The Spanish Curate*. Regardless of genre, the woman will play an important role as defendant or witness in a trial concerning the legitimacy of children, a subject of high anxiety during the Renaissance.

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. I conclude that all these factors
matter. Class certainly matters. 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 from a blood feud. 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 litigation where they are defendants rather than plaintiffs, or where they are vindicating a legitimate interest rather than instigating a frivolous suit. As we would expect, the genre of the play directly affects the outcome for the women defendants. The fates of Katherine, Jane Grey, and Virginia are foreordained by history and/or by the tragic genre. I find it of interest that in The Devil’s Law Case, where the playwright had more latitude to fashion the outcome he desired, Leonora is rewarded with the end she sought, marriage with Contarino.

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 (250-52). My study suggests several additional reasons. First, as noted, the women defendants in my study are prominent and educated; most of these defendants were on trial for their lives. They 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: partial 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 more forcefully advocate the infirmities of legal procedure. Some women defendants (such as the Queens) are portrayed as sympathetic throughout the plays but even those who are not (such as Vittoria) earn our admiration at trial. Thus, far from denigrating or attempting to subordinate women, the plays present the women defendants as strong and courageous in the trial scenes.

The playwrights present affirmative and negative portrayals of judicial partiality. Webster provides us with four male judges in three plays who present black-and-white contrasts of integrity in the conduct of their office. In The Merchant of Venice, The Queen of Corinth, and Measure for Measure, the women judges unravel intractable legal dilemmas. The Queen of Corinth and Isabella show an admirable ability to judge cases in which they have an interest that might have been expected to override their better judgment. Portia straddles the fence here, as her partiality is disguised; her ingenuity, however, has elicited admiration such that for centuries her name has become synonymous with a successful female advocate or jurist. While women judges are rarely portrayed in English Renaissance drama, Portia, the Queen of Corinth, and Isabella represent beacons of light against a backdrop of dismal performance by their male counterparts, Monticelso, Appius, and Angelo.
BIBLIOGRAPHY


Kornstein, Daniel. Kill All the Lawyers?: Shakespeare’s Legal Appeal. Princeton, N.J.:  


Latimer, Hugh L. Thirty-Seven Sermons Preached by the Right Reverend Master Hugh  

Lucas, F.L., ed. The Complete Works of John Webster. 4 vols. London: Chatto and  
Windus, 1927.

MacKay, Maxine. “The Merchant of Venice: A Reflection of the Early Conflict  
Between Courts of Law and Courts of Equity.” Shakespeare Quarterly 15.4  
(1964).

May, Thomas, trans. The Mirrour of Mindes, or Barclay’s Icon Animorum. London,  
1631.

McWhirter, Robert J. “How the Sixth Amendment Guarantees You the Right to a  
Lawyer, a Fairt Trial, and a Chamber Pot.” 44 AZ Attorney 12 (2007).

the Fifth Conference of the International Association of Professors of English

107-24.


Seventeenth-Century (visited November 4, 2008).
Tucker, E.F.J. The Letter of the Law in the Merchant of Venice. Shakespeare Survey 29
Vanita, Ruth. “Mariological Memory in The Winter’s Tale and Henry VIII.” Studies in
Vives, Juan Luis. A Very Fruitful and Pleasant Book Called The Instruction of a
Webster, John. The Devil’s Law Case. Ed. Frances A. Shirley. Lincoln: U of Nebraska
Woodbridge, Linda. Women and the Elizabethan Renaissance: Literature and the Nature
Wegemer, Gerard. “Henry VIII on Trial: Confronting Malice and Conscience in
Wright, Nancy E., Margaret W. Ferguson, A.R. Buck. Women, Property, and the Letters