

LAW, GENDER AND CULTURE : REPRESENTATIONS
OF THE FEMALE LEGAL SUBJECT IN SELECTED
JACOBAN TEXTS

Jenny Roth

A Thesis Submitted for the Degree of PhD
at the
University of St Andrews



2003

Full metadata for this item is available in
St Andrews Research Repository
at:
<http://research-repository.st-andrews.ac.uk/>

Please use this identifier to cite or link to this item:
<http://hdl.handle.net/10023/14658>

This item is protected by original copyright

**LAW, GENDER AND CULTURE: REPRESENTATIONS OF THE FEMALE
LEGAL SUBJECT IN SELECTED JACOBAN TEXTS**

Jenny Roth

A thesis submitted in fulfillment of the requirements of the degree of Doctor of
Philosophy at the University of St Andrews, November 29, 2002.



ProQuest Number: 10171011

All rights reserved

INFORMATION TO ALL USERS

The quality of this reproduction is dependent upon the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if material had to be removed, a note will indicate the deletion.



ProQuest 10171011

Published by ProQuest LLC (2017). Copyright of the Dissertation is held by the Author.

All rights reserved.

This work is protected against unauthorized copying under Title 17, United States Code
Microform Edition © ProQuest LLC.

ProQuest LLC.
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106 – 1346

TW
E 414

DECLARATIONS

(i) I, JENNIFER ZOTH, hereby certify that this thesis, which is approximately 18,000 words in length, has been written by me, that it is the record of work carried out by me and that it has not been submitted in any previous application for a higher degree.

date 29/11/02 signature of candidate

(ii) I was admitted as a research student in 09/99 and as a candidate for the degree of MLIT in ENGLISH and transferred to the degree of DOCTOR OF PHILOSOPHY in ENGLISH; the higher study for which this a record was carried out in the University of St. Andrews between 1999 and 2002

date 29/11/02 signature of candidate

(iii) I hereby certify that the candidate has fulfilled the conditions of the Resolution and Regulations appropriate for the degree of in the University of St. Andrews and that the candidate is qualified to submit this thesis in application for that degree.

date 16/12/02 signature of supervisor . .

Director of Postgraduate Studies
PP Professor David Rhodes

In submitting this thesis to the University of St. Andrews I understand that I am giving permission for it to be made available for use in accordance with the regulations of the University Library for the time being in force, subject to any copyright vested in the work not being affected thereby. I also understand that the title and abstract will be published, and that a copy of the work may be made and supplied to any bona fide library or research worker.

date 29/11/02 signature of candidate

ABSTRACT

This thesis addresses some of the extant gaps in law and literature criticism using an historical cultural criticism of law and literature that focuses on the Jacobean female legal subject in cases of divorce and adultery. It examines the intellectual milieu that constructs law and literature in this period to contribute to research on female subject formation, and looks specifically at how literature and law work to construct identity. This thesis asks what views Jacobean literature presents of the female legal subject, and what do those views reveal about identity and gender construction?

Chapter one offers some essential historical contexts. It establishes the jurisprudential conditions of the period, defines the ideal female legal subject, touches on recent historical scholarship regarding women and law, explores how literature reveals law's artificiality, and links the Inns of Court to the theatres.

Chapter two focuses on women and divorce. The first sections discuss the theology and ideology which impacted on divorce law. The latter sections examine Elizabeth Cary's *Tragedy of Mariam*, ca. 1609, and two manuscript accounts of Frances Howard's 1613 divorce trial, William Terracae's poem, *A Plenarie Satisfaction*, ca. 1613, and *The True Tragi-Comedie Formarly Acted at Court*, a play by Francis Osborne, 1635. These texts reveal the legal construction and frustrations of married women, and illustrate a gendered divide in attitudes towards women's legal position.

Chapter three examines women and adultery law. It then juxtaposes representations of women justly accused of adultery, like the real-life Alice Clarke, and the fictional Isabella in John Marston's *The Insatiate Countess*, 1613, and unjustly accused, like the virtuous wives in Marston's play. This chapter reveals how male anxiety creates the stereotypes that constrain the female legal subject within systems of patrilineal inheritance.

As a whole, this thesis uses literature to explore the Jacobean female legal subject's relationship to her husband and to the law, and, in some cases, it challenges the assumption that women were effectively constrained by legal dictates which would keep them chaste, silent and submissive. Literature, in some cases, works alongside law to sustain constructed identities, but radical literature can undermine law by challenging the stereotypes and identities law works to maintain.

CONTENTS

Introduction. Law, Literature and the Female Legal Subject	p. 10
I. Cultural Criticism of the Law: Jurisprudential Entertainment or Subject-Forming Discourse? The Newest Branch of Law and Literature	p. 12
II. The Legal Subject: Law as Representation and Social Control	p. 19
III. The Literary Subject: Possibilities and Pressures in Representations of the Legal Subject	p. 23
IV. The Female Legal Subject	p. 27
Chapter One. Jurisprudence, the Female Legal Subject and Legal Drama in a Jacobean Framework	p. 32
I. Nature, God and the King: The Jurisprudence of Natural Law, Divine Law and Positive Law	p. 34
IA. Natural Law	p. 36
IB. Divine Law	p. 38
IC. Positive Law	p. 44
ID. Conclusion: Women in Shifting Jurisprudences	p. 49
II. Constructing the Jacobean Female Legal Subject	p. 52
IIA. Authority, Power and Women's Legal Position: The Cases of Lady Allan and Sara Gough	p. 53
IIB. <i>The Lawes Resolutions of Womens Rights</i> : Women in the English Courts	p. 59
IIC. Dangers of Female Litigation: <i>The Honestie of this Age</i> and <i>The Parliament of Women</i>	p. 70
IID. Conclusion: The World of Jacobean Women's Litigation	p. 75
III. Imaginary and Legal Realities: Dangerous Representations, the Inns of Court, and the Female Audience	p. 77
IIIA. Alternate Realities Dangerously Imagined: Early-Modern Perceptions of Representation	p. 78
IIIB. The Inns of Court and the London Playhouses: Lawyers, Playwrights and Legal Drama	p. 85
IIIC. Conclusion: Representational Role-Models and Female Audience-Members	p. 90
IV. The Shifting Context of the Jacobean Female Legal Subject	p. 94

Chapter Two. Unnatural Division and Uncivil Destruction: Divorce Law and the Represented Female Legal Subject	p. 96
I. In the Beginning, God Created Marriage	p. 109
IA. Eve the Wife	p. 110
IB. Conjoined Organisms: People and Plants	p. 113
IC. The Sacred Marriage Between Christ and his Church	p. 116
ID. Theology of Divorce	p. 120
II. Family and State: Natural Political Ideology and the Social Responsibilities of Wives in Early-Modern England	p. 126
IIA. The Little Commonwealth	p. 126
IIB. The Lieutenant Wife	p. 129
III. Destroying the Whole: Effects of Theory on Divorce Law	p. 134
IIIA. Problems with Jurisdiction: The Canons and the Statutes	p. 138
IIIB. Thwarted Reform: <i>The Reformatio Legum Ecclesiasticarum</i> and Women's Marriage Rights	p. 141
IIIC. The Wife Forever: Divorce Constraints on the Female Legal Subject	p. 144
IV. Mariam, Salome and Doris: Reading the Female Legal Subject	p. 147
IVA. Mariam's Hubris: Legal Discourse and the Perfect Wife	p. 153
IVB. Salome the Temptress: Vilifying the Legally Active Woman	p. 173
IVC. Divorced Doris: Subjective Difficulties and the Ex-Wife	p. 188
IVD. Conclusion: Divorce Reform and the Female Legal Subject	p. 196
V. "When / Women Give Now Their Bills, and Plea Gainst Men:" The Literary Construction of Frances Howard	p. 199
VA. Ambiguous Innocence: Defending Frances Howard	p. 204
VB. Family-as-State, Woman-as-Devil: Denigrating Frances Howard	p. 219
VC. Conclusion: Howard Constrained	p. 232
VI. The Textual Interaction of the Female Legal Subject with Divorce Law in Jacobean England	p. 233

Chapter Three. Adulterated Marriage: The Female Legal Subject, Infidelity and Court Practice in Early-Modern England	p. 237
I. Thou Shalt Not: Adulterers v. Adulteresses in Theology and the Canon Law	p. 250
II. Challenging the Canon Law: Social Attitudes Towards Adultery and Adulteresses in Early-Modern England	p. 258
IIA. Eve and Adultery: Theology and the Constructions of the Adulteress' Precedent	p. 260
IIB. Insatiate Wives and Jealous Husbands: Cuckoldry and Constraint	p. 263
IIC. Patrilineal Succession and the Good of the Commonwealth	p. 269
IID. Conclusion: Legal Impacts of Social Constructs	p. 272
III. Innocent or Guilty? Adultery and the Female Legal Subject	p. 275
IIIA. Murdering Female Agency: the Case of Alice Clarke	p. 275
IIIB. Adultery, Female Stereotypes and the Courts: The Insatiate Countess of Swevia and the Virtuous Wives of Venice	p. 284
IIIC. Conclusion: The Adulterous Woman	p. 318
IV. Gender, Adultery Law, and Representations of the Female Legal Subject in Early-Modern England	p. 321
Conclusion. Culture, Identity and Gender in Selected Jacobean Law and Literature	p. 327
Appendix. Selected Transcriptions from <i>The Lawes Resolutions of Womens Rights: Or, The Lawes Provision for Woemen</i>	p. 336
Bibliography	p. 360

ACKNOWLEDGEMENTS

First and foremost I would like to give many thanks my supervisor, Professor Neil Rhodes, for his encouragement, patience, stimulating discussions and constructive criticism. This thesis would not have been possible without him. Thanks Neil! This thesis would also not have been possible without the love and support of my family: the brother who is pleased to point out that he makes more money, with no post-secondary education, than I probably ever will; the mother who constantly put things into perspective, and without whose friendship my world would be a much darker place; and the father who sat at his six year old daughter's bedside answering her questions about his PhD and dangerously planting the thought in her head that, above all else, this was something very important that one had to achieve during one's lifetime. Too many thanks to mention to the Flat Three girls, Asta, Janet, Jo, Karen, Marion and Mireia, for the laughter, irreverence and friendship. To my colleagues and friends, Malcolm, Rachel, Gareth and Tracey, many thanks for encouragement and support when I needed it. The history crowd also deserves many thanks for helping in areas that I was unsure of, their friendship, and their steadfast efforts to keep me in high spirits – Pam, Roland, Heather and Janet, I cannot thank you enough. I am indebted to Dr. Peter Maxwell-Stuart for helping with my Latin, and providing me with extra research information. The University Library Special Collections and its affiliates will always have a special place in my heart – thank you all so much for providing such a wonderful support base. Last but not least, many, many thanks to my husband, Ben, whose humour, encouragement, affection, nurturing and curries successfully saw me through many stages of this work.

LIST OF ABBREVIATIONS

The following abbreviations have been used throughout this thesis.

BL	British Library
COD	<i>Concise Oxford Dictionary</i> . Ed. Judy Pearsall. 10th ed. Oxford: Oxford University Press, 2001.
ESTC	English Short Title Catalogue (web database)
NRO	Northamptonshire Records Office
OED	<i>Oxford English Dictionary: Being a Corrected Re-Issue with an Introduction, Supplement, and Bibliography of a New English Dictionary on Historical Principles Founded Mainly on the Materials Collected by the Philological Society</i> . Oxford: Clarendon Press, 1933. 12 vols.
STC	Pollard, A. W. and G. R. Redgrave. <i>A Short-Title Catalogue of Books Printed in England, Scotland, and Ireland and of English Books Printed Abroad 1475-1640</i> . 2nd ed. London: The Bibliographical Society, 1986. 2 vols.
TLS	<i>Times Literary Supplement</i>
UCL	University College London

LIST OF ILLUSTRATIONS

The following illustrations have been used in this thesis with permission from the University of St Andrews Library, Special Collections.

- Fig. 1. Anonymous, *The Parliament of Women*, 1640. p. 73
- Fig. 2. John Wing, *The Crowne Conjugall or, the Spouse Royall*, 1620. p. 116
- Fig. 3. Heinrich Bullinger, *The Christen State of Matrimony*, 1541. p. 136
- Fig. 4. Anonymous, *The Unnaturall Wife*, [1628]. p. 145
- Fig. 5. Sebastian Brant, [Of Adultery], *Nauis Stultifera a Domino*, 1406 [actually 1506]. p. 258
- Fig. 6. Sebastian Brant, [Of Guarding Wives], *Nauis Stultifera a Domino*, 1406 [actually 1506]. p. 263
- Fig. 7. Anonymous, *The Merry Cuckold*, [1629]. p. 265
- Fig. 8. Henry Goodcole, *Adultresses Funerall Day*, 1635. p. 278

INTRODUCTION. LAW, LITERATURE AND THE FEMALE LEGAL SUBJECT

**Jurisprudence Fetishist
Gets Off On Technicality**

see LIFESTYLE page 11B

(Siegel, *The Onion*)

But where would Edmund be nowadays? . . . The gods are just. No doubt. But their code of law is dictated, in the last resort, by the people who organize society; Providence takes its cue from men.

(Huxley, *Brave New World*)

Cultural criticism of the law was cited at the 1999 London colloquium on law and literature as the most recent theoretical branch to come out of the law and literature debate (Binder 86). This debate attempts to answer the jurisprudential question “what is law?” by using an interdisciplinary approach to law and literature, and until 1999 it consisted of two main schools: law as literature and law in literature. A cultural criticism of the law attempts to address the obvious gaps in the two traditional schools by recognising that law and literature come out of the same intellectual milieu, and that literature therefore plays an important role in analysing law, culture and the legal subject.

Literature, as a realm of the imaginary in which potential and multi-dimensional legal subjects can be realised, provides inroads that help us to understand how law, a seemingly extra-human institution, arbitrarily creates, sustains and normalises social subjects. This thesis is an historically-based cultural criticism of the law using representations of the female legal subject in selected Jacobean texts.¹ Of necessity it engages in feminist jurisprudence, the legal theory that interprets law as part of a male-dominated power structure, because any cultural criticism of Western law, literature and the female legal subject must consider how law constructs women within a patriarchal system. I focus on the Jacobean period because, during the reign of James I, society became more litigious than it previously had been, unprecedented numbers of women were appearing in the courts to contest or bring suits, and jurisprudence began to shift in tangible ways away from pure theories of law toward more modern practices such as precedent and interpretation.²

¹ Although the Jacobean period is the specific area of interest for this thesis, I will often refer to the early-modern period as a whole. This is simply because the culture and laws which existed in the early seventeenth century did not simply spring into being with the accession of James I, and, necessarily, they are placed within the historical context that shaped them.

² All these cultural dynamics are discussed and evidenced in the ensuing chapters.

I. CULTURAL CRITICISM OF THE LAW: JURISPRUDENTIAL ENTERTAINMENT OR SUBJECT-FORMING DISCOURSE? THE NEWEST BRANCH OF LAW AND LITERATURE

Maria Aristodemou, an advocate of the cultural criticism of law, and the first to produce a book on this newest area of law and literature, defines its methodology as “a return to interdisciplinary enquiries, contextuality, and perspectivism in a bid to put legal doctrine back in the cultural context in which it belongs and from which it was divorced by positivist methodologies in legal studies (10).” She argues that a cultural criticism of law “will help broaden our understanding of law as part of our culture, a culture that it shares with literature; at the same time it hopes to enhance our understanding of ourselves as subjects of language, law, and culture (10).” Traditionally, law and literature as a theoretical discourse, has been firmly grounded in university law departments and the colloquium mentioned above was predominantly attended by law professors. This may explain why the two previously existing branches of law and literature often misinterpret the role literature plays, or can play, in society and in relation to law. It is perhaps difficult for law professors to turn literary critics, and the emphasis that is placed on the legal aspects of law and literature is most likely due to the debate being grounded in legal, not literary, discourse. Cultural criticism of the law attempts to address the significant shortcomings of the two historical branches of law and literature, law as literature and law in literature.

Law as literature, otherwise known as the hermeneutic project (Baron and Epstein 665), argues that law, like literature, is “a system of texts . . . a vehicle for creating and conveying meaning (Morawetz 452).” It is based on the Derridean understanding that language is an arbitrary vehicle for social construction. It accepts

that the processes of law are fundamentally interpretive (Derrida 204),³ and that law, like literature, is made up of a series of connotative signifiers which sustain and reflect logocentric systems of power. These systems maintain prevailing social structures through the words subjects have at their disposal to describe and to relate to their lived experience.

The law as literature project views legal texts as a discourse that can be read as literature because, like literature, law is in a state of interpretive flux. Legal texts, like all texts, are “alive” and subject to continuous reinterpretation by the readers (lawyers and judges) who utilize them. Ian Ward argues, in *Law and Literature*, that “[l]aw is already literature . . . and thus the reading of any text is always an act of ‘creation’ and of ‘translation’ between communities of discourse (53).” The hermeneutic school thus focuses on the interpretive malleability of law, and the common linguistic roots that law and literature share.⁴

The shortcoming of the hermeneutic project, describing law *as* literature, is that it runs the risk of misunderstanding the practical difference between the effects of legal and literary interpretation. Although it is true that law is an interpretive process, legal interpretation carries with it the power of incarceration and public punishment. Thus law, as a mandate of social order and control, affects how people interact in the public and private spheres. Even though “relations of power are interwoven with other kinds of relations (production, kinship, family, sexuality) for which they play at once a conditioning and a conditioned role,” and “these relations

³ For further discussion see also Ward 28-42.

⁴ The line between law and literature is blurred further by the fact that some trials, like the marriage annulment hearings of Frances Howard in 1613 (Lindley), the rape trial of the Earl of Castlehaven in 1631 (Herrup), or, much more recently, the televised proceedings of the O. J. Simpson murder trial in the United States, can so easily become popular events. Certainly, “few social practices are so readily transferable to a literary setting and so well suited to the literary depiction of conflict as the trial (Posner 22),” which bolsters the hermeneutic project’s stance that law and literature can often be conflated to the same end – in this case, the entertainment that can be found in case resolution.

don't take the sole form of prohibition and punishment, but are of multiple forms," law is what Michel Foucault refers to as the "primitive" answer to power relations (*Power/Knowledge* 142). In short, it defines relationships without admitting the subtle social complexities out of which they arise.

Literary interpretation, on the other hand, carries, at most, the power of public debate. While these debates can be stimulating, even antagonistic, they are not immediately associated with an impending prison term. Literature can suggest forms of social interaction, but it lacks the authority to make those suggestions immediately imperative. Thus, law shapes and constructs private and public subjects very differently than literature does, or even can, in an immediate way. Robin West, an opponent of the hermeneutic branch of law and literature, correctly points out that

adjudication is in form interpretive, but in substance it is an exercise of power in a way that truly interpretive acts, such as literary interpretation are not . . . Like the commands of kings and dictates of a majoritarian legislature, adjudication is imperative. It is a command backed by state power. No matter how many similarities adjudication has with literary linguistic activities, this central attribute distinguishes it. (93-4)

The hermeneutic project consistently fails to address the power differences that exist between legal and literary interpretation, and how those differences play out in the private and public spheres.

In failing to explore this discursive difference between law and literature, the hermeneutic project does not take its argument the necessary step further. It is not sufficient to say that language is an interpretive tool which structures and constructs reality and subjects. It must be recognised that different forms of language –

different discourses – are used by society in different ways for different purposes. In practical terms that affect subject representation and construction, law is not literature and literature is not law, even though both are based in interpretable language.

The second traditional approach to law and literature is law *in* literature, described by its proponents as the “moral uplift” project (Baron and Epstein 664). It “perhaps got its start in 1908, when John H. Wigmore published *A List of Legal Novels*, a ‘legal’ novel being . . . simply a novel in which a lawyer, most of all, ought to be interested (Baron and Epstein 663).” This branch of law and literature focuses on how “literary texts depicting human encounters with the law raise fundamental questions about the role of law in society and the moral responsibilities of lawyers (Baron and Epstein 663),” and how such books are useful teaching tools for law professors.

E. Perry Hodges, a proponent of law in literature, argues that the way in which law students are educated leads them to perceive law as an “independent rational structure” divorced from social pressures and human experience (638). Law in literature theorists believe that “literature . . . can do something that law never can, at least not in the classroom. It can present ethical dilemmas which demand resolution not by ‘lawyers’, but by people (Ward 25);” and that literature depicts “a real-life situation” which forces law students to “concentrate the mind on the realities of case-resolution (Ward 24).” This approach argues that literary narratives re-humanise, through characters who confront the legal machine, a system which can otherwise appear, with its “apparently arbitrary and undeniably coercive character (Posner 22),” to be operating outside the human condition. Literary narratives, law in literature suggests, provide access to other perspectives which ideally reinforce for

law students the integrity of the human subject within the legal framework, somehow making the students better people and, presumably, better lawyers.

The specific shortcoming of the moral uplift project is that it is used simply to remind law students that their clients are people, and that legal proceedings can often be frustrating and confusing endeavours. It does not go the necessary step further to consider how or why literary representations of the legal subject often portray the law as arbitrary and wrong. In failing to do so, the moral uplift project does not delve into the more subtle nuances of literary texts. It fails to understand the impact such texts could have on society, how they work as forms of representation, and it fails to satisfactorily explore why the subjects represented respond the way they do to the laws and legal system imposed on them. Although well-suited to do so, surprisingly this branch of law and literature is not used to question the law itself, or the power relations which exist behind law (to do so might be a dangerous exercise in a first-year law class, anyway) and thus it fails to either understand that literary representations of the legal subject often *do* lead inexorably to the conclusion that law is arbitrary and wrong, or to analyse that conclusion in any meaningful way.

A cultural criticism of the law attempts to redress the insufficiencies and gaps of the hermeneutic and moral uplift projects in law and literature. It asks the further questions the two historical schools of law and literature do not, and this perhaps makes it a more suitable discourse for literary critics. It sees an interdisciplinary approach to law and literature as a way of illuminating the social pressures and torsions which impact upon the legal subject, and in doing so, revealing the social values and codes embedded in a culture's practices and history. It argues that subjective identity is the product of social conditioning, and any defence to be made of normalising institutions must recognise that the parameters of those

institutionalised norms are based on “the kind of identities they will cultivate rather than their protection or accurate representation of existing personalities (Binder 88).” It accepts that law and literature are different discourses which nevertheless arise out of the same social framework. They are “artificial constructs, concepts, or abstractions like time or identity, aiming to create, and especially in law’s case, to impose, order out of chaos: to write on the bodies and very souls of the subjects and fulfil as well as replace their unfulfillable desires (Aristodemou 1).” Cultural criticism of the law understands that, while law is interpretive, statutes are an imperative mechanism for arbitrary social order and control, and thus they play a very different discursive role within society from literature itself.

Law is recognised as a discourse which is insinuated into a community by the rulers and colluding members of that community, in order to assert mastery over the populace and to pretend a social naturalism which does not exist. Law is the written (legislated) form of plastic social power relations which are constantly being shifted, remolded and challenged. Law gives the illusion of stability and trans-historicity because society complies with, and thus perpetuates, the myth that law is somehow natural or extra-human.

Given this, literary representations of legal subjects signify more than an individual’s struggle against the State (as the law in literature branch would have us believe); they imply a myriad of power relations that exist within the culture that produces specific laws and literary texts.⁵ Fictional representation of the legal subject “can stand for various institutions that use coercion, and it can also stand for the ways in which persons work together in institutions to realize their shared goals

⁵ Vilhelm Aubert argues that legal norms mark “the distinction between compliance and noncompliance, but with a more or less empty space inside the limits of acceptable behavior. This focuses the attention upon borderline problems, upon ambiguities, uncertainty, and transgressions (35).”

and values (Morawetz 451).” Therefore, literary representation provides inroads which help us to understand how law is situated within the society that it attempts to control, and how it impacts and is impacted upon by that society.

The cultural criticism of law argues that we can analyse a legal subject, and that subject’s social position within the legal structure, because any legal structure is not an autonomous, external force brought to bear on society. The structure which is perceived to be external, the legal system, is actually based on arbitrary social codes and signifiers (Giddens 162-3). Adhering to a cultural criticism of the connections between law and literature, this thesis is concerned with legal identity construction – specifically the female identity in the Jacobean period – the artificial subject that law tries to create, and how that artificiality is revealed, challenged, or coerced by literature. Firstly, however, in order to explode literary representations of the legal subject, it is necessary to define what is meant by legal and literary subjects.

II. THE LEGAL SUBJECT: LAW AS REPRESENTATION AND SOCIAL CONTROL

Law is an institution created with the overt aim of maintaining social order. Because of this, it implies a certain subject who will bolster society. Law attempts to constrain subjects by defining, regulating, and sustaining social norms. It is “governmental social control . . . It is, in other words, the normative life of a state and its citizens (Black 1-2).” The implied subject of legal dictates is the subject who follows the rules of law and lives harmoniously and crime-free (as either a perpetrator or a victim) within society; a subject who, for the good of society, accepts law as a dominant discourse, and whose actions are governed by the civic identity that the legal discourse attempts to create. Law defines “normal,” “acceptable” behaviour by categorising “the meaning of an act by which a certain behavior is commanded, permitted, or authorized (Kelsen 5).” The legal subject is thus the imagined subject of both the lawmakers and the society which accepts that law works for the greater good. Of course, this ideal legal subject – the subject who obeys all laws, always, unquestioningly – is nothing more than a stereotype of legal fantasy, and is often absent from lived experience.

Because law defines people by codifying “normal” behaviour (Gabel and Feinman 507), courtroom decisions seem to constrain people in overly-simplified binary positions of good or bad. This is because law will always protect, first and foremost, other institutions of social order, like the family unit, property ownership, systems of inheritance, etc., that bolster the *status quo*, over the complex psychology, history and motives of the individual.⁶ What the law protects with a final judgment of “guilty” or “innocent” is a product of the culture in which it is made, because the

⁶ Foucault argues that early legal theory saw “the necessity of punishment solely on the basis of the interest of society or the need to protect it (*Ethics* 27).” I am also heavily indebted to my former colleague, Bob Cosburn, LL.B., head of Cosburn & Associates, for many fun and fruitful discussions about the role of law in society.

hierarchical importance of traditional social institutions is an arbitrary social construction.⁷ Legal judgments often “achieve results that popular will would reject as irrational (Binder 84),” because they overtly protect traditional institutions of social order, and in doing so often force legal subjects into shallow, easily codifiable positions.

The legal processes which support a universalised codification across an otherwise very diverse culture “often fail to reflect – fail to represent – the experiences, interests, and needs of the full variety of human beings (Minow, “From” 17).” This explains why law, even today, often returns to myths and stereotypes in trials. It explains why, in 1991, Mr. Justice Harman denounced the use of the signifier ‘Ms.’ for women litigants in his English courtroom by apparently saying, “there are only three types of women: mothers, wives and whores (H. Kennedy 53).” Legal interpretation in courtroom cases adheres to stereotypes and myths because they are convenient, a fact which is especially relevant to the Jacobean texts I discuss in the ensuing chapters. To admit a complex legal subject would mean admitting to a complex society, which it is the sole purpose of law to control by essentialising into easily-identifiable categories. Law exists specifically to reduce social complexities into easily manageable (and punishable) categories of right and wrong.

Furthermore, the legal definition of appropriate social behaviour is inextricably interwoven with social relations and power relations (and it is arguable that the two are easily conflated). It is a discourse that governs the way in which

⁷ For example, in a society where euthanasia is legal, doctors who perform assisted deaths and the patients who opt for them are simply exercising their legal rights. In a society where euthanasia is illegal, it is practised covertly and surreptitiously, and doctors who are discovered are brought up on charges, labeled “bad doctors,” even murderers, by law. The patients are seen to be suicide cases, whose exertion of agency over their own deaths challenges both the law and socially accepted views of death. The legislated determination of right and wrong social behaviour creates, for the doctor and patient above, two very different subjective positions depending on legislation. In one cultural instance, they behave in an acceptable, normal manner, and are therefore properly functioning members of society; in another culture they are not, and are punishable.

people interact with each other (Thou shall not kill), with their environment (vandalism of public property is an offence), and even with themselves (you may / may not have access to abortion). Law thus shapes public and private lives by regulating social interaction. However, it is important to remember that law is not a free-standing discourse: it is a system of social coercion (Baron and Epstein 673). Ideally, law is an institution that regulates and protects society; but whom the laws actually protect is controlled by the lawmakers themselves. Laws are, in effect, the written mandate of the *status quo*, and they protect the desired cultural and social characteristics of a community – desired, that is, by those who hold power within that community. Generally, in market-driven economies the majority of the power to legislate lies with the wealthiest, and in most countries with men.

Thus the seemingly extra-human machine known as “The Law” or “The Legal System” does not regulate human behaviour from an isolated position. In truth, “the judgment that an act of human behavior . . . is ‘legal’ (or ‘illegal’) is the result of a specific, namely normative interpretation (Kelsen 4).” Judge and jury in a courtroom must interpret actions within the confines of laws which are created for a specific social agenda. The cultural criticism of law recognises that because people make laws, and must interpret and judge whether behaviour is “normal,” and therefore acceptable, or not, legally sanctioned norms are social constructions.

Literary representations of the legal subject explode this specific weakness in law. They highlight the construction and artificiality of law, and they challenge the perception that law is the objective, equitable and just final word for conflict resolution. Law will protect society, or what legislators have deemed right for society, at the expense of the individual. It will, in many cases even now, ignore the complex nuances of an individual subject for the “greater good,” and for ease in

sentencing. Often, this makes law appear to be crude or naïve, but this appearance is deliberate. In order to make claims to universality (the same law will apply to all subjects because all subjects are somehow the same) law must perform an essentialising and reductive role. There is very little room for a grey area in law, which works to remove ambiguities.

III. THE LITERARY SUBJECT: POSSIBILITIES AND PRESSURES IN REPRESENTATIONS OF THE LEGAL SUBJECT

Literature, on the other hand, can be fraught with grey areas. It is free to explore as many subtle nuances of the legal subject as it wants to, simply because it performs a different discursive role in society than law does. Literature can challenge the law, it can humanise the law, it can “articulate new imaginaries which may in turn become laws (Aristodemou 11)” – laws which, because they “reside in the worlds of dreams or possibility rather than in the so-called real world make them more, rather than less, important for enabling us to map and envision new selves and new conditions (Aristodemou 11)” – and it can overturn legal decisions in a safely fictional manner on the page or the stage. Literature and drama, because they are arenas of the imagination, are able to offer readers or audiences a world that could be, a different world than the one people experience in everyday life – The Globe, made up of countless imagined realities which contribute “to our sense of what is natural, common sense, and inevitable (Aristodemou 6).”⁸ Literary representation is a cultural discourse that has the power to impact upon its auditors, albeit from a less imperative position than law.

Legal proceedings and jurisprudence appear as the basis of plot and theme in literary and dramatic works from Geoffrey Chaucer’s *Man of Law* in the *Canterbury Tales* to William Shakespeare’s *Measure for Measure* and *The Merchant of Venice* (to name but two), on through to more modern texts such as Charles Dickens’ *Bleak House* and *The Trial* by Franz Kafka. The fact that authors can use law in their fictions signifies the destabilisation to which law is susceptible as a discourse that is constantly in flux as a result of being manipulated and re-manipulated (Julius 8). It

⁸ Of literature and drama, the latter, performed in a public space, has more potential to echo the processes of the law, making it an ideal discourse in which to examine law within its cultural setting. The courtroom can easily metamorphose into a theatre, with characters and dialogue, and the trial works towards a *denouement*, or resolution.

is therefore easy for writers to challenge and subvert the dominant legal discourse specifically because the perception that law is stable, omniscient and omnipresent must be accepted and maintained by society.

Thus, literary texts, which represent a world in which everything and anything is possible (Derrida 36-8), are a perfect “medium for jurisprudential debate (Ward 9).” Ward writes that any literary text is “everywhere political, and moreover that it is political in a way which invariably reinforces the established social structures (39).” Although I do not agree with Ward’s final statement – certainly literature can be subversive as well as coercive – the representation of the legal subject in literature, the literary subject, is often a metaphor for politically-produced (legislated) power structures. Because literature can suggest different social orders, characters are often more multi-dimensional than subjects constructed by law. Literature is “more likely than law to challenge received ideologies, values, and prejudices (Aristodemou 9),” through its characters’ words and actions. Therefore, the legal subject in literature or drama is represented as being much more complex than law represents its empirical counterpart. S/he often questions the *status quo* which affects her or him by challenging legal precepts, concepts of justice, and courtroom proceedings. How fictitious legal subjects interact with legislated hierarchies is what makes literature worthwhile to a cultural criticism of the law, because the values approved of in law “may well differ very considerably from day-to-day practices (Belsey, *Shakespeare* 6),” which are more easily represented in literature.

Despite the claims of law in literature, literary representation is not a mimetic re-creation of the “real” world. It is a series of imagined worlds which can “convert the given confines of the here and now into an open horizon of possibilities (Kearney

2).” These worlds, in turn, enable their auditors “to edit and improvise social roles off stage – roles of all kinds, dominant and subjected alike (Whigham 4).” Wolfgang Iser explains:

the bracketed world of the novel is not only to be seen as if it were a world, but it is also to be seen as a world that does not exist empirically. Consequently there will be continual oscillation between the bracketed world and that from which it has been separated. The former therefore becomes a medium for revealing what has remained concealed in the empirical world. (220-1)

In simple terms, when the reader compares the empirical reality she knows with the represented world of the novel or play, she is made aware of new possibilities in the empirical world by the ways the empirical world is challenged or sustained by its fictional re-ordering. Thus, “[t]he text itself becomes a kind of junction, where other texts, norms, and values meet and work upon each other (Iser 219),”⁹ and literature and drama can create hypothetical new worlds that have the potential to disrupt the social structures taken for granted in day-to-day life.

Therefore, literature in which the legal subject appears creates a space where the legislated social policies of the ruling body or group of people (law), and the way society either resists or reinforces such legislation (power relations), can be examined. The political agenda of legislation, Posner writes, “makes law a superb metaphor for the random, coercive, and ‘unfair’ light in which the human condition – ‘life’ – appears to us in some moods (22).” But law only seems random and coercive – it is actually “a human institution frequently perceived as external to man, like a natural phenomenon (22).” Law creates subjects and it is created by men (here I use

⁹ See also, for example, Judovitz 91-3.

the term specifically) to pursue and enforce a social and economic agenda. To represent the legal subject in a fictional text or drama is to address the cultural and historical politics and power relations that surround and produce that subject. Because it is “safely” fictitious, writing about law offers a way of questioning the *status quo*, accepted power relations, the culture which creates that law, and the ideology that shapes the legal subject in a way that is acceptable to those at the top of the hierarchical structure.

IV. THE FEMALE LEGAL SUBJECT

Because the top of the hierarchical structure in most countries is and has been predominantly male, laws, unsurprisingly, shape a specific legal subject who bolsters a patriarchal *status quo*, traditional patriarchal institutions, and traditional patriarchal power relations (Olsen 701). This leads to a legal system that impacts on women and men in gender-specific ways. For example, historically in England, a woman could be charged with being a “common scold,” an offence “legally of the feminine gender. A man may be a common bore, of course, but this, though a nuisance, is not an indictable nuisance (Parry, *Drama* 145).” Feminist criticisms of the law “identify law as part of the structure of male domination . . . and condemn law for being therefore ideologically oppressive to women (Olsen 700).” Legal dictates “are not neutral or universal, but biased in favor of the dominant culture, at the expense of all others (P. Smith 303).” If legal interpretation protects traditional institutions of social construction, feminist jurisprudence asks, “how could it be objective? If not objective, how could interpretation be impartial; and if not impartial, how could it be fair? . . . how could it be fair to the marginalized and despised (Binder 71)?”¹⁰ Feminist jurisprudence admits that law cannot be fair because it is not objective; that laws work as patriarchally-biased contributions to gender construction, because gender difference is an important pillar supporting the traditional patriarchal social institutions that law will protect over the individual.

Thus, law is “symbolic, playing an important role in the internalising of ideas about what is right and natural . . . The law constructs beliefs about roles of men and women in the home and at work which feed back into generally held attitudes about

¹⁰ For an engaging account of one of the central issues in feminist jurisprudence, the difference between male and female communication and how this difference is detrimental to women at law, see Abrams 44-9.

women (H. Kennedy 31).” Furthermore, the stereotypes and myths to which law often reverts in the courtroom do not help women. Helena Kennedy, a practising lawyer, admits that a “mere hint in court that a woman might be a bad mother, a bit of a whore or emotionally unstable, and she is lost (22),” simply because she plays into masculine stereotypes of the “bad woman.”

Feminist jurisprudence, like the cultural criticism of law, believes that all law is fundamentally and inescapably political; law supports the social constructions of the patriarchal *status quo* and does so in the guise of objectivity, fairness and neutrality. By attacking traditional jurisprudence, feminist jurisprudence attempts to create a wider understanding of the ways in which law interacts with women and *vice versa*. Taub and Schneider explain that “[m]ale control in the public sphere has often been consolidated explicitly by legal means. The law, however, is in large part absent from the private sphere, and that absence itself has contributed to male dominance and female subservience (329).” A cultural criticism of law and literature from a feminist perspective argues that literary representations of the female legal subject can undermine empirical legal practices and jurisprudence. As Hélène Cixous points out in one of her many discussions on subject formation:

[t]he repressive machine has always had the same accomplices: homogenizing, reductive, unifying reason has always been an ally of the Master, of the one Subject, stable and socializable; and it is here, at the base of it all, that literature has already been striking blows, where the theses and concepts of Order imposed themselves, by denouncing them on the level of the signified. (32)

Although Cixous is referring to structures of language, her analysis could apply to any signifier, whether it be a word, a gesture, or the representation of a subject – the

signified legal subject – who appears on the page or the stage to be held up to and compared with the empirical legal subject. Because law “aims to preserve the illusion of order, consistency, and inevitability, to obscure the fact that its history, decisions, and stories could have developed in a different manner, taking in other experiences, other views, other voices (Aristodemou 26),” it is easily undermined by literature, a medium which is able to give scope and play to the Others often silenced by law. For the purposes of this thesis, the Others it gives voice to are the “silent” women of the Jacobean period.

My thesis concerns itself with the construction of the female legal subject in Jacobean England. Because the role of women in Jacobean England, and hence the way the female legal subject is constructed, is closely linked to ideas about the family and sexual reproduction, I have chosen to focus on divorce and adultery. It is in these contexts that the woman’s status as a legal subject, defined in relationship to her husband, becomes most complicated, because here women are most easily confined by the legal stereotypes that protect those all-important institutions of Western social order: the family unit and patrilinear inheritance. Furthermore, it is within this relationship that the wife, as a political subject who either chooses or does not choose to accept her subjectivity, is in a position to challenge or sustain extant legal and political paradigms.¹¹ In marriage, women’s bodies become loci of legal tensions “because they are a site of biological reproduction and hence of legal dilemmas such as inheritance (of property and disease), illegitimacy, adultery (Smart 93).” In order to historically situate the literary and non-literary texts I will consult, Chapter One discusses theories of law in the early-modern period and reveals how those theories specifically affect women. In doing so, I attempt to define, as best as

¹¹ For an engaging discussion of female coercion and consent within the early-modern marriage, see Kahn, “Duty” 247-250.

can be done from the distance of four hundred years, the female legal subject in Jacobean England. Chapter One also draws attention to the connections between the Inns of Court and London playhouses, a fact which draws law and literature even closer together.

Chapters Two and Three consider divorce and adultery respectively. They are set out in a parallel manner, first using non-literary, and by that I mean non-fictional, theological and social writing of the time to gain an understanding of the patterns of thought that were impacting on litigation, creating statutes and helping to construct the female legal subject in the courtroom, the home and the street, with regard to divorce and adultery. The latter sections in each of the two chapters set literary texts against the non-literary discourses to illuminate the broader, cultural, subject-forming discourses that are often hidden by conservative law and the institutions which bolster it (and which it bolsters in turn).

Literature presents fictional subjects which also help to define, regulate and sustain, but can alternatively act to subvert, social norms. The literary representations in the last two chapters are an important reminder of the social undercurrents in both cases – sometimes in unexpected ways. Literature does not always imply that the law is unreasonably strict, sometimes it argues that judgment in a case is too light, or that it fails to address the real issue, or that it fails to fulfil social expectations of what the ruling should have been. Whether it is represented as being too strict or too lenient, however, the implication is often that law fails to adequately reflect social values.

The literary representations I discuss in Chapters Two and Three go a long way to fleshing out the legal subject described in Chapter One and the earlier sections of those chapters – making her more accessible, understandable and human;

alternatively, sometimes they vilify her in much more complex ways than the law can. Literary texts and legal texts “coexist and overlap . . . raising the question, what view of man, woman, and the world is offered by these texts (Aristodemou 7).” More specifically for the purposes of my thesis, what views of the female legal subject in the Jacobean period are offered by these texts, and what do those views, from the position of a feminist cultural criticism of the law, tell us about identity and gender construction?

**CHAPTER ONE. JURISPRUDENCE, THE FEMALE LEGAL SUBJECT AND LEGAL
DRAMA IN A JACOBAN FRAMEWORK**

[Law] tendreth the weakenesse and debilities of others; As of / Men
out of the Realm, or in prison, Feme Covert (and therefore
favoureth them for their dowers) infants, men unlettered, Idiots
out of their right minde, or without all understanding, as those
that are borne dumbe deafe, and blinde, or having other
imperfections.

(Finch, *Law, or a Discourse Thereof*)

It is the law, not I, condemne your brother.

(Shakespeare, *Measure for Measure*)

And to conclude the Law is like a Laborinth, you may enter in, but
it is hard to find the way out againe.

(Anonymous, *Witts Tearme*)

In order to effectively analyse the female legal subject in Jacobean England it is necessary to expand on the underlying jurisprudences of the time – the theories that affect legal interpretation and statute creation, the discourses which are essentially theories of government and social interaction – because it is often these “deeper patterns of thought and discourse that have guided our understanding of the nature of men and women (Kramer 280).” Section one of this chapter is an overview of the three major forms of early-modern law – natural, divine and positive. Entire theses could be written on each of these subjects alone, and I do not presume that one sub-section in a chapter is an in-depth encounter with prevailing theology and philosophy. Rather, I intend to bring to light the most generally accepted interpretations of these legal discourses from writing of the time, in order to outline the jurisprudential superstructure in which early-modern women found themselves. In this way, an analysis of the female legal subject can be carried out with knowledge of the empirical discourses that were impacting on women outside the fictional text.

The second section of this chapter discusses some examples of the female legal subject, places the Jacobean female legal subject in the courts, and draws attention to Sir John Dodderidge’s work, *The Lawes Resolutions of Womens Rights: or, The Lawes Provision for Woemen*, published in 1632.¹ The third section illustrates the strong connection between lawyers, authors and playwrights, a crucial point to bear in mind when analysing dramatic or literary representations of the legal subject in the Jacobean period. Firstly, I will outline the connections between, and jurisprudence of, different Jacobean legal systems.

¹ The work is attributed to Dodderidge by Elizabeth Darracott Wheeler (81). The STC also cites Dodderidge as the potential author of this text, and I accept for the purposes of this thesis that John Dodderidge is the author.

I. NATURE, GOD AND THE KING: THE JURISPRUDENCE OF NATURAL LAW, DIVINE LAW AND POSITIVE LAW

Like any discourses that exist at the same moment in time, theories of law in Jacobean England unavoidably reflect, refract and connect with one another. Edward Coke, noted barrister and Chief Justice (Knafla 146), lists “law of the crown,” “[l]ex et consuetudo parliamenti [law of parliament],” “law of nature,” “common law of England,” “[s]tatute law . . . established by authority of parliament,” “customs reasonable,” “law of arms, war, and chivalry,” “ecclesiastical or canon law,” “civil law,” “forest law,” “law of marque or reprisal,” “merchant &c.,” “laws and customs of the Isles of Jersey, Guernsey, and Man,” “law and privilege of the Stannaries,” and “laws of the East, West, and Middle Marches, which are now abrogated,” as the laws existing in England in the early seventeenth century (Coke 8-9). All three forms of law, divine, positive, and natural, are evident in his list.

These multiple jurisdictions are seen to be necessary in the early-modern period because they command different facets of duty, often divided along secular and religious lines – body / soul, earth / heaven, justice / conscience – which early-modern jurisprudence insists exist. It should be noted that the dualities listed here are not meant to convey polar opposites; jointly, they encompass the two components of the early-modern individual – the body and the soul, the life on earth and the continued afterlife. It should also be noted that despite listing three major forms of law, I have here drawn a distinction between only two (i.e. earth / heaven). The reason for this is that natural law does not stand as a separate jurisprudence from divine or positive law. It exists as a component of both, and is often used to justify the existence of both. In effect, it bolsters the jurisprudence of God’s law and man’s

law;² it is the theory behind the theories. Section IA of this chapter discusses natural law as it underpins the divine and positive legal structures that were regulating people's spiritual and corporeal well-being.

It was not doubted in early-modern England that both structures of law were necessary. Pierre Viret writes, in *A Christian Instruction*, 1573, that

as the true Church doth acknowledge the ministers of the Gospell, as the true ministers of God, ordeyned by him. For the administration of spirituall things, even so doth she acknowledge the magistrates as ministers of his justice, ordeyned by him for the conservation of the publique peace, and therefore she doth willingly submit hir selfe to them, in all thinges for God. (53 [actually 52])

People's rights, as the above arguments make clear, exist in two fields: "*Divine*, of which God is the Author. *Humance* [sic], of which Man is the Contriver (Ames 100)."³ The "two principall brethren the *Magistracie* and the *Ministerie*," are both necessary for a well-ordered society:

the one with the *word*, the other with the *sword*, the one *spiritually*, the other *corporally*, doe so much further and availe to the *publique* and *private* good of all, that the two eyes, and the two hands of the body *naturall* and *organicall*, cannot bee thereto more beneficiall and necessarie, then are those two to the state and staie of the body *politicall* and *mysticall*, and of the life *civill* and *spirituall*. (Eburne 32)

² Here I use the word (man) specifically. Women were not involved in the law-making process of early-modern England.

³ The word "right," Ames explains, "is derived from the Latine word *Jussus*, because it implies a Power of some Authority, commanding this or that to be done (91)," and is directly linked to law.

How both impact upon the female legal subject will be discussed in sections IB and IC of this chapter. First, however, I will turn to natural law – the law which structures all legal discourses of the time because it is seen to be inextricably a part of all laws.

IA. NATURAL LAW

In *Biathanatos*, John Donne pens the frustrations he feels when he tries to define natural law:

this terme the law of Nature is so variously and unconstantly deliver'd, as I confesse I read it a hundred times before I understand it once, or can conclude it to signifie that which the author should at that time meane. (*Selected* 64)

It is true that natural law in either its theological or philosophical forms is hard to pin down;⁴ in jurisprudence, however, natural law is the faculty that shapes human understanding of right and wrong. As I mentioned in the introduction to this chapter, it is misleading to argue that natural law exists as a wholly separate jurisprudence. What is important is to define natural law and the law of nature within a legalistic framework, and point to the ways in which it justifies, and is often justified by, divine law and positive law. This is necessary because the term “natural law” and the idea that human behaviour is somehow “natural” or “unnatural” often appears in early-modern writing about women and the law. It is crucial, therefore, to show how natural law exists within the legal practices of divine and positive courts, in order to successfully interpret writers’ allusions to it in fictional and non-fictional texts.

⁴ R. S. White asserts that natural law in the early-modern period is a “plethora of descriptions, hazy lines drawn between reason and ‘natural’ passion, dispute over its jurisdiction and applications, and even to skepticism about whether it can ever operate in a fallen world (xiii).”

The difference between natural law and the law of nature could be the source of much confusion, so it is with this distinction that I will begin, before moving on to discuss natural law within divine and positive law paradigms. William Perkins, writing in 1597, explained that natural law is “that order which God set in every creature by the creation,” whether they are Christian or not (*Salve* 2). It is, John Weemse argued in 1632, “the Law that all men are bound to walke in . . . therefore all men shall be judged by it; but with this difference, the Heathen and *Pagans* shall be judged, onely by it, as it is the Law of nature (*Exposition* 7).” Thus, the difference between natural law and the law of nature is that the acceptable social mores demanded of Christians are both inherent and specifically defined by the Decalogue and Gospels, whereas in a Pagan society, natural law manifests itself as an innate, “natural,” instinctive knowledge of right and wrong.⁵ Simply put, in a Christian society such as that of early-modern England, God created nature, thus natural trends reflect divine will, and nature is therefore beholden to divine law.

However, because natural law also provides an instinctive knowledge of right and wrong in all people, and is, as Finch argued in 1627, “that soveraigne reason fixed in mans nature, which ministreth common principles of good and evill . . . That men must live peaceably together: That we are not to do unto another that which we would not have done unto us: That Justice is to be done to all men, and such like (3-4),”⁶ it is inherent in positive law as well. In this context, natural law is the first and final source of all laws, systems of justice and comprehension of rights and duties.

⁵ Because of the close jurisprudential links between natural law and the law of nature, I will refer solely to natural law for the remainder of the thesis. In doing so, I adhere to the early-modern understanding that, in legal terms, natural law and the law of nature are the same thing – instinctive knowledge about right and wrong actions, thoughts, and desires – with different manifestations in Christian and Pagan societies.

⁶ Tubbs argues that “reason underpins common law, and reason is that which is available through natural law (111).” See also: Ames 105; Bodin, *Six* 4; and White 4.

Natural law, present in both divine and positive law is “[t]he form therefore of government which by God . . . was established” using “the instinct of nature, for the one; and the supply which was given by the written law, for the other (Bunny, *Scepter* 3).” Constance Jordan explains that “[t]he ability to apprehend natural law was . . . deemed innately and intrinsically human, a feature of human nature as it was divinely created,” and thus “[p]ositive law was valid only if it did not violate the general principles of natural law (and therefore by implication divine law) (65).” Richard Capel argued in 1633 that “God can hate nothing but what is against his nature and will, and whatever is against his nature and will is sin (11),” and breaches divine law. Following these assertions, natural law is an inevitable part of any discussion about divine and positive law in Jacobean England; the difference lies in whether something is natural because it reflects and adheres to the commandments and Gospel, or because it uses reason to access an instinctive knowledge of right and wrong.

The fact that different courts were set up to deal with these two interpretations of natural law implies that early-moderns felt it was necessary to police heavenly and earthly duties as separate parts of the same whole – like the body which is both “*politicall* and *mysticall*” and the life which is both “*civill* and *spirituall*.” I will now turn to the courts responsible for divine law, the jurisprudence of those courts, and how that jurisprudence affects the female legal subject.

IB. DIVINE LAW

One legal jurisdiction Coke mentions in the list I cite at the beginning of this chapter is “ecclesiastical or canon law.” This type of law falls to the responsibility

of the ecclesiastical courts, which function to ensure that God's law is obeyed.⁷ Divine law governs ecclesiastical and canon law, and, as a legal discourse, has a debilitating effect on the female legal subject. As I explained in section IA, jurisprudence of the Jacobean period often conflates divine and natural law, because "early Church writers would . . . refer to rules of nature which express divine will (Bix 225)." Divine law is seen as a form of natural law because when God, described as the "great Prince of nature" by Bodin (*Six* 4), created man (I use the term specifically) he "wrote in his heart *an eternal* Law, the Law of nature; and placing man in Paradise, gave him *a positive* law, the law of Abstinence from the tree of good and evill (Eburne 1)."⁸ Legal theory therefore supposes that men are naturally aware of divine law requisites. As Thomas Taylor explains in *Regula Vitæ*, "[t]he Law in the substance is the expresse idea or representation of the Law of nature written in our hearts in the time and state of innocency (21);" it is, he asserts, the natural manifestation of God's law.

Divine law⁹ is imperative. It is "the morall Law of God . . . not fitted that way to the estate of men; but all men must fit themselves to it (Weemse, *Exposition* 3)." People who "resiste the same, resist the ordinance of God, & do set up themselves against him (Viret 53 [actually 52])." The ten commandments and the Gospels are the written form of divine law imprinted on man at creation (Elton 1), and these must be followed if people are to follow God. In a Christian society, the commandments and Christ work in tandem to define divine law, and people's

⁷ That people uphold the Sabbath, for example, or do not commit adultery. All the laws commanded by the Decalogue, as well as the laws of the Gospel fall under the jurisdiction of the ecclesiastical courts.

⁸ This is true for the most part. However, it is important to bear in mind that some "theorists such as Grotius, Pufendorf, and Hobbes," advocated "a secular idea of human nature, including the natural desire for self-preservation, rather than divine law (Kahn, "Duty" 243)."

⁹ Also known as Royal Law, Christ's law and Moral Law.

responsibilities and relationship to it, and the Gospel explains how Christ eased the severity of the Decalogue, while still asserting the primacy of Old Testament divine law (T. Taylor, *Regula* 40).¹⁰ Although the severity of divine law is mitigated by Christ's death, in order to be good Christians, people must learn God's law, and actively obey it, through what some early-modern theologians describe as choices of free will (Véron Avii^v-Aviii^f), throughout their lives.¹¹ Thus, while Christ's death softens the law's condemnatory aspects, it does not nullify the law itself.

Christ's teachings also introduce the concept of equity,¹² a rule closely associated with natural law because "that rule of æquitie . . . God hath printed in the hart of mankind generally . . . by his written word (Bunny, *Scepter* 2)." To enable the proper use of "free will" and equity (that is, to make decisions that would best fulfill God's law), early-modern theorists argue that people are endowed with conscience, a tool

¹⁰ Perkins, *Salve* argues that "by the vertue of the death of Christ, it ceaseth to be a plague or punishment, and of a curse it is made a blessing, and is become unto us a passage or mid-way betweene this life and eternall life (5)." Old Testament law is interpreted as a plague or a punishment because under it everyone is revealed to be a sinner. It is impossible for people, conceived in sin and born in sin, to traverse a lifetime without breaching God's law. Thus, people labour under a system of law which inevitably condemns them, despite their best efforts. Christ, however, fulfilled all the demands of the law and died an innocent (in part because he was immaculately conceived and did not inherit Original Sin [Clarke and Richards 35-6]); therefore, those who believe in Christ can appropriate his righteousness and stand in grace, despite God's law. However, in order to be a good Christian, they must still choose to follow the ten commandments. I, as a non-practising Jew, am heavily indebted to Pastor Tim Burns for taking the time to explain how Christ redeems humanity from Old Testament law, as well as Cilla Jackson from the University Library Special Collections, for putting me in contact with him. For early-modern writing about this process, which so confused me in the first place, see: Dawlman 18; Foxe 17^t; Hinde 17; Howesoun A6^t; Rogers 42; T. Taylor, *Regula* 3; and Viret 27.

¹¹ See, for further discussion, Preston A2^r. This idea would later become the legal theory that defines law as a system of coercion in which people must actively choose to give up certain freedoms for the good of society – in short that they must exercise free will and agency to bind themselves (see for example Foucault, *Ethics* 59; and Kahn, "Duty" 246-7).

¹² Ames explains: "[t]he Roote of Justice and the whole foundation of Æquity . . . is comprehended in this: *Have a care, you doe not that to another, which you would not willingly have done to your selfe* (105)." See also Eburne 26-32.

to judge of the goodnes or badnes of things or turnes done . . . a parte of the minde or understanding in all reasonable creatures: determining, judgeing, decerning, and giving sentence of all their particular actions, thoughts, words or deedes, eyther with them or against them . . . a naturall power, facultie, or created qualitie: from whence judgement & knowledge doe proceede as effects. (Howesoun A7^v)

Conscience becomes disturbed when people sin, thus alerting them to breaches of the commandments. They can then take the necessary steps to clear their conscience before being judged by God after death.¹³ Gervase Babington explains that people know the “greatnesse” of their sin, or illegal transgressions, “by the law of GOD rightlie understood, the summe whereof is contained in the ten commandements (19).”¹⁴ Therefore, although belief in Christ and the use of conscience can help people to live in a state of grace, they must still adhere to the commandments in order to do so.

The commandments taught men (again I use the word specifically) to believe that “the Law was . . . hierarchical (Schoeck 220),” because it was handed from God first to men’s hearts in Paradise, and later from God through Moses to the people (Exod.19-23). The very process by which these first laws came into being “inevitably allude[s] to a social hierarchy that was generally accepted as a reflection of the hierarchy of creation, an order in nature or *of* nature, instituted not fortuitously but providentially, and therefore not subject to alteration by human beings (Jordan

¹³ For further discussion, both early-modern and modern, see Ames 4; *A Treasurie of Catechisme, or Christian Instruction* 5-33; Brinsley A4^v; H. Burton 1-2; Howesoun A4^v, B6^r, C3^r; Preston A3^r; Rogers 40, 46; Weemse 7; and White 3.

¹⁴ See also Cotton, *Direct* 10.

21).”¹⁵ God gave people law, Viret explains, so that they “shuld enterprise nothing of their owne head, in such matter, he himself wold give them a law & rule, by whiche he hath shewed them, howe they should rule and governe all their affections, and all their wordes, and all their works, to frame them all to his obedience (22).” This first imposition of government and social duty (T. Taylor, *Regula* 230), is an important foundation-stone for the hierarchical social theories of early-modern England.

Not only the process by which they were handed down, but the commandments themselves, sustain hierarchical social relations. The fifth commandment, in particular, “Honour your father and your mother (Exod.20.12),” is interpreted in early-modern England to mean “honour those to whom you are subordinate.” For women, this interpretation plays an important role in their construction as legal subjects under divine law because it was carried through in the later writings of St. Paul, which had enormous theological influence. Furthermore, because God’s curse on the first woman, Eve, was that her “desire will be for [her] husband, / and he will rule over [her] (Gen.3.16),”¹⁶ women were considered to be hierarchically beneath men, like a child to a parent, divinely commanded to be men’s subjects.

Thus, Paul instructs wives to “submit to your husbands as to the Lord. For the husband is the head of the wife as Christ is the head of the church, his body, of which he is the Saviour (Eph.5.22-3),” a metaphor which is picked up by John Milton in 1658, in Book 4 of *Paradise Lost*, when he describes the creation of Adam and Eve, “He for God only, she for God in him (299),” and later in Book 8, when

¹⁵ Original text reads “allude.” For a comprehensive layout of the English social hierarchy see Camden, *Britannia* ccxxxiii-ccl.

¹⁶ Original text reads “your” and “you.”

Adam recognises Eve's inferior status (540-3), and the Angel Raphael tells Adam that Eve "will acknowledge thee her head (574)," if Adam successfully performs his role as an hierarchically-superior husband.

Paul's writings, the influence of which is so evident in the later work of Milton, and in many other texts throughout the early-modern period, constructed the law as part of the "natural" hierarchy that exists between husband and wife. Therefore, if a woman does not accept her subordinate position, or challenges her husband's authority, she "breaches . . . Gods law (M. W. Perkins 30)," and brings down on herself "the curse of the law which went with death, namely the unspeakable wrath and indignation of God (W. Perkins, *Salve* 5)." Because "the Law is a reveiler of *duty*, so it is a reveiler of sinne too (T. Taylor, *Regula* 230)," and by not fulfilling her duty to honour her husband (and "honour" often meant "obey" in legal practice) the woman finds herself at the centre of familial and social discord. Robert Pricke, in *The Doctrine of Superiorite, and Subjection*, explains:

[t]here was never any disorder and outrage, in any family, Church, or Commonwealth, from the beginning of the world to this day, neither can be: but it proceeded from the breach of the 5. Commandeme[n]t. For how is it possible that there should be any disorder in the family, if the wife honour her husband as she ought? (A6^r)

The fifth commandment "stressed the rights and duties of station (Schochet 78)," and Old Testament divine law falls hard on women because it "presupposes an absolute moral order (Kelsen 68)," in which the law exists outside human desires and designs, is universally and morally correct, and is therefore unalterable.

Under this jurisprudence, proponents of divine law could argue that "[t]he least sinne . . . which is a breach of the least law, is worse than the destruction of the

world (Goodwin C2^f),” because the least sin transgresses all that is naturally, morally correct, and defies God’s will. In the ecclesiastical courts, whose duty it was to uphold divine law, women’s rights suffered under the hierarchical, naturalised and divinely ordained fifth commandment, Paul’s writings, and God’s curse that she be subject to her husband.

IC. POSITIVE LAW

While the ecclesiastical courts ensure that God’s law is obeyed, the positive law courts protect the public good. Positive law is “an Art of wel ordering a Civile societie (Finch [1]),” because civil laws protect what is good for the commonwealth.¹⁷ In section IA, I made a connection between positive laws, natural laws, and divine laws. To some early-modern theorists, the difference between these laws, not their shared roots, distinguishes them. Ames derides civil law, so necessary, others argue, for the maintenance of peace, because,

[t]he imperfection of the best Civill Law consisteth in this.

First, In regard it containes not in its compasse the whole Law of Nature, but so much of it, onely as such or such men have approved and thought appliable to their owne manners.

Secondly, in respect it hath no eye at all upon the inward affections, but onely upon the outward Actions; for it doth not suppress *absolutely* all vices, but those onely, which may seeme likely to disturbe the peace and quiet of the Common-wealth, neither doth it enjoyne all acts of all vertues, but those onely, which are opposite to the *inconvenient* vices.

¹⁷ See, for example, Weemse, *Exposition* 6.

Thirdly, In that it doth not *principally* make good men, but onely good Subjects or Citizens.

Fourthly, In that upon occasion it may admit in many things of addition, detraction or correction. (106)

Ames implies that the problem with civil law is its amenability to human interpretation, and the human biases that lie behind those interpretations. It is precisely positive law's susceptibility to interpretation, however, that makes it more open to women as active legal subjects.

Edward Coke outlines the three branches of positive law: "1. the common law, which is the most general and ancient law of the realm . . . 2. statutes or acts of parliament . . .; and 3. particular customs . . . I say particular, for if it be the general custom of the realm, it is part of the common law (10)." The positive law courts are divided into those which function under common law or the law of particular custom,¹⁸ and those which hear cases subject to statutes. The courts of equity, Chancery and Requests, were positive law courts that used a jurisprudential approach based on Christ's teachings ("do unto others etc.") to decide cases. These courts were most sympathetic to women bringing law suits in the Jacobean period, and will be discussed further in this section.

The different jurisdictional forms of positive law are exceedingly complicated. Richard Eburne wrote in 1616 that "[t]here bee in the common Law diverse contrarie Reports and Presidents: and this Corruption doth likewise concerne the Statutes and Acts of Parliament, in respect there are diverse Crosse and Cutting statutes, and some so penned, as they may be taken in divers, yea,

¹⁸ Because the law of particular custom changes from town to town, and divorce and adultery fall under the much larger jurisdiction of ecclesiastical courts or courts of equity, the law of particular custom will not be dealt with in this thesis.

contrarie senses (41).” Eburne’s argument implies that interpretation, always subjective and therefore often “contrarie,” only contributes to labyrinthine legal proceedings in the positive law courts.

The two areas I focus on in this thesis, divorce and adultery, are dealt with by ecclesiastical courts under divine law, and also in the courts of equity (Chancery and Requests) because of overlapping jurisdictions. As such, I will not devote much of this section to a discussion on English common law. Suffice to say that common law, which “emerged in the twelfth century from the efficient and rapid expansion of institutions which existed in an undeveloped form before 1066 (Baker, *Introduction* 14),” protects the hierarchy that places wives in subjection to their husbands, and therefore does not afford them much legal redress.

Under common law, women become *femes covertas*, or hidden women, “legal nonentities unable to sell, sue, or contract without the approval of their husbands or other male relatives (Taub and Schneider 330),”¹⁹ because when they

chose to marry, they immediately lost all their financial independence and were forced . . . into the fold of housewifery. For until the Married Women’s Property Act came into effect in 1883, a wife had no civil status apart from her husband’s. According to common law, her property passed into his hands as soon as they exchanged their vows. (Davidson 197)

Husbands, as the divinely ordained and customary heads of the family, have “control of the property belonging to that family, including the property of wives (Jordan 4).” William Gouge, writing in 1622, explained that

¹⁹ See also: Laurence 228.

a wife might not make a vow without her husbands consent: whence it followeth as an argument taken from the greater to the lesse, that she may not dispose the goods without his consent. Yea, the Law further expresly saith, that though she hath vowed, yet her husband hath power to disanull her vow. (294-5)

Because common law “restricts all legal activities to men, a man in the position of patriarch has a most efficient means of exercising his prerogative (Jordan 4).” When scholars address women’s legal status in early-modern England, they often highlight the debilitating effects of common law on women, and how it was gaining in popularity (Murray 67), without taking into account the role that the courts of equity played in undermining static common law tenets.

Equity, as I pointed out in section IB of this chapter, is founded in Christ’s teachings (specifically, “do unto others as you would have done unto you”),²⁰ and as a legal concept it influenced the courts of Chancery and Requests in ways which were very important to the female legal subject. Nicholas Breton pointed out in 1606 that if a judge rules equitably, “God in imitating his course of justice, will surely regard and reward” him (D2^r). Eburne, published in 1616, explained that

this principall and notable *Ground of humane lawes*, that *Royal Law* propounded unto us, and enacted for us by *Christ* himselfe, to open a way to vertuous and godly mindes, how to examine their actions, and conforme their lives some-what answerable to that integritie which the lawes both of *God* and *Nature*, doe require at their hands (2);

and further described equity as:

²⁰ Schoeck also points to Aristotle’s *Ethica Nicomachea*, Book V, as a source of equity in the early-modern period (226). Most often, though, early-modern authors support theories of equity with theology not philosophy.

[t]his Law of *Christ*, is a president or patterne, by & according to which the lawes of men ought to be formed & made . . . according to this patterne, their lawes ought to be *briefe* and *plaine*; *necessarie* and *equall* . . . they must be *equall* and indifferent. And this as well in respect of *the persons*, indifferent to all, not easing some and grieving others. (33-4)

The mandate that equity treat all people as “equall and indifferent,” and not work to remedy some people’s problems and not others, opens the door to suits brought by those who may otherwise have been without legal redress under the more strict jurisprudence of divine and common law.

Thus, like the teachings of Christ which soften divine law, “there were popular views that equity mitigated the rigour of the law, and that Chancery was a ‘court of conscience (Schoeck 226),’” simply because, as Ames explains: “[l]egall Justice taken strictly, considereth the words just as they are written, but Equity considereth the End, scope and intent of the Law, and so hath more in it, then Legall Justice, when taken strictly (111).”²¹ The tensions produced by a jurisprudential conflict between the written law and the interpretations of that law is best illustrated in the literary world by Shakespeare’s *Measure for Measure*, in which Angelo accepts written law as the final word on case resolution (II.ii.82), whereas the Duke softens that law using equitable judgment (V.i.392-532).

This “court of conscience,” Chancery, and the “poor man’s Chancery,” Requests, were often frequented by women (Stretton, *Women* 7). Overlapping jurisdictions meant that divorce and adultery cases which would normally belong in the realm of the ecclesiastical courts could be heard at Chancery and Requests. By

²¹ Kahn adds passion to the conscience in her examination of Milton’s *Doctrine and Discipline of Divorce* and newly-emerging ideas about equity in 1644 (“Duty” 252).

1559, “the fact that the secular state was taking responsibility for matrimonial and other matters once the preserve of the church, and treating them as it did any other legal problem (Harding 162),” was due to competing court systems which shared the same locale (Baker, *Introduction* 148).²² Because Chancery and Requests worked on the premise that laws must be equal and indifferent to all people, they were places where women were more likely to have coverture excepted (Stretton, *Women* 26), and could therefore potentially bring suits.

The jurisprudence underlying the proceedings in these courts provides “a system ideally suited to the poor and to women because they could come directly and freely to the Court of Chancery, whereas common law was prohibitively expensive, lengthy, rigid, and obscure (White 47),” and divine law courts offered them little redress whatsoever. Because “the doctrine of equity of the statute serves in the sixteenth century as a justification for avoiding a rigid, literal statutory interpretation (Tubbs 127-8),” women were able to take legal advantage of the flexibility this less rigid form of jurisprudence offered.

ID. CONCLUSION: WOMEN IN SHIFTING JURISPRUDENCES

The jurisprudence of equity was a source of relief for women who suffered under divine law and the positive law of custom: the “[a]rguments based on either God’s command or on society’s conventions [that] appeal to authority – the former the authority of a higher power, the latter the authority of the society expressed in a collective judgment (Fletcher 143. My addition).” Under these forms of authority, the legal constraints on women were multitudinous: “wives, daughters, and female

²² By the end of the fifteenth century, for example, “the King’s Bench was receiving a stream of actions brought on the Statute of Winchester against parties who had sued in ecclesiastical courts concerning matters which overlapped the jurisdictional boundaries (Baker, *Introduction* 151).” This problem was only exacerbated in the sixteenth century by the Reformation.

servants [were] . . . under a double set of obligations, those required by positive law and those derived from divine and natural law (Jordan 4. My addition).” The courts of Chancery and Requests, however, would, and did, hear suits brought by women.

The tension between systems of law which, on the one hand, presuppose a divine or customary authority and, on the other, attempt to define social actions within the boundaries of equity, is at the heart of the female legal subject in the Jacobean period. As Thorne admits, “both subsisted side by side, incompatible and essentially irreconcilable, waiting, in the case of one [custom], further emancipation from tradition, or in the case of parliament, a resolution dictated by the turn of future events (10. My addition).” Equity gave women a better chance to enter the legal arena, thus redefining the female legal subject by allowing her to become someone who was not invisible or covered, but very much in the legal foreground. The way in which the female subject vacillates between a jurisprudence that denies her all rights under divine law and laws of custom, and one that tries to deliver justice through indifference and equity is often the focus of dramatic and literary representations, because the implication is that neither system of law adequately reflects social values. The existence of these seemingly contrary systems implies a period of transition between the traditional jurisprudence of divine and common law, and the newer jurisprudence of legal humanism,²³ evident in equity and the use of precedent.

Women, like men, were caught in this period of transition, of overlapping jurisdictions and contrary values. For women, unlike men, the transition is fraught with the tension of having no legal rights under one system, and being able to access the law to protect themselves and their property under the other. Neither system of law defines the female subject completely; women were controlled by and exposed

²³ A jurisprudence which tries to place the litigator in his or her historical and active contexts through the use of precedent.

to both systems of law. As such, their lived experience as legal subjects cannot be confined within binary terms either of prohibitive laws or more equitable laws, since they were under the command of both.

The next section of this chapter is an historical examination of how women were interacting with the law, and the law with women, by the time of James I. I have chosen to frame this section with Sir John Dodderidge's *Lawes Resolutions of Womens Rights* because it is an important early work devoted to women's legal rights in England. The fact that it was published at all, and the questions raised by the existence of such a text, only highlights the jurisprudential tensions surrounding Jacobean women.

II. CONSTRUCTING THE JACOBAN FEMALE LEGAL SUBJECT

As I explained in the Introduction to this thesis, feminist jurisprudence, in conjunction with a cultural criticism of the law, unravels assumptions about the absent, invisible and silent female legal subject in the Jacobean period. Lisa Jardine notes: “[i]t is one thing to suggest that, textually, female figures are deprived of the power and authority to control the interpretation and evaluation of their actions . . . it is quite another to continue to sustain the traditional historical view that the lived experience of women down through history has been as objects (“Why” 19-20).” The methodology of feminist jurisprudence considers how legal norms are constructed by theology and ideology, and how the English legal system has “operated directly and explicitly to prevent women from attaining self-support and influence in the public sphere, thereby reinforcing their dependence on men (Taub and Schneider 334),” and keeping them firmly within the home.

Feminist jurisprudence argues that the absence of law in the private sphere implies that “women simply are not sufficiently important to merit regulation (Taub and Schneider 333).” By challenging the notion that “the requirements of universality (applying to everyone) and generality (prevailing all the time) . . . are essential attributes of well-formed laws (Fletcher 31),” feminist jurisprudence attacks the seeming ineluctability of a legal system that consolidates “[m]ale control in the public sphere . . . explicitly by legal means (Taub and Schneider 329).” The ways in which law is denied to women through culturally-constructed norms is one of the subjects feminist jurisprudence attempts to redress, by attacking present-day legal practice, or, as in the case of this thesis, by claiming a place for women in legal history. Questioning the ways in which laws are created, how they are controlled by courtroom interpretations and how all these factors are affected by sexism (or, in the

case of early-modern society, a divinely-ordained natural hierarchy), feminist jurisprudence attempts to expose and subvert the assumptions which lie behind legal double-standards.

Inevitably, such an approach raises questions as to whether the female legal norm is acceptable, or even accepted, in a multi-faceted society; whether it adequately reflects the values of that society, or if the literary representations of women and the law I discuss in Chapters Two and Three imply that the definition of the ideal female legal subject falls short of social expectations and experience. In order to carry out this task effectively, in this section I will discuss the experiences women had at law – how the systemic manifestations of the legal theories discussed in section one of this chapter affected Jacobean women in practice, thus situating the female legal subject within her historical context.

IIA. AUTHORITY, POWER AND WOMEN'S LEGAL POSITION: THE CASES OF LADY ALLAN AND SARA GOUGH

Jacobean legal theories were shown in section one of this chapter to be based, with the exception of theories of equity, on a divinely ordained or natural human condition. To transgress laws based on these theories transgresses God or nature, and the legal discourse is therefore highly effective for controlling human behaviour. Adding to this, R. S. White explains that “the tradition of Natural law . . . was fairly implacably patriarchal, and all the commentators in both their language and their narratives tacitly assume its operation to be an exclusively male domain (xv).”²⁴ Natural law, present in both divine and positive law discourses, “was invoked to justify male supremacy and racial domination (White 6),” and as a consequence, “far

²⁴ This could certainly be because nature's creator, God, has traditionally been described in masculine terms. In the Old Testament, “images used to depict God are overwhelmingly masculine: God is the King, the Judge, the Shepherd, the Warrior (Clarke and Richards 27).”

from biology dictating social patterns, it is the social order that gives significance to biology (Sachs and Wilson 10).” Arguments that the female legal subject should be treated differently to the male have the power of divine, natural and common law theories on their side.

The rights and duties of women is a popular topic in writing of the time, because these legal rights and duties, if performed, sustain the *status quo*. Constance Jordan, commenting on the conduct books which outline appropriate behaviour for men and women alike, notes that

throughout all these works . . . is a pervasive concern with questions of authority and subordination, that is, with the origins of the control of man over woman and its expression in prelapsarian history, and with the rights of the woman who is subject to the male superior . . . this authority is most often realized in situations that involve the administration of law and the possession of property. (3)

The premise for women’s legal position is quite simple: because woman (Eve) was not able to adhere to the first law (“don’t eat the apple!”) she proved that women, as a group, are inherently incapable of following mandates and managing legal affairs; because of this, they have no legal rights, and are denied the power and authority law-making entails and works to protect.

John Dodderidge’s *The Lawes Resolutions of Womens Rights* makes this clear in its third section, entitled The Punishment of Adams Sinne. Dodderidge writes that after “eating the forbidden fruit: for which *Adam, Eve*, the serpent first, and lastly, the earth it selfe is cursed,” woman’s “*desires shall bee subject to [her] husband, and he shall rule over*” her (6).²⁵ This is, he explains,

²⁵ Original text reads “thy.” All *Lawes Resolutions* quotes are from the 1632 edition.

the reason . . . that Women have no voyce in Parliament, They make no Lawes, they consent to none, they abrogate none. All of them are understood either married or to bee married and their desires or subject to their husband, I know no remedy though some women can shift it well enough. (6)

Those who can “shift it” are presumably the women I discuss later in this chapter, who were able to go to law.

The hierarchical placement of women below their husbands is of the utmost importance in the construction of the Jacobean female legal subject, because law worked as a doctrine of power that extended itself over women’s bodies making a wife’s possessions, including her self, her husband’s property in order to sustain the hierarchy. This approach is justified by divine law discourse because woman “sinned first, therefore she is humbled most; and ever since, the daughters of Sarah are bound to call their husbands Lord . . . to take them for heads and governours (Dod and Cleaver, *Godly P3*’).” Early-modern theorists argue that “silence is the best Ornament of a woman and therefore the Law was given to the man rather than to the woman, to shew that he should be the teacher, and she the hearer (Dod and Cleaver, *Godly G4*’).” Donald Black, extrapolating on the hierarchy that still exists in modern legal systems, explains that “upward deviance is more serious than downward deviance . . . At every stage, in every legal setting, a downward case is stronger than an upward case (22-3).” This means that the social hierarchy inevitably impacts on legal cases: poor people will be less successful at law against rich people; children will be less successful against adults; and women will be less successful against men.

The hierarchically-disadvantaged woman of the early-modern era fell under a strictly coded social and legal system. She erred more if she dishonoured her husband than he did if he wronged her, and she was less successful at law against him. As the anonymous Ste. B. tells wives in his *Counsel to the Husband*, “if women will bring their case to the Law of Gods word (which either must rule them here, or else will rule and judge them, most fearefully elsewhere) they shall finde, first the man to have the prerogative (56).” Clearly, early-modern legal practice disadvantaged wives and gave husbands significant power.

The legal manifestations of the hierarchy goes so far as to enable the husband to define his wife’s public persona in terms of her being a “good wife,” if she fulfils what is required of her by law in her relationship to him, or a “bad wife,” if she disregards his authority. The legal prerogative held by husbands, founded in theories of divine law, natural law, and, for the most part, although I do refer to some exceptions in this section, common law, cannot be underestimated. A decision pronounced 21 June, 1632 in the highest ecclesiastical court, the Court of High Commission, bearing on the Lady Allen, shows to what practical legal extent a husband could influence his wife’s subjectivity. In the trial, brought by Lady Allen’s husband because she had failed to respect his authority in matters pertaining to her leaving the home,

it was said by S^r Henry Martin, that if a husband commaund his wife not to goe to such a man’s house, and yet she will goe and doeth; that she is to be thought a whore; that the will of the husband soe declared is sufficient to cause her to stay away and forbear such an house or place. (Gardiner 310)

The way in which Lady Allen moves from the position of wife to whore with a courtroom decision illustrates how ecclesiastical courts upheld a husband's authority to a wife's extreme disadvantage.

Political theory has no small part to play in a husband's superiority. Jean Bodin argues in his *Six Bookes of the Commonweale*, that respect for different forms of power – in this specific case, the power structure in the private sphere – is essential to a well-ordered realm, and laws in the public sphere condemn those who do not defer to private authority. He explains that

[t]he power privat, consisteth either in the heads of families, or in corporations, or colledges, where all by a generall consent, or the greater part, commaundeth over the rest. But the domesticall power is of foure sorts: *Viz.* The power of the Husband over his Wife, the power of the Father over his children, the power of the Lord over his slaves, and the power of the head of a Familie over his mercenarie servants. And for as much as the right and lawfull government of everie Commonweale . . . and Familie dependeth of the due knowledge of commaunding and obeying; let us now speake of every part of commaunding in such order as is by us before set downe. (*Six* 14)

He goes on to argue that regardless of “what change or varietie of lawes soever in such diversitie of Commonweals, there was never law or custome that exempted the wife from the obeysance, and not onely from the obeysance, but also from the reverence that shee oweth unto her husband (19).” Bodin's work echoes the jurisprudential influence of Paul's writings and the fifth commandment. As I argued in section IB, the fifth commandment went a long way to denying women legal

rights under ecclesiastical law, and, as the decision in the Lady Allen's case illustrates, women could be forced by legal means to assume their place in the hierarchy.

The female legal subject in the early-modern period is thus defined through her relationship and duties to the men who wield legal power over her: first her father, and later her husband. While the case of the Lady Allen is an extreme example of how ecclesiastical law could impact on a woman's public persona, the quitclaim of Sara Gough shows how a woman is affected by marriage under common law – how she, as a legal subject, is refracted through her role as a wife. The document, dated 1610, is a one page quitclaim settling a dispute over a debt between Zachary Dow, a London draper, and Sara Gough. Sara is the “late wife and Administrator of all and Singular Goods Chattells Rights and Debts which late were of Edwyn Babington (Dow),” her deceased husband. Zachary Dow had borrowed a sum of money from Babington before his death, a sum which Sara “by vertue and force of the Administration aforesaid, made clayme as her right, to the said wryting in the nature of a Receipt, and to the somme of money mencioned in the same.” Sara's claim fell through, the quitclaim being exactly that, because of “the invalidity of the said writing,” and she and her new husband, John Gough dropped the suit against Dow. The legal document is signed by both Sara and her new husband.

On the face of it, this is a fairly mundane form registered to settle a financial dispute. In terms of the female legal subject, however, the textual evidence in this document displays the effects of marriage on women's legal agency. Sara Gough is the undisputed administratrix of her late husband's property when she makes the initial claim “as her right.” She is a property-managing widow, and under such circumstances the legal system regards her as an autonomous subject. She does not

need a husband to register her initial claim. With her new marriage, however, she again becomes a *feme covert* and falls under an husband's legal auspices. She is no longer Sara Babington, making a legal claim for an amount of money she believes rightfully belongs to her, but the second signatory, "Sara wife of the said John Gough." Although her name appears on the legal document, it is from the subjective position of wife, now the former administratrix of her late husband's goods; her right to deal solely with his property annulled by her remarriage; and her identity shifts from administrator to wife.

The examples of Lady Allan and Sara Gough illustrate how easily a woman's subjective position could change under a system of law that disables the wife by supporting hierarchical social roles. In both these cases, the female subject is at the mercy of legal dictates. However, not everyone accepted the role assigned to them by divinely-influenced legal doctrine. The London preacher, William Gouge, attests that "much exception was taken" to his preaching that "the common goods of a marriage were wholly at the husband's disposal, and to what had been said . . . about the 'particular duties' of wives" in one of his sermons (Collinson 71). In these moments of dissent, the social tensions surrounding the construction of the female subject defined at law become apparent. Some women, Gouge's statement implies, did not internalise the doctrines forced upon them. It is perhaps these types of women who contributed (despite a hostile legal and social environment) to the growing female litigation in the Jacobean period, to which I will now turn.

IIB. THE LAWES RESOLUTIONS OF WOMENS RIGHTS: WOMEN IN THE ENGLISH COURTS

Despite the bleak situation for women under ecclesiastical and common law, tensions between power, authority and equity gave some members of the legal

profession the leeway to consider women as legally active, rather than passive. Comensoli explains that “[c]ritical theory and practice that takes *woman* as a central category has often disempowered women by representing them merely as victims of patriarchal law (25).” Because of this, “[t]he woman-as-victim paradigm has ignored oppositional discourses and the numerous historical instances of feminine denial and transgression (25).” In order to gain a more complete picture of the female legal subject in Jacobean England, these instances of denial must be considered in their larger jurisprudential framework, because bringing these women to light works to frame the real and represented women I analyse in Chapters Two and Three.

Here I will return to *The Lawes Resolutions of Womens Rights*, the positive law of Jacobean England, and how law was being transformed through two forces: antiquarianism and Protestantism. A straight reading of early-modern divine, natural and positive law theories set out in section one would suggest that Jacobean women have no legal rights whatsoever: that unmarried women, as the legal wards of their male guardians have no recourse to the law; that married women are “one Person in law” with their husbands (Coke K2^f), and are “disabled to sue without [their] husband (Coke K3^f);”²⁶ and that a widow has legal rights only if she is lucky enough to have been predeceased by a husband who, during his lifetime, granted her his tenements to hold in fee simple after his death (Coke K2^f).

However, if it is true that women had no legal power or rights, then why did Sir John Dodderidge, one of the judges appointed to the Court of King’s Bench in 1618 – described by his contemporaries as “timid and nervous,” as well as a man whose “cowardice was very great (C. Johnson 59)” – write a book entitled *The Lawes Resolutions of Womens Rights: or, the Lawes Provision for Woemen?* The

²⁶ Original text reads “her.”

text “remained in print for at least a quarter-century after its first publication (Prest 83),”²⁷ and was obviously both popular with buyers and lucrative for its printers.

Dodderidge’s work is evidence that the relationship between women and law was shifting. I will return to it often throughout my thesis, because, as a legal source on women, it offers significant insights into the machinations of Jacobean law and sets out what women’s rights were at the time. No full new edition of this work is as yet available, leaving researchers only the 1632 black-letter edition to work from. Small excerpts of the work have been published in anthologies and sourcebooks,²⁸ but none engage with it as extensively as is required for the purposes of this thesis.²⁹ Extracts of the work, pertinent to the areas of law I will be covering in Chapters Two and Three, are transcribed and appear as the Appendix to this thesis.

Dodderidge writes that his book is a response to the legal double-standard that exists between men and women,

of which division because the part that wee say hath least judgement and discretion to bee a Law unto it selfe, (*Women onely Women*) then have nothing to do in constituting Lawes, or consenting to them, in interpreting of Lawes, or in hearing them interpreted at lectures, leets or charges, and yet they stand strictly tyed to mens establishments, little or nothing excused by ignorance, mee thinkes it were pittie and

²⁷ Prest attributes the work to Thomas Edgar (180). The confusion may arise because there are two potential authors of the work – the first is the author of the preface, who signs himself T. E., the other is the author of the main body of the work, edited by the author of the preface, and the main section has been attributed to Dodderidge.

²⁸ See: Aughterson 152-157; and Klein 31-61.

²⁹ Extant writing, which does not sufficiently examine, or transcribe to the length required for this thesis, on *The Lawes Resolutions*, is by: Gowing, “Language” 26, in which she makes brief reference to the introduction; Henderson and McManus 72 and 79, make fleeting reference to the early part of the work; W. Johnson published a facsimile of the 1632 edition; Maclean, *Renaissance* 72, 77 and 80, has a sentence referring to it; J. Sharpe, “Women” 121, where it is referenced in the footnotes; Shepherd 33, references it in two paragraphs; Stretton, “Women,” where it is referenced in the footnotes; and Wheeler 81, who notes that it was published posthumously.

impiety any longer to hold them from such Customes, Lawes, and Statutes, as are in a maner, proper, or principally belonging unto them. (2)³⁰

Extant criticism as to the purpose of the text is divided. Although Dodderidge writes he will “handle that part of the English Lawe, which containeth the immunities, advantages, interests, and duties of women, not regarding so much to satisfie the deep learned or searchers for subtilty, as woman kind, to whom I am a thankfull debter by nature (3),” Tim Stretton argues that with its technical terminology in Latin and legal French and its references to obscure cases and treatises, the book “seems to have been aimed more at lawyers than at women themselves (*Women* 47).” But this raises an interesting question: if women were legal non-subjects, why would English lawyers in the early seventeenth century need a handbook on women’s law cases?

The other side of the argument, articulated by Ian Maclean, interprets the running title of the book, “[t]he woman’s lawier,” as a reference to the book itself. This side argues that the book “is a manual intended for the use of women (*Renaissance* 80).” Again, the question is raised as to why women, unentitled to legal recourse, would need a self-help legal manual. In order to answer these questions I will place “timid” Dodderidge’s book in the context of two trends affecting English lawyers, judges, and hence jurisprudence: antiquarianism and Protestantism. In doing so, I will shed light on how it was possible for women to actively enter the public sphere of the courtroom, and how Dodderidge’s book was a timely contribution to the changing court practices. As Louis Knafla argues,

³⁰ Some other writers argue that women should appreciate their legal position. Capel argues that legal disempowerment should be seen as a blessing to women, because “they serve not in Juries grand or petty, they are not brought in Courts, to take oathes in Homages and the like; they serve not the office of Church-wardens, and so are not sworne and deposed any thing so often as men (282).”

[a]lthough most English historians have ignored any serious consideration of the legal humanists of the Continent, the Englishmen of the sixteenth century did not. Young Elizabethan scholars such as . . . John Dodderidge, knowledgeable in the philological, legal, and historical studies of Continental jurists, began to apply that expertise to an examination of the origins and development of their own native laws and institutions. (69)

It is partly in the early influence of Continental jurisprudence, then, that the seeds of English legal reform are lain.

Paradoxically, it was thus that a French lawyer pointed the English in the direction of their own history. In 1561 François Baudouin, celebrated judge, lawyer, and historian of the French court, wrote that “[h]istorical studies must be placed on a solid foundation of law, and jurisprudence must be joined to history (Kelley, *Foundations* 117).” Donald Kelley, in 1970, pointed out that “this formula not only expressed the basic doctrine of the historical school of law, it forecast the future trend of legal humanism (*Foundations* 117),” in which interpretation based on precedent is an important defining factor.³¹ The study of Continental jurisprudence by “young Elizabethan scholars” led to reforms in the Inns of Court “in early Tudor England [towards a] more pure knowledge, humanist, approach (Knafla 7).”³² The legal system thus began to undergo changes based in part on Continental jurisprudence, so that by 1602, “precedent, a word which appears first

³¹ Barbara Shapiro argues that legal humanism on the Continent spurred the humanist movement itself, because

[t]he association of law and history with rhetoric . . . was reaffirmed with the revival of classical studies . . . [i]ndeed, it was the lawyers and notaries, whose professional work linked them with the Roman past, who took the lead in reviving and developing humanist studies. (163)

³² Original text reads “to.”

in 1557, was becoming a small but recognizable part of judicial technique (Thorne 22).” What makes Continental legal humanism so important for the English female legal subject is specifically the introduction of precedent to legal procedure.

Significantly, Baudouin employed his historical theory to justify the rule of Catherine de Medici by using the ancient Roman law of France at the same time that Lord Burghley was casting around for ideologies to justify Elizabeth I’s reign and legitimise the Church of England (Trevor-Roper 123). Burghley was concerned that

the rule of Elizabeth . . . must appear as the natural, organic continuation of a robust, uncontested, ancient monarchy. Equally, the Elizabethan Church must not appear as a whimsical and heretical innovation, an ephemeral political compromise, doomed to founder in the stress of ideological war: it must appear as the true and legitimate continuation of that first Christian Church which had been planted in England centuries before the upstart Bishop of Rome had taken it over and corrupted its purity. (Trevor-Roper 123)

Following the successful example set by France, Burghley wanted England, too, to look to the past. To further his end, he commissioned William Camden, who was the Headmaster at Westminster School from 1593 and an Oxford antiquarian, to produce *Britannia*, a comprehensive history of the British Isles, which would provide the historical precedents he sought (Trevor-Roper 123).

In terms of the legal status of women (and, in part, the successful reign of Queen Elizabeth I), the antiquity movement introduced two crucial concepts: firstly, it argued that women had been allowed to own property in Anglo Saxon times and thus provided a case for female inheritance (Camden, *Britannia* 1: xlii); secondly,

linking law to history authorised the power of precedent. Thus, if it is accepted that women do have legal rights (and antiquarian studies argue that they do), and women choose to exercise those rights (as they did in increasing numbers between the time of Elizabeth I and James I), they in turn create new precedents involving women. As judicial practices accepted the legal power of precedent, and more cases were taken up by women, it would have become easier for women to enter the courtroom or solicitor's office. This meant "that by the early seventeenth century women had evidently become a significant minority among the suitors transacting business before the superior central courts, particularly but not exclusively those conciliar or equitable jurisdictions which used English-bill rather than Latin writ procedures (Prest 182)." Antiquarianism's introduction of precedent thus provided the loophole through which women could slip and re-emerge as legally viable subjects.

Although the law still statutorily impeded women's recourse to litigation, a growing number of precedent cases were developing in which women were suing and being awarded their suit. Part of the reason for women's success was the heated discussion about law reform "in the second session of 1605 (Knafla 78)." The argument centred around questions of equity, particularly whether or not magistrates had the right to interpret statutes as to their intention, rather than follow their exact wording (Knafla 80). The debate implies that pure theories of law such as those described in sections IA and IB were giving way to the more humanist approaches which allowed for precedent and equity. Furthermore, if a magistrate has the power to interpret statutes, the theoretical foundations of divine, natural and common law become destabilised – suddenly law is not law because it is universal, general and morally correct, but because it is also recognised to be a mandate of power that is in flux with the needs and priorities of the culture that uses it. During and after the reign

of Elizabeth I, that culture included women who had a potential right to legal agency, because the statutes and even common law were beginning to be amenable to interpretation. When that interpretation was coupled with theories of equity, women's right to bring cases to the courts became even more acceptable.

Like antiquarianism, Protestantism also augmented a change in perception about women's legal rights because it, too, encouraged the search for native traditions.³³ As I set out in section one, in any system of law based on a pure theory such as divine ordination, "[r]eligious values, directly or through the conduit of moral sensibility, obviously influence legal traditions (Dane 113)." Because law and religion are so tightly interwoven in early-modern England they interact with each other and with society in ways that are often seen as natural. This naturalisation occurs when preaching from the pulpit justifies a law governing appropriate female behaviour, and when society, including women, colludes with the law and religion, accepting that legal controls are right, justified, and natural, because they are part of God's will. Religious works written "about women, marriage, and family life attest not only to how men publicly regarded women, but also to how women were taught to think about themselves (Comensoli 22)."³⁴ Thus, the shifts in religious doctrine that were brought on by the Reformation affected religious writing, the laws which were closely tied to religious theory, and women's own perceptions of their identity and legal ability.

³³ As Burghley's use of antiquarianism to justify Protestantism illustrates.

³⁴ Foucault calls this process coercion – a power-relation entered into by subjects when they surrender a part of themselves or their power for the good of society as a whole. However, as with socialisation, which often occurs at an unconscious level, he rightly argues that in order to understand power relations, "one would need to inquire how relations of subjectivation can manufacture subjects (*Ethics* 59)." Although in the latter statement he is introducing a discussion on war, the same question applies to micro-relationships as well – the subjectivation not of nations, but of individuals.

I will not argue that Protestantism effected a sweeping change in the status of women. This minefield has been well-planted by theorists on both sides of the debate.³⁵ However, Protestant writing that outlines woman's social role and rights is a rich source of information about the female subject, regardless of the debate that presently surrounds it. Companionate marriage endorsed by Protestantism, described by Lisa Jardine as "the reformed Church's contribution to progressive household management ("Companionate" 234)," could have been a factor affecting the status of the Jacobean female legal subject, as it filtered from religious doctrine into courtroom decisions.

A Godly Forme of Householde Government, 1612, is a Protestant treatise written by John Dod and Robert Cleaver. Instead of a construction in which the husband is the indisputable head of the family and the woman naturally fulfills her submissive, subservient role, Dod and Cleaver represent the wife as a potentially active agent. Although the father is the "helping hands to Magistrates and Ministers (A4^f)," thus firmly situated outside the domestic sphere, implying that the wife still remains inside it, we also see in Dod and Cleaver's piece references to the wife as the "fellow helper (D5^v)" of the husband; the family is "a little Commonwealth (A7^f)" in which "the wife is like a Judge, which is joyned in commission with her husband to correct (O1^v)," and she therefore holds authority, even potential power, in the home.

Dod and Cleaver's outline of a good Protestant family, as opposed to one of "Papists, atheists, Turks and infidels (A4^f)," implies a shifting perception of women's role in the home. They argue that "there are two sorts in every perfect familie. 1. The governours. 2. Those that must be ruled (A8^f)." Unconventionally, Dod and Cleaver cite both mother and father, mistress and master, as the governors of the

³⁵ See, for example: Collinson 63, and Schochet 71 as examples of arguments for this trend, and Jardine, *Still* 49, 58; and Laurence 196 for some arguments against it.

household (A8^{r-v}), flying in the face of more traditional doctrine which endows only the husband with domestic authority. They submit that a wife “is a free Citizen in [the husband’s] house (O2r),”³⁶ and they even suggest that women have the right to usurp their husband’s power and run the family if they deem him unfit to fulfill the duties of a good Protestant parent (F3^r).

The position of the wife in Dod and Cleaver’s work is less that of a chattel and / or possession and more of a person. Specifically, more of a person with rights and some power, because she is the axis upon which the state of the household turns. If a husband keeps his wife happy, and treats her in a way that will cause her to love him, his household will run smoothly; conversely, “the husband that is not beloved of his wife, holdeth his goods in danger, his house in suspition, his credite in ballance, and also sometimes his life in perill (L3^r).” Dod and Cleaver still point out that “silence is the best Ornament of a woman (G4^r),” and they admit that the patriarch has the right to abuse his family as he sees fit to maintain domestic order (D5^v). Despite this, their work implies a strong role for women within the home, and potentially, the public sphere as well, if she chooses to unseat her husband for his lack of Protestant piety. More importantly, the dichotomous subject they describe, the meek and silent wife who usurps authority, reflects the tensions existing outside the work – the women in church who took exception to Gouge’s sermon about their social duties, discussed in section IA of this chapter, and the legal non-subjects who went to law despite their *covert* status.

Antiquarianism and Protestantism allow women’s position in the traditional legal hierarchy to shift, and could very well have contributed to increasing female litigation of the time. Recent historical scholarship shows that cases in the Court of

³⁶ Original text reads “thine.”

Chancery involving women rose from 25% in Elizabeth's reign, "to 40% during the reign of James I. The proportion of women plaintiffs commencing suits (on their own or with others) rose over this period from 17% of cases during Elizabeth's reign to almost 26% during the period 1615-1715," and "in the Court of Requests numbers rose from 12.4% during Elizabeth's reign to 18% of litigants in 1624 (Stretton, *Women* 39-40)." The only exception to this rise in female litigation was by widows in the Court of King's Bench and the Court of Common Pleas, where "in 1603 the figure was 6 per cent, [but] by 1624 it had fallen to 4.5 per cent (Stretton, *Women* 40. My addition)." Viewed overall, however, the evidence shows that the numbers of women taking part in litigation were rising rapidly in the Jacobean period.³⁷

Part of this rise in numbers is due to the fact that, contrary to popular perception, "in the eyes of the law, single women and widows had full legal capacity (Stretton, *Women* 101);" it was only the married *femes covert*s who were statutorily denied access to the courts. However, exceptions could be made to this rule of law as well. If a woman's husband had been banished, or if she were deemed abandoned, she could plead on her own behalf (Coke K3¹). Stretton points out that although "the legal system was certainly hostile in the sense that the crown, judiciary and parliament each accorded women fewer rights than men . . . these bodies never denied women rights altogether, and female litigants went to court in their thousands (*Women* 216)." Furthermore, the fact that women were using the law at all undermines the promulgated hierarchies to which they were expected to adhere, and in which they were constructed as being "naturally" submissive to the systems of authority that governed them.

³⁷ Literary representations reflect the growing numbers of women going to law: "female characters at the mercy of the law were joined for the first time by those who used the law, women who accused others not just answered accusations themselves. In short, Jacobean dramatists presented women not only as victims, but as customers, of the legal system (Stretton, *Women* 58)."

It was during this vigorous trend of female litigation that *The Lawes Resolutions of Womens Rights* appeared in published form. As a text which sets out the public perception of Jacobean women and law, it is invaluable to our understanding of women's role in legal society, regardless of whether the book was used by women themselves, or the lawyers who represented them. That such a book was written by Sir John Dodderidge, a judge more likely to leave his brother judges to bear the brunt of the battle, while he slunk over into the ranks of the courtiers, than to propose radical, sweeping reform (C. Johnson 59), shows the extent to which women's interaction with the law was becoming more commonplace. As Dodderidge himself states in his speech to the House of Lords shortly before his death: "I have sat in this court fifteen years, and I should know something. Surely if I had gone in a mill so long, dust would cleave to my clothes (Qtd. in C. Johnson 60)." Suffice to say that women were becoming more litigious, and Dodderidge's book, whether for lawyers or litigants, reflects a trend of his time; a need which was driven by the women who were accessing the legal system in increasing numbers.

IIIC. DANGERS OF FEMALE LITIGATION: *THE HONESTIE OF THIS AGE AND THE PARLAMENT OF WOMEN*

The rising numbers in female litigation paint a rosy picture for feminist critics. They are, however, only part of the Jacobean legal picture, and contributed to social tension and anxiety about women's power and its potential threat to cultural stability. The freedom women experienced was challenged, as, "[f]aced with unprecedented social mobility, the English authorities sought to inculcate the respect for order in the population by appealing to traditional notions of stability and hierarchy (Comensoli 10)." The sanctification of the family so evident in Dod and Cleaver's work "was only partially rooted in religious idealism; it was also a

political response to the shifts in and challenges to the social and moral foundation of society (Comensoli 20).” A large part of this backlash landed on women because of their perceived responsibility for ensuring the safety and security of the home.³⁸

The strict hierarchical social code, strengthened through natural and divine law, implies that “[m]en and masculinity were threatened both by the very nature of early-modern thinking about gender division, and by women’s insubordination (Amussen 216),” simply because if a wife could be insubordinate, her actions flew in the face of assumptions about “natural” female behaviour. Women who left their housewifely responsibilities to enter the public sphere and claim legal power could be seen, and often were described, as insubordinate in the extreme.

Barnaby Rich’s ironically titled tirade against social evils, *The Honestie of This Age*, published circa 1616, makes specific reference to women’s use of the legal system. He excludes the usual suspects: women who conform to the categories of wife, virgin, and biblically-precedented goodness are safe from his censure. Those who stray from these categories, however, are vitriolically attacked, including women who go to law. “How shall we be now able to judge of an Harlot?” he asks,

especially if she bee rich, & hath ability to bring her accuser to the
Comissaries Court: we must not co[n]demn her by her outward show
. . . her *Proctor* will make you to understand a little *Latine*: if you be
not able to prove *rem in re*, you have slandered her . . . you must cry
her mercy. (14-5)

Rich is highly critical of the increasing numbers of women accessing slander and

³⁸ There is often still this knee-jerk political reaction today, when right-wing leaders of Canadian political parties blame women entering the workplace for the perceived breakdown in social order, for example.

defamation laws to their benefit.³⁹ Certainly, “the central courts at Westminster regularly processed cases involving knowledgeable women who were neither submissive nor deferential (Stretton, *Women* 216),” and antagonists of women were quick to draw links between the public speech that going to law entails, and women’s sexual nature.

As Patricia Parker points out, “the loud and ‘babbling’ complaint of Shakespeare’s Mistress Quickly that her legal ‘action’ is ‘entered’ and her ‘case so openly known to the world’ not only opens what should be silent and closed but activates a long-standing link between legal case and female ‘case (106).” Thus masculine anxiety about women’s legal power is situated partly in a sexualised fantasy, wherein the woman who goes to law upsets patriarchal inheritance and uses what is legally the property of her husband, her body, in ways that potentially deny him primogeniture. Like Rich’s *Honestie, The Parliament of Women*, published years later in 1640, continues to illuminate masculine social unease about female litigation. The subtitle of the work promises it will reveal

the merry lawes by them newly enacted. To live in more Ease, Pompe, Pride, and wantonnesse: but especially that they might have superiority and domineere over their husbands: with a new way found out by them to cure any old or new cuckolds, and how both parties may recover their credit and honesty againe. (frontispiece)

The fantasy runs rampant.

The woodcut on the frontispiece of the work shows the terrifying spectacle of a man standing in the dock before this women’s parliament. The female power, even supremacy, over men that the image depicts, reveals that masculine anxiety about

³⁹ For comprehensive discussions on women and slander see: Gowing, *Domestic*; Gowing, “Language;” and J. Sharpe, *Defamation*.

women's litigation in the Jacobean period could lead to the conclusion that women would unseat male authority altogether, if given the chance.⁴⁰ The tract bawdily



Fig. 1. Women's parliament, woodcut from *The Parliamt of Women* (London, 1640) frontispiece.

plays on the connection between “open cases” and legal cases when the women decree that men “shall know that we have the Law in our owne hands, and in our owne Cases wee will be our owne Lawyers and plead our owne rights. For wee have tongues to tell one our owne Tales, and our tales shall be heard and handled (A3^r).” That the women's “cases” will be their own, dangerously implies that their sexuality

⁴⁰ The date of this pamphlet, situated at the eve of the civil war, is perhaps not insignificant in its representations of *topos*, or a world in which the hierarchical social order is turned upside down, where women rule over men and make laws. Christopher Hill explains that in medieval society “Shrove Tuesday, the Feast of Fools, All Fools Day and others” were occasions when “the social hierarchy and the social decencies” could be ignored and extravagantly subverted, which made the social order “that much more tolerable (16-7).” By the date of *The Parliamt of Women*, however, this disruption in the social order was beginning to be seen in a different light: “[w]hat was new in the seventeenth century was the idea that the world might be *permanently* turned upside down (Hill 17),” and in the case of this specific pamphlet, in a way that threatens the foundation of the *status quo* – the social hierarchy.

is the property of no man, thus questioning a husband's right to his wife's body and patrilinear inheritance. The pun on "tales" implies that the women will be putting forth that part of their bodies for anyone wishing to "handle" it.

The work goes on to plumb the depths of masculine anxiety even further, dangerously alluding to castration. One of the items the Parliament passes states "that a man which promises a pritty mayd good turn, and doth not perform it within three moneths shall loose his what do you call them (A6^v)."⁴¹ The implication in this item, for the masculine reader,⁴¹ is that powerful women lead to emasculation in the most absolute sense. The fact that castration works its way into this otherwise light and ribald work, shows just how deep-rooted the Jacobean male fear of female power could be. The represented women who wield choice over their own bodies and make men pay the highest price for disrespecting them signify the destruction of the hierarchical social order, the destruction of a man's rights to his wife's property, including her body, and potentially the eventual destruction of the human race if men do not amend their treatment of pretty maids. Because the tract was sold at the Old Bailey, it stands to reason that it was a work in which judges and lawyers would be most interested, and that the topic of women's litigation was one of much legal, and satirical, interest.

These examples illustrate that the number of women going to court was engendering anxiety and social adversity in some quarters. For women who engaged in divorce or adultery litigation the blast from opponents was even more severe because, as I show in Chapters Two and Three, in these specific types of cases the tensions that lie behind representations of the otherwise absent female legal subject

⁴¹ The perspective of the woodcut implies that most readers would have been male. The gaze of the reader is shared by the man in the dock, and it is with this character, therefore, that the viewer is meant to sympathise – both the reader and the man face the women's parliament.

are especially revealed. The invisible woman, who should according to law be under the dictates and authority of her husband, as Lady Allan and Sara Gough are, suddenly steps to the foreground to undo the socially and legally binding relationship that erases her – marriage. In doing so she undermines her husband's authority, directly challenges theological precepts which give "order for preserving the honour and dignity . . . bestowed upon every one, especially upon every Superior (Brinsley 62)," and is guilty of transgressing the will of God. Presumably, divorce and adultery cases play most deeply on male anxieties about female litigation simply because suits that set wives directly against their husbands (even if the husband is the Claimant) completely undermine assumptions about the social hierarchy and women's natural role as wife and mother. If the role were natural, neither divorce nor adultery could exist.

IID. CONCLUSION: THE WORLD OF JACOBEAN WOMEN'S LITIGATION

The legal world for women described in the sections above is not entirely the realm of the naturally silent, chaste and submissive housewife. Historical evidence reveals that despite the law's attempts to silence and categorise women as absolute subjects to their husbands (and, in many cases, it was able to do precisely that) part of the Jacobean experience included a world in which women sued and were sued; in which women travelled to London in order to attend the courts of Chancery and Requests; and in which the court records reflect an unprecedented level of legal actions by women.

Furthermore, female legal action was not confined to the upper classes.⁴²

Research reveals that

⁴² As has been assumed by some members of the audience at two papers I have given over the course of writing this chapter.

the gentry and aristocracy were in a minority, and many litigants came from the middle ranks of society. Even quite poor litigants waged law in these courts [of equity], petitioning to be allowed entry *in forma pauperis*, by which they would receive free representation by legal counsel and have their costs waived. (Stretton, *Women* 5. My addition)⁴³

It is a legal setting in which there were “women fighting contests against men, and, for a while at least, more poor women challenging their rich neighbours (Stretton, *Women* 217).” While this legal environment “may have offered inspiration to playwrights and satirists, it may also have contributed to more general feelings of unease about women’s independent behaviour (Stretton, *Women* 217),” as evidenced by Rich’s work and *The Parliament of Women*.

Certainly the fact that some men (such as Rich and the anonymous author of *Parlament*) insist “upon a system of order based on female subordination indicates that women did not always conform to the roles prescribed for them (Comensoli 21).” These discursive tensions make an easy and absolute definition of the female legal subject difficult. No doubt many women would have obeyed the mandates of church, “nature” and law. No doubt many women suffered at law because of their inferior status – the women I discuss in Chapter Three certainly do. However, the experience of these women is tempered by the experience of those who were successful at law, and both types are evident in literary representations that help to define, question and sometimes subvert the legal norm that the evidence cited in this section shows did not always exist.

⁴³ Anne Laurence points out that although women from different socioeconomic strata were using the courts, the “familiarity with the courts and their procedures was much greater in the town than in the country; urban women were more independent and there were fewer informal mechanisms for arbitration (263).” This may have created an urban / rural divide not closely examined by Stretton.

III. IMAGINARY AND LEGAL REALITIES: DANGEROUS REPRESENTATIONS, THE INNS OF COURT, AND THE FEMALE AUDIENCE

The former section may seem to have ended on a rather high note. How, the modern theatregoer may ask, can dramatic representation define a legal norm? Specifically, how can drama presume to impact on legal subjects and the law itself – discourses which, in the modern world, seem to stand well-distanced from popular theatre? Any historical cultural criticism of the law must take into account how representation and the imaginary are perceived in Jacobean England. It must also consider what connections exist between law and literature in an historical context to fully appreciate the role literature, drama and the imaginary could play to structure and define society on a legal level. In effect, a cultural criticism of the law must examine how plays were able to have the discursive power to make them much-maligned as dangerous, both physically and spiritually, to their Jacobean audience and participants alike, and how drama and the law interacted in ways which make the present-day law in literature movement seem essentialist and naïve. This section explores how the represented realities on the stages of Jacobean England had the potential to impact powerfully on lawyers and theatregoing women that is often not recognised.

I will first unveil the fears generated by represented worlds in anti-theatrical tracts – a sure sign that the early-modern appreciation of the imaginary saw representation as something that could be sinister. I will then highlight the strong connection between law and literature, or more specifically, lawyers and playwrights, or the Inns of Courts and the playhouses of London, to demonstrate how some of the fears voiced in section IIIA are justified, before I turn to the women seated in the Jacobean audience, watching and hearing scenes and words which could bolster or subvert the legal discourse that bore down on them, to explore how

representation potentially affects the values and ideologies associated with and internalised by its female audience.

As with the first section of this chapter, each of these subsections could be a thesis in its own right, and in no way do I presume to give them the full attention they could receive under other circumstances. The purpose of this chapter is to highlight different aspects of the historical context in which the women I discuss in Chapters Two and Three find themselves, in order to better understand what extra-textual legal, theological, Continental and dramatic trends impact on both the empirical and represented female legal subject. If all the world is a stage, I will now draw back the curtain on the early-modern world of theatregoing, to show how the alternate realities on the bankside of the Thames could challenge, structure, bolster, define, or strike fear in the hearts of their audience.

IIIA. ALTERNATE REALITIES DANGEROUSLY IMAGINED: EARLY-MODERN PERCEPTIONS OF REPRESENTATION

Theatre and literature, as I explain in the Introduction to this thesis, are mediums through which other worlds are created; worlds where new social orders can exist, or the existing ones be ratified; worlds where different value systems and unfamiliar social codes can compete with the familiar. Because drama can be either coercive or subversive, “[t]he public and private theatres of early-modern England reflect the heterogeneity of early-modern culture, each fostering modes of representation which sometimes promote and sometimes challenge dominant political, religious, and social systems (Comensoli 11).” Thus, these represented realities are worlds where the plurivocity and artificiality of society is laid bare; compared to the extant dominant discourse that moulds, shapes, and assigns static

duties they seem other-worldly,⁴⁴ but imaginary dialogue is dialogue that always potentially exists in the empirical world.

In legal dramas involving women, those whose voices are supposed to be muffled to the point of background whispers and obscurity can literally take centre-stage, forcing the private sphere into the public before hundreds of watching eyes, and demonstrating the potential for female legal agency – a potential the numbers of litigious women discussed in section IIB shows was not unknown during the time in question. For critics of women's litigation, such as Rich and the anonymous author cited in the previous section, "legal" plays with strong female leads dangerously reveal "the instability of the early-modern household, together with the passions, rivalries and ambivalence attending early-modern theories of order (Comensoli 16)." The tracts I referred to in section two by Dod and Cleaver, Rich and others, would have been "read by both the dramatists and their audiences and the ideas contained in them are the ideas held by the majority . . . [t]he dramatist, then, can reflect, reinforce, or question these assumptions (M. Johnson 26)," because drama has the ability to refract or restructure the assumptions made in more academic forms of discourse.

As Kevin Sharpe argues, "in no age is good theatre the mere reflection of social change; it helps to discern and even direct it . . . in short help[s] to make social change itself real by staging what contemporaries had scarce begun to perceive (*Remapping* 420-1)."⁴⁵ Thus, theatre "valorized as well as symbolized profound changes in ideology as well as social relations (K. Sharpe, *Remapping* 421)."

⁴⁴ Aristodemou notes that within such a context, "[o]ne of the aspirations . . . of law and literature analyses, is that the construction of literary texts may throw light on the construction and fictionality of the so-called real world, including that of the legal world, its values and conventions and ourselves within it (25)."

⁴⁵ Original text reads "helped."

Dramatic representations of the female legal subject and the legal system could, therefore, signify ideological shifts that were threatening the hierarchical ethos of the *status quo*.

As Iser explains, “[l]iterature reflects life under conditions that are either not available in the empirical world or are denied by it . . . literature turns life into a storehouse from which it draws its material in order to stage that which in life appeared to have been sealed off from access (227).” Appears to be, but perhaps is not. Drama can challenge social stability because it proposes that “there is no one, ultimate, totally determining ground, no ground of all grounds – neither in history, society, nor politics (D. Carroll 70).” Therefore, “[t]he text itself becomes a kind of junction, where other texts, norms, and values meet and work upon each other (Iser 219).” The many voices which can be represented on the stage give speech to those who are supposed to be silent, and undermine doctrines that assert a static, natural homogeneity.

Further exacerbating the way in which the social order could so easily be challenged by fictional voices, was, White explains, “[t]he Renaissance imaginative writer,” who,

in creating fictions, thought of literature as performing the function of God . . . The writer is controlling deity of a constructed world of human beings who make, obey, and break their own laws within that world, and must stand judged and often condemned by themselves, their fictional peers, readers, and audiences. (8)

Not to waste space on the obvious blasphemy that playing God would entail, the fact that the imagined world is recognisable as a representation of the extra-textual world

that early-moderns accepted as divinely created, calls into question the truth, or perhaps Truth, of representation.

Truth in the early-modern period is defined by its relation to divine will. William Burton, in his *Certain Questions and Answeres, Concerning the Knowledge of God*, answers the question “*What is that truth which is in things,*” by explaining that “[a]ll things are called true things so far forth as they agree with the forme and patterne set downe in the minde, which forme and patterne in God is nothing els, but his divine foreknowledge and eternall decree (32^r).” In short, “to lye is evill (Rainolds, *Overthrow* 9),” thus an actor dressed as a king, for example, commits a sin because firstly he upsets the divinely-ordained hierarchy, and secondly he represents “the deformitie or corruption of the action, that is, when the action doth decline from the rule of Gods law (W. Burton 42^v).” He is not a king, and by adopting kingly signifiers he suggests the artificiality of those signifiers in the empirical world.

Acting is therefore not simply “make-believe:” it deforms the person and the system it represents; it declines to adhere to God’s law because it presents something that does not exist; and in the early-modern understanding of world creation and divine will, if something does not exist, has not already been created by God, then it is not meant to exist.⁴⁶ Furthermore, players who represent someone other than themselves dangerously challenge the mandate that everyone is required to “live in strict conformity with the self [God] has bestowed on us, and that in the most minute particulars (Barish 92),”⁴⁷ which is, essentially, the foundation for the early-modern social hierarchy.

⁴⁶ Barish argues that “[p]layers are evil because they try to substitute a self of their own contriving for the one given them by God (93).”

⁴⁷ Original text reads “he.”

Thus the query, “[w]hat saye you then to vaine pastimes, as Lord of misrule, stage players . . . which tende to lewde and unchast behaviour, with surfetting, and rioting, &c.,” is answered simply by W. Burton: “[t]hey are not beseeming the dignitie and majestie of the sonne of God, nor the profession of Christians, but they are rather for such as knowe not GOD, nor his Sonne Christ (13^v).” Presumably this is because, as Jonas Barish puts it, “plays lend themselves too readily to the mockery of those in authority (4),” because stage players can represent a reality that overturns the divine precepts controlling social roles, duties and gender division. Significantly, “[t]he stage provokes the most active and sustained hostility when it becomes a vital force in the life of the community (Barish 66).” Therefore the heightened backlash against the stage is a backlash against the power it has to reconstruct and reconfigure social truisms through its representations.

Boy actors dressed as women caused no end of anxiety,⁴⁸ because as well as blurring gender signifiers, “*the putting of womens attire upon men, may kindle sparkes of lust in uncleane affections* (Rainolds, *Overthrow* 34)” in male audience-members. That these same male audience members would have known that the women on stage were really boys in costume, implies that when players of the early-modern period distort the boundary between the imaginary and the real,⁴⁹ they do not simply impersonate people who stand hierarchically above or below their social station, or who are a different gender. Rather, the actors are transformed from what

⁴⁸ See: Amussen 215; *A Shorte Treatise Against Stage-Playes* 14, 17-8; Ste. B. 42; Grantley and Taunton 24; and Rainolds, *Overthrow* 8-19.

⁴⁹ The shock of recognition and revelation in the 1990s film *The Crying Game* suggests that confusion so easily caused by altering gender signifiers like clothing, make-up and hairstyle is not a problem confined to early-modern society – of course, early-modern theatregoers would have *known* that the women on stage were actually men, which makes the question of representation here one of transformation as opposed to disguise. I am concerned that I may be approaching this argument from an assumed heterosexuality on the part of male audience-members. I take my lead from the implications in Rainolds’ statement: that it is the female signifiers, not the male actors, to which some audience-members might be attracted.

they should be according to God's law, natural law, and even positive law (in this case, boys),⁵⁰ into something they decidedly are not (sexually attractive women).⁵¹

Rainolds argues that any feigned transformation is not only dangerous to the audience, but to the actors themselves, because

[s]eeing that diseases of the minde are gotten farre sooner by counterfeiting, then are diseases of the body: and bodily diseases may bee gotten so, as appeareth by him, who, faining for a purpose that he was sicke of the gout, became (through care of counterfeiting it) goutie indeed. So much can imitation & meditatio[n] doe.
(*Overthrow* 20)

His argument illustrates how acting is not only dangerous because it overturns the extra-textual social structures that are protected by law, but because it can also affect the body and even the soul of the actor.

As well as the unnatural transformations which take place in the imaginary world created by the playwright, if an actor's role requires him to play a sinful character, "they will bring with them not onely appearance of evill, but evill it selfe (*Shorte* 14)," because a sin in thought is still a sin, let alone a sin in thought, rehearsal and delivery in front of an audience. The audience that witnesses a character's sinful (and therefore lawless) behaviour considers the sin, thus furthering the cycle of evil. Because of these factors, Turner, in 1607, described the activities

⁵⁰ The Sumptuary Laws dictated not only what clothing was appropriate to which gender, but also what fabrics each level of society was lawfully allowed to wear, in order to make each person's class position easily recognisable (Brundage 343, 353).

⁵¹ Orgel argues convincingly that the transformation caused by simply changing clothing is due to the early-modern consideration of gender fluidity, as a whole. The medical truism that women could "change" into men, implies the horrifying possibility that men could also "change" into women (18-27).

between the playhouses and the Inns of Court, which may have only furthered anxiety about the potential extra-textual instability of the commandments and law for theatre antagonists.

III.B. THE INNS OF COURT AND THE LONDON PLAYHOUSES: LAWYERS, PLAYWRIGHTS AND LEGAL DRAMA

The law in literature movement, which focuses on the use of fictional legal scenarios in the education of law students, would have a field-day with the relationship that existed between the theatres and the Inns of Court in the Jacobean period. White argues that law and literature are closely connected because both are “institutional (the existence of the Inns of Court and their practices) and professional (shared reliance on rhetoric and fictions) (8).” A cultural criticism of the law explores the connection in a much broader and in-depth way. While it is true that both share “rhetoric and fictions” it is insufficient to highlight this as the main point of intersection between them. The social relationship between the Inns of Court and the London playhouses meant that lawyers interacted with the fictions of plays and plays themselves in much more complex ways than the modern-day law student does whilst reading *The Merchant of Venice*.

In the Jacobean period, dramatic representations of law are much more than a humanising exercise in legal education. During the sixteenth century, the Inns of Court grew to such an extent that by 1612, Sir George Buck described them as “[t]he third University of England (Qtd. in White 73).” This growth led to a rapidly expanding institution for the education of young men:

[b]y Elizabeth’s time there were four Inns – Inner Temple, Lincoln’s Inn, Middle Temple, and Gray’s Inn. To each was attached one or more Inns of Chancery (eight in all) which were considerably less

prestigious . . . There were also . . . fourteen ‘houses of students in the common law’ and two Serjeants’ Inns. The key to these institutions lies in the fact that they were not solely, nor even primarily, organised to teach law, but rather they were societies or guilds, existing not only with the authority to call to the bar, but also to instil a sense of community amongst men who might or might not become lawyers or influential figures at Elizabeth’s court. (White 73)

During the early-modern period, “the Inns housed, at one time or another, all the significant writers of the second half of the sixteenth century (White 74),”⁵² which led to their “long-entrenched associations with the drama (A. Cook 108).” Students at the Inns would often engage in playwriting and “[d]rama written and performed by members of the Inns eventually gave way to professional presentations (A. Cook 108),” ensuring strong ties between Inns’ productions and public plays.

This meant that “no gentleman who went up to the Inns could avoid exposure to drama any more than he could in grammar school or the university. Plays formed an intrinsic part of his life and education (A. Cook 110).” In part this was due to the educational practice of declamation and the Inns’ Revels, into which “was poured academic learning such as an educated gentleman might be expected to recognize (Elton 5).” The Revels thus acted as both a form of entertainment and an opportunity to practise rhetorical, courtly and legal skills through

fustian- and mock-orations; misrule and mock government; mock-trials, arraignments and sentencings; mock-counsellings; courts of love; processions and progresses; challenges, barriers, trials-by-

⁵² White’s statement is somewhat erroneous. Shakespeare and Marlowe, for example, were not Inns’ members.

combat, jousts and mock-duels; mock-proclamations and edicts; mock-prognostications; pageants, masques and plays. (Elton 1)

In fact, “[l]aw students were trained not only through moots, bolts . . . , and similar exercises, but also through compulsorily attended Inns of Court Revels (Elton 135),” which could certainly explain why “[t]he drama of this age was inextricably infused with the law, with perhaps one third or more of Elizabethan and Jacobean plays including a trial, an arraignment or a law suit (Stretton, *Women* 64).”

R. J. Schoeck’s research on early-modern theatre attendance shows that, in general, “[t]he average theatregoer . . . would have had personal experience in matters of marriage and wills, with a smattering of ignorance in contracts, and all would have had a layman’s nodding acquaintance with such essentials as the marriage law of the church (220),” and would therefore have been able to engage with the underlying precepts of legal drama. The group of men associated with the Inns, however, who made up a large percentage of the audience (Gurr 119), could have had at least a passing acquaintance with the plays’ authors, if not in fact being the playwrights themselves.⁵³ Legal dramas in the Jacobean period are thus imbued with a jurisprudential authenticity often not recognised by modern critics, and representations of women and the law could well, therefore, have been contributing to extant debates among lawyers, judges and law-makers about the rights and abilities of the female legal subject.

⁵³ Stretton, *Women*, points out that the relationship between the legal system and playwrights was a dynamic one:

Webster involved himself in civil suits, as did Middleton, who perhaps was inspired by the litigiousness of his mother and stepfather. Lodge, another active litigant, sued his own brother in a debt action. Ford, Middleton, Dekker and Rowley were all sued for libel in Star Chamber . . . Ben Jonson was twice imprisoned for offending figures of authority with his plays . . . while Christopher Marlowe, who had to appear before the Privy Council, seemed to make a hobby out of being arrested. (65)

The strong tie between playwrights and lawyers thrusts any examination of legal representation in the Jacobean period into a much more complicated field of reference. While those responsible for the law had to work to normalise society and to control perceived deviancy, they would also have been exposed throughout their education at the Inns and in the Revels to representations of legal values which ran contrary to legal doctrine – they may even have had a hand in imagining, writing and performing in these representations of difference. Therefore, a plot that engages with law and jurisprudential conflicts can, in this context, be seen as a court away from the courts, a place where arguments about justice, legal interpretation, and rights could occur in sometimes radical ways, safely disguised as fantasy and fiction. As Iser explains:

[e]ach text makes inroads into extra-textual fields of reference and by disrupting them creates an eventful disorder . . . thus each one is being reshuffled in the text, and takes on a new form – a form which nevertheless includes, and indeed depends on, the function of that field in our interpreted world. (218)

A legal drama that represents the extra-textual legal world is a safely fictional arena in which influential law-makers and interpreters could be exposed to legal conundrums or could explore the practical problems that arise when statutes stand at odds with lived experience or ideas about justice.

The possibilities that stage plays, closely related to the Inns of Court, offer for legal argument, suggest that representations of the female legal subject are much more than a stance for or against women's legal rights by an author ignorant of the theories structuring the empirical legal system. Some of the people working with women in a legal capacity – the judges who hear the cases, or the lawyers who act on

a woman's behalf – would have been exposed to such representations during their education, would potentially have interacted with playwrights writing about women and the law housed at the Inns, or could have taken part in writing and acting (perhaps even as a woman) in Inns' productions.

The inference is that if the law-makers and administrators themselves are actively questioning, or are at the very least, exposed through the dramatic processes that took place at the Inns to characters and plotlines which undermine the absent female legal subject, this would only contribute to the ideological inroads being made by antiquarianism and Protestantism into legal practice. The fact that plays challenging pedantic forms of jurisprudence exist at all suggests that the imaginary world of Jacobean legal drama was opening avenues of thinking about women and the law – avenues which could lead to the conclusion that the law either falls short of adequately providing for women's needs, does not reflect social values in its treatment of them, or does not reflect how women were able to use the law despite impediments. The connection between law and literature in the early-modern period implies that some men attached to the Inns would have been thinking about the relationship between law and women, and may have been using drama to explore ideas about justice and women's legal position,⁵⁴ topics which, for the most part, would have been inappropriate to raise within the rigidly structured courtroom environment.

The concern from some quarters that fictional representation had the power to challenge God's will and reshape society was therefore perhaps not unjustified. The imagined legal world of the stage was not always merely suggestive of how the law could be different; it could also be pointing to how the extra-textual world was

⁵⁴ See, for example, the play I discuss by John Marston in Chapter Three.

changing in ways that would disrupt traditional views about social roles, gender and hierarchy, and how law works to protect them; how the law-makers themselves, or those in close proximity to them, may not have accepted prevailing jurisprudence and were using the stage as a medium to explore different legal identities and subjects.

IIIC. CONCLUSION: REPRESENTATIONAL ROLE-MODELS AND FEMALE AUDIENCE-MEMBERS

If plays can be seen as teaching-tools for lawyers, these same plays can most certainly be seen as instructional for a more general audience. Comensoli explains that Jacobean drama “was not a monolithic institution which passively and equivocally bolstered dominant moral or political orthodoxies (8).” Sentiment in the “pro- and anti-theatrical tracts . . . attests to the instability of the theatre as an institution for the inculcation of moral or social codes or precepts (8).” Specifically for the purposes of this thesis, I am interested in the social codes and precepts that may affect women in the Jacobean audience, and what the imaginary realm is able to suggest to them as empirical subjective possibilities. Hélène Cixous rightly points out that the dynamic social properties of drama are dangerous to a highly structured society. She describes dramas as “great destroyers” which “are also great givers of strength, and of forms: through this shaking of the literary ground, those who crack it open pull off amazing effects, glimpses of ways out (33).” Out, one assumes, from restrictive social forms which contain and constrain the female subject in the off-stage world.

Historical research by Paul Merchant reveals that in the early-modern period, theatregoing was

[p]erhaps the most influential form of entertainment . . . where wives could be seen in their new-bought jewels . . . and could watch the performances of women as dynamic as Middleton's roaring girl . . . characters drawn from the world of the audience, intelligent, resourceful women, capable of dominating a whole play. (4)

Gurr's historical evidence supports Merchant's, noting that in the early seventeenth century, "women from every section of society went to plays, from Queen Henrietta Maria to the most harlotry of vagrants (57)," and there would have therefore been a high level of female exposure, across the social spectrum, to the agency shown by women characters on-stage. Furthermore, the high percentage of female audience members "meant that the success of any play was significantly dependent on the receptiveness of women; and this in turn means that theatrical representations – whether of women or men or anything else – also depended for their success to a significant degree on the receptiveness of women (Orgel 10-1)." Thus any representations of legally active female subjects must have been an acceptable cultural representation of the female legal subject in order for it to work as a viable dramatic character.

In this way, it is possible that plays "were important contributors to the debate on the changing status of women, and may well have initiated some terms of that argument (Merchant 4)." Plays "repeatedly focus on issues, such as gender relations, and institutions, such as marriage, that were at a point of crisis during the early-modern period . . . the representation of women repeatedly produces a disruption in these scripts (Loomba 95)," simply because represented women could behave in ways that actively challenge the dogmatic underpinnings of gender and

marital construction. Ania Loomba states that critics of early-modern women and drama

should consider *why* the drama becomes increasingly preoccupied with the disorderly woman; why woman can no longer be presented as a stable entity; and why the stories themselves become deeply contradictory and contestable. The individual author may not be 'feminist', but the ideological effects of his fragmented female protagonist are radical precisely because she is presented as a discontinuous being. (95)

Like the female legal subject who evades easy definition because she both can (if she accepts the subjectivity placed on her by law) and cannot (if she chooses to ignore her prescribed role and go to law) be absent and silent, unstable representations of women reflect the instability experienced by all subjects. However, because they are women characters, they also reveal her own constructed subjectivity to a female audience-member. If, as noted in section IIB of this chapter, more conformist female characters were "joined for the first time by those who used the law (Stretton, *Women* 58)," then it is not unlikely to suggest that some women in the audience might have seen these new, represented, roles as ones which they could embody in real life.

The fact that plays were so closely linked to the world of law in the Jacobean period, and that representations of women interacting with the law occur despite strict legal doctrines that commanded the contrary in the so-called real world, implies that some members of the legal institution felt that women could safely embrace a more active legal identity. Certainly those who worked with the women discussed in section IIB of this chapter must have felt so. The furore surrounding the dangers

plays posed to the divinely-ordained hierarchy and traditional social roles supports the suggestion that theatres had the power to disrupt traditional social practice. In terms of women, strong female characters were given a voice by playwrights who may have been associated with the Inns of Court, thus further implying a shifting jurisprudence in the legal institution itself. Potentially, these strong female characters could be internalised as role-models by female audience-members as well, thus furthering the play's impact on extra-textual legal practice and procedures.

IV. THE SHIFTING CONTEXT OF THE JACOBAN FEMALE LEGAL SUBJECT

In this chapter I have attempted to historically contextualise the female legal subject in her relationship to the courts, to prevailing legal practice, and to the theatre. Central to this process are Continental trends which impacted upon women's ability to use the law, and the close connection between lawyers and playwrights. What has become apparent throughout this chapter is the number of conflicting discourses which were impacting on and attempting to define, or redefine, the female legal subject.

In any society where numerous discourses converge upon, confront, attempt to disqualify, support or denounce each other, subject definition cannot be contained securely within any single discourse. I have drawn attention to this because, in the ensuing chapters, there will be points of contradiction. This contradiction is inevitable, given the fractious properties of the discourses I highlight in this chapter. It is at these points of rupture that the artificiality of the static female legal subject comes to the fore: some women went to law, some did not; some discourses supported women's litigation, some did not; some arguments attack law for being too unyielding, some for its pliancy. All these forces must be borne in mind in the following chapters because they contribute to the ideological torsions that the female legal subject endured, and inevitably work their way into literary representations of her.

I will now turn to the areas of divorce and adultery respectively: areas which, for reasons briefly mentioned throughout this chapter, expose litigious women to the highest level of commentators' scrutiny. These commentators include playwrights who represent women and the law in their plots, as well as religious and political tract-writers. How women are represented in the controversial areas of divorce and

adultery reveals where the points of legal discourse that attempt to control women are most unstable. Whether the author argues for or against the way in which law deals with the specific women I will be discussing, Jacobean writing reveals that the legal crisis embodied by women who went to law is a crisis of relationships: the relationship between law and the people; the relationship between husband and wife; and the relationship between authority and women.

**CHAPTER TWO. UNNATURAL DIVISION AND UNCIVIL DESTRUCTION: DIVORCE
LAW AND THE REPRESENTED FEMALE LEGAL SUBJECT**

A Familie is the right government of many subjects or persons under the obedience of one and the same head of the family; and of such things as are unto them proper. The second part of the definition of a Commonweale by us set downe, concerneth a Familie, which is the true seminarie and beginning of every Commonweale, as also a principall member thereof.

(Bodin, *The Six Bookes of the Commonweale*)

Come, let us to our death: are we not bless'd?
Our death will freedom from these creatures give:
Those trouble-quiet sowers of unrest,
And this I vow, that had I leave to live,
I would forever lead a single life,
And never venture on a devilish wife.

(Cary, *The Tragedy of Mariam*)

This chapter explores how literature that represents women and divorce law reflects the public pressures which were exerted on the female legal norm; how extra-textual values created tension between the female legal subject and women's fictional voices; and why female characters on the stage or page who approached the legal system were often wrapped in a cloak of notoriety. As Vilhelm Aubert argues, norms in general

present social and behavioral activities as a map with clear borders marking the distinction between compliance and noncompliance . . . This focuses the attention upon borderline problems, upon ambiguities, uncertainty, and transgressions, often upon rather hypothetical or rare cases of doubt. (35)

The female legal subject who engages with divorce law oversteps the normative boundaries set for her and offers up for consideration questions about women's role in the "natural" hierarchy, while also providing good raw material for dramatic treatment.

Inherent in this chapter is the question of definition – how the female legal subject is defined by her relationships; how she is defined by the authority that exerts itself over women's bodies; and how she is defined (although, significantly, not by herself, but by those who hold the authority to define her) by her actions within, or reactions against, the legal system. Theological and ideological underpinnings of early-modern divorce law define the female legal norm, and I discuss these influences in the first two sections of this chapter, in order to situate the characters I analyse in the later sections. The third section sets out divorce law by the time of James I, when the literary works I analyse in sections four and five were written.

Any critique of legal systems using a cultural criticism of law and literature understands that public values and laws impact on one another because, as Roger Shiner explains, “the morality of a society is the set of customary norms by which the members of the society regulate significant social and private behavior,” and “a legal system is an institutionalized normative system (442),” set up to ensure behaviour regulation can occur in a very public sense. However, Jules Coleman and Brian Leiter, in “Legal Positivism,” point out that “[t]he legality of moral norms is not a function of their morality, but their validity under the rule of recognition; the rule of recognition in a particular community asserts, in effect, that certain norms are law provided they meet the demands of justice, or that they cannot be law unless they do so, and so on (251).” Thus, while law-makers do have the power to legislate a social agenda, legislation must be accepted by the public it controls as necessary, plausible and right in order to work effectively as a system of control.

Kevin Sharpe aptly notes that “while the organs of state education and discipline have formed subjects who have interiorized codes of order, authority also responds to the desire of subjects (*Remapping* 417).” Law and public opinion impact on one another time and again because, Guyora Binder argues, “the coercive force of the state must be justified by consent: the consent of individuals to public arrangements or the consent of populations to public policies (83).” Although “[i]t only makes sense to criticize law for inaccurately representing individual or collective preferences . . . A more sophisticated and less fragile critique recognizes that social will may not be independent of its legal representation (Binder 84).” A cultural criticism of the law can presume, therefore, that while laws may work against individuals in ways that seem unjust, they reasonably reflect public opinion, or at least the dominant discourse. Because the law-makers in the early-modern

period are (with the exception of Queen Elizabeth I) upper-class men, the laws they make must be supported by other forms of discourse, such as religion and ideology, in order to be internalised as right by the general public. Chapter One described how law and other discourses of the period are interwoven, so I will not spend time on that here. In the same way, literature, which plays with social values and norms, can also be seen to reasonably reflect some aspects of public opinion. However, literature often does this by giving voice to opinions that exist on the margins – it can reflect the public opinion that is not obviously represented by the dominant discourse. The interplay between law and society leads, in colloquial terms, to a chicken-and-egg scenario in which it is easy to become confused as to whether public opinion directs law, or law directs public opinion.

Law, however, will always claim authority in this structure because it “cannot simply reflect but must also help compose society and its characters (Binder 85),” in accordance with the morality and beliefs of the most influential members of society. In this way, the social system and its institutional structures are protected by those who control it (in the early-modern period a very select group), and those whom the law frustrates are left with little opportunity to make their voices heard. The literary works in this chapter are chosen because they illustrate how law structures society and how a specific segment of society structures law in return.

Elizabeth Cary’s *Tragedy of Mariam The Fair Queen of Jewry*, is a drama most likely written “after her marriage and probably before the birth of her first child . . . in 1609 (Weller and Ferguson 5);” the unpublished poem by William Terracae, *A Plenarie Satisfaction, Out of the Holie Scriptures, Cannons, and Civill Lawes Authorised*, housed in the Northamptonshire Records Office, is about the Frances Howard marriage annulment which took place in 1613; and the play *The True Tragi-*

Comedie Formerly Acted at Court, attributed to Francis Osborne (1593-1659 [L. Potter ii]), is most likely an early, unpublished, slightly different version of *The True Tragicomedy Formerly Acted at Court* (1635), also about the Frances Howard trial. Because the female legal subject in the early-modern period is, for the most part, denied many forms of self-definition, both the law and social values (in this case, patriarchal values) mould and shape that subject to their benefit, and these works reveal how that process is subverted by and also influences literature.

The early-modern period is important to literary representations of divorce legislation and the female legal subject because tensions between law and reform were causing social antinomies and legal power struggles. By the time of James I, these struggles were beginning to manifest themselves in tangible ways that affected jurisprudence and, most importantly for the purposes of this thesis, the female legal subject. While humanist philosophers and some Protestant writers were redefining the individual's relationship to marriage law, state and church legislation continued to maintain strict control over public expression and social function. For reasons I will discuss in section two of this chapter, many legal arguments focused on the definition and significance of marriage, and people's rights to annul an unhappy union. Because the familial matrix was so important to early-modern philosophy, many aspects of the marriage argument were represented and challenged in literature and drama of the time.

To combat the potential unrest that representations of divorce or revolutionary ideas about women's rights in marriage might spark in an audience, "all plays had to be approved by the public censor as politically and religiously inoffensive, and such censorship both implies that there is dissent from orthodox

beliefs and induces ambiguity and obliquity of expression (Posner 17);”¹ oblique expression which was necessary for an institution “[p]atronized by courtiers and under the control of city magistrates,” and therefore “closely connected to government (Sharpe, *Remapping* 422).”² As I argued in the Introduction and Chapter One, literature and drama present an arena in which otherwise dangerous expressions of legal emendation can safely clash with empirical legislation.

Frank Whigham explains that the “radicalizing power [of the theatre] derives precisely from the freedom of the professional actors from full dominance by a censoring of State, from the access to a deniability that comes with speaking words *as* dramatic characters (4. My addition),” thus situating it firmly in the realm of the imaginary. Because, often, characters’ responses to law are represented as the radical and dangerous ranting of subversives who set out to challenge the natural order of society, writers can safely present any criticisms as the words of an antisocial, even evil, person, whilst also successfully projecting those words into the public arena for audience consideration.

Sections four and five of this chapter examine three literary works that represent the impact of extra-textual pressures on the female legal subject and divorce, and explore how literature can work as a critique of the dominant legal discourse. Cary’s play depicts three women confronting an unsympathetic legal system and their perspectives on marriage and divorce law within the dominant legal discourse are telling. How Cary’s characters oppose the law and the legal system, the arguments they use and the types of women they are, implies the backlash of

¹ See also, for example, Clare, *Art* ix-xii, 5, 9-13, 15-21; Clare, “Censorship” 20-1, 25-6, 28-9; Clegg throughout; Dutton 51-5; Hadfield 1-3; and Longstaffe 31.

² He goes on to explain that “Henry VIII and Thomas Cromwell saw the potential value of theatre as a forum of propaganda and recruited John Bale and Richard Moryson to write antipapal, and later Protestant, plays (422).”

public opinion against women who speak out against the constraints of marriage and divorce, or who simply consider the option of divorcing, their husbands. Cary's work reveals the frustrations women could feel in a legal system that favours men in general, and a man's right to a woman's body in marriage in particular.

Surprisingly, for a text in which the law figures so prominently, very little extant analysis of Cary's play addresses the law, how it affects women and how the female characters are obviously knowledgeable about the legal matrix that binds them.³ Most analyses focus on Cary's life and why she chose the subject material she did for *Mariam*.⁴ It is sufficient to point out that Cary, in later years, was one of the many women who engaged with the legal system; "when her husband immured and half-starved her . . . she took her case to Privy Council and obtained an allowance of £500 a year (Sommerville 93-4)." She may therefore have been thinking critically about women's role and rights in marriage when she wrote this play shortly after her own arranged wedding. Because so much extant work on Cary's private life has already been carried out, I will not make her the focal point of my analysis. Instead, my focus will be on how the law and public opinion impact on and define the characters Cary creates, as well as how the growing extra-textual

³ Critics tend to focus on the family-as-state metaphor (See Purkiss, "Blood" 30-1, 38; and Raber 321-43); the politics of martyrdom (See Beilin 171-2; Purkiss, "Blood" 38-40; Weller and Ferguson, Introduction 37-9); patriarchal authority (See: Beilin 151-76; Belsey, *Subject* 174; Lewalski 179; and Quilligan 224); the link between women's silence and chastity and the biographical, potentially Catholic / Protestant, elements of the play that reflect Cary's own life (See: Dunstan; Krontiris; Purkiss, "Blood" 27, 30, 40-1; Purkiss, Introduction; Raber 322-3; Shannon 135-6; Walker; Weller and Ferguson, Introduction; and Wright). Interestingly, the most widely accepted date of production for the play (1609) is fifteen years earlier than Cary's conversion to Catholicism and consequential falling-out with her husband (N. Miller 354). This makes any criticism that figures Cary as the unhappily-married *Mariam*, or *Mariam* as a symbol for Catholic faith within an oppressive Protestant framework suspect. Iwanskiw overcomes the anachronistic elements of the majority of this criticism by arbitrarily giving the play a new production date of 1612 (112), to illustrate how it may have supported Catholic recusants (113-4).

⁴ See for example introductions to new editions and textual criticism by: Dunstan; Krontiris; Lewalski; Purkiss; Walker; Weller and Ferguson; and Wright.

litigation by women is overtly implied by a work in which all the female characters either know the rules of law or have been exposed to it.

Section five analyses Terracae's and Osborne's fictional accounts of the scandalous Frances Howard divorce trial of 1613. Little is known about William Terracae, but it is likely that he was involved in the court of King James I, because his poem is addressed to James' favourite, Robert Carr, and Frances Howard at a time contemporaneous with the annulment proceedings. Francis Osborne is best known for his *Advice to a Son*, 1656, and seems not to have been involved in the court at the time of the trial (Lee 42: 286-9). I have consulted the manuscript version of Osborne's play because the first published edition appears nineteen years after Howard's second trial, the 1616 arraignment for the murder of Sir Thomas Overbury, and there are a number of differences between the published version and the manuscript.⁵ The version I use was written nearer the time of the trials, and I hold it as the more authoritative of the two for the purposes of this thesis because I feel it is important to capture the literary moment at which the real-life Frances Howard is fictionalised by Osborne during her second trial, when she was found guilty for her part in Overbury's murder. It is important to bear in mind that Terracae's work was most likely written in the period between the divorce and the murder trial, and his treatment of Howard is therefore much more sympathetic than Osborne's account of her separation, which was written after she had been confined to the Tower.

The most notable modern work on the Howard trial and the two manuscripts I consult is provided by the historian David Lindley, in his *Trials of Frances Howard: Fact and Fiction at the Court of King James*. Lindley, however, makes use of the

⁵ Alterations in dialogue and character names are the most apparent differences.

later, altered, published edition of Osborne's play. Furthermore, he uses Terracae's and Osborne's works to illustrate court corruption by focusing on how court women are stereotyped as lascivious, and how the manuscripts and later accounts have swayed historical interpretations of the divorce trial and of Howard herself (Lindley 44, 57 and 112). He does not explore how Frances Howard's divorce trial indicates torsions in the female legal subject in general, nor how the jurisprudence of divorce law affects women in Jacobean England.

Terracae's poem and Osborne's play are important vehicles for exploring representations of women and the law because, with the real-life annulment suit as their backdrop, they illuminate public opinion about women who sued for divorce. Osborne's play is inevitably affected by Howard's even more scandalous second trial, when public opinion could openly turn against her. In terms of divorce law, the works reveal a bias against women who reject their husband's authority and the submissive role that they are "naturally" supposed to perform. They are ideal illustrations of how the represented worlds (that of the poem and the play) interact with the empirical world (the legal subject Howard was expected to embody). The Howard section (section five) of this chapter examines how literature can contort and distort empirical evidence for political purposes; specifically in this case, the politics of gender, and how those with authority can use literature to protect their position and to justify the social system itself.

A cultural criticism of the law recognises that

not only do literary and legal texts reflect the belief systems that inhere in their historical moments, they also participate in shaping those belief systems and those historical moments. Thus, fictive and

legal texts alike . . . provide particular sets of documents for studying both cultural ideas and social change. (Baron and Epstein 673)

The fictionalisations of Howard and her trial reveal how one (law) can provide the subject matter for the other (literature), as well as how the fictionalised portrayal of a real-life person impacts on a readership's or audience's perception of the source material (the legal subject who goes to law and what happens to her).

Although Cary's play and the Frances Howard material deal with different time periods (Biblical Judea and the seventeenth century), the women in all three works are familiar with divorce law, and their interactions with the legal world run contrary to the ideal female legal norm. Although the subject matter in all three works is heavily indebted to the relationship between law and women, there has been little extant analysis done on the connection between divorce jurisprudence and women as it appears in these texts. Nor have there been any connections made between the texts themselves, despite their similar themes and their shared point in history.

While there is no concrete evidence to suggest that the publication of Cary's play was instigated by the Howard trial, it is certainly plausible that this was the case. *The Tragedy of Mariam* "evidently circulated for some years in manuscript (Weller and Ferguson, Introduction 6)," before it was published in 1613 (Weller and Ferguson 179), the same year as Howard's divorce proceedings. The Howard divorce was a popular, scandalous affair. Given the excitement and debate it provoked, it is not hard to imagine that a play written by a woman, in which marital duty and divorce figure as main themes, could well have been seen by its seller, Richard Hawkins (Weller and Ferguson, Chronology 179), as a lucrative publication investment. Literature is not, of course, isolated from the extra-textual world, and

the publication of Cary's play may well exemplify how contemporary events (in this case, Howard's divorce trial) influence a text's public dissemination.

Kevin Sharpe and Steven Zwicker, arguing for an interdisciplinary approach to early-modern literature, state: "[t]o isolate literature is not only to deprive its language of the power of these associations [with other discourses] but also to deny the political its highest polemical mode (2. My addition)." The publication of *The Tragedy of Mariam* could have come about precisely because other categories, such as the legal system and the extant Howard case, as well as the potential political interest in a play representing the female perspective on divorce and marriage laws, impacted on the printing market of the time. Cary's play, contemporary with Howard's trial, often challenges the sentiments in Terracae's and Osborne's works. In doing so, it challenges the legal power of the dominant male discourse. It suggests that the law, by limiting itself to policing the wants and needs of a select social group, fails to reflect the plurivocity of society or adequately to protect those outside the most influential *coterie*. Furthermore, Cary's play suggests that not every member of the general public internalised the laws governing them as appropriate control mechanisms.

These works have been chosen because they interact in revealing ways that show the tensions that can occur when two systems of authority – law and public opinion – are confronted by one of the very things they try to control – in this case, a woman who is meant to be subordinate to her husband but is not. The Cary text reveals an often discredited side of public opinion (one conspicuously absent from the Howard manuscripts and most non-literary treatises of the time), the perspective of women who were using legal knowledge to fight in the courts or the home against their husbands. Cary's play, as I have argued, is significant because it portrays

different legal bonds on women and the ways women loosened those binds or struggled against them. The Howard material is important because it would not exist if Frances Howard had not sued for a marriage annulment. Ironically, the woman vilified in the works provides their impetus because she is able to overthrow the social hierarchy using legal means, despite legal and social pressure to the contrary.

All three literary texts in sections four and five represent challenges to legislated social policy by subversive women; dramatic and poetical evidence, perhaps, of the growing female litigation referred to in Chapter One. The texts often overtly suggest that the social values inherent in the mandates of the legal system and laws do not adequately represent empirical values and public opinion. Douglas Bruster argues, in *Drama and the Market in the Age of Shakespeare*, that an important component of the popularity of early-modern plays lies in “the attractiveness of change as a model with which to enfigure the meaning (and instability) of personal relationships” which the plays offered up for audience consideration (13). Read in juxtaposition, the texts imply that no system which tries to define and control normative behaviour can adequately reflect public opinion and practice, because opinion and practice in the empirical world is so widely varied that it denies easy classification and representation.

Before turning to the works themselves, it is crucial to analyse the theological and ideological assumptions that influenced divorce law in order to read the literary representations correctly. Divorce, for all the obvious reasons, depends on being married, and early-modern marital philosophy led to difficulties in obtaining divorce and reforming divorce law. First, then, I will discuss some of the theological and ideological underpinnings that impeded progressive moves towards divorce reform, and locked women into highly constrained legal positions. I will then outline the

state of divorce law up to the time of James I in order to properly contextualise the literature I discuss in the final two sections.

I. IN THE BEGINNING, GOD CREATED MARRIAGE

According to *25 Hen. VIII, c. 19*, 1533, the church courts and canon law maintained jurisdiction over marriage annulment, so long as they did not work “contraryaunt or repugnant to the Kynge prerogatyve Royall or the customes lawes or statues of this Realme (Statutes of the Realm).” This legislation, ratified roughly four years after Henry’s first divorce and England’s break from Rome (A. F. Pollard 26), upholds the absolute power of the monarch whilst ensuring support from the Church by leaving its jurisdiction, on the surface anyway, untouched.

It is surprising that a monarch who was himself divorced at the time the statute was created, would not alter the law that had impeded his own efforts to annul his marriage to Catherine of Aragon. Ironically, even after breaking from Rome to obtain the divorce he wanted, the Church of England’s stance on separation remained such that Henry was forced years later, in his annulment suit against Anne of Cleves, to argue on the ecclesiastical grounds “that her physical appearance was such as to render him impotent,” when he could not lawfully dispose of her with a treason charge (Phillips 77). Possibly, her physical appearance was also the source of “duress” entered in his plea (Baker 563). This is a question better left to historians, but it is possible that the law was worded in such a way as to pacify a religious system left in upheaval after the Reformation.

As A. F. Pollard points out, “never was revolution more skilfully draped as reform (26),” and part of its success may rest in the fact that components of the old system remained in place. In the post-Reformation legal system, “[c]anon law was allowed to remain in force in the ecclesiastical courts, although its authority was restricted and its study at the Universities was forbidden (Kitchin 174).” Another reason divorce law remained vested, in policy, with ecclesiastical courts that upheld

the Roman law of marriage indissolubility was perhaps because of the influence hundreds of years of Catholic doctrine exerted on Anglican theology, as well as on a populace indoctrinated in those Catholic beliefs before the Reformation. Thus, the roots of marriage, the role of women within marriage, and the rules of divorce were still controlled, in policy, by restrictive theological doctrines, making theology the obvious starting-point for any discussion about early-modern divorce law and the female legal subject.

Protestant theology thus maintained the Catholic doctrine that bound the married couple together in a near-impenetrable knot. Godfrey Goodman argued in 1618 that although humans are defective, “there are instruments and tooles appoynted to supplie our defects (A4^t),” and one such “toole” is marriage.⁶ Protestant doctrine taught that “marriage was . . . a state divinely ordained for the procreation of children, the avoidance of fornication, and the mutual society, help and comfort of the couple (M. Ingram 128),” and a number of recurring themes appear in writing of the time to consecrate the matrimonial bond. All of these arguments form the foundations of the canon law jurisprudence that defines a wife’s legal rights in matters of divorce. This section illuminates the three main theological themes that affected divorce jurisprudence, and then illustrates how they interact with the female legal subject.

IA. EVE THE WIFE

The most widely accepted source of marriage in Christian theology, from Augustine to Agrippa and on to the late sixteenth- and early seventeenth-century writers they influenced, is the union between Adam and Eve. In the Garden of Eden, “[t]he sacrament of matrimony, being most ancient, and fyrst after that man was

⁶ Taken from the writings of St. Paul (1 Cor.7.1-8).

made, even at the begynnyng of all thynges, was ordeyned and commanded of god (Agrippa, *Commendation Bi*^f).” Marriage came about because “God himselfe delivered in the beginning; *It is not good for man to bee alone, let us make him a helper meete for him.* Therefore doth hee make him *a helper* (Abbot 44-5),” and woman was created. For this reason, Agrippa argues,

god the maker of al thynges, wold this most holy bonde so to be knit with indissoluble glewe, and persever, that the husbände in his wife, and the wife in her husband, shuld alwayes bothe lyve and abyde, as a bone of bones, a fleshe of fleshe. For this was the fyrst commaundement of god, institutyng matrimony. (*Commendation Bi*^v-*Bi*^f)⁷

Such belief creates an institution in which the man, and the needs of the man, are the firm theological foundation.

When Gouge described in his sermon of 1622 the first meeting between man and woman, he revealed both the centrality of the husband to the marriage power-structure and the role assigned to all women who marry: “at the first making of this Law the woman was brought to him to see how he would like her: and having cast his affection on her, he was to be bound hereby to continue that good liking towards her: as also because of the preheminencie which man hath above his wife (111).” The husband’s needs are clearly first and foremost in this matrix, and as Abbot explains, the creation myth puts all power, even the power to define the woman herself, in the husband’s hands:

⁷ Agrippa’s argument is akin to, and probably influenced by that of St. Augustine, who writes in “On the Good of Marriage:” “a marriage once for all entered upon in the City of our God, where, even from the first union of the two, the man and the woman, marriage bears a certain sacramental character, can no way be dissolved but by the death of one of them (406).”

[u]pon this framing of the woman the man pronounceth, *This is now flesh of my flesh & bone of my bone: she shall bee called אשה, ishah, woman, because she was taken out of אדם; ish, the man: for this cause shall a man leave his father and mother, and shall cleave to his wife, & they two shall be one flesh.* (Abbot 47)

Thus, Eve, who was created to be a wife, is the precedent for women's relationship to men. It is perhaps for this reason that all women "are understood either married or to be married and their desires or subject to their husband (B3^v)," as Dodderidge states in *The Lawes Resolutions*.

Because, as I show in Chapter One, women legally cease to exist as autonomous individuals when they marry, the viable corporeal body of the couple belongs to the husband. Therefore, although God instructed Adam not to eat from the tree of knowledge (Gen.2.3), "yet was it also to be observed by Eve, for as they were conjoined in nature, so were they not to be separated in regard of their precept and grace (Salkeld 147)." As the wife of Adam, Eve was subject to the same legal dictates, whether she was specifically instructed in them or not. For this reason, when she broke the law, going against God and severing her bond with her husband by acting autonomously, the resulting punishment was, from a theological perspective, the most dire – expulsion from Eden and a life of pain and suffering (Gen.3.16).

Thus this first wife put in motion the earthly marital hierarchy which would legally constrain women, and as an analogy, she worked to the benefit of those in authority wanting to maintain the *status quo*. As Elizabeth Clarke and Herbert Richards write in their sourcebook on women and religion, "Eve, strangely enough, does not function as any kind of female symbol in the Old Testament. It was, rather,

the early church fathers who understood what a useful service she might render as a prototype of female sensuality, stupidity, and treacherousness (29).” Thus, by the time of the early-modern period it was believed that women must be submissive to their husbands because God had commanded it at the Fall, and that the responsibility for their subordinate position generally rested with women themselves. The Eve argument has the power of tradition, divine will, and woman’s own fault on its side, and helps to shape not only women’s legal position in marriage, but the perception of women in general in the early-modern period. Furthermore, the early connection between bodies – that woman came from man and is metaphorically reunited with him after marriage – led to the second major trope used to argue against divorce.

IB. CONJOINED ORGANISMS: PEOPLE AND PLANTS

In John Donne’s Elegie XVI, “On His Mistris,” he describes his separation from her as akin to “all paines, which want and divorcement hath (*Poems* 99).” On one hand, he conjures up the emotional trials love wreaks on its participants; on the other, describing divorce as a physical pain, he alludes to the view, asserted by the creation myth, that men and women become one body when they fall in love and to separate them is to metaphorically destroy an organic whole. The two recurring metaphors for this in the early-modern period are either a conjoined body, or plants growing together to form a hybrid whole with two separate root systems – the early form of the family tree. In both cases, the underlying message is the same: in marriage the separate man and woman become one.

Because woman is made from man (Gen.2.21-2), once married, she returns to being flesh of his flesh. Being physically conjoined after marriage makes divorce problematic because as Thomas Gataker explains, “[i]t is easier glewing againe of

boards together, that have been unglewed, than healing up the flesh that is gashed and divided (Gataker 4).” Writing a year earlier, Gouge argues that

[t]he first, highest, chiefest, and most absolutely necessarie common mutuall dutie betwixt Man and Wife, is *Matrimoniall Unitie*, whereby husband and wife doe account one another to be *one flesh*, and accordingly preserve the inviolable union whereby they are knit together. (214-5)

These arguments illustrate the importance of conjoining in marriage indissolubly, and echo Agrippa who argues that divorce is unlawful “because it is lawful for no manne to departe from him selfe, nor no man to leave him selfe (Agrippa Bii^f-Biii^f).” Separation in the early-modern period is not seen as two individuals going their own ways, but as the metaphorical destruction of a single person, who, in legal terms, is defined as the husband.

While heavily impacting on women, the conjoined body metaphor works against the husband as well, to the extent that he becomes responsible for his wife’s behaviour because she becomes a part of him. Gataker explains:

[h]e that hath an evill wife, is as one that hath an evill soule, a guilty conscience, that evermore sticketh by him, that every where accompanieth him. . . For what is said of the one, is as true of the other, the relation betweene them being alike. (6)

Any falling out between the couple reflected badly on the husband because “[i]t is an effect of *Gods anger* to light on a *bad Wife*: *He that God is angrie with, shall fall (into that snare, or) into that pit* (Gataker 61).” Thus, the early-modern wife who mistreats her husband recreates the pain, suffering and wrath of God that Adam experienced at the hands of Eve. In this way, she becomes locked in an argument

that sustains the Eve myth by continually invoking it as the source of female insubordination and male suffering.

Because the creation myth transmogrifies husband and wife into the legally viable husband, women are subject to their husbands and are encouraged to learn their place. Whately writes that

[t]he whole duty of the wife is referred to two heads. The first is, to acknowledge her inferiority: the next, to carry her selfe as inferiour . . . If shee stand upon terms of equality, much more of being better than he is, the very root of good carriage is withered, and the fountaine thereof dried up. (*Bride-Bush* 36)⁸

He invokes the growth metaphor in his argument that sees husband and wife as the roots of the same organic system. This root system, however, is easily gendered to the exclusion of the wife. John Donne, in "Love's Growth," uses the organic metaphor to describe love growing like "grass" in the spring (*John* 4), but in this poem, "love's awakened root (*John* 20)," from which "Gentle love deeds, as blossoms on a bough, / . . . do bud out now (*John* 19-20)," is associated with the penis. Thus, although the growth metaphor does indeed illustrate the intertwining of two loves, the "roots" from which that love grows can have decidedly masculine connotations, thus firmly situating the power of regeneration with the husband, not the wife.

The frontispiece of John Wing's *The Crowne Conjugal or, the Spouse Royall* illustrates the separate organic roots of the husband and wife intertwining above them to form a single growth system, while they face one another holding a burning

⁸ He goes on to instruct the wife to tell herself: "I will not strive against GOD and nature. Though my sinne hath made my place tedious, yet I will confesse the truth, *Mine husband is my superiour, my better* (36)."

heart in their joined hands. The illustration implies that husband and wife stand on equal footing, but the words under the woodcut delineate the parameters of their roles – the husband is the wife’s head, and the wife is the glory of her husband (so long, Wing goes on to explain, as she is subservient [S2^v-S3^r]). Legally, because the



Fig. 2. Husband and wife, woodcut from John Wing, *The Crowne Conjugall or, the Spouse Royall* (Middleburg, 1620) frontispiece.

husband is the woman’s head and they become one after marriage “[a]ll she hath is her husbands (42),” including herself, simply because she was created from man and beholden to him after the Fall.

IC. THE SACRED MARRIAGE BETWEEN CHRIST AND HIS CHURCH

Adding to the solemnity of the physical union between husband and wife is the analogous connection between Christ and the Church. The wedding sermon

preached by R. Abbot in 1608 is a typical example of this tenet. In social relationships, he argues,

the society betwixt the husband and the wife . . . is the roote and foundation of all the rest, most neere & strait in bond, most lovely in pleasance, most commodious in benefit and use; so specially serveth in holy scriptures to describe and set forth that conjunction betwixt God and man . . . to note the union and bond of amitie which is betwixt God and us; God making himselfe the bridegroom; his church and people the spouse and bride. (Abbot 44)⁹

This argument makes the bond between husband and wife analogous to the bond between God and the people, Christ and the Church. As the anonymous Ste. B. explains,

[n]either is there any estate, wherein we may more lively behold, or sensible taste and feele, any sparckle or jot of the Lord our God, his eternall love to us, then in that united estate of man and wife; wherein two persons become but one, which still are two; and mutually owe to other severall dutie [sic]. (1-2)

Thus, the married state is “a lively paterne of more heavenly things (2),” or, the signifier of heavenly love unattainable on earth. As such, “man and wife be the mistery of god (Agrippa BV^t),” and the union between them is given the respect such “mistry” deserves.

The covenant between husband and wife is sacred “because God is the author & witnes of it, in his name it is made, & he shall require the performance of it

⁹Although Abbot uses the term “God,” this can be taken to mean “Christ” in concurrence with other theological texts of the time. This line of reasoning is an extension of St. Augustine’s argument that “the first natural bond of human society is man and wife (399).”

(Abbot 49),”¹⁰ as he requires the union between Christ and the Church, and Himself and the people. If marriage is argued from the pulpit to be the same as people’s relationship with God, in the model commanded by God, then the dissolution of the marital bond implies the destruction of the love between God and the people, Christ and the Church. Such an analogy places the highest level of condemnation on separation, because it creates an atmosphere in which marriage is a point of transcendence, metaphorically connected in a profoundly religious way to the metaphysical.

For women who wanted to exert themselves in the legal sphere, the Christ / Church analogy is inhibitive. It sustains rigid, pre- and divinely-ordained hierarchical roles in the marriage relationship. John Dove preaches that

[t]he man is the womans head, as Christ is the mans head, and God is Christs head, the woman is but the Image of the man, as the man is the Image of God. But there needes be more perfection in the head wherein are all the senses, vegetation & understanding, then in the bodie which hath but vegetation & one only sense, that is feeling; in the body, then in the shadowe; in the archetypus or first forme, then in the Image of the same. (57-8)¹¹

This sermon, echoing St. Paul, Eph.5.22-3, as Milton does in *Paradise Lost*, Book Four when he describes the creation of man and woman, makes the wife’s place clear: her husband is her head in all things; her desires are subject to him as the desires of the body are subject to the head; and her subordinate role requires that she reverence and respect her husband as “unto the Lord,” in thoughts, deeds, and words

¹⁰ See also Gouge 204.

¹¹ See also Gouge 16, 31.

(and not too many of the latter, at that). Thus theologians could allege that “it were better to dwell in the corner of an house top, yea in the wilderness, most desolate and solitarie: and as another saith, with dragons & beares, or other cruell beasts, then with the contentious and froward wife (S. B. 4).” Such a wife overturns the divine will of God and undermines the hierarchical foundation on which the familial matrix is based.

Within these pre-ordained roles Gouge argues it is important that

notice be taken of the particular callings wherein God hath set us, and of the severall duties of those callings, and conscience be used in the practise of them. He is no good Christian that is carelesse herein. A bad husband, wife, parent, childe, master, servant, magistrate or minister, is no good Christian. (16-7)

These teachings are the foundations of social expectations and divorce law jurisprudence. Everyone had their place, and if they were good Christians they would adhere to it.

For women, subordination is an integral part of Christianly behaviour. The wedding sermon preached by Ste. B., however, implies that not all women meekly accepted the role foisted upon them. He argues that “[i]t standeth not in what man and wife shall conclude upon, that there may be peace & quietnes, but what order God hath prescribed them, to bee obeyed in their places (42),” and sternly advises wives to:

look unto the hand of God, which made her the wife, and not the husband, the weaker vessell, and not the stronger? the bodie, and not the head? to obey, and not to rule? that is, not to rule without

obedience. To grudge hereat, is not against the husband, but against
 God withall: to governe otherwise, is not to rule, but to usurpe. (50)

He goes on to reason with his audience, asking, “can this be counted slaverie, or servill subjection? must there not be in some subjection? Can al (in a nation bee kings? Can all in a family bee fathers? can all be wives? can all be every thing (49-50).”¹² The desperate tone of his rhetoric implies an uneasiness which could well have been fuelled by the obvious legal empowerment (and non-servile attitude) that litigious women were embodying by the time of James I.

IV. THEOLOGY OF DIVORCE

The three recurring metaphors described above – Eve, conjoining, and Christ and his Church – create the foundation for canon law divorce jurisprudence and seem to be highly restrictive for women. The arguments from the pulpit lead to a complex theological grounding for marriage law: parallels are drawn between marriage and the pre-lapsarian relationship between Adam and Eve; parallels are drawn between the relationship between husband / wife, God / man and Christ / church; marriage is seen to be the divine ordinance and will of God; and because man and woman transmogrify into the same flesh when they marry, “our Saviour giveth us to understand that the breach and separation betwixt the husband and the wife, because they are but one flesh, is a thing unnatural as is the renting and sundring of one member of the bodie from another (Abbot 47).” Thus, Gouge can confidently preach

¹² No closing parenthesis in text. He is not the only preacher whose work implies insubordination on the part of women. In fact, women who transgress the role urged upon them appear often enough in writing of the time to suggest that it was seen as a serious problem in the early-modern period. For evidence of this, see also: Caussin 475, 499 (although Caussin was French, his translated work found its place into the English-speaking market across the waters, and enjoyed four reprints, the last being in 1638, after its first publication in 1626 [Pollard and Redgrave 1: 218]); *The Court of Good Counsell* C2^r, D1^r; Dillingham 10^v; Gataker 15; Gouge 282, 286-7; T. Taylor, *Good* A2^r; Whately, *Bride-Bush* 25-6, 38-9.

in 1622 that a spirit of discord between a wife and husband “is a plaine diabolicall spirit, contrary to that spirit which is from above; and if it be not cast out, it will cast those whom it possesseth into the fire of hell (Gouge 227-8).”¹³ It is seen to undo God’s intent; it directly thwarts God’s will and is implicitly the work of the Devil. Given this, it is not surprising that divorce was difficult to obtain from the church courts.

As I mention in the introduction to this chapter, however, tensions existed between hard-line theological doctrine and attempts to reform the system that the doctrine sustained. These reform movements in turn imply that some theologians were willing to question the terms of the tenets set out against divorce. Although the marital hierarchy makes a woman’s desires subject to her husband’s, there are indications in early-modern writing to suggest that women were not entirely relegated to social, or even legal, invisibility.

Abbot preaches that the scriptures “teacheth the wife to remember her selfe, as not made of the foote to be troden upon, so neither of the head to be as a master or commander, but of the side; and as though as a companion, yet inferior to her husband (58).” The woman is “of the side” of the man for the simple reason that she was created from his rib: “[f]or they are joined one to another side by side, who walk together, and look together whither they walk (Augustine 399).”¹⁴ The image

¹³ See also Whately, *Bride-Bush* 3-4.

¹⁴ The locus of woman’s creation, the rib, plays an important function in understanding the relationship between men and women. John Salkeld explains that

the woman was not made neither of the most principall, nor of the most base parts of man: not of the principall, lest shee should be too impudent; neither of the baser, lest shee should be too much debased; shee was therefore created of the ribbe, and of that ribbe, which was next to the heart; the one to signifie the mediocritie of her condition; the other to insinuate the esteeme and respect, which both shee should have towards *Adam*, and *Adam* towards her; as also to signifie the heart, love, and fidelitie, which he should beare unto her, who had her being from so neere his heart. (173)

of husband and wife, side by side yet still hierarchically distinct, is a recurring argument in Protestant literature. On the Continent, Calvin's work for early Protestant reform stressed equality between husband and wife "in issues of sexuality, especially, for both husband and wife have equal conjugal rights and responsibilities and an equal right to divorce or remarry (M. Potter 726)." The Geneva Marriage Ordinances of 1561 asserted that a woman could divorce and remarry if her husband were convicted of adultery (Douglass 304).¹⁵ Like the frontispiece to Wing's *Crown Conjugall*, the early Continental reforms imply an equality between the husband and wife, but only within specifically defined parameters. Although these reforms were not accepted in England, some of the philosophy was accepted in Protestant doctrine; thus, an English woman should no more behave as the head of the family or marital unit than she should a servant or slave, which strata would be associated with the "feete" of the social hierarchy.

This "side-by-side" argument makes both husband and wife responsible for maintaining the marital union. Agrippa argues that

a wyfe is the mistery of god. & I thinke that he can not be with sufficient punishment vexed, which was so hardy to flee his helpe, comferte, and succour, and his companion to lyve with, gyven to hym by god, wicked agaynste the holy, a defyler of nature, and injurious to god. (*Commendation Dii*^v)

Dove, writing in 1601, concluded:

This doctrine defines the sort of subjection women to owe men. Because she is made from man, she is subordinate to him, but "let us remember what subjection the wife must yeeld: politique, not servile and slavish subjection: as she was not made of the head of *Adam*, so was shee not made of his feete (10')."

¹⁵ Despite these efforts to reform divorce on the Continent, "with the exception of Henry VIII and a few other cases among the nobility, the liberal attitude towards divorce in Europe did not make its way to England (Auchter 49)."

[h]e which loveth his wife, thinketh the lawe of divorcement superfluous and very needlesse: but where advantage of lawe is required for the undoing of marriage, there hatred appeareth; but where there is hatred of a mans wife, there is also fornication. (A6^v)¹⁶

Unlike the pressures on the husband to remain married, however, for the wife the pressure is twofold – she rebels not only against God, but against the will of her husband whom she should obey in all things.¹⁷

Some women, however, did manage to divorce their husbands despite heavy opposition, because not all theologians accepted woman's legal position in marriage as *de facto* based on the canonical teachings. This inevitably impacted on canon law jurisprudence. Certainly some of Agrippa's writing supports the early-modern reform movement. He notes that the familial power structure is not based on inherent religious truths, but rather the arbitrariness of canon law:

all offyces belongynge to the common weale, be forbydden [women] by the lawes . . . it is not permitted to a woman, though she be very wise and prudent, to pleade a cause before a Juge. Furthermore, they be repelled in jurisdiction, in arbiterment, in adoption, in intercession, in procuration, or to be gardeyns or tutours, in causes testame[n]tary and criminall . . . But the unworthy dealyng of the later lawe makers is so great, that breakyng goddes commaundemente, to stablysshe theyr owne traditions, they have pronounced openlye, that women otherwyse in excellency of nature, dignitie, and honour most noble, be in condicson more vyle than all men: And thus by these lawes the

¹⁶ He goes on to state very clearly that “no divorcement is lawfull” according to the teachings of Christ (1).

¹⁷ As Eve acknowledged in *Paradise Lost* when she tells Adam that he has sinned “Against God only,” whereas she has sinned against God and him (Milton 10: 931).

women being subdewed as it were by force of armes, are constrained to give place to men and to obeye theyr subdewers, not by no naturall, no divyne necessitie or reason, but by custome, education, fortune, and a certayne tyrannicall occasion. (*Nobilitie* 368^v-369^v)¹⁸

He reveals the canon law to be a socially constructed institution designed to create and sustain power structures, and marks how it influences the creation of the female legal subject. Dove, who preaches that men and women who divorce are dishonest fornicators, also unexpectedly argues for the ability to remarry after a separation has been granted, because,

with a restraint from a second marriage, men and women are caused to burne in lust, and defrauded of that benefit which God hath appointed to be a remedie against fornication: and therefore by it, chastitie is not preserved, and by a consequent adultery is committed.

(A7^r)

These counter-arguments led to an environment of reform for divorce law in early-modern England, the most notable contribution to which was Archbishop Thomas Cranmer's *Reformatio Legum Ecclesiasticarum*.¹⁹ Although no legislation came of the reform proposals, the fact that they exist shows that despite hard-line dogma from the pulpit, not all theological arguments accepted the role of women laid out in the canons as the final word on the female legal subject and divorce law, and that the canon law was being reinterpreted by some in ways which could lead to rulings in favour of women in the courts.

The reformist counter-arguments could have created an environment in which, despite heavy opposition, women were able to utilise the legal system in

¹⁸ Original text reads "theym."

¹⁹ The *Reformatio* will be discussed further in section three of this chapter.

matters of divorce, or, as Cary's *Mariam* suggests, were able to obtain knowledge about their legal rights and responsibilities in marriage. The growing numbers of women involved in litigation by the time of James I indicate that not all women took urgings from the pulpit to heart, and some of them subverted the canon laws which attempted to constrain them as silent, chaste and submissive and which tried to erase them entirely as legal subjects through coverture. In many cases, the body rebelled against the head, and, as in the case of Frances Howard, won, despite legal impediments.

II. FAMILY AND STATE: NATURAL POLITICAL IDEOLOGY AND THE SOCIAL RESPONSIBILITIES OF WIVES IN EARLY-MODERN ENGLAND

It is perhaps a miscalculation to separate ideology and theology in examining the beliefs that led to the legal circumstances of women in the early-modern period. Religion is intricately embedded in the social ideas and political movements of the time, and therefore this section will at times unavoidably intersect with the previous one. However, there are some early-modern social truisms which, while they are related to the theological foundation of a divinely-ordained hierarchy, are transformed to the extent that they move away from theology. These, too, deny easy access to divorce. In this section, I outline the social convictions that, along with theology, made up the cultural and intellectual milieu contributing to early-modern jurisprudential expectations of normative female behaviour.

IIA. THE LITTLE COMMONWEALTH

By far, the most prevalent social theory impacting on divorce jurisprudence is the analogy between family and State. Couples were advised to “love, respect and cherish grace one in another (T. Taylor, *Good* 9),” because the husband and wife are the primary social unit of the family, the ultimate foundation for the commonwealth. In general, “the family based on the conjugal couple was the primary matrix of procreation and of the socialisation . . . of the young,” and “the family household was . . . a vehicle for the accumulation and transmission of property, and . . . the fundamental institution of social order and political authority (M. Ingram 125).” The authority the family institutionalised in the early stages of socialisation is that of the king and the patriarchy.

Law, like the “natural” family unit, and the power structures that lie therein, was also seen as a “natural” part of society, “‘like the nerves of the body physical’ . .

. because it was 'caused' by the spontaneous generation of popular usages in the course of time, and because it was established by 'common consent' and confirmed by 'common interest' (Kelley, *Human* 169)." This legal theory is tied very closely to early-modern theories of State which subscribe that "people . . . under lawful and kingly governance, [take] the form of a 'body mystical' analogous to the 'body natural' described by Aristotle (Kelley, *Human* 169)."²⁰ The law, like marriage, is an image of the State – both of which are based on an organic metaphor.²¹ This organic imagery supports the argument that the State functions in a natural way, that the roles of people within the State are naturally predetermined, and that legal machinations are extra-human, a product of natural social growth, and influenced heavily by divine will.

Of course, customs, collective habits and social patterns are not natural but the social constructions which sustain the *status quo*. As Martin Ingram points out, "royal and patriarchal authority were mutually validating reflections or natural manifestations of a divinely ordered hierarchy (125)," and the family, both a part of and a microcosmic manifestation of the natural, divinely ordered hierarchy became analogous with the State itself – "a little Commonwealth, by the good government whereof, Gods glorie may be advanced, and the commonwealth which standeth of severall families benefited; and all that live in that familie receive much comfort and

²⁰ Original text reads "takes."

²¹ Grantley and Taunton inadvertently explain the prevalent use of this metaphor for State, law and marriage:

an interest in the human body might be considered a natural product of humanist interest in the material and philosophical realities of terrestrial existence. Renaissance humanism quite understandably propelled the contemplation of the human body to the centre stage of early-modern culture, whether in respect of the human form in art, or the body as material for self-fashioning, as a source of metaphor, as a contention over sexuality, as a source of political or magical power, or as a signifier of otherness, to name but a few facets of this potent focus of cultural discourse. (5)

commoditie (Dod and Cleaver, *Godly A7^f*)." The social roles attributed to members of the family were considered natural, "for our particular places and callings are those bonds whereby persons are firmly and fitly knit together, as the members of a naturall body by nerves, arteries, sinewes, veines, and the like, by which life, sense and motion is communicated from one to another (Gouge 16)," and out into the larger "body" of society itself.

Patrick Collinson explains that in the early-modern period the connection between church, State and home "was more than a telling analogy. It was believed, for example, by mid-Tudor statesman Sir Thomas Smith, that complex social and political structures had their origins in the family (60)." Therefore, if the family were challenged or disrupted, the hierarchical propaganda of the State it was supposed to represent would have been undermined. Simply, "[t]he reasons of this doctrine are cleere; for the family is a seminary of the Church and common-wealth . . . for in families are all sorts of people bred and brought up: and out of families are they sent into the Church and common-wealth (Gouge 17)." Essentially, from a good or bad family come good or bad church-members and citizens.

It is therefore important that the family functions effectively as a unit which will, ideally, instill in its members the beliefs and values of the model citizen; thus "[m]ariage is a kind of publike action: the well or ill ordering thereof much tendeth to the good or hurt of a family, Church, and common-wealth. For by mariage families are erected, and Church and common-wealth increased and continued (Gouge 204)." These theories suggest that if the family were to disintegrate, two things could ensue: first, the metaphor for a well-functioning State and commonwealth would be undermined; and second, because of this, society would perceive the children of a dissolved family as being unfit to contribute to a well-

ordered State. Thus, to divorce could be considered an uncivil act, because it destroys the very foundation on which society is built.

IIB. THE LIEUTENANT WIFE

In order for a marriage to contribute sound and civil members to society two things were considered necessary: first, the marriage had to be good, and, as Gouge is quoted as arguing on page 119, the key to a good marriage lies first in the individuals maintaining their prescribed roles; and second, perhaps more importantly, the wife has to be a good person (as defined by the prevalent patriarchal ideology and theology), because her role in *lieu* of her husband as ruler of the small kingdom, the private sphere,²² is recognized to be of the utmost importance for raising children and maintaining a happy home.

The good relationship between wife and husband was critical to sustain the “little commonwealth wherein, there are divers societies and degrees, reciprocally relating, and mutually depending one upon another. The highest degree or societie is between the husband and the wife; and this is as the first wheele of a clocke, that turneth about all the rest in order (S. B. 40).” The wife’s role in the microcosmic state was to govern the home “to the honour of her husband (S. B. 44),” or, more plainly, in the way he would have wanted it governed. In fact, according to William Crompton, the fifth duty of a wife is “in governing her little Kingdome; like a well-ordered Army, every one furnisht, hath his place of employment assigned; Lawes enacted (Crompton 4).” The language Crompton uses indicates the close ideological connection between family and State, and highlights a jurisprudentially active role for the wife, who can try and punish under her “lawes,” the household rules.

²² As Dillingham writes, “the mans calling is to handle things abroad; her calling is to deale with things at home (9).”

It is the duty of the wife to run the home because “[t]ouching the other dueties of wives, as to abide at home, whence she is called an houswife, & to keep chastity, they may well bee included in these two; for shee that is a right helpe, shee will remaine at home, and keepe herselfe chaste (Dillingham 10^v).” She is relegated to the private sphere and, in jurisprudential theory at least, that domain is the only place in which she is allowed to wield power (under strict guidance from her husband). In the ideal husband / wife relationship,

[h]ee must instruct, she must learne; he must guide, she must follow, he must admonish, she must hearken; he must allow her cheerefully out of his estate, she must conforme her selfe contentedly to his estate. He must not straiten her, and she must not undoe him: he must trust her, and she must not deceive him: he must not be bitter, and she must not be stout. In a word he must ever account her for his Love, and shee must ever esteeme him as her head. (Hieron 24)

Thus, a woman must conform to the standards which society, in the body of the husband, sets for her, because society determines what behaviour is best to raise ideal citizens.

The ideal woman, so important to a happy marriage, “is like a starre with five rayes, which are the five vertues, of Devotion, Modesty, Chastity, Discretion, and Charity (Caussin 485).” A woman who steps outside those “five vertues” does not fulfill her role as a good wife. Such women are dangerous because “[t]here are noted to be in the hart of a woman the passions of a Tyrant, and should they continually have wheeles and gibbets at their Commaund, the world would become a place of torture, and execution (Caussin 479)” – a world to be avoided indeed! Tellingly, women who do not conform to social ideals are described as

able to give a lesson to the greatest Lawiers in matter of processe, so well are they versed therein: they know all the tearmes of Litigious pleadings better then ever did *Labeon* or *Tribonius*, and they so cunningly make use thereof, that they tyre the strongest patiences by the trickes, and flexibilityes which they invent. (Caussin 475)

The implication is that the bad wife will know about the law, despite impediments, and will use it to undo the men around her.

Although writers acknowledge that despite best efforts some women will rule over their husbands, they agree that if it is done prudently, and carries with it an air of subjection, it is not to be considered wayward behaviour, because “those women know how in time and place to be obedient to their husbands (*Court D1^v*).” However, “there are some such shameles women, that they will not at any time be commanded, but by their exclamations, scolding and brawling, continually: always with-standing their husbands wills and make a mock at them (*Court D1^v*).” It is the latter sort of wife who undoes the foundation of society by destroying her marriage, and this sort of woman is to be constrained or avoided. Contrariwise, the virtuous wife, who is “like well-tuned Virginals, her life is perfect & Musicke: no harsh sounds, nor jarrings strings on her brest: if she intreat, it is with humility; if she complaine, it is with teares, if she chide, it is with smiles: how can she displease, whose harmlesse thoughts are still intent to please (*Crompton 6*),” is ideal and is to be sought out. As an anonymous author wrote in 1621, “there are foure things that deceive a man out of his owne house, smoke, fire, a rotten rooffe, and a churlish wife (*Discourse 79*).” The pressure such ideology places on the wife creates a legal paradox. On one hand, she ceases to exist, on the other, she is the keystone to a successful, smoothly-running Commonwealth.

These social expectations impacted heavily on the female legal subject. As a *feme covert*, the woman was supposed to be “hidden” not just metaphorically by becoming one with her husband after marriage, but also literally by staying indoors and keeping silent. As Aristodemou argues, “[m]arriage in this context becomes less an institution for ensuring mutual love and cooperation than a tool for reproducing patriarchal authority behind the guise of love and consent (98).” Thus, according to ideology, the legal female subject would be no subject at all. Unseen and unheard, she would raise her children and manage her household in accordance with her husband’s wishes and with the State’s best interests in mind. A woman who oversteps these boundaries would confront society as an autonomous, existing, exposed individual, and would subvert and challenge the social assumptions that work to keep her closeted. Furthermore, women who go to law successfully challenge the metaphor for the Commonwealth, in which everyone contributes by happily maintaining their “naturally” predetermined role, because they throw into question a woman’s relationship to her husband and her “natural” place in society.

Despite theological decrees to the effect that “there is no Societie more neere, more entire, more needfull, more kindly, more delightfull, more comfortable, more constant, more continuall, than the *Societie of Man and Wife*; the maine *Roote, Source and Originall of all other Societies* (Gataker 28-9),” and social theories that uphold the family as the primary unit of public life, marriage was not always heaven on earth. As Ste. B. wrote in 1608,

this Image of Gods love, and of our eternall and most happie conjunction with Christ, (he the head, and we the members; hee the husband, and we the wife; hee, our welbeloved one, and we his aswell

beloved) is not to be found in every conjunction (as woeful
experience giveth cause of complaint to many). (4)

Thus, although most theological and ideological rhetoric condemned separation,
canon law did allow for marriage annulment in certain circumstances.

III. DESTROYING THE WHOLE: EFFECTS OF THEORY ON DIVORCE LAW

Separation in early-modern England had three main avenues: the first was private separation which was “thought to be very common in the later sixteenth and early seventeenth centuries, and may well have outnumbered those decreed by the courts (Houlbrooke 118);”²³ the second was the practice of wife-selling, restricted mainly to the lower classes, in which

sales were often pre-arranged, taking place at market or in a pub in order to publicize or validate the exchange. The woman was supposed to give her consent; often she was disposed of to a lover . . . Sales were often accompanied by legalizing actions, including the payment of a market or turnpike toll, the statement of a minimum price, the presence of witnesses or even the drafting of a written agreement (Menefee 2) . . .

and the third was a legal separation granted by the courts. While the first two methods were accepted for the most part as valid (at least until the reign of James I when they were strictly outlawed which, in turn, may have led to the increasing numbers discussed in Chapter One using the formal court systems), this thesis focuses on the legal doctrine of divorce and the shaping of the empirical and literary

²³ In fact, they outnumbered court separations so much by the time of James I, that he enacted *1 Jac. 1, c. 11*, which legislated extreme punishment for private separations:

[f]orasmuch as divers evil disposed persons beinge married, runne out of one Countie into another, or into places where they are not knowen, and there become to be married, havinge another husband or wife livinge, to the greate dishonour of God and utter undoinge of divers honest mens children and others; Be it therefore enacted by the Kings Majestie, with the consent of the Lordes Spirituall and Temporall, and of the Commons in this present Parliament assembled, That if any person or persons within his Majesties Domyions of England and Wales, beinge married, or which hereafter shall marie, doe at any tyme after the ende of the Session of this present Parliament, marrye any person or persons, the former husband or wife beinge alive, and then everie such offence shalbe Felonie, and the person and persons so offendinge shall suffer death as in cases of Felonie. (Statutes of the Realm)

female legal subject. Therefore, I will examine court-based separation practices only.

Officially, there were two types of separation given by the church courts.²⁴ The first was divorce *à vinculo*, which considered the marriage “a nullity from the beginning, and no legal proceedings were needed to make it so (Baker, *Introduction* 560).” This type of divorce could be claimed in marriages where the parties were married before the age of consent,²⁵ for precontract,²⁶ for close blood relationships (consanguinity) which could include any number of degrees of separation, as Figure 3 below shows, for close relationship through marriage or other physical connections,²⁷ for impotence, for physical disability, “if the woman be infected with a contagious disease, that hee [the husband] cannot doo the office of an husband without manifest daunger of his life (Dove 29. My addition),” or present marriage to another (Gouge 180-6).²⁸ If any of these criteria were met, it meant that the marriage

²⁴ Given the sanctity of marriage these two avenues were often seen as theologically inviable. Dove writes that “the first [*à vinculo*] he [Christ] saith may not bee, because it is contrary to the institution of marriage; the second [*à mensâ et thoro*], if unhappily it followe, that for the incontinencie of the one partie, the other partie be grieved and cannot be reconciled unlesse they depart, yet that departure be but for a season, until they can be reconciled againe, and that is no divorcement (28. My additions).”

²⁵ The ages considered too young were under 12 for girls and under 14 for boys. See: Cranmer 92-99; and Baker, *Introduction* 560-1.

²⁶ This was the one condition which underwent emendation during the early-modern period. *32 Henry VIII, c. 38* (1540) stipulates

marriages being contracte and solemnised in the face of the church and consummate with bodily knowledge or frute of childerne or childe being had therin betwene the parties so married, shalbe by auctoritie of this present parliament aforesaid demed judged and taken to be laful good juste and indissoluble, notwithstanding any precontractse or precontractis of matrimony. (Statutes of the Realm)

This statute was repealed by *2 & 3 Edward VI, c. 23* (1548), however, because it relieved persons of precontract, and by Edward’s time, too many people, “after the making of it, very dissolutely come from their first voves, and, as it were in spight of conscience and Ecclesiasticall censure, coupled themselves bodily with such as they newly fancied, slipperily leaving their former Contracts (Dodderidge, *Lawes* 69).”

²⁷ See also Dodderidge, *Lawes* 66 and 71 for a list of the prohibited degrees of marriage.

²⁸ See also Dodderidge, *Lawes* 65-6 and 68-70.

had been invalid *ab initio* (from the beginning). The couple were not considered to be legally man and wife, and there was no impediment to remarry because in the view of the law there had been no marriage to begin with.

The Christen State	Of matrimony.
The first table goeth vpon the man.	The second table goeth vpon the woman.
<p style="text-align: right;">If man may not marry hye.</p> <ul style="list-style-type: none"> Mother. Daughter. Mother in lawe. Daughter in lawe. Halfe sister. Whole sister. Sonnes daughter. Daughters daughter. Graund mother. Fathers sister. Mothers sister. Brothers daughter. Sisters daughter. Fathers brothers wyfe. Mothers brothers wyfe. Wifes brothers daughter. Wifes sisters daughter. Sonnes wyfe. Wifes mother. Brothers wyfe. Wifes sister. Wifes sonnes daughter. Wifes daughters daughter. Graundfathers wyfe. 	<p style="text-align: right;">If woman maye not marry her.</p> <ul style="list-style-type: none"> Father. Sonne. Father in lawe. Sonne in lawe. Halfe brother. Whole brother. Sonnes sonne. Daughters sonne. Graund father. Fathers brother. Mothers brother. Brothers sonne. Sisters sonne. Fathers sisters husband. Mothers sisters husband. Husbands brothers sonne. Husbands sisters sonne. Daughters husband. Husbands father. Sisters husband. Husbands brother. Husbands sonnes sonne. Husbands daughters sonne. Graundmothers husband.

Fig. 3. Prohibited degrees of affinity, from Heinrich Bullinger, *The Christen State of Matrimony* (London, 1541) C1^v-C2^r.

The second form of separation which could be granted by the church courts was divorce *à mensâ et thoro* (from board and hearth). This judicial separation could be sued for in cases of “adultery, cruelty, sodomy, and heresy, or for fear of future injury (Baker 562),” and was the early-modern equivalent of modern divorce law,

with the exception that neither of the parties had the right to remarry afterwards – their bodies were still considered one under law.²⁹

These rules of divorce were so well known that playwrights were able to make good use of them. The most notable literary instance is Ben Jonson's *Epicoene*, the only comedy of the time to end in a divorce. Because "the canon law affords divorce but in few cases (V.iii.67-8)," Morose, the unlikable uncle of the protagonist, Dauphine, is left only with the option of pleading *manifestam frigiditatem*, or impotency, in order to divorce his new wife *à vinculo* (V.iii.158). Epicoene, his wife, refuses to allow the divorce to go through, however, saying she will "take him with all his faults (V.iv.59-60)." Dauphine's allies, Clerimont and Cutbeard, are correct when they announce: "Why then, 'tis no divorce, Doctor, if she consent not. / . . . No if the man be *frigidus*, it is *parte uxoris*, that we grant *libellum divortii* in the law (V.iv.62-4)." Only if a wife complains about her husband's impotence can a divorce bill be granted. In the end, Dauphine reveals Epicoene to be a boy dressed as a woman, and the divorce is easily granted on the grounds of *error personae* (V.iv.189-191), or contract "to one person thinking her another (V.iii.82)." Jonson's characters adhere to the rigid mandates of the ecclesiastical courts, and that his final Act is able to go into the legal detail it does

²⁹ See also Dodderidge, *Lawes* 64. Dove outlines the seven exceptions for granting a separation *à mensâ et thoro*:

if the woman be inforced by violence not giving consent, as *Dinah* was: if by plaine and simple oversight shee bee deceived, taking one for an other . . . if the woman by great presumptions in lawe, and the generall view of the world, supposing her husband by his long absence to be dead, doo by publike allowance without guilt of conscience marry an other: if her husbande himselfe be consenting to her adultery, as *Sara* gave her maide *Agar* to lie with *Abram*, for then it is his fault as well as hers: if hee by refusing to accompany with her hath abused her weaknesse and so given her occasion to fall, he cannot with a good conscience be a plaintive against her: if he knowing his wife to bee incontinent to beare with her for the present time, hee ought not afterward to complain, because lawe doth suppose a reconciliation & forgiveness of the crime, and after forgiveness there ought to bee no punishment. (29-30)

indicates that his audience would have been versed well enough in legal language, or at least the principles of divorce, to enjoy his scenes.

The state of divorce law thus seems rather straightforward, but, of course, the jurisprudence of divorce, and divorce practices, were not as simple as is laid out in the legal texts (or Jonson's play). The tensions that existed behind the law must be examined in order to carry out a cultural criticism using Jacobean literary representations. The next section sets out to describe divorce law as it stood by the early seventeenth century, not just the written law, but the way that law was put to practical use, and how a wife's rights (or lack thereof) were impacted upon under that law.

IIIA. PROBLEMS WITH JURISDICTION: THE CANON AND THE STATUTES

The state of divorce law and the courts during the early-modern period was complicated, to say the least. The divorces of Henry VIII

had bastardised two future queens of England: Mary, the daughter of Katharine of Aragon, and Elizabeth, the daughter of Anne Boleyn. Needless to say, each of them upon her accession restored her legitimacy by act of parliament, and in so doing demonstrated more finally than their father had done the sovereign power of parliament to interfere with the laws of marriage . . . Parliament had begun to do what the medieval Church had considered the exclusive province of God. Even so, the legislation at first interfered only with the interpretation and application of the rules to particular cases, not with the rules themselves. (Baker, *Introduction* 564-5)

This shifting power-base did affect the rules, however, during the reign of Edward VI, when the Marquis of Northampton introduced a new precedent to divorce law. He had been legally separated from his wife and wished to remarry, but because canon law disallowed remarriage, he did not receive permission to do so from the ecclesiastical courts. He disregarded the ruling, married anyway, and then applied to Parliament for legal validation. His new marriage was allowed by a Parliamentary bill (Styve 2: 44-5).

This precedent meant that any theological principle disbaring remarriage after separation “could be dispensed with ad hoc by parliament; and it bore hard on those who could not afford the dispensation (Baker, *Introduction* 566).” The shifting power paradigms within the State and laws led to a system in which the problems inherent in overlapping jurisdictions were complicated by struggles between reformists and conservatives,³⁰ and the outcome was an entanglement of parliamentary and church courts attempting to uphold marriage annulment laws that were not themselves clearly enough defined in the first place to allow uniform application across the various court jurisdictions.

The noted barrister Edward Coke writes that “[t]he law spiritual, is the ecclesiastical laws allowed by the laws of this realm . . . which are not against the common law . . . nor against the statutes and customs of the realm (B5^v).” Thus, although ecclesiastical laws still vested solely with the church courts, these courts

³⁰ The new laws clashed with the laws of the traditional canon, and were sometimes lambasted by theologians:

[d]o not tell me of mens new lawes concerning divorcement, but of Gods olde lawe concerning marriage, for God at the day of judgement shall not judge thee according to the lawe which man hath devised, but according to that which his selfe hath commaunded. But the positive lawe which God prescribed to man in his creation was this, that hee should during his life cleave unto that wife which he hath at the first taken unto him. And that lawe of marriage is by so much more auncient then this of divorcement, as innocencie is before sinne. (Dove 32-3)

had to acknowledge both common and statutory law. If the church courts worked against these latter two forms of law, parties could access other court systems for redress if they had the means. Because the church courts denied access to remarriage, “[t]he only legal way to divorce one spouse and marry another was by Act of Parliament – a difficult, expensive, and uncommon procedure (Sommerville 194).” For women, with little or no legal access to independent funds, the situation was exacerbated. Thomas Heywood’s literary representation of Luce in *The Wise-Woman of Hogsdon*, 1638, offers a female perspective hard to find in non-literary texts.

When Luce’s secret husband intends to marry another woman publicly³¹ she argues with her father:

To claim a public marriage at his hands
 We want sufficient proof, and then the world
 Will but deride our folly, and so add
 Double disgrace unto my former wrong.
 To law with him? He hath a greater purse
 And nobler friends. How, then, to make it known? (IV.ii.121-6)

Her lines give voice to the oft-neglected lower-class women who could find themselves in such a position of thwarted precontract.³² Literature, in this case, gives a much broader view of the system than legal tracts alone can provide. Luce vents her frustrations at a system that effectively bars those who do not have the money and influence to access the Act of Parliament which would give them conjugal rights. Wives, who lost all right to real monies after marriage, would have

³¹ Possibly pursuant to 32 *Henry VIII*, c. 38 which allowed church weddings to take primacy over unsanctioned precontracts.

³² The anonymous *Parlament of Women* refers to this problem as well, and attempts to redress it by castrating men who do not honour precontract.

found it very difficult to pursue a divorce and get permission to remarry through the Parliamentary system. These impediments, as I explain in the next section, were hotly contested by legal reformers of the period.

IIIB. THWARTED REFORM: THE *REFORMATIO LEGUM ECCLESIASTICARUM* AND WOMEN'S MARRIAGE RIGHTS

Because of the problems that overlapping jurisdictions created for separations and remarriages in the time of Henry VIII, theological reformers “believed that the marriages made possible by divorce [remarriages] would contribute more to the totality of morality, just as enforced celibacy and separated men and women [who did not have the legal right to remarry] detracted from it (Phillips 94. My additions).” There was, therefore, a pressing theological need to allow remarriage after divorce because “many innocent parties among the laity had been interpreting these sentences of separation from bed and board as *de facto* grants of permission to remarry (Stone, *Road* 304).” The right to remarry became “a great question depending among the citizens (Strype 2: 44),” and new legislation was required in order to avert ecclesiastical charges of mass bigamy. To further this end, Henry VIII appointed a Commission of sixteen spiritual and sixteen temporal persons “to draw up such laws ecclesiastical as should be thought by the king and them convenient to be used in all spiritual courts (Strype 1: 295).” The product of the Commission, headed by Archbishop Thomas Cranmer, was the *Reformatio Legum Ecclesiasticarum*.

Unfortunately “all this great and long labour of the archbishop came to no effect by reason of the king’s untimely death, and, it may be, the secret opposition of papists (Strype 1: 298).” Despite never being ratified, however, the *Reformatio* clearly lays out ecclesiastical law as it stood at the time of the Commission, and

highlights points of legal contention – the points which Cranmer and his Committee suggested be reformed to better suit, or reflect, the needs of the populace. It is therefore a crucial text for any cultural criticism of divorce law, because it overtly suggests the ways in which laws were seen to be working against the good and the will of society.

The *Reformatio* proposes that divorce be granted for adultery, desertion, long absence, deadly hostility, and prolonged ill-treatment (99-104). It proposes that the “innocent, if desirous, shall be allowed to proceed to a fresh marriage” and the guilty party shall be “condemned to perpetual banishment or committed to prison for life (100).”³³ What is most striking, besides the new mandate that remarriage be allowed, is that for the first time divorce could be granted for abuse. A husband who showed “excessive violence” towards his wife “must be considered his wife’s mortal enemy and a danger to her existence. Wherefore she, in her peril, must be helped by the remedy of divorce, no less than if her life had been openly attacked (103).” The proposed change indicates that wife-abuse was beginning to receive recognition in the early-modern period,³⁴ and was a radical step away from the doctrine which advocated patience and taught that “an unhappy marriage was to be borne as a cross (Phillips 106).” In short, it implies a shift in the definition of the rights of the female legal subject, which would inevitably bear on the construction of the female subject herself.

³³ The problem of remarriage after divorce, as I have discussed already in this chapter, would be dubiously solved under Edward VI by Northampton’s new precedent.

³⁴ Popular songs of the time, particularly those by Martin Parker, often blame the husband for mistreating his wife and show sympathy to women who found themselves in dangerous or unhappy marriages. See, by Parker: *Bonny; Cooper; and Married-Womans*. Women were urged to choose their husbands carefully, lest they end up in a dire situation from which it was legally difficult to extricate themselves.

This is not to say that there was a huge change concerning the physical power men were allowed to wield over women; the *Reformatio*, which offers the most progressive suggestions for legal reform, is quick to point out that the proposed changes do not abrogate the power of husbands when it comes to “restraining wives in whatever ways are necessary, should they be rebellious, obstinate, petulant, scolds, and of evil behavior, provided that the husband does not transgress the limits of moderation and equity (103).” What constituted “moderation and equity” was at the discretion of the judges hearing each particular case.³⁵ Although the *Reformatio* did not become law because Henry died before he could ratify and legislate it, during Edward VI’s and Elizabeth I’s reigns divorces were

granted by the ecclesiastical courts in accordance with the *Reformatio Legum* . . . at any rate on the ground of adultery, and no one questioned the right of parties to re-marry until near the end of Elizabeth’s reign in 1601, when the Star Chamber, presided over by the then Archbishop . . . declared that marriage was by English law indissoluble. (Kitchin 180)

The fact that the *Reformatio* exists at all, however, is a clear indication that some people in positions of power within the law-making system saw divorce law, as it stood, to be an inadequate reflection of the needs of the populace. Unlegislated, the *Reformatio* did not have a far-reaching effect on legal practice, and divorce continued to be difficult for men and women alike. For women, however, the process was exacerbated by their prescribed social role within the hierarchy.

³⁵ The infamous Rule of Thumb springs to mind.

IIIC. THE WIFE FOREVER: DIVORCE CONSTRAINTS ON THE FEMALE LEGAL SUBJECT

Because, as I explained in section IB, the only viable legal body in marriage was the husband's, husbands simply had more legal rights. Even if a woman were prepared to undergo an arduous court annulment, "under English common law an annulment barred the woman from her dower rights (declaring that the union had never constituted a true state of marriage) and bastardised any children born of the union (M. Ingram 145)." Given this state of affairs, the potential legal consequences of marital discord weighed more heavily on women than on men. In fact, Houlbrooke points out that "such strife was a major cause of anxiety, especially to women, among the patients of Richard Napier [astrological physician, 1559-1634] in the early seventeenth century (114. My addition)," because inside and outside the courtroom, it was the wife who most often bore the brunt of social blame for marital breakdown.³⁶ Women were more often answerable to society because in marriage the wife's duty is "[f]irst, that she reverence her husband. Secondly, that she submit herselfe, and be obedient unto him (Dod and Cleaver, *Godly O3*^v)." Therefore, if the marriage were unsuccessful, it was more likely to be the wife's lack of obedience than the husband's inability to guide her (which could, in the end, be blamed on her lack of obedience, anyway) that caused the breakdown.

The prototype for marital hardship is, not surprisingly, the Fall, in which "discord and unhappiness . . . had entered marriage with the . . . beginning of sin (Phillips 99)." The Fall is traditionally attributed to Eve who accepted the apple from the Devil, and "just as the serpent used Eve's weakness to tempt Adam to sin, so the devil did his work of matrimonial destruction through the wife (Phillips 104)." In short, "domestic discord . . . was the devil's work . . . [and] it was the neglect of

³⁶ See for example: B. 55-7, 59, 92-3; Gataker 14, 20, 61; and Gouge 27-9, 277, 281-82.

duties by women upon which most of the immediate blame for the marriage breakdown was placed (Phillips 102-3. My addition).” The early-modern stereotypes of women, which set them up as inherently weak and irrational led inevitably to the idea that they were easily-appropriated vessels for demonic means.



Fig. 4. Wife stabbing her husband with the Devil at her back, woodcut from *The Unnaturall Wife* (London, [1628]) frontispiece.

The frontispiece woodcut to *The Unnaturall Wife* (Fig. 4 above) shows the devil at the wife’s back, influencing her as she stabs her husband. Women do not work autonomously, the picture implies; the devil lies behind their destructive actions.

The presupposed purveyors of all that went wrong in a marriage, wives were not supported by divorce laws of the time. Stone argues that, “most suits launched by a wife were in reality blackmail devices to improve the financial terms of a separation which had already physically taken place,” unlike the “uncontested or nominally contested suits brought by a husband [which] were usually part of a collusive arrangement by which both parties conspired together to prepare the

ground for a parliamentary divorce (183. My addition).” In the latter case, although the wife may have been amenable to the separation suit, it was the husband who more often than not brought it before the parliament,³⁷ and although Stone does not cite any vehemently contested suits, some certainly must have existed in the society described by John Strype, where

[n]oblemen would very frequently put away their wives, and marry others, if they like another woman better or were able to obtain wealth by her. And they would sometimes pretend their former wives to be false to their beds, and so be divorced, and marry again such whom they fancied (2: 182),

thus robbing the wife of any financial claims on him, her dower and illegitimising their children. Such was the state of divorce law for women by the time of James I – the time when Mariam of Jewry, Salome, Doris and Frances Howard stepped out onto the public stage for the audience’s scrutiny.

³⁷ This most likely had to do with the financial constraints marriage imposed on women that I mentioned earlier in this chapter.

IV. MARIAM, SALOME AND DORIS: READING THE FEMALE LEGAL SUBJECT

As evidenced in the previous chapters and sections, Jacobean women who overstepped the boundaries of social customs and theological expectations were seen to be working against statutorily defined power structures, sometimes even in conjunction with the Devil. Elizabeth Cary's play, *The Tragedy of Mariam*, is concerned, in part, with representing the female legal subject – how that subject is shaped by the discourses that impact on divorce and marriage law, and how women can potentially (while safely fictionally) respond to those discourses, legal and otherwise.

Cary's closet drama, one of twelve such plays produced under the influence of Mary Sidney, the Countess of Pembroke (Shannon 144-5), is a genre ideally suited to legal criticism. This form of drama is neo-Senecan, and its content was influenced by the French playwright Robert Garnier, who "frequently used historical events to comment on current developments, including the debate among Protestants and Catholics about the limits of resistance to unjust laws or bad (irreligious) kings (Shannon 144)." It was produced for primarily private circulation amongst a courtly *coterie*. Closet drama is therefore a form of subversive writing, like a circulating court rumour, that challenges the very group it takes as its audience, it is "a vehicle . . . for political dissent;" a form of drama with "oppositional or at least critically reflective connotations (Shannon 146)." The publication of Cary's manuscript in 1613 does not negate its original purpose; certainly "the associations of the closet drama with political or governmental critique are central to the philosophical, constitutional analysis that structures *Mariam* (Shannon 144)." Thus, Cary's play, written by a woman about women, is a crucial starting-point for any cultural criticism of divorce law and the female legal subject in the Jacobean period. Her

characters give voices to wives, or ex-wives, who are haunted by the spectre of the law, wherein other discourses are legitimated and ultimately empowered by state sanction – powers which the Pembrokean closet dramas were produced to critique.

As I mentioned earlier in this chapter, it is quite surprising that most extant criticism of a play so overtly concerned with divorce does not examine divorce law in relation to the represented female legal subject in any meaningful way. The notable exceptions to this are articles by Laurie Shannon and Susan Iwanisziw. However, while Shannon refers to themes that “address the impossibility of moral stability or purity when an authority creates laws whose ‘justice’ operates to the detriment of those to whom the law applies;” the “debates on tyrannies and the issue of obedience to unjust laws (136);” “the ultimate incompetency of Moses’ law to achieve and maintain civil order (147);” and the introduction of “the law as a counterpoint and potential force of resistance to the destabilizing actions that set the tragedy in motion (149),” she fails to bring these observations to any useful conclusion. Her article, despite glimpses of the law and legal subject, reverts back to the well-trodden paths of female chastity and male friendship. Iwanisziw’s article briefly highlights divorce as a component of the play’s plot, and mentions the two forms of divorce allowable in the Jacobean period (112, 117-8), without using these extant legalities for an in-depth analysis of Cary’s characters or text. No critics, in the course of my research, consider the role law plays in shaping the female subjects represented, nor how the portrayal of that legal subject ultimately works in a cultural criticism of law and literature. This section attempts to remedy that gap.

Although Cary’s play is set in pre-Christian Palestine (Cary, *Argument* 67), it reflects Jacobean legal norms. Mariam, Doris and Salome are legally constrained in ways similar to Jacobean women, and the attitudes expressed by the play’s characters

and Chorus have the mark of Jacobean social discourses. As Shannon points out, despite the differences between Moses' and the New Testament's laws on a number of dictates, in divorce law "there was no *new* dispensation, no amelioration of any kind – not during the early Christian period and not in seventeenth-century England. Thus, to the extent Cary raises the issue of law specifically, she is referring to an area of law that the coming of Christ never altered (141)." The restrictions on divorce were such that, even by 1643, John Milton argues in "The Doctrine and Discipline of Divorce" for more lenient separation rulings. In fact, Milton lauds the Old Law of Moses as a superior, more equitable, system (257), to that created by later canonists (247).

With easier access to divorce, he argues,

peace and love, the best subsistence of a Christian family, will return home from whence they are now banished; places of prostitution will be less haunted, the neighbour's bed less attempted, the yoke of prudent and manly discipline will be generally submitted to; sober and well-ordered living will soon spring up in the commonwealth.
(252)

The situation in the seventeenth century was obviously not much improved over pre-Christian Palestine. Cary's play is therefore an ideal vehicle for examining how divorce and marriage laws impact on the Jacobean female legal subject.

The three female characters I focus on in this section embody stereotypes in different stages of marital discord: Mariam is the unhappy wife who rails against her husband; Salome is the evil temptress who wants to put aside her husband; and Doris is the bitter and betrayed divorcée. The only other woman in the play involved in the marriage matrix in a meaningful way is Graphina, "the epitome of traditional female

virtue," who is "chaste, obedient and silent (Beilin 168-9)." Because she so totally conforms to the ideal female legal subject, she will not be discussed at great length in this section. Her relationship with Pheroras, Herod's brother, is helpful to note, however, because it distinctly sets out the hierarchical power relations between men and women. Pheroras commands Graphina to "Move [her] tongue (II.i.41)"³⁸ when she does not respond to him, illustrating a man's right to control women's speech. Her loving declarations to him: "You have preserved me pure at my request, / Though you so weak a vassal might constrain / To yield to your high will (II.i.61-3)," darkly reveal the sexual imperative men had over women of a lower social status; in fact, as the play on "weak vassal" and "weak vessel," a term commonly used to describe women, implies, the power men had over women in general. The fact that Graphina, who so easily accepts and adheres to the social role prescribed to her, is a slave may not be insignificant in any feminist reading of this text.

The women I will be discussing, Mariam, Doris and Salome, represent not only hyperbolised norms, or stereotypes of women, but they also figure the three stages of marriage in which women can be outdone by law. Juxtaposed, they reveal a myriad of perspectives which are significantly lacking in other marital discourses of the time. They rail at the legal system that binds them for different reasons, implying that in very few instances of experience does the system adequately sustain women's needs. In doing so, they challenge the power law has to regulate social interaction and question the way in which it forces subjects into shallow, easily-codifiable positions. The play reveals that law, the vehicle for social cohesion, creates a social paradox, and in doing so, fails to realise its mandates of order and control.

³⁸ Original text reads "thy."

In jurisprudential terms, divorce and marriage law work to maintain order and unity in what, some argued, was the state's most fundamental relationship, marriage. However, under special circumstances, it gave the husband the right to separate, but denied that right to the wife. Shannon argues that by treating women and men differently, "the law authorizes disorder and inconstancy on the part of men, and thus is ultimately inadequate to preserve order in the society (137)." Furthermore, in "authorizing inconstancy between the sexes by allowing husbands to divorce at will, the law thwarts both its legitimating purpose and its intended general effect (Shannon 151)." The chaos into which the play descends – Constabarus, Babas' sons and Mariam die, Pherora and Graphina's marriage is precarious at best, Herod seems to have gone insane with grief, and the only person who comes out unscathed is the evil Salome – only confirms the law's inability to adequately control society or to reflect the needs of the people represented in the play.

This is precisely the way in which a cultural criticism of the law uses literature to question the extra-human, seemingly objective manifestations of the legal system. Cary's play does not allow the law to stand apart, powerfully protected by the other discourses that surround it. Her characters question the ways law works to control relationships between men and women, and in doing so, they ultimately question the social and religious values inherent in Jacobean divorce law.

As I mentioned in the introduction to this chapter, the fact that Cary's play was published the same year as the scandalous Howard divorce, during a period when women were becoming more litigious, implies that the legal debates the play proposes were socially and jurisprudentially relevant. Salome, the most vocal character against the legal system, is vilified in the extreme, whilst Mariam and Doris are represented ambiguously. The fact that these women must be presented as,

at worst, evil, or, at best, ambiguous, indicates the potential for a very real backlash against women whose actions overtly, or even implicitly, criticise the formal systems used to protect the *status quo* – specifically, in this case, the judiciary.

As well as the support offered by my background researches into jurisprudence and the law in previous chapters and sections, throughout my analysis of Cary's play I will interweave non-literary discourses to highlight the ideology and theology which were impacting on the law-making process, and were contributing to the represented world of Cary's play. Certainly, as Diane Purkiss argues, "we ought to canvass the possibility that Cary was just as caught up in these representations, these discourses (although perhaps *differently* caught up in them) as Webster or Shakespeare (28)," making Cary's treatment of women and the law much more complex than the critical approaches that simply relegate it to proto-feminism give it credit for. As a product of early-modern society herself, Cary would have been aware, perhaps even indoctrinated in, extant rules for, and representations of, women: the good wife; the bad wife; the temptress; etc. Thus, extant theological and ideological systems, created and sustained for the most part by men, cannot be discredited in any reading of this play – despite the female author's potential lack of participation in the male-dominated polemic – and can only augment interpretations of the play's characters.

Why Cary's play is important to the law and literature movement becomes apparent in the ensuing sub-sections. Like Thomas Heywood's Luce, Mariam, Salome and Doris offer new interpretations, new represented experiences, of a decidedly female nature, to the audience. These characters broaden the subjective scope of Jacobean legal discourse, showing how it defines its subjects as well as the

potential effects it has on them. Mariam, the unhappy wife, is the first of the three women to appear on stage.

IVA. MARIAM'S HUBRIS: LEGAL DISCOURSE AND THE PERFECT WIFE

Lawrence Stone points out that, in the sixteenth century, "the ideal woman . . . was weak, submissive, charitable, virtuous and modest (*Family* 198)." Herod, Mariam's husband, indicates that Mariam fulfilled those criteria: "To see chaste Mariam die in age unfit. / . . . she pass'd them all / In every gift, in every property (V.i.226-8);" and that "Upon [the female] sex's forehead Mariam sat, / To grace you all like an imperial crown (V.i.163)."³⁹ The fact that he has her executed at the end of the play (IV.vii.498), however, and eulogises her with the above statements, makes Mariam a much more complicated figure than his late laurels suggest. For a Jacobean audience, schooled in the traits of an ideal woman, Mariam would not necessarily have embodied a good wife. In legal terms, she does not fulfill the subjective position required of her. Herod laments that "Her excellencies wrought her timeless fall (V.i.229)." The "excellencies" which "wrought" Mariam's beheading are the manifestations of her "virtuous pride (IV.viii.663):" abstinence and open speech.

Mariam believes that abstinence in marriage is a virtue. She denies Herod intercourse because, she states: "I would not that my spirit were impure. / Let my distressed state unpitied be, / Mine innocence is hope enough for me (III.iii.178-80);" and has sworn that "With purest body will I press my tomb (I.ii.201)." Not only does she not share her body with her husband, but she also declares: "too chaste a scholar was my heart, / To learn to love another than my lord (I.i.27-8)." However,

³⁹ Original text reads "your."

Mariam's notion of chastity is confused (as are the arguments of modern critics who accept her as a model for female virtue, given any historical reading of the text).⁴⁰

During the early-modern period, wifely chastity meant fulfilling a sexual debt to one's husband.

Not the chaste woman, therefore, but the sexualised marriage partner, follows the course of God's work in the doctrine of post-Reformation England. Augustine, who heavily impacted on early-modern canonists, states that "the faithful are married, that they may be chastely joined unto husbands, but for this end the impious are virgins, that they may commit fornication away from the true God (403)." Remaining literally chaste is not the ideal. By refusing Herod her marriage debt, Mariam challenges God's divine plan, and thus, theology teaches, not only rejects her husband but rejects God as well. Any claim she makes for her abstinence offering her easy access to heaven is completely undone by this theological tenet.

In terms of Mariam's position as a legal subject, one of the legitimate reasons for marriage annulment was any impediment "which prevented the essential purpose of marriage, namely sexual intercourse (Stone, *Road* 191)." A husband would therefore have the right to divorce his wife for refusing his bed, simply because the dictate that couples "must lovingly, willingly and familiarly communicate themselves unto themselves, which is the best means to continue and nourish their mutuall naturall love, and by which the true and proper ends of matrimony shall bee attained in best manner (Whately, *Bride-Bush* 43)," is reflected by the law. Marriage is for copulation, procreation and the avoidance of fornication, and Mariam's chastity vow subverts her sexual responsibilities as a wife.

⁴⁰ See for example: Dolan, "Gentlemen" 165-6; Iwanisziw 109, 112, 119; and Raber 322.

Matthew Griffith, writing in 1633, described marriage as “a covenant of God, whereby all sorts of people may, of two, bee made one flesh; for; The Multipling of an holy seed. Avoiding of fornication. Mutuall comforting of each other (A2^f).” This philosophy, common to conduct literature of the early-modern period, finds its roots in the Gospels,⁴¹ and later, as mentioned, in the writings of Augustine, who argues that couples owe each other “services mutually due from either sex, although the members of either be languishing and almost corpse-like, yet of souls duly joined together, the chastity continues the purer by how much it is the more proved.” Simply, he argues, because

in that very debt which married persons pay one to another, even if they demand it with somewhat too great intemperance and incontinence, yet they owe faith alike one to another. Unto which faith the Apostle allows so great right, as to call it ‘power,’ saying, ‘The woman hath not power of her own body, but the man; again in like manner also the man hath not power of his own body, but the woman.’ (400)⁴²

The marriage debt is therefore of the utmost spiritual importance. Although couples may “have intercourse also beside the cause of begetting children; although evil habits impel them to such intercourse, yet marriage guards them from adultery or fornication (Augustine 401).” This sexual “oneness” of flesh is critical to the marriage bond, “for hence subsists the propagation of the human kind, wherein friendly fellowship is a great good (Augustine 403).” I have already explained in preceding chapters how, as a *feme covert*, Mariam’s body would be the legal

⁴¹ Specifically St. Paul I Cor.7.1-9.

⁴² Quoting I Cor.7.4.

property of her husband. To deny him use of that body directly thwarts one criterion of the female legal subject, as well as Herod's legal rights as a husband.

A Jacobean audience, taught about a husband's conjugal rights in church sermons and moral treatises, would have surely recognised that Mariam's abstinence could have severe legal consequences. The play itself reveals that the pre-Christian world Mariam inhabits shared the Jacobean concern for physical conjugation in marriage. Sohemus, Mariam's guardian, urges her to reconsider her position when the news of Herod's death turns out to be a rumour:

Sohemus. Be not impatient, madam, be but mild,

His love to you again will soon be bred.

Mariam. I will not to his love be reconcil'd,

With solemn vows I have forsworn his bed.

Sohemus. But you must break those vows.

Mariam.

I'll rather break

The heart of Mariam. Cursed is my fate:

But speak no more to me, in vain ye speak

To live with him I so profoundly hate. (III.iii.131-8)

Sohemus knows what her role should be: he urges her to be "mild;" "more temp'rate (III.iii.149)." His simple, matter-of-fact statement, that calls attention to itself by disrupting the rhyming pattern of the interchange, "But you must break those vows," highlights the legal conjugal duties a wife owes to her husband; duties Mariam refuses to recognise, and which the Chorus, in its reiteration of the dominant legal discourse, is quick to point out: "Had Mariam scorn'd to leave a due unpaid, / She would to Herod then have paid her love: / And not have been by sullen passion sway'd (IV.viii.659-61)." Unlike Sohemus, who shows genuine concern for

Mariam's well-being, the Chorus is the moralising, faceless entity that comments on the play's action and guides the reader's or audience's responses throughout the drama.

As Iwanisziw explains, "the Chorus in Renaissance closet drama tends to follow its classical function in shoring up traditional social values (111)." The words of the Chorus can therefore be interpreted as the generalised response of the dominant discourse. In the circumstances of this play, Raber rightly points out that "[t]he chorus delineates an extremely narrow view of the domestic sphere women occupy, yet this view is culturally powerful and representative of much conduct literature and political writing on the subordinate role of women within marriage (327)." The Chorus, as the authority that decides whether a character's actions are good or bad, can also easily represent, reading the text within a cultural criticism of the law, the legal system that seems to exist outside human influence, condemning and / or controlling a subject's actions. My discussion in section two of this thesis' Introduction covers this aspect of legal theory, so I will not allocate space to it here. It is sufficient to say that the Chorus, with its constant reiterations of dominant ideological paradigms and the authority it has to pronounce judgment on the play's characters, reflects the structure and workings of the legal system.

The laws of marriage dictate whether Mariam is a "good" or "bad" wife, and, as the Chorus constantly reiterates, under those laws she falls short. She rails against her husband, she does not contribute to a happy home by recognising him as her head in all things, and, because of this, she does not fulfill her legal wifely obligations. The Chorus turns its displeasure on her for two reasons: her attitude towards her marriage debt, and her lack of reverence. Even at the end of the play, when it describes her as "guiltless (V.i.272)," the Chorus offers up two foreboding

lines: “Had [Herod] with wisdom now her death delay’d, / He at his pleasure might command her death (V.i.283-4),”⁴³ suggesting that Mariam is doomed to die, and not even Herod’s wisdom can redeem her from inevitable tragedy.

This may be because Mariam knowingly puts herself in danger, making her even less redeemable within the parameters of the Jacobean female legal subject. She knows that her life would be easier if she accepted the legal obligations of her marriage debt and showed her husband the reverence her legal position demands of her. She tells Sohemus:

I know I could enchain him with a smile:
 And lead him captive with a gentle word,
 I scorn my look should ever man beguile,
 Or other speech than meaning to afford.
 Else Salome in vain might spend her wind,
 In vain might Herod’s mother whet her tongue:
 In vain had they complotted and combin’d,
 For I could overthrow them all ere long. (III.iii.163-70)

Furthermore, although she claims she has taken her vow of chastity “To be commandress of the triple earth, / And sit in safety from a fall secure (III.iii.175-6)” – to safely enter heaven – she describes Herod as her “foe (I.i.12)” and says that “rage and scorn had put my love to flight, / That love which once on him was firmly set: / Hate hid his true affection from my sight, / And kept my heart from paying him his debt (I.i.19-22).” Hatred and anger, not piety, have led to her vow, further undermining her presumption that her abstinence signifies heavenly virtue. Regardless of how innocent Mariam perceives herself to be she openly hates her

⁴³ Original text reads “he.”

husband, and this makes her irredeemable to the Chorus throughout the play, and ultimately to Herod, who sentences her to death.

Mariam dies for choosing to disregard her legal position. In the end, she finally understands the gravity of her situation, and the power law (represented in this play by the Chorus and King Herod) has to punish those who step outside the roles legally required of them:

Am I the Mariam that presum'd so much,
 And deem'd my face must needs preserve my breath?
 Ay, I it was that thought my beauty such,
 As it alone could countermand my death

 Had not myself against myself conspir'd,
 No plot, no adversary from without
 Could Herod's love from Mariam have retir'd,
 Or from his heart have thrust my semblance out. (IV.viii.525-36)

Her words indicate a realisation that the road to happiness in marriage lies in fulfilling her legally binding wifely duties, duties which demand she give herself over “to wise subjection, to loving, and Christian reverence, to faithfull and dutifull obedience (S. B. 92).” As the Chorus points out, “’tis a firmer conquest truly said, / To win the heart than overthrow the head (IV.viii.633-4).” Mariam can certainly be seen to be thwarting her legal responsibilities by disregarding her subordinate position and consequently denying her husband conjugal rights, as the Chorus’ vilification of her constantly reiterates.

When the Chorus first accuses Mariam of “wavering,” however, its attitude seems misplaced. Although Mariam does not fulfill her legal duties in any absolute

sense, Salome is clearly the more sexually “wavering” of the two women throughout the play, a term attached to her by Constabarus at I.vi.474 when he refers to her “wavering thoughts.” Even though Salome is the one involved in murder (I.iii.250, I.iv.286-8) and adultery (I.iv.266-70), the Chorus nevertheless accuses Mariam of possessing “a wavering mind (I.vi.498),” and warns:

To wish variety is sign of grief,
 For if you like your state as now it is,
 Why should an alteration bring relief?

 Still Mariam wish'd she from her lord were free,
 For expectation of variety. (I.vi.511-8)

Variety, the vice of which the Chorus accuses Mariam, again seems to be a misplaced charge. Mariam is not looking for “variety” in male companions; she has sworn abstinence even from her husband. She therefore exhibits extreme constancy, the virtue which counters the vice. However, constancy on the part of a wife is sexualised in Jacobean England, and Mariam fails to realise this. In fact, the Chorus describes her as lascivious,⁴⁴ thus signifying a different value system than one which accepts women to be whorish only if they crave or conquer a number of different men.

In the Jacobean period, the audience would have recognised “wavering” in Mariam’s open and irreverent speech, the second “excellency” which leads to her death, and through which she contravenes her legal subjectivity. When Karen Raber, in her oft-quoted article, “Gender and the Political Subject in *The Tragedy of Mariam*,” asserts that “Mariam, the play’s protagonist, chastely and properly restricts

⁴⁴ Like Augustine, cited on page 142, who argues that “the impious are virgins, that they may not commit fornication away from the true God (403).”

And though she may with reputation live,

Yet though most chaste, she doth her glory blot,

And wounds her honour, though she kills it not. (III.iii.215-

20, 227-32)

Although Raber's article does offer up a useful analysis of gendered politics, to discuss gender and the political subject without acknowledging that in a very significant, gendered, way Mariam contravenes the subject she is expected to embody, leaves Raber's argument incomplete.

Clearly Mariam has spoken openly, caustically, a number of times in the presence of others. She is not, as Gataker would have wives, in 1623, "*a wise a discreet woman: who is therefore . . . a speciall Gift, as a principall blessing of God (7).*" She is not a good wife, whose "heart must bee kept inwardly, in a dutifull respect of [her husband], and shee must regard him as Gods Deputy, not looking to his person but his place; nor thinking so much who and what an one hee is, as whole officer (Whately, *Bride-Bush* 37)."⁴⁵ The finding in Lady Allen's case, discussed in section IIA, Chapter One of this thesis, shows the extent to which a wife's public actions could be controlled by law, and how a wife's public speech, company and movements could be constrained by the legally superior assertions of her husband. By actively speaking out against "Gods Deputy," Mariam again rejects the legal subject commanded of her, and sets herself up for disaster.

This is simply because the rigid marital hierarchy behind canon law defines the wife as subject to her husband and demands that she reverence him as her head. Gouge argues that a "wives [sic] outer reverence towards her husband is a manifestation of her inward due respect of him (277)," and the duties of wives, laid

⁴⁵ Original text reads "him."

out in order of importance by Crompton, dictate that the sixth most important wifely trait is “wisdom and discretion; in speech she openeth her mouth with wisdom, her words are few, seasonable and weighty,” whereas “her piety” and fear of the Lord come last (5). Mariam’s speech, favouring piety over discretion, upsets the order of wifely duties, and directly challenges the laws which would keep her silent, chaste, submissive and deferential to her husband.

As Herod, the signifier for absolute patriarchal power in the play says to her: “I will not speak, unless to be believ’d, / This froward humour will not do you good: / It hath too much already Herod griev’d, / To think that you on terms of hate have stood (IV.iii.139-42).” Therefore, although Mariam presents legitimate arguments for hating Herod: he killed her brother, “Aristobulus, the [loveliest] youth / That ever did in angel’s shape appear (I.i.35-6),” and “His high ascent, alone . . . procur’d,” by killing her grandfather (I.i.44-6), if she accepted the legal subject defined for women, her primary allegiance would be to her husband, not her family.⁴⁶

The entrapping effects of this legal paradigm only exacerbate her hatred for Herod. She admits that

When Herod liv’d, that now is done to death,
Oft have I wish’d that I from him were free:
Oft have I wish’d that he might lose his breath,
Oft have I wish’d his carcass dead to see (I.i.15-8),

simply because, denied the right to divorce, her husband’s death is her only recourse to freedom. In the above monologue, although she derides her husband, she is alone

⁴⁶ Boyd M. Berry argues that the play depicts the shifting ideology of the early-modern (post-Reformation) period from a marital system based only on lineal inheritance to one of companionship (258).

on stage, and therefore her words can be considered safely private, despite audience presence. This is not, however, always the case, as has already been evidenced, and her open hatred for Herod complicates interpretations of her as the chaste wife who works as a dramatic foil to Salome.⁴⁷

Dillingham wrote in 1609 that “whereas men are commaunded to love their wives; wee must not thinke that wives must not love their husbands; for love them they must, and must in no case be bitter unto them (2’).” Herod seems to fulfill his side of the marital contract: he calls Mariam a “rare creature (IV.i.10),” and his “best and dearest half (IV.iii.88).” Mariam, on the other hand, is certainly bitter. When she hears that Herod’s death was a rumour, she announces to Sohemus: “Hate doth appear again with visage grim: / And paints the face of Herod in my heart, / In horrid colours with detested look (III.iii.158-60),” a prime example of both her inability to accept her subjective wifely role and her open, public speech.

While it could be argued that speaking to her guardian does not constitute public speech, as such, the fact that the butler in IV.iv knows about the discussions (169-70), demonstrates that no matter how closeted an interchange may be, court rumour and intrigue soon make any instance of private speech public knowledge. Thus, Mariam’s words, private though they may be by modern standards, directly challenge the canonical teachings that shape Jacobean jurisprudence. Gouge typically argues that

[a]s by gesture, so by speech also, must a wives reverence be manifested: this must be answerable to that. For by words as well as deeds, the affection of the heart is manifested, Out of the abundance of the heart the mouth speaketh. A wives reverence is manifested by

⁴⁷ As Raber supposes she is at pages 322 and 335-6. In fact, the foil to both women, and Doris, is Graphina, the chaste, silent, obedient slave.

her speech, both in her husbands presence, and also in his absence.
For this end in his presence her words must be few, reverend and
meeke. (281)

Mariam openly attacks Herod throughout the play, and her monologue, “in his absence” in I.i, is neither “reverend” nor “meeke.”

Sohemus recognises the dangerous trap Mariam is setting for herself. He worries that she will be “by herself undone (III.iii.148),” and admits that “Unbridled speech is Mariam’s worst disgrace, / And will endanger her without desert (III.iii.183),” or, more correctly, with desert, as extra-textual teachings make clear. He, like the Chorus which demands:

When to their husbands [wives] themselves do bind,
Do they not wholly give themselves away?
Or give they but their body, not their mind,
Reserving that, though best, for others’ prey?

No sure, their thoughts no more can be their own,

And therefore should to none but one be known (III.iii.233-8),⁴⁸

understands the dangerous connection between an open mouth and open legs.

As the Chorus explains:

she usurps upon another’s right,
That seeks to be by public language grac’d:
And though her thoughts reflect with purest light,
Her mind if not peculiar is not chaste.

For in a wife it is no worse to find,

A common body than a common mind.

⁴⁸ Original text reads “they.”

And every mind, though free from thought of ill,
 That out of glory seeks a worth to show,
 When any's ears but one therewith they fill,
 Doth in a sort her pureness overthrow. (III.iii.239-48)

Extra-textual writing makes it clear that the "one" to whom a woman's thoughts should be known is her husband; Herod, in Mariam's case, not Sohemus. As Patricia Parker rightly points out, "the long association in which a 'public woman,' and especially one who spoke in public, could only be called a whore (104)," makes women's open speech sexually dubious, under any circumstances. A Jacobean audience would certainly have been aware of the theological and social pressures on wives to maintain their privately-speaking role within the marriage contract.

Although Belsey argues that "the play as a whole makes clear that what brings about Mariam's death is not her openness with other people but her outspoken defiance of Herod himself (*Subject* 173)," her "unbridled" attitude with Herod makes his connection between her open speech with him and intercourse with Sohemus so much easier. When the butler tells Herod that Mariam and Sohemus have been talking privately, he charges, "Hell itself lies hid / Beneath thy heavenly show. Yet never wert thou chaste (IV.iv.203-4)," and accuses her of being a "fair fiend (IV.iv.213)," making the familiar connection between women, the Devil and unhappy marriage; laying the responsibility for marital breakdown squarely at his wife's feet.

Salome uses the speech / libido analogy to drive home Herod's suspicions about Mariam's infidelity:

Salome. She speaks a beauteous language, but within
 Her heart is false as powder: and her tongue

Doth but allure the auditors to sin,
 And is the instrument to do you wrong.

Herod. It may be so: nay, 'tis so: she's unchaste,

Her mouth will ope to ev'ry stranger's ear:

Then let the executioner make haste,

Lest she enchant him, if her words he hear. (IV.vii.429-36)

When Mariam ignores the subject position that law encourages her to adopt, she puts herself in grave danger. By challenging Herod's position as her head, she enters the trap. The husband "must still be seene to bee the head and husband," and if the wife does not accept that, it "were most uncomely, yea, her very shame and dishonour (S. B. 51);" if she will

not acknowledge her head & king, or will not use the fittest meanes for her rule and libertie; or having what shee would, cannot (or will not) use it to her husbands honor, & thus lay a foundation of contention and strife, Gods wisdom is despised, it cannot be well.

(S. B. 92)

For Mariam, it is not well.

When the Chorus derides her for speaking publicly, it "seeks to ensure that legal doctrine will extend into that place conceived of as the woman's interior, her 'self' figured as her mind (Raber 328)," specifically because, if she shares her mind with someone other than her husband, she challenges his ownership of her person and her loose speech becomes analogous to loose sexuality. It is this for which the Chorus attacks Mariam throughout the play, and which ultimately leads to her death.

Theology of the time would conclude that Mariam has no one but herself to blame. Laws of the time, based on that same theology, would conclude the same:

Mariam does not conform to the legal subject position of a good wife; she refuses to become one with her husband and reverence him in all things; and in doing so, she refuses to perform the role that natural, divine and positive law insists on for women in both marriage and the broader spectrum of Jacobean society.

Wives who are “disdainfull, contemptuous, brawling, impatient, discontented, and disobedient” should “clamour not against thine husbands folly, exclaime not of his rashnes and hardnes; but condemne thy selfe before, and call upon God, to make thee feare and obey thine husband, as a Commander under him (Whately, *Bride-Bush* 48).” Mariam is unhappy because she does not accept the wifely role typically set out by Whately and other writers of conduct literature, and law of the time would give Herod the right to divorce her for her transgressions. In the end, Herod’s ability to separate from Mariam manifests itself in the extreme – her head is severed from her body (V.i.14-5), perhaps implying the emotional severance experienced between the “head” (Herod) and the “body” (Mariam) throughout their marriage.⁴⁹

The social dynamics of the characters overall, however, suggest a much richer reading of Mariam than that proposed by the narrow legal parameters reiterated by the Chorus, Sohemus and Herod, for which she ultimately loses her life. In fact, the Chorus’ condemnation in Cary’s play achieves a two-fold task. On one hand, as I have already argued, it effectively reiterates and represents dominant legal discourse; on the other, its condemnation seems misguided, and it is here that the law is destabilised. For the Chorus to constantly attack Mariam when throughout the play Salome admits to murdering her first husband, causes the death of her present husband, commits adultery and plots Mariam’s demise (I.iii.247-50), is ridiculous.

⁴⁹ A reading analogous to Diane Purkiss’ interpretation of the separation between “the state (body),” and “its ruler (Herod, the head) (38).”

The Chorus' very act of condemning implies that the social expectations used to define the female legal subject are too unforgiving; that patriarchal legal dictates are unjust and essentially impossible. Its misplaced blame suggests that society's strong backlash against women who barely overstep the boundaries set by canon law is ludicrous. Boyd Berry argues that Herod and the Chorus signify the same dominant patriarchal discourse: "the Chorus persistently judges Mariam, just as Herod does, abruptly (263)," and "the patriarch is lunatic (259)," or, as Alexandra, Mariam's mother, puts it, "raging lunacy (I.ii.124)." Mariam is executed by Herod and vilified by the Chorus because she speaks ill of her husband to people outside the marriage and refuses to have intercourse with him. That Mariam dies for speaking and abstaining, whilst Salome remains unscathed and uncondemned by any but her husband (who is silenced by his death at her hands), strains the credibility of the legal discourse that Herod and the Chorus represent.

It is true that Mariam oversteps the boundaries of wifely behaviour. According to legal coverture, the wife's mind as well as her body belong to her husband, and only her husband, after marriage, "the womans speches of the husband behinde his backe, must bee dutifull and respectiue. Shee must not call him by light names, nor talke of him with any kinde of carelesnesse and slightnes of speech, much lesse with despitfull and reprochfull termes (Whately, *Bridge-Bush* 41)," and, as Dod and Cleaver argue, "she should seldome speake, but to her husband, or by her husband (*Godly O7*)." However, as Raber points out, "Cary's play exposes coverture as illogical ideology (327);" an illogicality born from the contradictions in the discourses impacting on the female legal subject. Mariam's situation illustrates the paradoxical effects of the law for the audience, and, in this way, works to question the empirical legal discourse.

On one hand, law decrees that a woman's mind belongs only to her husband, and Mariam's execution implies that the husband is the only acceptable recipient of a wife's social interactions. On the other, Whately's quote above describes a society in which women are not silent, in which wives make "speeches of the husbande behinde his backe." His sermon defines what the tone of those speeches should be, but accepts that they do, and will, exist. As Naomi Miller pointed out, in her 1997 article, early-modern "women managed estates and carried out business decisions during the often frequent absences of their husbands, despite cultural prescriptions apparently limiting their roles to chastity, silence, and obedience (353)." This contradiction in discourses reveals a fracture at the centre of the legal subject herself – the legal definition of her would erase the wife completely; in her lived experience she was often not erased.

Like Mariam, women could, and did, engage in speech outside the home with people other than their husbands, despite legal dictates and courtroom decisions which attempted to work the contrary. As Dolan argues, "[g]iven prohibitions of women's self-assertion and public action, to represent them as speaking and acting is already to disclose a contradiction at work ("Gentlemen" 158)." The open speech of Cary's Mariam exposes this legal paradox. The law is revealed to be not a mechanism for cohesion, but a patriarchal fantasy. In fact, the "[p]atriarchal dreams of control implode wholly" throughout the play (Berry 265): Mariam disregards the mandate for public silence and refuses to give her body to her husband; Salome is a husband-murdering adulteress; and Doris returns to destroy Herod's and Mariam's children and to reinstate her and Herod's son as the heir to the throne. The female legal subject Mariam embodies is shown to be unstable, caught between the legal imperative for silence and the empirical experience of speech and action.

Chapter One and section IC of this chapter demonstrate that many women did not blithely accept the constraints legal doctrine placed on them. The legal subject of the silent wife who accepts her subservient role is not sustained empirically, as the evidence of Chapter One and the introduction to this chapter show, and is not a part of this specific literary representation. Women did speak, some of them very loudly, and juxtaposing Mariam's behaviour to Salome's implies that there are far worse things a wife could be doing than railing against her husband and refusing his bed. Mariam's story illuminates how unjust it is for society to punish women whose only real crime is public speaking, and reveals the contortions the female subject has to endure under a legal paradox. The suggestion is, of course, that legal condemnation of such behaviour is a misplaced social dictate.

What is overtly clear in the representation of the unhappily married wife in this play is her lack of choice and recourse to law. Her legal entrapment in a marriage to a man she hates ultimately causes her death. The only agency she can exert, denied access to divorce, to remedy her situation is through speech and abstinence. In the play's opening scene, she says: "blame me not, for Herod's jealousy / Had power even constancy itself to change: / For he, by barring me from liberty, / To shun my ranging, taught me first to range (I.i.23-6)." She describes her marriage as a "prison (III.iii.151)," and she admits she was able to love Herod "when virgin freedom left [her] unrestrain'd (I.i.72)."⁵⁰ Mariam's position illustrates how marriage and divorce law work to constrain the female subject, to deny that subject entry into the public sphere, and to create an impossible legal situation for women; a situation in which the only way to fulfill law's requirements would be to stay indoors, speaking to no one, preferably lying naked on the husband's bed.

⁵⁰ Original text reads "me."

Mariam, who is a good wife in comparison to Salome, shows the impossibility of women's position within the narrow view of divorce law. Despite her manifest inability to live up to the ideal female legal subject, Mariam does follow the legal dictate on divorce – she stays with her husband, even though she hates him, and it is perhaps for this reason that, after her death, she is redeemed through him when he declares: “Her excellencies wrought her timeless fall (V.i.229).” In the end, Mariam must die to separate from Herod – she announces on the scaffold: “My soul is free from adversary's power (IV.viii.570),” gratefully going to her death. Conversely, Salome's husbands must die so she can separate from them.

IVB. SALOME THE TEMPTRESS: VILIFYING THE LEGALLY ACTIVE WOMAN

Like Mariam, Salome does not fulfill her wifely obligations. She openly engages in speech with another man, and her husband echoes the Chorus' attitude towards Mariam when he discovers her in private conversation: “Oh Salome, how much you wrong your name, / Your race, your country, and your husband most! / A stranger's private conference is shame, / I blush for you, that have your blushing lost (I.vi.375-8).” Like Mariam, Salome is not a wife who “*in subjecting themselves aright to their husbands are subject to the Lord,*” but rather one who “*in refusing to be subject to their husbands, refuse to be subject to the Lord* (Gouge 29).” She is the kind of woman an anonymous author described in 1607 as “shameles . . . that they will not at any time be commanded (*Court D1*’).” Like Mariam's, her desires upset the early-modern divinely-ordained legal position of the wife.

Dod and Cleaver warn, in their treatise on the good Protestant family, that wives who rail against their husbands should “beware of disordering and perverting the course which god in his wisdom hath established: and withall let her

understand, that going about it, she riseth not so much against her husband, as against God (*Godly O8^f*).” Salome, like Mariam, is the type of wife who

was made for *a helpe* to prove not an helpe but an hurt: for her that was given for a blessing, to prove a crosse and a curse. As one saith of Eve, *reast from Adam as a rib, and shot by Satan at him as a shaft*: bestowed on him by God to consummate his felicitie, but made by Satans flight and her owne default, the meanes of his extreme miserie.

(Gataker 20)

As her husband, Constabarus, tells her: “Heaven knows that you have been my comfort chief, / Then do not now my greater plague appear (I.vi.381-2);” and, “Didst thou but know the worth of honest fame, / How much a virtuous woman is esteem’d, / Thou wouldest like hell eschew deservèd shame, / And seek to be both chaste and chastely deem’d (I.vi.391-4).” Like Mariam, the jurisprudential mandate for a stable hierarchy traps Salome in an unsustainable position, where she sees death (the death of her husbands) as her only escape. However, unlike Mariam, Salome tries to do something about her legal position: she attempts to use the divorce laws normally allowed only to men to escape her marriage, and perhaps for this reason, unlike Mariam, she remains unredeemed at the end of the play.

Her overt forays into the male-dominated legal system cause a strong backlash against her, and make her the play’s most exciting female character. As Iwanisziw rightly points out, “Salome’s highly successful intrigues, which drive the entire plot of *Mariam*, and her indomitable sexual ambition that in combination contrive the Machiavellian disposal of her husbands, render her a hugely diverting figure (111).” Weller and Ferguson, in their introduction to Cary’s text, argue that Salome’s appeal lies in her descent from “the Vice tradition of medieval drama . . .

whose plots create the plot, whose malevolently inventive activity is the very mainspring of the play's theatrical life (39-40)." In terms of the ideal female legal subject, "Salome successfully denies the patriarchal order, both domestically and politically, by recognizing its inconsistencies, refusing to allow any code to define and contain her (Raber 336)," much more aggressively than Mariam ever does.

Although an exciting figure in the play, there is no doubt that Salome's plots are extreme – she does not necessarily have to murder the husbands she would leave yet her character is strangely sympathetic. I would argue that Salome, despite her murderous actions, is made less heinous through Cary's use of revenge tragedy motifs.

Like the tragic revenger, Salome is not "able to procure justice by law (Bowers 36)," and according to some early-modern writers, when "the Magistrate is absent; either for a time, and his stay be dangerous; or altogether, so as no helpe can be had of him, nor any hope of his comming. In this case, God puts the sword into the private mans hands (Perkins 293)." This "wild justice," as Francis Bacon calls it in "Of Revenge," is tolerable in situations "which there is no law to remedy (72)." Although private revenges had been outlawed by the time of Elizabeth I, "the idea of redress by private action was still very much alive (Bowers 16)." In James I's reign, the tendency to private revenge increased with the arrival of many Scots in London, who followed James to his new seat of power, and who had been influenced by "[t]he weak state of the law in Scotland (Bowers 18)," which made private revenge a common Scottish form of redress.

Because the right to private revenge for perceived injustice continued to play a strong role in the Jacobean social framework of the plays, "sentiment was on the side of the revenger (Bowers 10)." Although Cary does not strictly adhere to the

revenge tragedy formula (Salome remains alive at the end of the play, for example), the audience could well have recognised the need for private revenge in her case. The law does not accept Salome's suit, and importantly, it is only after she realises that she cannot access divorce legally that Salome plots the murder of her second husband, Constabarus.

Ironically, audience sympathy may also have been enticed by Salome's gender. As Eileen Allman argues, "[f]emale characters [in revenge tragedies] are idealized not when they still their voices but when they raise them, when they cast off their presumed social subjection and assume authority (18-9. My addition)." When Salome calls for legal redress and finds she is barred from it because of her sex, she raises her voice very loudly indeed (to the ultimate demise of Constabarus) against a system that is biased in the favour of men, and that denies women the same legal rights to divorce as their male counterparts. Charles and Elaine Hallett surmise that "[t]he revenger, seeking to comprehend the meaning of his situation and frustrated by the seeming injustice of it, became for the playwrights an emblem of Man himself (6)," or in this case, Woman herself, facing the frustrations of a seemingly extra-human, sexist legal system. Although Cary does not adhere to the tragic revenge genre in any absolute way, the tragic revenger, who pursues justice in the face of an uncaring legal system, lurks behind Salome's words and actions, potentially inciting some audience support for her extreme plots.

Salome gives voice to women's frustrations in the face of a system that works against them, and her solution to her constrained position acts as a double warning to the play's audience. Firstly, it can be read as a caution to wives who hate their husbands, an entreaty to bear their burden or be publicly condemned (Constabarus notes "How ill Judea's mouth doth censure" Salome [I.vi.388]); secondly, however,

it can be read as a warning to the law-makers and those who sustain it, a representation of the social chaos that can occur when a system denies rights to some of its populace, but gives those rights to others; the social breakdown that can happen when the law denies people a non-violent option.

Salome is overtly critical of the institutionalised ideology that entraps her. She rises up against her husband and the legal system; she demands equal rights; and she tries to use legal processes to free herself from marriage. In doing so, she represents not just a bad wife, or even a tragic revenger, but also the women who were knowledgeable about and active in Jacobean legal matters. Her portrayal reflects the extra-textual disruption of the female legal subject wrought by the women who were increasingly using the law between the time of Queen Elizabeth I and King James I. Salome's straightforward approach to marriage and divorce laws (she denounces them as unjust and openly fights against them) makes her a less complicated character than Mariam, whose fatal flaw lies in misinterpreting the ethos of legal and social tenets.

Salome's words are revolutionary; her actions extreme; and her appeal lies in these very qualities. However, her words and actions are less shocking when read within a cultural criticism of the law, which places representations of the legal subject firmly within the extant discourses that shape it. In such a reading, Salome figures the women discussed in Chapter One, section IIC who used law and were consequently attacked by writers of theological literature, sermons and conduct books. She also represents the changes to the legal system and jurisprudence, discussed in Chapter One, sections I-IC, which were affecting early-modern English legal practice.

In terms of wifely duties, whereas Mariam dies for her open speech and irreverent attitude to the men around her, the least of Salome's crimes is railing against her husband, who charges: "You have my patience often exercis'd, / Use make my choler keep within the banks (I.vi.405-6)." The litany of Salome's transgressions puts Mariam's to shame: she had her first husband, Josephus, slain so she could marry Constabarus (I.iii.244-56); she commits adultery with Silleus (I.v.329-38), whom Weller and Ferguson describe as a "blank, and more or less arbitrarily chosen, surface on which she can inscribe the shape of her desires (Introduction 40);" she is outspoken in her criticism of patriarchal legal values (I.iv.305-12); and she is responsible for Constabarus' execution (III.ii.69-83 and IV.ii.83).

She is the kind of women who is dangerous to her husbands in the extreme, and even Silleus, her new lover, uses rhetoric that highlights her desire for domination. When he hears she will become his queen, he exalts: "Arabia, joy, prepare thy earth with green, / Thou never happy wert indeed till now: / Now shall thy ground be trod by beauty's queen, / Her foot is destin'd to depress thy brow (I.v.345-8)." His loving words conjure up the image of a woman trampling on a man's face, and evoke a world completely different from that in which wives stand silently below their husbands on the hierarchical scale. Because Salome would be expected to be subordinate, Silleus' metaphor is inappropriate and only serves to make her less sympathetic by underscoring masculine anxiety about "mannish women."⁵¹

Her violent actions make her demonic to her husbands, but surprisingly not to the public voice of the Chorus. Iwanskiw argues that "Salome's activities fail to

⁵¹ The anonymous *Hic Mulier: or, The Man-Woman* reveals the anxiety aggressive, active, women could engender.

evoke choral contempt because she embodies no virtue and her vices already exemplify female weakness (111).” Perhaps they also fail to evoke Choral contempt because of the revenge motifs that surround her. However, there is little need for the Chorus to comment on the evils that the audience can so plainly see for itself, and Constabarus does an excellent job playing the Chorus for her, commenting on her unwifely attributes from a position firmly within the dominant discourse.

He draws on many of the early-modern tropes I have already discussed to vilify her, and significantly these are the same stereotypes that law uses to justify female constraint. He associates her with demonic evil, raising the familiar woman / serpent / death metaphor, when he tells Silleus not to trust her:

She merely is a painted sepulchre,
That is both fair, and vilely foul at once:
Though on her outside graces garnish her,
Her mind is fill'd with worse than rotten bones.
And ever ready lifted is her hand,
To aim destruction at a husband's throat:
For proofs, Josephus and myself do stand,
Though once on both of us she seem'd to dote.
Her mouth, though serpent-like it never hisses,
Yet like a serpent, poisons where it kisses. (II.iv.325-334)⁵²

The connection between the serpent and marital discord would have been obvious to a Jacobean audience taught that the serpent / Devil was responsible for the first instance of marital disharmony (wrought though the woman) in Paradise, an act

⁵² Constabarus echoes Matt.6.19-33, which admonishes respect for earthly treasures and physical beauty. This is a common device in literary representations of the time, appearing, for example, in John Webster's *The White Devil* (I.ii.148-9, III.ii.62-7) and John Marston's *The Insatiate Countess* (III.iv.85-6).

which led to the Expulsion and the spiritual death of humankind. From a patriarchal perspective, women like Salome are in league with the Devil.

From her perspective, however, Salome transgresses social and legal taboos out of necessity, and it is here that the revenge tragedy motifs are most apparent. The legal subject she is meant to embody under early-modern law denies her the right to leave her husband and to remarry if he is still alive. As in Mariam's case, death is the only way Salome can see to free herself. She says, "Salome, thy tongue / To Constabarus by itself is tied / And now, except I do the Hebrew wrong, / I cannot be the fair Arabian bride (I.iv.277-80)." She knows that her marriage vow makes her person, including her thoughts and desires, subject to her husband. She also realises that unless she "does the Hebrew wrong" she will never be able to leave him.

Ironically, by using her agency to wed him, she has legally negated herself. Thus, Salome is not the foil, but rather "the active double of Mariam's passive resistance to patriarchal power and to definition by the male (Weller and Ferguson, Introduction, 40)." Unlike Mariam, who fails to understand the legal ramifications of her behaviour, Salome indicates that she does understand the implications of rejecting her husband; she seems to be familiar with the tenet that a wife "must be with condition to submit herself unto him, acknowledging him to be her head, that finally they may so agree in one, as the conjunction of marriage doth require (Dod and Cleaver, *Godly O7'*)" – she acknowledges that her tongue is tied because she is married.

She also knows the wider social expectations of wifely duty and obedience. She acknowledges that she transgresses when she does not remain faithful:

'Tis long ago

Since shame was written on my tainted brow:

And certain 'tis, that shame is honour's foe.
 Had I upon my reputation stood,
 Had I affected an unspotted life,
 Josephus' veins had still been stuff'd with blood,
 And I to him had liv'd a sober wife.

.....

But shame is gone, and honour wip'd away,
 And Impudency on my forehead sits. (I.iv.282-94)

Salome admits that she is trapped by “the principles of Moses’ laws, / For Constabarus still remains in life (I.iv.299-300),” that she is part of a legal system in which only her husband’s death will leave her free to marry, even if he chooses to divorce her himself.

In fact, it is not Mosaic law that entraps Salome. If Constabarus were to divorce her, she would be free to remarry (Deut.24.2-3). The legal situation she describes is early-modern, not pre-Christian. In the time of James I, a husband and wife were bound together for life, even if they did successfully separate *à mensâ et thoro* in the courts. However, as shown in section IIIA of this chapter, often men would apply to have a new marriage ratified, whereas wives, who could not afford the action, were unable to do so.⁵³ Thus Salome is trapped not by the laws of Moses, but by the laws extant in Cary’s time, which worked to deny the wife access to remarriage, despite divorce.

Salome rants at the injustice of the difference between her legal situation and Constabarus’: “If he to me did bear as earnest hate, / As I to him, for him there were an ease; / A separating bill might free his fate / From such a yoke that did so much

⁵³ In practice, the legal constraints on people in the lower hierarchical strata were often simply ignored. Strype bemoans the fact that “divorces increased much; yea, and marrying again without divorce; which became a great scandal to the realm (Strype 2: 184).”

displease (I.iv.301-4).” Constabarus makes his claim to legal superiority apparent when he fights Silleus and effectively divorces her, announcing: “I willingly to thee resign my right, / For in my very soul I do abhor her (II.iv.361-2);” he resigns his right to her self, body and mind, while conjuring up the right which is his to exercise, the right to keep her or to give her away. Although Salome claims the action as her own (at IV.ii Pheroras tells Herod that Constabarus is “from Salome divorc’d [79],” because “she was by her love to you enforc’d / To leave the man that would your foes relieve [81-2]),” in practice it is Constabarus who has the power to dictate the state of their union. Salome abhors him, as he does her (I.vi.416-9), but does not have any legal recourse to the remedy she seeks. The two-line ease with which Constabarus is able to dispose of her only highlights the discrepancy that exists between men’s and women’s legal prerogative.

Her murderous plots are thus represented as being born from the legal frustrations she experiences as a woman. She killed her first husband so she could marry Constabarus, and now feels she must kill Constabarus to marry Silleus. She does try to use the law to solve her problems, but is denied access to it. When she tells Constabarus that “I from thee do mean to free my life, / By a divorcing bill before I sleep (I.vi.419-20),” his response is to reiterate the importance, the imperative, of the social order:

Are Hebrew women now transformed to men?

Why do you not as well our battles fight,

And wear our armour? Suffer this, and then

Let all the world be topsy-turvèd quite.

Let fishes graze, beasts [swim], and birds descend,

Let fire burn downwards whilst the earth aspires:

Let winter's heat and summer's cold offend,
 Let thistles grow on vines, and grapes on briars,
 Set us to spin or sew, or, at the best
 Make us wood-hewers, water-bearing wights. (I.vi.421-50. Editors'
 addition)

His attack is a pat defence of the indoctrinated "natural" social hierarchy and the laws that sustain it, evoking images of the world turned upside-down, which "occurs commonly in English tragedy, ballad, complaint, satire, etc., from the earliest times (Donaldson 23)." Such a world, created by "strange cosmic upsets . . . reversals in the normal relationships between animals and men . . . [and] reversals in the normal relationships between people (Donaldson 22-3. My addition)," endangers the power bases of the natural hierarchy.

Law's role in maintaining hierarchical power structures is important to Salome's position. If the hierarchy does not "naturally" maintain itself of its own accord (and given the fallacy of a "natural" hierarchy this is bound to be the case), those who were most likely to benefit by its implementation (i.e.: upper-class males) could, and did, legislate women into subordinate legal positions. Salome derides the legal prerogatives men give to themselves, and questions the validity of a social discourse that denies agency to half the population. She directly attacks the legislated *status quo*, saying:

Why should such privilege to man be given?
 Or given to them, why barr'd from women then?
 Are men than we in greater grace with Heaven?
 Or cannot women hate as well as men?
 I'll be the custom-breaker: and begin

To show my sex the way to freedom's door,

And with an off'ring will I purge my sin;

The law was made for none but who are poor. (I.iv.305-12)

She further asserts, "Though I be first that to this course do bend, / I shall not be the last, full well I know (I.vi.435-6)," to which Constabarus replies, "Till now that fourteen hundred years are past, / Since first the Law with us hath been in force: / You are the first, and will, I hope, be last, / That ever sought her husband to divorce (I.vi.435-6)." Salome wants, as Constabarus makes clear, to "[r]everse all order (I.vi.458)." Indeed, the way Constabarus describes it, she will bring chaos into the whole world through her desire to divorce her husband.

Salome is therefore perceived by Constabarus to be a monstrous, destructive, creature, "a kind of Monster in Nature" as Caussin describes assertive women (477), because in rejecting her wifely position she becomes "unnatural," a creature who does not follow "nature's" hierarchy. Jordan argues that "[w]hen a wife's disobedience can be clearly established . . . her subordinate status and its political consequences are emphasized (293)." Constabarus' vilification of Salome (as well as any acceptance of his arguments as valid) must employ the mandates of wifely duty and subordination in order to sustain its position. His misogynistic tirade before his execution against all women except Mariam, highlights why women are subordinate by law: "[y]ou giddy creatures, sowers of debate, / You'll love today, and for no other cause / But for you yesterday did deeply hate; / You are the wreck of order, breach of laws (IV.vi.329-32)." He makes it clear that women who do not submit to wifely obedience, chastity and silence, transgress the law, and thus upset the social order law sustains. As Raber explains "[f]emale characters like Salome . . . become monstrous and unnatural precisely because they inhabit that gray area

early-modern theories of absolutist patriarchal monarchy find so difficult fully to account for (337),” a grey area occupied not only by fictional women, but by extra-textual women who went to law as well.

Furthermore, Salome’s “custom-breaking” speech remarks on the power of precedent and the machinations of the Jacobean legal system. There has been much extant analysis of this particular speech: N. Miller states that the “‘door’ for Salome seems to consist of skill at manipulating men rather than a resolve to stake out an alternative locus of authority (362);” Raber argues that “[m]ore disturbing to the type of paradigm for gender roles articulated by the chorus, however, is the series of propositions she offers, that virtue is skin deep, that women should be equal to men . . . that freedom is for the rich only (336);” and Iwanisziw asserts that Salome’s speech “only highlights Salome’s acknowledged sinfulness, her indifferent piety, and her hypocritical claim to speak for other aristocratic women (112).” Unfortunately, these interpretations deny the text its connection to the empirical legal and jurisprudential framework of Jacobean England.

Salome clearly knows how the legal system works; as the sister of the King she has the funds to petition for a bill of separation, like the upper-class men who, by the Jacobean period, could afford to petition Parliament to have their separations ratified as divorces. While it is true that Salome easily embodies the stereotype of the manipulating, scheming, devilish woman, the “door” to which she refers has not been opened by a woman before, and, thus, her motives aside, she understands that creating a precedent for females to divorce *would* enable “an alternative locus of authority” for other women, who could then follow her to law.

Salome’s divorce plan offers “a strikingly direct alternative to Mariam’s careful (and finally unsuccessful) negotiation of conflicting moral [and legal]

imperatives (Weller and Ferguson, Introduction 40. My addition).” Although Salome’s motives are suspect, her legal philosophy is not. She tells Constabarus “I mean not to be led by precedent, / My will shall be to me instead of Law (I.vi.453-4),” to which he replies, “I fear me much you will too late repent, / That you have ever liv’d so void of awe (I.vi.455-6).” This brief interchange highlights the philosophical contortions that the Jacobean legal system was undergoing: the jurisprudential shift from viewing law as an extra-human force, driven by divine and natural dictates that are to be accepted, unquestioningly to understanding that law can be controlled by interpretation, precedent and equity.

Salome, the legally-savvy woman, who will not “be led by precedent,” but will create her own, describes the new form of Jacobean jurisprudence. Constabarus, on the other hand, rallies behind the older, unquestioning, system of legal doctrine. The point of contradiction in their argument reflects extra-textual tensions that existed between the old system and the new, as well as between the competing jurisdictions of canon law courts, which upheld the law to which Constabarus refers, and secular, Continentally-influenced courts trying to rework legal practice, which Salome would prefer. The fact that she refers to the jurisprudence that made law more accessible to women, and is herself a woman wanting to use the law, may not be a coincidence.

However, unlike some actual women, who did use the law courts to separate from their husbands, Salome is firmly trapped by a jurisprudence that favours the husband over the wife. As she explains to Silleus,

In this land we have an ancient use,
Permitted first by our law-giver’s head:
Who hates his wife, though for no just abuse,

May with a bill divorce her from his bed.

But in this custom women are not free,

Yet I for once will wrest it. (I.v.33-8)

Her ultimate inability to be “the custom-breaker” and “wrest it,” to provide the precedent for women who want to divorce, leads to private violence. In this case, the legal system creates its own monsters: with access to divorce, Salome’s representation might have been much different – a woman who simply avails herself of the legal rights available to her. In the early-modern period, however, this is not possible. The clause which binds married couples, “till death do them part,” in the wedding contract, ensures that only her husband’s death will allow Salome to remarry.

The fact that she calls upon the new legal philosophy of precedent, and is the only character who ultimately gets exactly what she wants without having to die for it, complicates any representation of Salome as an evil woman. Undeniably, her actions are specifically illegal and in that sense she is easily condemned. There is, however, a much more complex reading of her available within the text’s jurisprudential context. The tensions between old and new, traditional and reformist, conservative and progressive, which are suggested by the legal struggle between Salome and Constabarus, point to wider empirical tensions impacting on the extra-textual legal system and the female legal subject. As I demonstrate in Chapter One, section IB, the new jurisprudence could be more lenient to female litigants and could allow them access, in a very active way, to a sphere otherwise reserved for men – the courtroom. The fact that, in the end, Salome remains unable to exact a divorce on her terms, suggests that, as with Mariam, a legal system based on “nature” and “awe”

in no way adequately reflects the needs of all society's members, nor creates a female legal subject who is sustainable in practice.

The third main female figure in the play is Herod's ex-wife, Doris. In the play's source material, Josephus' *Jewish Antiquities*, she "exists only by default on the margins of Josephus' narrative, her position implicit simply in the historical fact that Mariam was Herod's second wife (N. Miller 360)." In Cary's play, however, she figures much more prominently, perhaps because in a play overtly concerned with divorce law and women, an ex-wife makes an important jurisprudential contribution. Doris represents women who have been divorced by their husbands, and the negative consequences divorce has for her rewrite the freedom Salome and Mariam crave.

IVC. DIVORCED DORIS: SUBJECTIVE DIFFICULTIES AND THE EX-WIFE

Doris is first mentioned after Mariam's speech in I.i. Alexandra, Mariam's mother, tries to understand Herod's order that Mariam be killed if he does not return alive from Rome (I.i.47-50), and suggests, "Who knows if he, unconstant, wavering lord, / His love to Doris had renew'd again? / And that he might his bed to her afford, / Perchance he wish'd that Mariam might be slain (I.ii.127-30)," to which Mariam replies, "Doris! Alas, her time of love was past, / Those coals were rak'd in embers long ago / [Of] Mariam's love, and she was now disgrac'd, / Nor did I glory in her overthrow (I.ii.131-4. Editors' addition)." The ease with which Herod was able to divorce Doris mocks Mariam's and Salome's sense of legal entrapment. But Doris, though free, reveals the dark side of the separations Mariam and Salome desire. Her representation suggests that if a wife does not agree with, or want, a separation, the legal consequences for her can be hard to bear.

In this way, Doris marks yet another fracture in the construction of the Jacobean female legal subject. The author of *The Court of Good Counsell* argues that, in marriage, “if the woman see her husband faile in the love, which he oweth her, yet she must not do as he doth, but supply vertuously his default: Shewing to the worlde, that for her part, she beareth the crosse her selfe, which doing she shall have double reward of God (D2’).” But what sort of attitude must she adopt if her husband’s love fails to the point of divorce? In a society where wives are defined by their relationship to their husband, defined as women who no longer exist because of coverture, and who lose their possessions, name, mind and body to the man they marry, how are they defined if their husband, their only permissible public persona, puts them aside for another woman? Through whom do they refract themselves in a system that demands women must figure themselves through some male figure, because they are not able to stand as autonomous individuals? How do they survive the disintegration of their social and subjective position?

Cary’s Doris poses all these questions; she illustrates that the law, while easily defining a woman’s role as wife, has a hard time defining an ex-wife, and has an even harder time instilling the sense of “awe” necessary to keep that ex-wife from committing crimes. In this way, Doris also carries with her shades of the tragic revenger. She feels that the law has failed her, and she therefore sets out to enact her vengeance. How the law does *not* shape the legal subject of the ex-wife, and the effects that has on the subject herself, is Doris’ jurisprudential conundrum. The legal effects on her after the divorce are severe. At the time of the play’s action, she has returned to Palestine with her son, Antipater, to be revenged: “So long it is since Mariam’s purer cheek / Did rob from mine the glory, and so long / Since I return’d my native town to seek: / And with me nothing but the sense of wrong (II.iii.223-6).”

Her “sense of wrong” is wrought by the Jacobean legal tenets to which she adheres, not those of pre-Christian Palestine.

Although Mosaic law allows remarriage after divorce (Deut.24.1-4), early-modern law does not. The *Constitutions and Canons Ecclesiastical* state in Article CVII that in sentences for divorce, a “bond [is] to be taken for not marrying, during each others life (Church of England. My addition).” Cary’s play, so steeped in other legal representations that run parallel to those of Jacobean England, creates a conflicting jurisprudential locus in Doris. The play’s audience and readers may have known that remarriage after divorce was permissible in pre-Christian Palestine, but Doris’ rhetoric implies that the dictates she adheres to are all early seventeenth-century. Canon jurisprudence argues that

[a]s the *Rabbines* speak, *The bone thou must gnaw, that is fallen to thy Lot.* There is a *knot of God* betweene you, that cannot be unknit. *God* hath joyned her unto thee either in mercie, or in wrath; to be, as he saith of *Rulers*, either a *Nurse* to thee, or a *Scourge*. And *Those that God hath joyned together, Man may not sever.* (Gataker 17)

However, Herod divorces and remarries with impunity,⁵⁴ and Doris’ and her son’s seventeenth-century perspectives clash with pre-Christian divorce law.

Antipater, Doris’ son, says that Mariam’s children “are but bastards (II.iii.277),” and that “foul adultery blotteth Mariam’s brow (II.iii.278).” Doris confronts Mariam in prison, telling her “Your soul is black and spotted, full of sin: / You in adult’ry liv’d nine year together, / And Heav’n will never let adult’ry in

⁵⁴ Weller and Ferguson argue that Doris’ plight is an attack on Henry VIII’s divorce from Catherine of Aragon. Doris echoes the feelings of many who felt Henry’s marriage to Anne Boleyn was not legitimate, and that the issue therefrom had no legal claim to the throne (Introduction 30-5). See as an example of the public reaction to Henry’s divorce, Harpsfield’s *Treatise on the Pretended Divorce between Henry VIII and Catharine of Aragon*.

(IV.viii.576-8).” The discrepancy between the two forms of law, pre-Christian and Jacobean, come to a head when Mariam responds: “Was that adult’ry? Did not Moses say, / That he that being match’d did deadly hate: / Might by permission put his wife away,⁵⁵ / And take a more below’d to be his mate (IV.iii.587-90)?” Early-modern law states that remarriage after divorce (with the exception of divorce *à vinculo*) was illegal, and it is unlikely that Herod and Doris’ divorce met *à vinculo* criteria, which were for *frigiditatis / impotentiae* (Doris and Herod have a son), *praecontractus* or *consanguinitalis* (Coke 17^v). The play does not make clear how or why Herod divorced Doris, but Doris and Mariam imply that he put her aside because he wanted Mariam, which would make the divorce, in early-modern legal terms, *à mensâ et thoro* for which remarriage was not allowed. As for Mosaic law, a husband is allowed to divorce his wife if she “becomes displeasing to him because he finds something indecent about her (Deut.24.1),” and is allowed to remarry after divorce (Deut.24.2-3). Suffice to say, the attitudes expressed by Doris seem to be more in line with seventeenth-century thought than Judaic, and it is this form of law with which she engages throughout the play. Her double-barrelled attack emphasises how bitter she feels, how wronged she perceives herself to be, and makes her arguments more sympathetic within a seventeenth-century legal context.

From a Jacobean legal perspective, it is plausible that the play’s audience would recognise Herod’s remarriage as illegal, and would agree with Doris’ assessment that Mariam’s children are “baseborn heads / That were begotten in unlawful beds (IV.viii.617-8),” which would only undermine any interpretation of Mariam as a good woman. Furthermore, and importantly for the purposes of this

⁵⁵ Mosaic law only gives this right to the husband, not the wife. She must suffer with the one she hates.

thesis, Doris' and Mariam's differing perspectives on the law suggest its malleability and amenability to interpretation.

Because both women have interpreted the law differently, the audience is forced to engage with jurisprudential contradictions. The differing perspectives on the legal validity of Mariam's marriage to Herod suggest to the audience that law is a flawed system of contradicting interpretations, not an ephemeral, extra-human manifestation of nature and God's will. If it were "natural," both women would have reached the same conclusion. That pre-Christian Palestine has one version of "God's law," and the early-modern period another (based on Canonical teachings), reveals the instability of legal discourse. While this is certainly an important aspect of Doris' representation, because through it the text directly criticises extant legal norms, more interesting in terms of the female legal subject is the process through which she tries to rework her subjectivity – tries to refigure herself within the parameters legally allowed to her in Jacobean discourses.

Doris' freedom is not a gift. As an ex-wife, she has lost everything – her social position, her dowager rights, her possessions – and she, like Salome, is bent on murder:

Oft have I begg'd for vengeance for this fact,
 And with dejected knees, aspiring hands
 Have pray'd the highest power to enact
 The fall of her that on my trophy stands.
 Revenge I have according to my will,
 Yet where I wish'd this vengeance did not light:
 I wish'd it should high-hearted Mariam kill,
 But it against my whilom lord did fight. (II.iii.247-54)

The subject Doris embodies, that of the revenging, angry, spiteful woman, because she is denied access to wifehood, is far from legally normative, acceptable female behaviour.

As a divorcée, she has no status and her child is illegitimate (implying that she herself is sexually loose). Her legal disempowerment spurs her to vengeance, and she is determined to see people suffer for what has happened to her. Donald Black discusses, in *The Behavior of Law*, how a system that negates subjects' social positions causes the very behaviour it tries to dissuade: "[o]ne theory of deviant behavior holds that a person who is poorly integrated, or marginal, is more motivated to deviate . . . The unmarried, divorced . . . all, according to marginality theory, have a greater motivation to engage in deviant behavior (54)," because they suffer from social disintegration. Doris, cut off from all the relationships through which she was able to define herself before her divorce – her relationship to the patriarchy as a wife, to her society, to her husband, even possibly to herself if she accepted the dogma that would make her wholly subordinate – needs to find a way to reinvent herself, to find a suitable subjective position to occupy.

She feels betrayed by her husband, and more importantly, confused by his rejection. She asks Mariam:

What did he hate me for: for simple truth?

For bringing beauteous babes, for love to him?

For riches, noble birth, or tender youth?

Or for no stain did Doris' honour dim?

Oh, tell me, Mariam, if you know,

Which fault of these made Herod Doris' foe? (IV.iii.591-6)

She cannot think of any way in which she has transgressed her wifely obligations, and as such, feels usurped by Mariam, as well as righteously angry at having lost the social position her marriage afforded her: “I am that Doris that was once belov’d, / Belov’d by Herod, Herod’s lawful wife: / ’Twas you that Doris from his side remov’d, / And robb’d from me the glory of my life (IV.iii.583-6).” Her repetition of Herod’s name and the rhyming of “wife” and “life” indicate that her entire sense of self was (and still is) dictated by her relationship to her husband, by Herod’s love for her, and by her position as his wife. With those defining referents gone, her identity is destabilised, her “glory” disappears, along with any meaningful way to construct herself as a female legal subject, or a female subject at all.

Doris enters Palestine, her former kingdom, unnoticed. Her bitterness towards her former realm is evidenced in her words:

[You] royal buildings, bow your lofty side,
 And [stoop] to her that is by right your queen:
 Let your humility upbraid the pride
 Of those in whom no due respect is seen:
 Nine times have we with trumpets’ haughty sound,
 And banishing sour leaven from our taste,
 Observ’d the feast that takes the fruit from ground.
 Since I, fair city, did behold thee last. (II.iii.215-22. Editors’
 additions)

Not only her place as a wife, but her status, have been destroyed by the divorce.

As her speeches above suggest, Doris is strongly affected by her separation from Herod – she tells Mariam, “These thrice three years have I with hands held up, / And bowèd knees fast nailèd to the ground, / Besought for thee the dregs of that

same cup, / That cup of wrath that is for sinners found (IV.viii.597-600).” She moves from being a good wife who was truthful, childbearing, loving, rich, noble, tender and young, to an evil, plotting sinner because she feels that the law has left her no choice; it has denied her everything she was before Herod divorced her. With no legal recourse to any compensation (or viable subjective position) for either herself or her son, she can only turn to sinful wishes of vengeance and plot against Mariam and Mariam’s children, to try to win back at least one aspect of her former self, her dowager rights and her position as a respectable mother.

Because the social roles for women were so limited during the Jacobean period – mother, wife, daughter, widow, temptress, whore – Doris has no other self to adopt after her divorce, no other cloak to wear, no legitimate role as an ex-wife. She therefore has no choice but to try to reinsert herself within the narrow boundaries prescribed to her. Because she is disallowed all options except mother, temptress and whore (no longer a wife and no longer a daughter – her father would have handed over guardianship at her wedding), she focuses on becoming the mother who will be recognised as socially legitimate, so long as she can reinstate her son’s legitimacy.

Although Mosaic law is unclear as to whether children of a divorce are legitimate (Deut.24.1-4), early-modern law is very clear on this point: “such divorces as dissolve the marriage . . . make the issue bastard (Coke 17^v).” Doris tells her son, the original heir to Herod’s throne,

And thee, my boy, whose birth, though great it were,

Yet have thy after fortunes prov’d but poor:

When thou wert born, how little did I fear

Thou shoulds’t be thrust from forth thy father’s door!

Art thou not Herod's right begotton son?

Was not the hapless Doris Herod's wife? (II.iii.227-32)

She has used conventional methods to fight for her son's birthright, prayer and communiqués with Herod, "to try / If thou before his bastards might be plac'd / In Herod's royal seat and dignity (II.iii.255-7)," but to no avail. Law, embodied by Herod, dictates that "Mariam's infants here are only grac'd, / And now for us there doth no hope remain (II.iii.258-9)." The only way to remedy a situation in which Antipater's legal rights (and her own through him) are erased, is to "some subtle plot devise, / That Mariam's children might subverted be, / By poison's drink, or else by murderous knife, / So we may be advanc'd, it skills not how (II.iii.273-6)." Her situation is similar to Salome's: she feels that the law denies her any non-violent recourse, any legal way to reclaim some of the dignity her former self was allowed, and she therefore turns to private revenge in order to legitimate her son.

Unfortunately, the play ends before Doris' plot is realised, leaving only her early discussions with Antipater and her confrontation with Mariam for examination. The fact that her situation is not resolved, and that tellingly the Chorus makes no mention of her whatsoever when it recaps the events at the end of Act V (i.259-94), although it makes specific reference to all the other characters except the butler (a servant) and Silleus (a fool), suggests that the machinations of an ex-wife (like a servant or fool) are simply not important enough to merit comment. Not only does she no longer exist as Herod's wife – as a woman who fulfills an appropriate subjective position – the Chorus' omission implies that she does not exist at all in any meaningful social way, thus bolstering the dominant discourse that attempts to constrain women in a few acceptable roles, and censures, ignores or erases those on the margins.

IVD. CONCLUSION: DIVORCE REFORM AND THE FEMALE LEGAL SUBJECT

All three women in Cary's play implicitly support the extant drives at divorce reform that had begun with Cranmer and his Commission. For two of the characters, death is the only way they can see out of an unsatisfactory marriage, and the one who has gone through the separation process is left in such dire straits that she is sworn on revenge and murder. The three women dramatically reinforce the women who did not keep their silence, despite the canonical mandate that they do so; the women who took legal action against their husbands and fought hard for dower and dowager rights after separation or widowhood.

The implication of Cary's play is that the law does not adequately reflect social needs enough to keep women from breaking away from the legal subject they are expected to embody. The lack of women's legal rights and their inability to access the law, makes all three women a form of "bad" wife, ex or not: Mariam because of her public speech, because she cannot free herself from an unhappy marriage; Salome because of murder, to free herself from unhappy marriages; and Doris because of revenge, because she has lost everything through Herod's suit against her. Their behaviour begs the question: how else does the law allow them to address their feelings of injustice? The use of revenge tragedy motifs throughout the play suggest that there are no viable legal avenues for the women to take, and that the women are left to deal with the injustice by private violence.

In a social climate of increasing women's litigation, the arguments for divorce law reform in Cary's play may explain some of the increasing statistics of legally-active women in the Jacobean period. The play might show, through dramatic representation, why women's legal rights are so important from a female

perspective. As Raber argues, “[w]hile Herod may have a legal right as a husband and monarch to dispose of his wife and sister, the play suggests that containing either is difficult and perhaps ultimately impossible (338).”⁵⁶ What is beyond doubt, is that the literary representations of the female legal subjects in Cary’s play are bleak. They are fraught with sadness, anger, death and helplessness. Their “gendered conflicts in the play with reference to the stifling effects of patriarchal authority upon the female characters within marriage (N. Miller 354),” suggest that the empirical legal construction of women needs to be altered to take into account women’s desires and movements outside the home, and that extant jurisprudence creates an impossible subject who cannot exist within a lived human experience touched by passion, pain, desire and occasional irreverence.

All three characters speak powerful, dangerous, words for early-seventeenth-century women. Because they are fictitious creations, however, and all represented as “bad” wives, their contentious speech can easily be dismissed as the ravings of those who want to overthrow the *status quo*. In this way, the play can freely explore and question the empirical system that creates the female legal subject without actually having to challenge that system in court. As the literary representations in the next section prove, to do so may be legally fruitful, but leads to social disgrace.

⁵⁶ Doris, absent from choral comment, is notably absent from most extant criticism, as well.

V. "WHEN/WOMEN GIVE NOW THEIR BILLS, AND PLEA GAINST MEN (Terracae 11):" THE LITERARY CONSTRUCTION OF FRANCES HOWARD

Cary's play illustrates one aspect of a cultural criticism of law and literature – her representations suggest a need to redefine the female legal subject to take into account women's agency and desires, and reveals law's inadequacy and artificiality. In doing so, the play challenges the dominant legal discourse and subverts the female norm which that discourse tries to create, it subverts the easily-codifiable stereotypes that women are expected to embody. The works discussed in this section also reject legal machinations, but do so in a significantly different way than Cary's play. The literary works I will discuss, Terracae's *Plenarie Satisfaction* and Osborne's *True Tragi-Comedie*, are based on a contemporary, real-life event, the divorce between Lady Frances Howard and Robert Devereux, the third Earl of Essex, which took place in 1613, the same year Cary's play was published.

The Howard case has been of more interest to historians, like Lindley, who focus on the politics affecting the trial, if they focus on the first trial at all, than to literary critics. Most historical accounts are drawn to the second Howard trial, in 1616, for the murder of Thomas Overbury,⁵⁷ described as "one of the most 'Machiavellian' and complicated of all Elizabethan revenges (Bowers 25)," an event which would haunt the reign of James I because of his involvement in the political intrigues which led up to it.

The Overbury case is well-known, and therefore I will not allocate much space to it here. A brief synopsis is, however, necessary, to situate Osborne's text, written after Howard's second trial, in which she was charged with Overbury's murder. Sir Thomas Overbury (1581-1613) was a close friend of James' favourite, Robert Carr, the Earl of Somerset, who would marry Howard after her successful

⁵⁷ See, for example: Bellamy; Gibbs; Comte; Matter; and Somerset.

divorce from the Earl of Essex. Overbury played an important role in the Howard / Somerset union, encouraging “the liaison, taking malicious pleasure in helping to prostitute the daughter of a Howard (Houston 46).” However, when Howard successfully divorced Essex leaving Somerset free to marry her, Overbury violently opposed the union, fearing that his influence with Somerset would be undermined (“Overbury” par. 3).

The Howard family was quick to put pressure on King James, who subsequently confined Overbury “to the Tower for refusing the King’s offer of a diplomatic posting abroad (Houston 46),” where he died “mysteriously, in September 1613 (Houston 46).” Two years later, when it came to light that Overbury’s “mysterious” death had been caused by slow poisoning delivered by Frances Howard and her allies, James ordered an investigation.

Howard pleaded guilty and Somerset pleaded innocent, but both were sentenced to death, then later reprieved by the King, remaining interred in the Tower until 1622 when they were released (Houston 51). Howard’s involvement in this ruinous affair would destroy her reputation for all time, and is certainly more than partly responsible for Osborne’s vicious, open attacks on her in *The True Tragi-Comedie* – an extremely biased account of the 1613 divorce trial.

The metaphors he uses to vilify Howard, however, are of extreme importance in reading the female legal subject in matters of divorce, because they point to extant ideological and theological stereotypes into which women could easily be slotted, and it is for this reason that his text is useful to my thesis, despite the extreme bias it carries against Howard for her murder plot. Terracae’s poem is of even more interest to the construction of the female legal subject in matters of divorce, specifically because it was written before Howard’s involvement in Overbury’s death came to

light. Its representation of Howard is not, therefore, stained by the murder investigation.

Literary critics have been less drawn to Frances Howard as a subject than historians have been. This is possibly because literary works based on the Howard annulment are, for the most part, not by any of the "great" writers of the time and did not enjoy anything more than a first printing, with the exception of John Donne's *Epithalamion at the Marriage of the Earl of Somerset*. 1613. December 26, and George Chapman's *Andromeda Liberata* and *A Free and Offenceles Justification*, both ca. 1614. Despite the relative obscurity of Terracae and Osborne, the poem and play on which I focus in this chapter, situated within the historical events that background them, are important texts for a cultural criticism of law and literature.

While Cary's play represents women who do not adhere to social dictates, implying the need for reform and a connection between her characters and extra-textual, legally-active women, the Howard materials attach themselves to a single woman in a specific historical event. How these texts interact with the female legal subject they discuss illustrates how literature can support the dominant legal discourse; how it can create a subject, based on a real woman, the representation of whom affects and is affected by events outside the text; how literature can impact on the extra-textual legal subject in a way that law sometimes cannot.

Frances Howard was married to Robert Devereux on January 5, 1606 (Lindley 13), to support the political machinations of her father (Lindley 15-6). On September 25, 1613, Howard was successful in her annulment suit against Devereux

on the legal grounds of his impotence, in the court of High Commission,⁵⁸ and married Robert Carr, James' favourite, in December of that same year (Lindley 82).

Lindley argues that historical accounts of the annulment proceedings are influenced by what happened thereafter: Howard's sentencing to the Tower of London in 1616 for her part in the murder of Sir Thomas Overbury (77), a scandal that Cuthbert Johnson, in 1837, described as "one of the black stains on the reign of James which time will never efface," and about which he refuses to give the "filthy details (258)." However, there is strong evidence to suggest that textual representations of Howard show a significant negative public backlash to her divorce suit even before it became much easier to characterise her as a dangerous murderess in the post-1616 annulment accounts. The epithalamion written for her and Carr's wedding by John Donne, for example, illustrates the impact court rumour was having on Howard's reputation long before there was any hint of murder attached to her.

Many were convinced that Howard and Somerset had had an illicit relationship prior to her divorce from Essex. Such was the furore surrounding her swift remarriage to Carr that Donne makes a point of defending Howard's virginity and the purity of the Howard / Somerset relationship. His reasons were most likely political – at the time he was working as Somerset's secretary, and Carey argues that "[g]iven the character of the bride" Donne seems to have found writing the

⁵⁸ Henry VIII had created these courts that "exercised by royal commission – on a statutory basis after 1559 – the authority of the crown as supreme governor of the church in England (M. Ingram 37)" after the Reformation. They were created "to enforce royal policy in matters of religion (M. Ingram 39)," but in reality, "exercised a summary jurisdiction" over other courts (Rowse 410), and "dealt with cases involving immorality and matrimony, including what were in effect suits between parties (M. Ingram 39)." Lindley states "a commission was appointed, headed by George Abbot, Archbishop of Canterbury (81)" to hear the annulment suit. Primary participants were not allowed to give evidence under canon law, because "they were hopelessly biased witnesses (Stone, *Road* 197)" and holding the annulment before the High Commission meant that both Howard and Essex could give evidence during the hearing. King James' personal involvement in deciding which bishops were appointed to the commission proves that the ecclesiastical court in which the hearing took place was that most influenced by the monarch: that is, the Court of High Commission.

epithalamion “ticklish,” but “[h]e does not scruple . . . to allude to the scandal the affair had caused (86-7).” Although not the focus of this section, Donne’s work stands as a useful juxtaposition to Terracae’s poem – both men defend Howard after her remarriage, and both texts exhibit the same tensions between textual representation of the female legal subject and extant public opinion. Donne describes Howard as being “intirely” a picture of “starres . . . not so pure, as their spheares are (*Epithalamions* 156-8),” a dubious compliment that refers both to her “entire,” intact (i.e.: virginal) condition, and to the infamy that surrounded the new marriage spurred on by rumours that she was not so pure. Donne goes on to describe the nuptial scene, averring,

Their soules, though long acquainted they had beene,
 These clothes, their bodies, never yet had seene;
 Therefore at first shee modestly might start,
 But must forthwith surrender every part,
 As freely, as each to each before, gave either eye or heart.
 (*Epithalamions* 212-6)

Although he asserts that both Howard and Somerset were innocent of any physical relationship prior to their wedding, the previous stanzas show that he does so with some reluctance.

The narrator of the epithalamion, Idios, has left the court because of the wedding, and argues:

I knew

All this [James’ involvement in the annulment and remarriage]; and
 onely therefore I withdrew.

To knowe and feele all this, and not to have

Words to expresse it, makes a man a grave
 Of his owne thoughts; I would not therefore stay
 At a great feast, having no Grace to say. (*Epithalamions* 91-6. My
 addition)

The official excuse is that he leaves because he does not have the words to express his joy at the affair, and therefore is embarrassed to be unable to celebrate it properly. The implication, however, is that the feast does not receive Idios' grace; he does not have words to express his feelings because he cannot safely express himself and still stay in the King's (or Somerset's) favour. His words might dangerously reflect the extant public opinion that condemned the second marriage. The ambiguity in Donne's *Epithalamion* and the other works produced before 1616 is rooted in something other than Howard's indictment as a murderess, and in these earlier sources the creation of the female legal subject, and the overlap between legal and literary representation, comes into play.

VA. AMBIGUOUS INNOCENCE: DEFENDING FRANCES HOWARD

Like Donne's *Epithalamion*, Terracae's poem illuminates both the conflation of legal and literary subjective representations, and the difficulties inherent in sustaining a literary subject under oppositional empirical pressure. It is crucial to bear in mind the context of his work.⁵⁹ Terracae's poem is addressed

To the right noble Robert Earle of Somerset, Viscount Rochester,
 Baron of Branspeth, Lord high Treasurer of Scotland, Knight of the
 most noble order of the Garter & one of his majesties most Honorable
 Privie Counsaile of both the Kingdomes: And to his thrice noble &

⁵⁹ Which is lodged at the Northamptonshire Records Office; Northampton was a strong ally of the Howards.

accomplish'd faire Ladie, the Lady Frances his virtuous Countesse.

(1')

His political affiliations are clear: he dedicates his poem to Frances Howard and her second husband, Robert Carr, the Earl of Somerset. Because Terracae's poem was most likely written before the murder trial of 1616⁶⁰ and stands firmly, with its Address, behind the decision of the court and Howard's remarriage, one would expect it to be highly biased in favour of the "thrice noble & accomplish'd faire Ladie," and he certainly tries to build an argument with which he can defend her.

He asserts that the legal annulment of the marriage guarantees the truth (or at least this is what he states at the poem's beginning). What the court has ruled he accepts,

ffor it is most sweet, that when . . . the life of man ral'd to the Barre,
for mattor of fact, or suppition, the Jurie disputing for a time the most
pointes in the end carry yt, and so the Judited . . . sentence goes most
just, and legally pronounced in the whole Juries name: the like being
in all Judicatorie Proceedings . . . and this may force in any
reasonable opinion to stop the Malice, or Ignorance. (2')

The jury system gives fairness to the trial, and sustains Terracae's argument that Howard must be innocent because a court of her peers found her to be so. Furthermore, he confronts the issue of her right to bring the claim by asking "if the One, and other, had not right / And mutuall power alike? As exquisite, / And peremptorie Hers, the wives; as His, / Over her bodie in marriadg offices (11^v)?" Like

⁶⁰ The Northamptonshire catalogue dates the poem at 1613-32, but it was acknowledged by a Records Office employee that this date is "a guesstimate," and Lindley dates the poem as "probably completed before the marriage (124)," i.e. before December 1613. It was most likely written before the murder trial for the simple reason that it is unlikely Terracae would have allied himself with convicted criminals, particularly given that he chooses to define "truth" by judicial mandate.

Salome's plea for equal rights to legal redress, Terracae suggests that a wife has as much right to divorce her husband as a husband does his wife, because she shares his body as he shares hers. Not only has Howard been found innocent, Terracae argues, but she is completely justified in bringing her claim – a wife has claims to her husband's body in marriage as well. Thus, although public opinion is against Howard, and although the text implies that Terracae recognises the rumours, he quickly establishes his definition of truth as that which the court decrees, "sweet" and "just."

In doing so, Terracae attempts to dismiss any attacks on Howard's character that are not grounded in legal fact. He places the subject in the hands of the legal process and creates an absolutist position: the court's decision dictates the character of the individual. This makes Terracae's poem a perfect example of how legal and literary representation can conflate. Howard, at the beginning of the poem, is the character defined by the courts, not that created by derisory public opinion. She is innocent and her claim good because she successfully separated from Essex because she was found to be *virgo intacta* at the time of the trial by the women who examined her (Lindley 66); her body proves his impotence; the court ruling proves her innocence. For Terracae, the court ruling shows that the rumours of a physical relationship between Howard and Somerset before the annulment are unfounded.⁶¹

The rumour and hearsay impacting on Howard's remarriage are noted in Terracae's poem. He refers to the trial as "so like a well-stor'd Act / (On Publique stage) (2^v)," implying that the people involved are shaped as though they are characters in a drama, susceptible to social construction and invention, and implying that the rumours, like stage representations, belong to the realm of the imaginary.

⁶¹ This only proves that no physical relationship took place between Howard and Somerset. Certainly the Claimant and Somerset had met privately a number of times before the divorce (Lindley 68).

Throughout his work, he attacks the “Beastes” of the multitude who spread the rumours that maliciously construct Howard as a fallen woman, and who “will know no more then Beastes, but so live still (3’).” However, and most importantly, despite his adamant wish to defend Howard, his writing reveals the bias of the extant opinions he tries to refute.

On the front page Terracae clarifies that his poem is meant “to settle the Desires of such, who setting aside Singularitie, Envie, or Passion to either Partie; ar willing to heare the Truth and Lawfulness of a Nullitie in Marriadg to be pronounced in *Malificium quoad Hanc* or of particolor proved *Impotencio* (1’).” Throughout the poem he attacks popular opinion which had developed against Howard and Somerset during the course of the divorce proceedings. However, his representations buckle and become ambiguous under the pressures of extra-textual opinion.

On one reading, he is supportive of the new marriage – he wants to defend Howard’s divorce and the Howard / Somerset union; on the other, he freely alludes to the circulating rumours about a pre-annulment relationship between them. He asks his readers to ignore the “Singularitie, Envie, or Passion” of the parties, and to judge the case solely on legal merits. He also unwisely refers to the ruling in favour of witchcraft (*malificium quoad hanc*) that places the blame for Essex’s impotence firmly with Howard and / or her associates. These rumours, and the social and political tensions surrounding the case, impact on Terracae’s literary subject. Although the court did decide in Howard’s favour, it reached its decision on the ground that Essex’s impotence was caused by supernatural conjuring by, if not Howard, then at least those associated with her (Lindley 96-8). The rumours about Howard and Somerset would only have been exacerbated by the implication that she

used witchcraft to make her first husband impotent in order to divorce him and marry someone else.

Terracae's ambiguous representation of Howard's innocence continues in the introduction to the poem when he addresses her directly:

And you (faire Maddam) in like Goddnes rest,
So shall you shyne with all those graces blest,
That star-like crowne the Truth; and shall obtrude
To shame, both Envie, and the Multitude.

As for those frailties, that may shake thy Presence,
Those adventitiall, not of thy true essence;
And wher is that Compusre framd of blood
And flesh, that may make boaste of simple good.
Heaven will not . . .
. . . hide in Mistes Cimmerian
thy naturall Vertues, but quite opposite
The worst extinguishe, and the better light. (5^v)

Whether Terracae refers to the rumours about Howard's connection to Somerset, or the way in which she oversteps her wifely boundaries by bringing a divorce suit against her husband when he cites her "frailties," is debatable. Unarguably, the lines can be read as derogatory, particularly when shortly thereafter Terracae states again that his poem is written to support "Authorities, sacred, and authentique, gathered to satisfy, in the Lawfullnes of a Nullitie pronounced in the Case wher is apparent *Hominem Malificium Esse Quoad Hanc* (1^l);" a case in which witchcraft was apparent, but the claim still lawful. Seemingly supportive, Terracae's defence of the

new marriage is undermined by both his reference to witchcraft and Howard's "frailties."

Because her prior marriage had been declared null on the grounds of Essex's impotence, the law declares that their marriage was never valid in the first place (*à vinculo*), and Howard would have the right to remarry. It is this valid legal process, and the jurisprudence behind it, that Terracae tries to use to sustain his argument. As he points out:

Whome God hath joyn'd, Let no man separate:

But here, then, what, or whome . . . God hath so joyn'd must be the

Question: . . .

Those Duties to performe, & consummate,

Which his high plesure was often to command . . .

namely he made land

to fill with People: Grow and multiplie,

Increase in fruit, & fill the earth. (3')

Procreation was for theologians the primary purpose of marital union. If Essex were unable to consummate the marriage, he would not have been a legitimate husband. However, although Terracae claims to support Howard, his argument undercuts his (and her) position. He acknowledges rumours of an affair with Carr, and almost confirms them when he writes: "whome . . . God hath so joyn'd must be the Question." This is tricky rhetoric, and instead of cementing Howard's remarriage on the ground that her first was not divinely ordained, he undermines her moral character by implying a liaison between her and Somerset before the divorce. Although Terracae quickly attests that Howard is "The Innocent, sought in the heate

of Rage / To be devoured like Harpies foode (3^v),” he again refers to the possibility of a Howard / Somerset connection two pages later.

He argues that Essex’s impotence is akin to adultery, because Essex “putts awaie / His wife (9^f)” by his inability “to make good / The duties of the amorous Bed (10^f).” Under such circumstances women like Howard, “the fair forsaken young-one,” “go / At length (betray’d by Importunite) (10^{r-v}),” and “in due time doe addresse / In beds of truer Fate, and happiness (11^f).” Here, Terracae’s legal reasoning is sound; theologians argue that

[t]hey are to be accounted impotent, and in that respect unable to performe the essentiall duties of mariage, who (to use the Scripture phrase) *were borne Eunuchs from their mothers wombe*: or by an accidentall occasion are so made: as they who are defective, or closed in their secret parts: or taken with an incurable palsie: or possessed with frigidity, or any other such like impediment.

These ought not to seeke after mariage: for by those signes of impotencie God sheweth that he calleth them to live single. (Gouge 180-1)

Although the jurisprudence is sound, when Terracae accuses Essex of metaphorical adultery, he obliquely accuses Howard of actual adultery because he implies she has sought recourse in another’s bed, albeit out of necessity.

He further clouds his textual representation of her as innocent when, after citing “her Modestie (12^f)” and “her modestie, and womanish honour (12^v)” as the reasons she took so long to come forward with her petition (which was launched seven years after her wedding), he concludes on the same page, that her “dutious spousal love, unto her lord, / That noble Earle; compel’d her to accord / The

manifesting of her . . . cause (12^v).”⁶² Thus, it is not her “modesty” which kept her from petitioning, but rather her “spousal love” for Somerset that finally forced her hand. As the Mariam section made clear, one duty of spousal love is to engage in sexual intercourse. Thus Terracae’s description of the Howard / Somerset connection as a form of marriage raises the possibility that they have had sex, as spouses who love each other dutifully should, and as court rumour was convinced to be the case.

He continues the line of argument that Howard and Somerset are divinely-ordained spouses, despite her first marriage, using theological marital doctrine and analogies to rationalise and justify the second marriage. He likens the Somerset / Howard relationship to “A figure twixt Christ and his Holy-One / Of the high spirituall conjunction (3^v).” As discussed in section IC, the analogous connection between Christ and the Church, God and the people, is a commonplace metaphor for marriage in the early-modern period, and gives sanctity to the marriage bond.

In the lines that follow, however, ambiguity again arises. Terracae argues that the relationship is sanctioned by God because it is like

the first worck too of paradise:
As the most perfect; thereby to express
How far this sacred Act was from the blame
Of an imposture coupling, and the shame
Of those Defects, which Sinn, and Satan, can
Bring by permission, on the fall of Man. (3^v)

His metaphor uses the biblical precedent of Adam and Eve to validate the Howard / Somerset union. As God made Eve for Adam, so He made Howard for Somerset.

⁶² The definition of “accord” and its origins, in the *COD*, indicate that the “Earl” Terracae refers to is Somerset, not Essex.

However, such a metaphor subtly disparages Howard whilst it attempts to vindicate her.

The Expulsion, as I have illustrated in earlier sections of this chapter, was seen as the first instance of marital discord, brought on by the wife working in conjunction with Satan. Therefore, any reference to this episode in Christian mythology firmly binds female dissent, marital disharmony and sin into a tight connotative knot. Francis Osborne's *Advice to a Son*, published in 1656, describes Terracae's Edenic precedent in a very different light. He argues that women, responsible for the Fall, are

the fruit of that Tree, the kernell of that Apple, which first destroyed us all, faire to sight, to of fatall and dreadful consequence to the taster, rendering him subject to slavery, that was born free, and Her to command, who ought in righter reason to serve and obey.⁶³

It is highly improbable that Terracae was completely ignorant of this other version of Eden, in which the woman (and the sexual power she wields over the innocent man) caused Original Sin and spiritual death. Thus, his use of the Eden metaphor dangerously alludes to the way in which Howard overturns conventional notions of hierarchy by suing her husband for divorce on the emasculating grounds of his inability to perform sexually, and would certainly raise the spectre of dangerous female sexuality for a number of Terracae's readers.

Adding to the representational tensions in Terracae's text was public skepticism about Essex's impotence. Certainly some believed that Howard was lying about her first husband's inability. During the hearing it was reported by Abbot that

⁶³ If this was Osborne's attitude towards women in general, it is no surprise that his textualisation of Howard in *The True Tragi-Comedie*, discussed in the next sub-section, is less than sympathetic.

Essex . . . having five or six captains and gentlemen of worth in his chamber, and speech being made of his inability, rose out of his bed, and taking up his shirt, did shew to them all so able and extraordinarily sufficient matter, that they all cried out shame of his lady, and said, That if the ladies of the court knew as much as they knew, they would tread her to death. (Qtd. in Lindley 95)

Howard's argument is considerably unseated by this evidence, and if it were generally known that Essex were not impotent, then Howard's position would have been indefensible.

Her role as a woman and a wife, the person "to whom subjection was enjoined: before there was childe or servant in the world, it was said to her, *thy desire shall be subject to thine husband* (Gouge 25)," demanded that her duty was to Essex and to him alone. As his wife she "must submit her selfe to an husband, because he is her head: and she must doe it as to the Lord, because husband is to her, as Christ is to the Church . . . As an head is more eminent and excellent than the body, and placed above it, so is an husband to his wife (Gouge 29-30)." The anti-Howard sentiments which grew out of public skepticism could very well have contributed to the double-edged character representation in Terracae's poem.

He continues his unsustainable defence of Howard when he describes the mid-wives' examination to ensure that Howard was *virgo intacta*, the evidence which effectively counters Abbott's statement. He says that even "had she not bene a virgin found (21^v),"

A maid, who for a virgin bargain'd is
 So sold, so bought, yf after she be found
 No maide, yet shall not that be lawfull . . .

To make the covenant void, or be repaid
 The monies . . . layd out for her; so said
 The Roman Justice: and the Reason was
 Why should Reddition be in such a case
 Where such her fault was no Impediment
 Unto that use, for which the Patron ment
 To buy her for. (22^r)

Terracae's legal reasoning is problematic, to say the least. His statement, "had she not bene a virgin found," reveals his own dubiousness about the validity of her claim and the midwives' findings. It is certainly not an iron-clad defence of a woman who *was* pronounced a virgin by her examiners. Secondly, a husband would have been able to divorce his wife for not being a virgin, if he had married her thinking, in good faith, that she was. It is precisely this legal tenet for which Morose is able to divorce in *Epicoe* in Ben Jonson's play – he married someone thinking she was one thing, when in fact she was another. Furthermore, after seven years of marriage to Essex, it is most likely, had Howard not been intact, that the midwives and court would have assumed the responsibility lay with her husband, not with some unnamed, undisclosed liaison prior to her marriage.

Importantly, Terracae's argument reduces the marriage to a purely business venture – if she were not a virgin that is no matter because it is "no Impediment" to "that use, for which the Patron ment to buy her for." She can still be a wife, still procreate, whether she is a virgin or not. More shocking is how he likens her to a chattel in the lines of a poem purporting to defend its female recipient against the barbs of the multitude. In marriage writing of the early-modern period, Terracae's language is unusual – while, in practical terms, upper-class marriages were a

business venture, using women to cement family connections or wealth, marriage tracts tended to emphasise the joys of companionate marriage rather than the lucrative gains that could be made by a union. Terracae's statements do not deny Howard's lasciviousness, all they do is try to raise sympathy for her by highlighting her position as a commodity and her lack of choice in her marriage to Essex. His arguments only serve to draw attention to the possibility that she was a "loose" woman even prior to her first marriage. The fact that he would use such far-fetched rhetoric to defend Howard displays uncertainty that he can successfully defend her against notoriety, and implies that he is trying to defend her from within the notorious subjective position that stains her character, rather than illustrating an effective defence from outside it.

In the end, Terracae's political affiliations are overshadowed, and indeed overcome, by empirical stereotypes, ideologies and rumours. Howard oversteps her wifely boundaries to bring the petition; she is subsequently associated with witchcraft; and her remarriage shortly thereafter to Robert Carr causes a public scandal. Under these circumstances, although he sets out to defend Howard, Terracae's poem succumbs to the same ambiguities apparent in Donne's *Epithalamion*. His representation cannot escape empirical influences. Deliberate or not, his references to a possible Howard / Somerset connection before the divorce and to the charges of witchcraft only undermine the legal subject he tries to stabilise by basing her character on court findings.

His representation of Howard is thus symptomatic of the destabilisation the female legal subject endures in a system that places conflicting demands upon her – in Howard's case, that she become a wife and reproduce, with the ability to separate

from her husband if he fails in his husbandry, but which paradoxically also vilifies her for leaving the home and publicly dishonouring her husband in a court of law.

Despite rumours and opposition, the annulment was controversially granted because James packed the Commission with two judges bound to vote in Howard's favour (Lindley 120). Thus, the law, as the normalising engine for the *status quo* found her innocent and Howard should have been accepted as existing safely within legally normative boundaries, immune to any public denunciation of her character. However, in Terracae's poem, where he tries to sustain the literary representation of Howard by adhering to the court verdict, that she is an innocent wife with an impotent husband, such a representation is unsustainable. It continually buckles under the empirical pressures of scandal, rumour and general outrage (not the least of which was James' involvement in the case). His early assertion about "the Truth and Lawfulness" of the annulment appears to be nothing more than a superficial reference to the legal subject which the ruling has created. If Terracae genuinely accepted the ruling to be the truth about Howard's character his poem would be far less ambiguous. Provocatively, if the legal definition of a subject is "the truth" about that person, then no contrary rumours would exist in the first place.

However, this is clearly not the case. Rumours did abound about Howard and Somerset's relationship, and about the validity of Essex's impotence, suggesting that the law does not have the power to define or constrain subjecthood in the face of contrary public opinion. Terracae's defence is undermined to the extent that his dedicatory address to the "virtuous" Howard comes to seem ironic. Because his representation of her is so ambiguous, the legal finding on which he bases his sole reasonable defence of her innocence is challenged and destabilised. The tensions that exist between Howard, the legal subject defined by court ruling, and Howard,

the wayward wife defined by public opinion, reveal that the legal system does not always sustain the dominant discourse, and suggest the arbitrariness of law. Although the judgment in Howard's favour meant that she, as a legal subject, was innocent and correct to bring forward her suit, public opinion did not accept that legal subject as valid.⁶⁴ Certainly, there will always be cases where legal outcomes and verdicts are at odds with public opinion, for many reasons. The public outcry against the divorce between Howard and Essex, however, is a distinctly gendered reaction. It is based on the construction of the female legal subject that exists outside this specific court ruling.

Although Howard was right to bring her suit forward (her intact virginity and the verdict in her favour prove this), the backlash falls to her, not to Essex who, according to law, should not ever have married because he could not fulfill his sexual responsibilities. Ironically, by adhering to one aspect of her legal subjecthood (her ability to annul her marriage because of her husband's impotence) she subverts so many others (she challenges him in a very public way on extremely emasculating grounds, she is not silent or submissive, she does not reverence him) that she is unredeemable, despite being entirely within her legal rights. What lies behind the extra-textual, and subsequent literary, vilification of Frances Howard is male anxiety. The charges of witchcraft make this more than evident, even if she was not punished for them.

For the court to consider, and to put forward for public consideration, that Essex's impotence was no fault of his own, but rather due to his wife's connection with the Devil, sustains the belief that the responsibility for marital problems lies

⁶⁴ This is a problem the law has yet to rectify. The same thing happened over 300 years later in the United States' O. J. Simpson murder trial, and the disparity may lie in the fact that there are two "systems of law" at work in society: one "is geared to dishonor, that is, to the effects of public opinion (Foucault, *Ethics* 28)," which is often at odds with the other, legislated statutes that protect the interests of *status quo* specifically, and sometimes fail to take public opinion into account.

only with the wife. As Chapman writes in *A Free and Offenceles Justification*, in defence of Howard,⁶⁵ patriarchal society simply cannot accept responsibility for unmanly traits:

*O barraine Malice! was it ever sayd
 A man was barraine? or the burthen layd
 Of bearing fruite on Man? if not, nor this
 Epithete barraine, can be construed his
 In least proprietie: but that such a one
 As was Andromeda; in whose parts shone
 All beauties, both of bodie and of minde
 The sea dame to a barraine rocke should binde
 In envie least some other of her kinde
 Should challenge them for beauty any more. (123-32)*

The witchcraft charge protects the masculine virility mocked in Chapman's lines, for the simple reason that impotence, under these circumstances, is not a physical shortfalling of the husband.

Howard's inability to fulfill the requirements of her legal subject because, ironically, she openly challenges her husband in a court of law whilst exercising her legal right; and the connection between her and witchcraft (for the most part, a female-dominated profession in the early-modern period) that absolves Essex of any "unmanliness," are the terms by which Howard is undone. Despite the court ruling in her favour, she cannot escape the dominant discourse that requires wives to be silent, chaste and submissive, and she is therefore easily slotted into the stereotype of an evil, demonic woman.

⁶⁵ Like Donne, Chapman's reasons for defending the marriage were also most likely political – Robert Carr was Chapman's patron at the time of the marriage (Solve 24-9).

These factors cause the empirical world to impinge on Terracae's literary representation to the extent that he cannot uphold his original intent; he cannot confirm the validity of Howard's second marriage by proving her innocence through law. Her case is a rare legal occurrence – too rare to create a social atmosphere in which divorcing wives could be accepted as legally normal. Extant reactions to Howard's suit are more in line with the upside-down world described by Constabarus in Cary's play, than with equity or legal judgment, and Terracae's literary representation of her cannot resist empirical condemnation, despite her legal innocence.

VB. FAMILY-AS-STATE, WOMAN-AS-DEVIL: DENIGRATING FRANCES HOWARD

Francis Osborne's play, *The True Tragi-Comedie*, exposes the same empirical censure as Terracae's poem. His representation, however, is overtly anti-Howard. As early as the play's character descriptions, he makes his position clear: he writes that "noe Sinn below the girdle is mortall; yet an affect of it may be so, as experiance did manifest in This Lady, who Died of a Disease in Those parts (5')." He immediately connects Howard's supposed lasciviousness with her death from uterine cancer in 1632.⁶⁶ Osborne makes no attempt to defend her, and stands firmly in the ranks of those who openly vilified her for her court action and remarriage after the murder trial of 1616. To effectively disparage her, he draws a close analogy between civil unrest and marital unrest, playing on the early-modern family-as-State paradigm. His play supports the constructed social hierarchy, the ideological underpinnings for marriage law, and the dominant definition of the acceptable

⁶⁶ The author's sentiments echo those of her "post-mortem report that survives among the papers of her first husband," which say that the derogatory statements in the report "are for the Glory of God, who often makes his punishments (in the ballance of his Justice) of equal weight with our sins (Qtd. in Lindley 191)."

female legal subject. For him, a woman who successfully asserts her legal rights figures the destruction of the State, embodies chaos and evil, and causes dangerous hierarchical upheaval. It is important to remember that Osborne's play was written after the 1616 murder trial, and it therefore bears the mark of those proceedings in its attitude toward its subject matter. Howard, ambiguously unsympathetic in Terracae's poem, is vilified in Osborne's work to the point of demonisation.

Throughout the play, Howard's annulment suit represents the divisive unrest in James I's kingdom at the time the divorce hearing took place. This connection is given weight by James' own rhetoric early after his ascension to the throne, which attempted to unify the formerly disparate kingdoms of England and Scotland. In his speech to Parliament in 1604 he stated: "What God hath conjoynd then, let no man separate. I am the Husband, and all the whole Isle is my lawfull Wife; I am the Head, and it is my Body; I am the Shepheard, and it is my Flocke (*King B2^f*)." The unrest and in-fighting between English and Scottish court factions, referenced in Osborne's play, thus becomes an even more effective commentary on divorce than the family-as-State paradigm alone could be.⁶⁷ Although James had dreams of a united kingdom, the animosity between the Scots and English at court made that dream an unattainable reality. Howard's divorce is situated in this potentially explosive historical context and Osborne makes good use of it to draw an analogous connection between the personal problems of marital unrest and the civic problems created by political unrest.

The trial itself is never the focal point of the play (all the legal proceedings take place off-stage), but Howard and her allies appear for interchanges about its

⁶⁷ James was followed from Scotland by a number of courtiers upon whom he conferred lavish favours. This angered the English, who feared that James would ignore them in favour of those from his home country, causing animosity between the different power bases early in his reign. I am heavily indebted to Dr. Ritchie, of the Department of Scottish History, for her time spent with me discussing the political repercussions of James' ascension to the English throne.

can do is respond in anger and exit the scene, leaving Cecil alone to ruminate on the woeful state of the kingdom, and the role James has played in its collapse (19^v). The hierarchy, even before Howard appears on stage, shows signs of disintegration and destabilisation. The head of State does not control his body politic.

The “Scotch man” who enters in Scene ii signifies the extant political unrest between the English and the Scots who followed James to his new seat of power. He makes the connection between unruly women and the Devil that will continue throughout the play, declaring to the Lord Treasurer: “I have heard of a secretary that could neither write nor Rede but not a Treasurer . . . who shall let his wife ride . . . the staff, with all her children behind her (as they say witches run a hegging) (19^v).” While, initially, his reference to the Treasurer’s wife and witchcraft seems out of place, it foreshadows the Howard sub-plot and connects, quite succinctly, both the domestic (the wife and children who rebel) to the political (he mocks the Treasurer’s authority, implying that Cecil cannot even keep his family in check), as well as women to the Devil. Once Osborne has set this civic background for the Howard case, Frances Howard, “the Day after her marriage with Essex (22^f),” and her sister, Lady Cranborn, appear onstage.

Howard immediately refers to the difficulty she is experiencing in her new marriage. In her first sentence she announces: “you know I am no virgin though I might live and Die on[e], for any account Essex is able to contradict it (22^f).” Two important themes surface in the interchange between Howard and her sister, which will haunt her character for the remainder of the play. First, Osborne’s stance on her moral worth is clear: she is “no virgin,” and it is not her husband who has deflowered her. Secondly, her relationship with Essex is off to a bad start – he is

unable to consummate the marriage, and both these factors will lead, later in the play, to her involvement in the dark arts.

Howard's talk of marital dissatisfaction takes place directly after discussions about State discontent, suggesting, by juxtaposition, that the unrest of the kingdom is reflected in Howard's marriage. James' "lawfull Wife," Britain, is as unhappy as Howard is. The appointed "head" of the relationship, her husband Essex, is not given the respect he is entitled to as her superior; Howard says he "is not able to spoyle a Dormouse or violet the chastity of a sho-flea (22')," dangerously overstepping the bounds that require her to honour and reverence him. The metaphorical rebellion her words suggest challenges the symbolic source of phallogocentric power as a whole. Not only does she rise against her husband, but she does so by implying that he cannot rise at all. Her challenge to her husband's authority echoes the Treasurer's open distrust of the King's favours to the Scots and the Scots' denunciation of the Treasurer's power. Both instances suggest chaos in the "natural order" because the authority of the monarch and the quasi-monarch husband is questioned by those on lower social strata.

Frances says that her dissatisfaction arises from "Exxes [sic] proving barren as a Rock which produseth nothing but moss and pumice (22^v)," and she envies her sister whose husband "hath yet sumthing to venture with for a child (22^v)." Her use of the word "barren," like Chapman's "barraine" in the previous section, to describe male impotence, is significant. Women, not men, are described as barren, and the word effectively emasculates Essex, echoing the "unmanliness" that would have been attached to an impotent man in the early-modern period.

In her speech, she suggests it is her desire for a child, and her husband's inability to provide her therewith, which is the source of her unhappiness. Shortly

thereafter, however, she admits to her feelings for Somerset, saying she has “long since neade his Embraces The full circumfurance of all Desires (22^v).” The real motive for her marriage annulment, according to Osborne, is quick to surface: not because she will remain childless, but rather her desire for another man makes her union with Essex disagreeable.

After Frances’ sister tells the Earl of Northampton that “the pore wench . . . is wrapt up in a man of misery & situated under a frigid pole . . . Essex has neither Redpece, nor Codpece (24^v),” the women leave the stage to be replaced by a Jesuit who discusses international relations and English foreign policy with Northampton (25^r). He refers to a plot to overthrow the monarchy, saying that if the plot had succeeded, “the parliments splene had bin eveporated by words, and Laws, nothing coold have folowed by confusiaon, and ruine (25^v).” This sudden plot shift is less abrupt when read within the family-as-State paradigm, and carries on the themes established in the first scene.

The unhappy, restless wife is replaced by an unhappy, restless citizen, and the illegal plot to overthrow the monarchy is thus connected to the interchange between Howard and her sister – her desire for separation becomes an illegal uprising against her husband, her head. This plot shift suggests that the “confusiaon and ruine” which would arise if there were a revolt against the king is like the “confusiaon and ruine” that will arise from Howard’s domestic situation. Such a connection makes Howard’s actions akin to a treasonous uprising – the lower strata challenging the supremacy of the higher,⁶⁹ and darkly hints at the ruinous effects the trial will have on James’ own political career.

⁶⁹ Frances Dolan’s *Dangerous Familiars: Representations of Domestic Crime in England 1550-1700*, draws the parallel between high treason in the home, when women murder their husbands, and high treason in the state, when someone plots to kill the monarch. The law thus recognises the parallels between state and home in the extreme.

When the Jesuit and Northampton exit the stage, Howard and her friend Mrs. Turner (who was executed as an accomplice in Overbury's murder [Lindley 9]), enter disguised, at Mr. Foreman's house,⁷⁰ trying to obtain a spell or potion which will help Howard rid herself of Essex. She tells Foreman's assistant that "Though my Lords Chillness is constru'd a disese & my no less hott affecion to the other [Somerset] a scarr to my honore: yet the First suits so well with my ockesions & the Later is so becuming to my affecions I shuld curse the hand that endeavour'd thair Cure (27^v-28^r. My addition)." She does not want to cure Essex's "disese" because she is in love with Somerset, so she obtains from Mr. Foreman two potions. The first is for Somerset, and Foreman promises that

[i]f he doe not leve his presant honor & love of the King, and future fortune to the gidance of those Constellations which, like Castor & Polluse twinkle in the fermement of your beauty Lett me be Duckt for a water witch & have my powre confin'd to the Charmings of frogs & blowing wind in the noysum taile of Lapland. (29^v)

The second is for Essex, to ensure he does not regain potency, "[t]o preven[t] which, take this image, created out of a mass of expeareance & informed with the most active spiret of a simpathising imagination so as nothing can be applied to it that incite to Lust . . . [and it] shall worke upon Essex (29^v. My addition)." This early alignment between Howard and witchcraft drives home the demonic nature of women who overstep social boundaries, a quality attributed to Howard when she arrives at Mr. Foreman's and his assistant says: "You see madam the Devil knows you (28^r)." It also fictionally fills in the reasons for the charge of *malificium quod*

⁷⁰ Also tried and found guilty for his involvement in the Overbury case.

hanc at her divorce trial and makes a potentially damning legal finding even more so with its lurid, imagined, details.

Howard's connection with the Devil is an easy extension of the ideology that kept women legally bound. Stephen Gere, in his eulogy to M. Elizabeth Machell of 1639, stated that wives "that want grace, and the [feare] of God, are matched and lincked by sinne unto Satan, and so shall partake of his shamefull miseries (36-7)." Gouge, in his treatise on domestic duties, argues, "how monstrous a thing it is to sow any seeds of discord and stirre debate betwixt man and wife. The devils instruments they are therein, and a diabolicall spirit is in them. For Satan most laboureth to unloose those knots which the Lord knitteth most firmly (116)." Osborne's imagination makes Howard guilty of both these charges: if she feared God she would respect the divine ordinance of her marriage and honour her husband; she does not, and is therefore "the devils instrument." How Howard's dealings with Foreman impact on the female legal subject is apparent in the action that these interchanges frame. The scenes in Mr. Foreman's house surround a drama in which Howard's mother begins the legal process which will lead to her daughter's marriage annulment. Such framing draws obvious connections between women who engage in the legal process and women who engage in the dark arts.

Kate, Howard's mother, asks Davis, a Procter⁷¹ for legal advice about her daughter. He replies: "uppon this Conjuratiō I will be true to you . . . where Purses are giveth, against fees & delayes, the cause of defect is inquired into as whether it relates to a naturall, or Diabolical Caues [sic] (28⁵)." His words carry strong echoes and impressions left by stories about demonic conjurations. Like the practice

⁷¹ A professional lawyer who specializes in civil law and is licenced to practice in the courts (Stone, *Road* 195).

whereby a demon is summoned into a magical circle to answer questions, Kate “conjures” the lawyer who “will be true” in his responses.

While her daughter actually uses the dark arts, Kate does so by implication. There is a strong connection between Frances employing a “diabolical cause” to ensure Essex’s impotence, and her mother’s “conjunction” of the Proctor. Both relationships are described with demonic imagery, and sustain the belief that women who disrupt the happiness of marriage (and in this Kate is as guilty as Howard, because she hires the lawyer who will bring the suit) are in league with the Devil because they do not show respect for the divinely-ordained “natural order.” By railing against their positions in society and by actively trying to change their lot in life, they rail against God’s will and God’s laws.

The reason, under man’s law, that Howard will inevitably bear the brunt of a situation in which her husband is impotent and should not, therefore, have presumed to marry in the first place, is explained by the Proctor. When Kate tells him that “the invalidity respects the husband (28^v),” he replies:

[i]ndeed that’s most frequent; weomen being oftener able . . . But to say truth, ther is more partiality showne in the Legal discussion of masculine Infermitys then Hirs; the Old Judges voting any remnant sofficiant; so as of Ladys had not a vast Freedum they might suffocate for want of --- which maks it hard for a wife to recover what belongs to har unless he, she mistoke for a husband be so ingenious as to confes his difect. (28^v)

The “Old Judges” are the enforcers of the *status quo*, the signifiers of the law that dictates women’s social role, the legal gatekeepers posted to keep women out of the realm of legal action and safely within the home under a husband’s rule. They are

the defenders of a gender norm that dictates women cannot successfully legally challenge their husband's inability to perform sexually, the "partiality" of the judges toward the husband being what it is. As Lindley points out: "in challenging potency, Frances Howard triggered a more general male anxiety which was bound to produce the hostile reaction to her that has been enshrined in all subsequent accounts (100)." She attacks the very root of patrilineal inheritance, the signifier for legal prerogative, and thus stands on very shaky legal ground when facing a patriarchal legal system.

The law represented by these "Old Judges" is not an impartial institution which will help Howard to secure an annulment, but rather an adversary, because of her gender, with which she will have to battle in order in order to win her suit. The social outcry against Howard before the 1616 murder trial was due more to her gender – a wife seeking divorce – than the divorce itself; "by suing for divorce at all Frances Howard flouted the doctrine of wifely obedience, and by charging her husband with impotence she raised the fearful spectre of male inadequacy (Lindley 104)." When faced with this devastating spectre, the judges would, as the Proctor explains to Kate, rule in favour of the husband. That was not the case in the Howard trial, but it is convenient, from a male perspective, that the annulment granted by the Commission was on the face-saving grounds of witchcraft. Howard won her case, but in effect lost the war – Essex's impotence was not his responsibility, but was induced by her alliance with demonic powers.

The connection between female power, the Devil and marital disharmony in all scenes of Act II would likely conjure for the audience Eve's connection with the Devil in the Garden of Eden, and male problems caused by a wife's close relationship with Satan. By IV.i Somerset has fallen under Howard's spell and

Turner says to Howard: "I could not but smile to see how like a serpent you wrigled about him whilst he stood gaping at the apples of your Eyes not seming to value pariadice in Comparisun of them (39^v).” Her speech not only connects Howard’s sexuality with The Fall (in which serpents, apples and women played a major role), but conflates the independent figures of woman and Devil into one. Howard is not just Eve the temptress, but also a wriggling serpent, for whom Somerset will willingly sacrifice paradise.

This conflated image of woman and serpent is a familiar trope in the early-modern period. Salkeld’s *Paradise* sermon describes why this is so:

the reason why our first mother was not afraid to approach and talke with the serpent, was, because the devill had chosen such a serpent, as which (in face at leastway) represented a woman, yea and one most beautifull like unto her selfe . . . hee deemed it most fit for the accomplishing of his desire in the temptation and fall of the woman, to accommodate himselfe, as much as possibly hee could, to the feature and naturall disposition of the woman. (216)

He goes on to explain that the serpent was able to tempt Eve because

it maketh men stay to behold her beautie, insomuch that whom she cannot overtake by reason of her slow creeping, she taketh them as amazed at her wonderfull beautie; not unlike unto the common and powerfull temptation of women, to whom nature hath denied the force of the body, yet hath permitted her to overcome by her beautie, those who are most powerfull and vigorous in body. (218-9)

The serpent Salkeld describes is female, and not a snake at all, but a human woman. Because the snake / Devil shares so many attributes with women, by association

women share many attributes with the Devil, particularly in terms of their beauty and sexuality. Osborne's imagery carries the woman-as-Devil theme throughout his play, and only serves to highlight how important it is (both politically and spiritually) for women to maintain their "natural" place in the hierarchy.

Given the doctrinal connection between female power and demonic ends, the law was unlikely to support women over men in petitions for divorce. Indeed, "there is little doubt that Frances Howard was only able to bring the suit because of the eminence of her own family and the political position of her intended husband (Lindley 121)." In fact, the bishops did not grant the annulment in the interests of justice. James I was the sole cause of Howard's success. In the first stages of the trial, Howard was accused of plotting against Essex and the divorce was not going to be granted (Lindley 50). However, because of Somerset's position in court and his favour with James, "the King promotse the nullity, by all the arts he cane haveing procur'd the consent of most of the Bishops (Osborne 40^v)." The way in which he promoted the nullity was to assign to the Commission judges who were bound to vote in his (and Howard's) favour.

Although Howard was found to be *virgo intacta* by the midwives who examined her during the trial and therefore could prove Essex's inability to consummate their marriage, initially this was not enough for her to secure an annulment. Her position as a woman suing for divorce is quite clear: the intervention of the King alone was able to push her case through the Court of High Commission, but as a consequence she was subsequently (and concurrently) demonised.

Frances Howard's early notoriety was a product of her divorce suit; although she is declared legally innocent, in some ways this is a false ruling, she would have

been legally disparaged as a bad wife had it not been for James' intervention, and it is for this reason that her legal subjecthood as a wronged wife cannot be sustained. The bias of the King is corrected by the bias of public opinion, which stands firmly behind the dominant definition of the female legal subject. The general precept which dictated that "[t]he woman is bound by the lawe to the man while hee liveth, but shee which is bounde by the lawe, shall be an adultresse by the lawe, if shee leave her husband, notwithstanding a thousand Bills of divorcement (Dove 34)," seems to have won out in this particular case.

Osborne's play shows the effects of the 1616 murder trial – the character is not Howard newly-divorced, as in Terracae's poem, but Howard recently-confined-to-the-Tower. However, his scenes connect women who engage in law with witchcraft, as Terracae's did, and support constraints on the female legal subject. His work suggests that because Howard and her mother overturn the divine hierarchy they are in league with the Devil. As wives, they should be *femes covertis*, without legal rights or recourse; they should not enter the public sphere, particularly not to upset the hierarchy and challenge the patriarchy by actively engaging in a system legally debarred to them.

If Essex were impotent, Howard would have been right to claim a marriage annulment safely and with legal justification; despite this, the representation of her in Osborne's play does not support that legal right, nor would the initial ruling of the Commission, had James not stepped in. The subject who is declared innocent is undone by the literary representations that reflect overwhelming public opinion, particularly after her imprisonment in 1616.

VC. CONCLUSION: HOWARD CONSTRAINED

The implication of both the works discussed in this section is that despite Howard's innocence in the courtroom the broader parameters of the female legal subject overcome the Commission's final decision. The reasons for this are clear in an early-modern context:

if there bee such, as cannot end this controversie without the Law . . .
 then this I must say, The wrong and burthen will light upon the
 womans backe. By wrong I meane not injustice, but as we say in our
 proverbe, the wrong end of the staffe will be her parte; that is, it is in
 vaine (in this case) for the wife to strive with the husband, which is,
 the weaker with the stronger; the horse (pardon mee good wives to
 use so base a similitude) the horse (I say) with him that hath the bridle
 and is able to be fast. (S. B. 55-6)

The literary representations of Howard agree more with jurisprudence that joins the wife to the husband and constrains female power and agency, than with her rights as an individual. They show that the condemnation Howard receives in descriptions of her divorce are gendered; that she, as a woman who oversteps her social and theological role, can be considered dangerous, and vilified as such, even if the law decides she is innocent. This presumption horribly played itself out in the extreme three years later when she was convicted of the slow poisoning of Thomas Overbury during his imprisonment in the Tower.

VI. THE TEXTUAL INTERACTION OF THE FEMALE LEGAL SUBJECT WITH DIVORCE LAW IN JACOBAN ENGLAND

This chapter has explored the jurisprudential underpinnings that construct women's relationship to divorce law in the early-modern period. Although the canons are straightforward in their written form, the clarity they suggest is undone by multiple, often oppositional, discourses. The canons and moral tracts alone do not reveal this, however, and it is only by using literature that the confusions, tensions and contrary social ideals which were impacting on divorce law and women are fully comprehensible.

Peter Goodrich argues, in *Law in the Courts of Love*, that "literary analysis politicises law, in the academy and in practice, by questioning its values and transgressing its limits as a discipline and so also as a practice (6)." In this way, the otherwise static values represented in the laws and tracts of the period take their place alongside other competing, sometimes challenging, discourses. The law is firmly placed within the cultural parameters that produce it, and that it affects in return. The female legal subject represented in the literary works of this chapter reveals the tensions and torsions women underwent when the law moved from the printed mandates of canons and statutes to practical application and interpretation. Cary's play challenges the law in one way, Terracae's and Osborne's works in another.

As the *Tragedy of Mariam* makes clear, the female legal subject defined in canons, statutes and moral treatises is insufficient given women's lived experience. Iwanisziw states that "Cary empowers both Salome and Mariam: each reveals, albeit in moral antithesis, the range of female agency and women's active involvement in 'divorsive' engines (119)" (although she does not mention Doris, Herod's ex-wife also figures female agency in the confines of her legal subject), illustrating how the

play challenges the assumption that women are “naturally” subservient and incapable of entering the public sphere of the legal arena.

Cary rewrites the traditional female legal subject, demonstrating how “[l]iterature suggests other possibilities for law, other means of expression of law and more profoundly conceptions of value and of justice that draw upon a wider variety of experiences of gender (Goodrich 6-7).” Her work opens up realms of possibility and urges change in women’s legal position. Her characters refigure and reinvent a wife’s relationship to her husband. They do not conjoin, they are neither silent nor hidden, and their various predicaments suggest that the frustrations women experience at law are a product of the ways in which society defines their relationship to the man they marry. Unable to acceptably adopt another role within that relationship (because another role is simply not available to them), Cary’s wives fulfill criteria that makes them socially reprehensible.

The implication is that if the law allowed them different relationships to their husbands (if Mariam could speak in public without being accused of adultery, if she could divorce a man she despises, if Salome could divorce, if Doris were not made socially illegitimate by divorce) they would be able to redefine their subjective positions without having to break the law. Cary’s play shows how the law creates the very sort of wife it tries to eliminate by leaving women impossibly stranded in unhappy marriages, unable to divorce but easily put aside by their husbands, with no legal redress. In this way, *Mariam* provides “an expansive method for reinterpretation and revisioning of legal relationships (Goodrich 7),” and illustrates that the legally defined female subject does not exist simply because the law dictates she should.

This is the same problem that surfaces in the Frances Howard material, albeit from an entirely different, male, perspective.⁷² When Edward Parry asserts that “[t]rials are the raw material of drama (*Drama* 18),” he sums up the production of the Howard literary canon. Literature, in this case, also attacks the formation of the female legal subject, but unlike Cary’s work, it accepts the dominant formation of that subject as necessary and right. Court decisions that run contrary to the dominant subjective legal definition of women come under attack in the Howard material.

Like Cary’s play, Terracae and Osborne comment on the inadequacy of the legal system. The latter two, however, indicate how “[t]he recourse to aesthetics, to literature, to social theory, to philosophy or ethics have in common the desire to reconnect the discipline of law to questions of conscience and more broadly to the politics and causistic indeterminacies of judgment (Goodrich 4).” The corruptibility of the legal system, and how that leads to verdicts that do not sustain the *status quo*, comes under attack in the Howard literature.

That these materials all argue that the law does not adequately reflect social values and public opinions, and yet stand firmly opposed to each other in their representations, further illustrates the range of cultural discourses that are generally absent from written canons and statutes. As I pointed out in the Introduction to this thesis, law will protect society over the individual by silencing, for the most part, oppositional voices and contradictory value systems. In doing so, it tries to impose a universality on subjects that simply does not exist. This chapter illustrates how these literary works about women and divorce law undermine the illusion of universality that law attempts to create. They also effectively challenge the authority law has to govern all people effectively, by illustrating that different people react to different

⁷² One difference in perspective is fictional writing by a woman and “historical” literature written by men.

legal situations in different ways, and that for the purposes of this thesis, those ways can be significantly gendered.

Furthermore, the juxtaposition of these works illustrates the debates about divorce law that were occurring extra-textually. Debates which led to Cranmer's *Reformatio* and its subsequent disappearance from potential legislation; debates which caused some writers to lambast women who tried to use the legal system, and some lawyers and judges to allow those women into the courtroom. It is little surprise that under these circumstances the legal definition of the female legal subject in its relation to divorce is found wanting by more than one social group. The next chapter explores women, adultery and the law. Like this chapter, it considers the formation of the female legal subject as it relates to adultery jurisprudence and then analyses representations of that subject in literature and a tract based on a real adultery case, in order to better understand the broader culture in which early-modern adultery law is situated, and to examine how the stereotypes and myths that are often used in the courtroom to maintain social order are sustained and / or undermined by literature.

**CHAPTER THREE. ADULTERATED MARRIAGE: THE FEMALE LEGAL SUBJECT,
INFIDELITY AND COURT PRACTICE IN EARLY-MODERN
ENGLAND**

[W]e must be convinced of the greatnesse and foulnesse of the sin of adultery; it gives a deadly blow to the knot it selfe; it is cried out of exceedingly in the Word, it cuts a-sunder the sinews of families, we must judge of it by the Word; not by the world.

(Capel, *Tentations: Their Nature, Danger, Cure*)

But there are many hold it as their creede,
That all [women] are false, if they be tried:
If some seeme chast, it doth of this preceede
They have the wit to doe, but not be spide;
And know by deep dissembling & good heed,
With sober lookes their wanton lust to hide.

(Anonymous, *Asylum Veneris, or a Sanctuary for Ladies*)

Adultery is the most uncontested reason for divorce in the early-modern period, and is set out in the canon law as a straightforward legal matter: "You shall not commit adultery (Exod.20.14)." The seventh commandment applies equally to husbands and wives. However, the previous chapter reveals more than women's legal rights, or lack thereof, in divorce and marriage. The textual evidence of the Howard trial and Cary's play makes it clear that a strong connection exists between women's agency and women's concupiscence.¹

Although no hard evidence exists that Frances Howard and Robert Somerset were having an affair before her separation (she was *virgo intacta*), and the divorce was not brought by Essex because of infidelity on her part, rumours of an affair destroyed her reputation and marred the social validity of the High Commission verdict years before the public outcry could be justified by her connection with murder. In Cary's play, Salome is an open adulteress, and the most persistent character to call for women's legal rights, and Mariam dies because Herod interprets her speech as an adulterous act. William Whately typically asserts that women who show disrespect for their subordinate position in the home by going public, are "[s]taines of woman-kinde, blemishes of their sexe, monsters in nature, botches of humane society, rude, gracelesse, impudent, next to harlots, if not the same with them (*Bride-Bush* 39)." The evidence in the divorce chapter and Whately's work suggests that any foray into public proceedings casts suspicion and aspersion on women's reputations. It comes as little surprise, then, that in practice the laws governing adultery itself were much harder on women than men.

No mention is made of adultery in *The Lawes Resolutions*, implying that an adulteress enjoys no legal rights whatsoever. Significantly, there is also no mention

¹ Jean E. Howard and Phyllis Rackin argue that "Renaissance women who transgressed in any way, even by excessive gossip and railing, were often characterized as whores (63)."

of how a woman may seek legal recompense against an adulterous husband (the implication being that such affairs are to be borne as part of married life), or how women can defend themselves against a false accusation of adultery (the even more sinister implication being that there is no viable defence against such an accusation). Even though the written law asserted that “extra-marital sexual activity of whatever kind was in social theory abhorred as hateful to God and a threat to the well-being of the commonwealth (M. Ingram 125),” many men took mistresses in the early-modern period.

A. F. Pollard, writing about Henry VIII’s divorce from Anne Boleyn, argues that

[t]he gravamen of the charge against Henry is not that he seduced the ladies of his court, but that he married them. The Papal Curia itself was lenient to mistresses; it was, indeed, as Mr. Hilaire Belloc has noted, ‘a common practice’ for his ‘greater ecclesiastics’ of that time to take a mistress, and Anne Boleyn only encountered Papal censures when Clement VII discovered that Henry really meant to marry her.

(24)

This situation, in which men could take mistresses without detriment to their honour, remained unchanged from the time of Henry VIII to that of James I, as the evidence in this chapter will show. Thus, the extra-marital activity which could disrupt the very foundation of society was not that of a socially-sanctioned, rapacious, mistress-holding husband, but rather, a wife’s illicit infidelity.

Popular belief, as Alain Chartier wrote in 1566, held that men have “more libertie then women to love in moe places then one” because “[t]ake modestie, shamefastnes, and feare from women, and ye take awaie their life, which chaunceth

not to man (8^v).” This attitude could, and did, filter into the court system affecting the interpretations of adultery law. Thus, husbands were far more successful bringing adultery charges against their wives than wives were against their husbands, simply because the ideological pressures evidenced by Chartier and Pollard exerted themselves on the otherwise egalitarian canon law.

Such pressures led to a situation in which the courts worked to the benefit of husbands, who, as noted in the previous chapter, “would sometimes pretend their former wives to be false to their beds, and so be divorced, and marry again such whom they fancied (Strype, *Memorials* 2: 182).”² The difficulty for women arises because adultery is in many ways an “unprovable” (and equally indefensible) act, unless the parties involved are discovered. In the courtroom, often without hard evidence of innocence or guilt, it was a husband’s word against his wife’s, and the male legal prerogative, which controlled women’s bodies as “spaces in which masculine activity reigned (Fissell 440),” gave him the upper hand. Therefore, although “a wife being sued for divorce could debar the action if she could show that her husband had also committed adultery (Sommerville 145),” this was very hard for women to prove, given a legal system that supported the husband’s claim, and that generally accepted male infidelity as harmless.

During this period men used adultery accusations to rid themselves of unwanted wives so frequently that it led to a debate about the right to remarry after divorce for adultery.³ As for the women involved, Edmund Bunny argues that

² John Rainolds, writing in 1609, also cites this practice (1).

³ Some, like William Whately, who asserts that the party “being wrongfully forsaken by his or her yoke-fellow, may lawfully then marry another, as being disburdened of the former yoke, without any sinne, on their parts (*Bride-Bush* 5),” and John Dove, who argues that “*with a restraint from a second marriage, men and women are caused to burne in lust (A7)*,” believed that remarriage after adultery should be allowed; others, however, adhered to the canon law which defines divorce for adultery as separation *à mensâ et thoro*, “which dissolveth not the marriage . . . for it is subsequent to the marriage (Coke 16^v-18^l),” thus barring the parties from remarrying pursuant to Article CVII of the

remarriage after divorce for adultery falls hardest on wives: “[t]hose that are blemished thereby, are both those second wives of theirs, and the children that by them they have: the former of them being accounted no wives but only adulteresses by law; and their children illegitimate also (*Divorce* 161).” While Bunny freely admits that women are hardest hit by divorce and remarriage,⁴ he does not criticise the husband for bringing disrepute onto all the women involved, and his omission reflects the social attitudes that affected the jurisprudence of his time.

The fact that men were able to use the court system so easily in their favour in matters of adultery indicates that the patriarchal interpretation of social relations was manifesting itself through seemingly objective (and objective as written, in the sense that adultery law applied equally to both men and women) legal strictures. Thus, early-modern married men found themselves in a position

[w]hereas that, which heretofore came (lightly) no farther, but only to be disputed among the learned, is now growne to so common a practise with many, namely to prosecute divorce for adulterie and to marrie againe . . . because manie themselves being given to that fleshly libertie, doe neverthelesse shrowd themselves under the judgement of those learned that favour the same. (Bunny, *Divorce* 1-2)

The early-modern hierarchical system which relegated women to a subordinate role “was enshrined in institutions, from Parliament down to the humblest family

canon law, which states that after a separation *à mensâ et thoro*, a bond is to be taken to not remarry while the other person is still alive. The tension between these two factions was such that Whately was called before the court of High Commission in 1621, when the *Bride-Bush* came to their attention. He was charged with heresy and his book placed under censorship. He renounced his position on remarriage after divorce on May 4, 1621, signing a formal recantation. The republished edition of 1623, however, still contained the offensive text, which he dismissed, rightly or wrongly, as a printer’s error (Auchter 51).

⁴ NB: See Doris’ attitude towards Mariam in Cary’s play.

(Mendelson 2),” so that although “wives accused their husbands of adultery almost as often as husbands accused their wives (Stretton, *Women* 195),” a double-standard existed in the law courts governed by those who “favour the same” practice as the accusing husbands – other men – making it near-impossible for a wife to successfully contest her suit.

A husband’s reasons for falsely accusing his wife were in part financial. John Rainolds explains that “the woma[n] being putt away so, doth lose her dowry too by law,” because “[w]hich pu[n]ishme[n]t as God hath threatned by his law to men that goe a whoring fro[m] him, though they have not any dowrie of their owne neither, but of his gift: so the Civil Law hath i[n]flicted it on adulterous wives, & the Canon Law i[n] looser tymes also (86).” By divorcing a wife for adultery the husband gains the right to her dowry, and frees himself from making alimony payments (Stone, *Road* 159).

Why the law, for the most part, applies penalties to women alone in adultery cases, is explained by gendered cultural constructions, and is established by the early-modern “[p]atriarchal legality [that] conceives of female sexuality as criminal (Loomba 107. My addition).” As the anonymous author of *The Court of Good Counsell* explains:

though the husband offend God as much as the wife, in violating the sacred band of Matrimony: Yet the wife ought firmly to print this in her hart, and to remember alwaies, that where the husband by his fault doth but a little blemish his credit, the wife altogether looseth her good name, and remaineth spotted with such infamy, that she can never recover her honour againe. (D2^r)

As I argued in the previous chapter, one of the reasons a wife is treated differently at law than her husband is because of the analogous connection between Christians and the Church. This analogy is especially telling when adultery is involved.

If the wife pursues extra-marital activity, her actions are akin to people pursuing extra-Christian devotions.⁵ The analogy simply does not allow for a husband's extra-marital pursuits to be interpreted in the same way. As John Dove preached in 1601, "*when a man or wife asketh counsell of the Lawyer how they may be divorced, the man so doing is dishonest; the woman so doing, is adulterous* (A6v)." Responsibility for a schism between the church / husband and the people / wife rests solely with the errant flock, and although a husband may be deemed to be "dishonest," his reputation is not as badly affected as that of his "adulterous" wife.

Such belief led to a legal situation for women in which

[m]en might evade allegations of adultery, but women usually could not. The power of the accusation of female adultery was such that a single instance of alleged infidelity could provide grounds for separation and the denial of maintenance (Stretton, *Women* 195-6);

a situation that ran contrary to the written precepts of canon law which treated husbands and wives as equals in matters of adultery. Extra-marital sex was, in the written law, as heinous in the man as in the woman.

The traditional canon law was cited by some early-modern writers as a counter-balance to court (and husband) practices that generally relegated blame only to the wife. Bunny argues that

⁵ This metaphor is not unique to Christian theology; it finds its source in Judaism, wherein the "Hebrews used a woman's sexual deviation as a central metaphor for religious apostasy; falling away from the worship of Yahweh alone is described as 'harlotry' in several biblical passages (Clarke and Richardson 29)."

[t]hat other out of the fift of *Numbers*, is that lawe of Jealousie, which (being an harder course than this, and a great deale more busie; and a peculiar remedie ordained when a man hath his wife in suspition of adulterie, or when as it was so indeed, but without any witness; and not allowing the man to go any farther, but to hold himselfe co[n]tent, if she in such sort as there is set downe, should make her purgation) doth every way, me thinke, insinuate, that then there was no so easie a way for this, for a man (for lighter matters) to be rid of his wife when he would, and the same to stand good by the word of God. (*Divorce* 36-7)

His argument suggests that court trends do not reflect the canon law as written, but are rather an interpretation of the law through social constructions and pressures; pressures which exerted influence, because “although marriage be the ordinance of God: yet for the circumstances thereunto appertaining, it hath diverse things that are to be governed by the positive laws (Bunny, *Divorce* 12),” and is, therefore, susceptible to the interpretations of positive law.

Cranmer’s *Reformatio* attempted to address the false accusations and double-standards practised by husbands and the courts. It proposed that men, in pursuit of “a succession of fresh marriages,” and

a constant change of wives . . . will devise slanderous charges of adultery and other crimes of that kind against the innocent, unless the punishment for their offenses is made sufficiently severe to act as a deterrent. Therefore, if a man shall charge his wife with adultery or

poisoning,⁶ and if subsequently the case fail, then the half of his property is to be assigned to the wife. Nor shall he in any circumstances have any right of selling, dividing, bequeathing, exchanging, giving, or alienating that property unless the wife consent thereto. (104)

Furthermore, “the marriage shall be maintained (105),” with the husband in a financially subordinate position. Although, as I pointed out in the previous chapter, the *Reformatio* was not legislated, this passage proves that influential people in the legal system, such as Archbishop Cranmer and others, were not blind to the inequitable treatment of women and were attempting to reform legal practice in order to discourage husbands from making false accusations.

Recognising this legal shortcoming was not exclusive to Cranmer and his fellow reformers. Throughout the early-modern period disquiet about the sexual double-standard between men and women arise time and again. In 1617, years after Cranmer’s proposed reforms were quashed by rival factions, Sowernam’s *Esther hath hanged Haman*, a pamphlet in the well-known “Swetnam debate,” arguing against Swetnam’s *Araignment of Lewd, Idle, Froward, and Unconstant Women*, cites the different treatment of men and women who engage in illicit sexual encounters:

if a man abuse a Maid and get her with child, no matter is made of it but as a trick of youth, but it is made so heinous an offense in the maid that she is disparaged and utterly undone by it. So in all offenses, those which men committ are made light and as nothing,

⁶ The link between adultery and murder is familiar in the early-modern period. See for example: Arthur; *A True Relation of the Most Inhumane and Bloody Murther, of Master James; The Unnaturall Wife*; and *A Warning for All Desperate Women*. For an extensive critical discussion, see Dolan, *Dangerous Familiars*.

slighted over, but those which women do commit, those are made grievous and shameful (24);

in 1624, Whately agrees that if “the adulterer, that having a lawfull wife at home, shall give his unlawfull lusts scope to range abroad, to the wives and daughters of other men, [he] is worthie all sharpenesse of punishment, as a man that hath hearkened to the oration of foolish folly (*Care-Cloth* 39. My addition);” and later, in 1633, Richard Capel argues that although a husband’s infidelity “is amongst too many but for a tricke of youth, ye for such tricks, God the just will damne men in hell, unlesse they repent (386).” These examples indicate that the legal system which generally gave men the freedom to sexually transgress and severely punished the women who did so was not accepted whole-heartedly by the society it attempted to structure.

Obviously many discrepancies existed both socially and jurisprudentially with regards to adultery law and its courtroom interpretation. This chapter attempts to explain why, when the written law treats men and women equally, the law in practice does not do so, and to illustrate how the oppositional arguments surrounding adultery law construct the female legal subject. I will first explore the theological and social underpinnings of adultery laws and court practice, giving essential historical and legal context to the Jacobean female legal subject. I will then turn to written representations of women in order to examine how forms of literature define or subvert the female legal subject’s relationship to adultery law, and work to firmly place that subject within extant cultural constructs. I have chosen contrasting representations in order to examine the ways in which women and adultery law interact, how this reflects, or challenges, ideological and theological trends, and how these texts work within a cultural criticism of law and literature.

The first selections represent women justly accused of adultery. Henry Goodcole's pamphlet, *The Adultresses Funerall Day*, 1635, relays a real-life case in which an adulteress is condemned to death for murder. Of its genre, Goodcole's pamphlet is unique – unlike so many other accounts of adulterous women who were executed for committing concomitant murder, Alice Clarke never confesses to killing her husband, and maintains her innocence throughout. This pamphlet is important evidence of how one discourse impacts on another. The strong connection between adultery and murder in the early-modern period decides Clarke's guilt, not her case history, evidence, or plea.

Although it is not strictly a "literary" work, the reshaping, reinventing and reconstruction of Alice Clarke that occurs in order for Goodcole to be able to represent her not just as an adulteress, but a murderess as well, makes her a near-fictional character by the time her plight is printed for distribution. In this way, Goodcole's pamphlet evidences the same conflict between written representations and extra-textual constructions so apparent in Terracae's poem and Osborne's play. His treatment of Alice Clarke reveals how the social construction of women affects court decisions.

The second woman chosen for this section is Isabella of Swevia from *The Insatiate Countess*, a play attributed to John Marston and others, ca. 1607-8.⁷ The

⁷ It is important to note that there are significant problems with the text, not the least of which is the inconsistency of the characters' names in the different quartos. Giorgio Melchiori, the editor of the 1984 Revels Plays edition, explains that the first quarto of the text, on which Q2 and Q3, published in 1616 and 1631 respectively, are based, "is not the final text acted at the Whitefriars: it is a fairly early 'treatment', by William Barksted, Lewis Machin and perhaps other hack writers in the pay of the short-lived company of the Children of the King's Revels, of a very incomplete draft of the play left by John Marston (1)." Melchiori's research concludes that the first layer of the play was drafted by Marston, who wrote "Act I, part of II.i, some speeches and outlines of the rest, particularly II.ii, II.iv and, to a lesser extent, III.iv, IV.ii and V.i (16)," the second layer was completed up to V.ii by Barksted and Machin, and the third layer, V.ii, by "either a new hack writer or one who had already worked on the play (16)." Martin Wiggins, the editor of *Four Jacobean Sex Tragedies*, published in 1998, agrees "broadly" with Melchiori's analysis (xxv), but uses the names assigned to the characters in Q2, changes he attributes to Barksted and Machin (xxvi). He also attributes the play "primarily to

contrasting representations of the female legal subject I then discuss are women unjustly accused of adultery, the virtuous wives, Abigail and Thais, also from Marston's play. Their plight underscores the real problem for early-modern women – being falsely accused of adultery in an unsympathetic legal system, and the constraints that stereotypes produced to make it very difficult for women to plead innocent.

The Insatiate Countess is an ideal play for a cultural criticism of adultery and the female legal subject. Extant criticism has tended to pass over this play in favour of Marston's other dramas.⁸ For the purposes of this thesis, however, the stories of the insatiate Countess and the virtuous wives, and how those women can (or cannot) use the law in matters of adultery, makes a worthwhile contribution to the law and literature movement I discuss, specifically because, in many ways, Marston's characters break down the stereotype of the evil, lascivious woman so evident in Goodcole's pamphlet (and Cary's play). As Scarr argues, "in the sheer quantity of puns and innuendoes that emanate from his female characters, [Marston] boldly stakes a claim for feminine equality in sexual desire in those who are objectified and demonized, which other writers only hint at (96-7)."⁹ Like Cary's *Tragedy of Mariam*, *The Insatiate Countess* is a variant of the revenge tragedy. It is an Italianate court tragedy, a genre which utilises revenge tragedy motifs while stressing "the

Barksted and Machin rather than Marston (xxvi)." He freely admits that "conventional editorial techniques cannot hope to produce a version of the text which corresponds with the finished play that was staged in the early seventeenth century (xxvi-vii)." For the purposes of this thesis I have used the Melchiori edition, which uses the Q1 and Q3 character names. I also adhere to scholarly tradition that generally attributes the play to Marston, simply because Marston's outline worked as the blueprint for the play's action, to which Barksted and Machin contributed, and that blueprint would have sustained the themes he establishes in the early parts of the play, particularly those with respect to female sexuality and the masculine response to it. I cite Marston alone for ease of reference, whilst acknowledging that Barksted and Machin had a large part to play in the play's production.

⁸ See, for example: Colley; Finkelpearl, *John*; Finkelpearl, "John Marston's;" Finkelpearl, "The Use;" Geckle; R. Ingram; and Morse.

⁹ Original text read "he."

corruption of the great (Melchiori 33),” and it is thus well situated to criticise the extant legal system. Furthermore, Marston himself was one of the playwrights I discussed in section IIIB, Chapter One, who was embroiled in the Inns of Court during his writing career, a member of the Middle Temple from “1570, and during the legal term he lived there for the rest of his life in chambers which he had built for himself (Finkelppearl, *John* 84).” He would therefore have been exposed to the cultural interactions between those institutions and the playhouses, a fact which lends legal authority to his work as well as underlining the point that dramas were used as early forms of teaching tools at the Inns.¹⁰

That this play borrows plot devices from Shakespeare’s *Measure for Measure* (most notably the appearance of a Duke in Friar’s clothing acting as a *deus ex machina* in the final court scene, and a bed trick to save female honour), another decidedly “legal” play of the period,¹¹ suggests that Marston could have been writing with an eye to the connections or fractures between the empirical legal world and the imaginary world of the drama. When the female characters of *The Insatiate Countess* become involved in the legal system at the end of the play, they explore themes of gendered justice and women and adultery, suggesting that Marston was indeed attempting to address legal philosophy, questions of justice, and the workings of the legal system. Before examining representations of the female legal subject in the literature, however, it is crucial to lay the theological and social groundwork to show how such representations condone or condemn the prevailing early-modern attitudes towards women and adultery.

¹⁰ For further discussion with regards to some of Marston’s other plays, see Finkelppearl, “John Marston’s,” and “The Use.”

¹¹ For extensive discussions see for example: Bradshaw 164-7, 174; Eisaman Maus 2023; Kornstein 37-8, 42, 46-54, 62-3; and Muir 102.

I. THOU SHALT NOT: ADULTERERS V. ADULTERESSES IN THEOLOGY AND THE CANON LAW

Theology is the appropriate place to begin any examination of courtroom attitudes towards women and adultery. Like divorce laws, adultery laws remained, in principle, under the jurisdiction of the church courts after the Reformation (Harding 160).¹² As I mentioned in the introduction to this chapter, the canon law governing adultery is based on the seventh commandment of the Decalogue, which ensures “the just propagation of mankinde (Ainsworth P2’).” Adultery is specifically outlawed by God because

it breakes the covenant of marriage, whereby married persons bind themselves not only one with another but to God himselfe (who hath appointed the Ordinance of Marriage) that they will faithfully and truly keepe their faith plighted one to the other . . . it brings pollution into the Ordinance which God hath sanctified for the propagation of an holy seede, and makes confusion in Stocks and Families through bastardy: and many times brings the child of an Adulterer into another mans possession, to his great wrong and indignity. (Elton 249-50)

The above arguments against adultery are the dissolution of the joined flesh (illustrating that adultery carries with it the same theological problems divorce does), the question of patrilineal succession and the notion of property – through adultery, a man is forced to possess something which is not his, children born from an adulterous union, and loses something which is his, the sole right to his wife’s body.

¹² As with divorce cases, church courts were losing jurisdiction to the court of High Commission and secular courts of equity throughout the early-modern period.

The first of these three concerns is theological, the second and third are socioeconomic. As seen in the previous chapter, the dogma transforming the husband and wife into the same flesh is persistent. Adultery, like divorce, separates the bound couple in a way seen as unnatural, even murderous. The reason “the Commandment that forbids Adultery, [is] next to that that forbids Killing or Murder” is “because next after injurie done to the person of man or woman, there is none greater then that which is offered or done to the joynt person: as the wife is to the Husband, and Husband to the Wife, they two being but one flesh (Elton 249. My addition).” This argument treats man and woman equally. The rhetoric implies that the person coming into the relationship from the outside “murders” the married, conjoined body, and is to blame for the breakdown of the physical bond between husband and wife.

The latter two concerns in the argument reflect social and economic practices. In economic systems of inheritance it is important that the family “stock” remain pure, or unadulterated. Thus, if the children in a family are the offspring of someone who is not the wife’s husband, the patriarch has been duped; his “possessions” are not his own. With this shift away from theology toward social practice, the onus for bad behaviour falls to the woman. What is significant, for the purposes of this section, is that when adultery is discussed from a purely theological standpoint, man and wife, as one body, share equal responsibility for maintaining a chaste marriage.

Dod and Cleaver, explaining the seventh commandment, exhibit the same lack of gender prejudice in their theological arguments. They assert that adultery is a great, indeed a mortal, sin,

for if he be either [sic] joyned by mariage or contraction, that commits the act, then it is adulterie. This is a verie high breach of this commandement. For when they have beene either married or contracted, then they breake the covenant of God . . . if one be so audacious as to breake the covenant of God, though it be a thing much neglected of men, and they will not cut him of according to Gods law, (for by the law of God the adulterer is as culpable of death as the willfull murderer) yet God meetes with him, and by filthie diseases brings him to his death. (*Treatise* 53^{r-v})

“He,” in their *Treatise*, refers to both the man and the woman, not the woman alone.

In general, adultery in early-modern theology is seen as a sin against nature, which “breaketh out so grossely that nature cries shame of it (Capel 57).” It “deprives a man not onely of religion, but of the free use of reason (Capel 344).” It “weakens the body, and pines away that, darkens ones senses, shortens ones life, and then comes in a huge cry, that wee have rotted away our life (Capel 350-1).” No distinction is made between the sexes in theologically-based interpretations of the seventh commandment.

Both the husband and the wife are responsible for the sanctity of the marriage bed, which “must with all care be preserved in all purity; the tentation is strong to fornication, stronge to adultery; for the worser a sin is, the stronger is the impulsion of Originall lust unto it: and Satan is more eager to make men adulterers after, than fornicators before (Capel 388).” For women, the danger of an adulterous husband is embedded in the ideology that relegates the sexes to separate spheres. The man can leave the safety of the home and “become uncleane and filthie . . . given to whoredome, imbracing the bosome of strangers, and bringing home unto [her] the

feare, if not the feeling of loathsome diseases (Whately, *Care-Cloth* 47)."¹³ The wife is neither absent nor silent in Whately's work, and her health and safety are taken into account by theological teachings which do not see the husband as blameless.¹⁴ In theological discussions about the Decalogue, the wife's position is viewed sympathetically. Women are neither invisible nor silenced in anti-adultery theological arguments, but can expect their husbands to maintain the marital bond.

This is because the ecclesiastical law is egalitarian in its wording, and its penalties affect both men and women. Canon Article XXVI, which polices Communion offenders, reads: "[n]o Ministers shall in any wise admit to the receiving of the holy Communion, any of his Cure or Flocke which bee openly knowne to live in sinne notorious without Repentance (Church of England);" and Article CIX, dealing with crimes and scandals, states:

[i]f any offend their brethren, eyther by Adultery, whoredome, Incest, or Drunkennes, or by swearing, Ribaldry, Usury, or any other uncleannes & wickednes of life, the Churchwardens or Questmen and Sidemen in their next Presentments to their Ordinaries, shall faithfully present all and every of the said offenders, to the intent that they and every of them may be punished by the severity of the Lawes, according to their defects. (Church of England)

In both these mandates no distinction is made between the treatment of men and women. The sin affects the soul of both parties equally – they "lose the inherita[n]ce of the kingdo[m] of Heaven, & purchase to the[m]selves the chaines of darknes for ever (Rainolds 91-2)," despite gender.

¹³ Original text reads "me," as the wife asks the author a question.

¹⁴ An anonymous author writes: "at what time the married man determyneth to keepe a harlot, even the same houre, doth he set fyre to his honestie, destruction to his house, and losse of all, that ever he hath (*Brief* B8^v-B9^r)."

A husband must thus take responsibility for his actions inside and outside the marriage bed because the role of sexual intercourse within marriage is yet another factor that contributes to the theological condemnation of adultery. A discussion between King James I and his clergy illustrates that, like the marriage debt a wife owes to her husband, a husband needs to fulfill his wife's sexual needs as well. At the conference,

D. Reyn. tooke exceptions at those wordes, in the Common Prayer Book, of Matrimony, With my body I thee worship. His Majesty looking upon the place; I was made beleeve, (saith he,) that the Phrase, did import no lesse then divine worship, and adoration, but by examination I finde, that it is an usuall English terme, as a Gentleman of Worship, &c. and the sense agreeable to scriptures; giving honor to the wife, &c. But turning to Doctor Reyn. (with smiling saith his Majesty), Many a man speakes of Robin Hood, who never shot in his bow, if you had a good wife your selfe, you would thinke, all the honour and worshippe you could doe her, were well bestowed.
(Barlow L2^{r-v})

James' insinuation suggests that a husband bears a (not unwelcome) sexual responsibility to his wife, and that that responsibility is an integral part of marriage, indeed, of worship, because through it God's will is manifest.¹⁵ Thus, sexual intercourse "must be a satisfying . . . and drinking away our thirst at our owne Cesterne, lest wee hanker after a strange fountaine (Capel 394)," and must be done only within marriage, to save the parties from deadly sin and to carry out God's will.

¹⁵ This is perhaps another reason why James was so willing to involve himself in Howard's divorce suit against her husband, which was for impotence.

These arguments find their source in the teachings of Paul (I Cor.7.1-39), and later, the writings of St. Augustine, who explains in “On the Good of Marriage” that intercourse “for the sake of begetting hath not fault . . . but adultery or fornication hath deadly fault (402),” because

married persons owe one another not only the faith of their sexual intercourse itself, for the begetting of children, which is the first fellowship of the human kind in this mortal state; but also, in a way, a mutual service of sustaining one another’s weakness, in order to shun unlawful intercourse. (401)

The marriage bed “which the holy ghost honoureth with a very seemely title, calling it, *The bed undefiled* (*Office* 28),” is the safe haven for sexual desire. Whately argues that

[i]f God, having planted in man that naturall inclination which hee hath planted, for the increase of the world, should have debarred him matrimonie, it had been doubtlesse an unjust rigor in God, and would have much extenuated mans offences in that kind. (*Care-Cloth* 37)

The jurisprudence behind adultery law is simple – it is impossible for people to live without experiencing lust, and marriage is the only appropriate place for people to assuage their desire.

John Aylmer explained in 1559 that sexual urges are an unavoidable part of human experience after the Fall, when Original Sin, tellingly described by Daniel Rogers, as “[t]he Old man; *The flesh, Lust, Concupiscence, The law of the members, the Law of sinne reigning in the members, The Old husband*, who hath the wife in subjection (55),” was introduced into the world. He argues that “[f]or like as a man inhabiting a stinking, filthy, and unholosome house, situate in a corrupt and unclean

aire, can not be but subject to that contagion; so these mindes of ours, beinge lodged in so impure an harborowe, must neades be defiled with the filthe (A2^v).” Richard Capel argued, in 1633, that, “out of sinne comes nothing but sinne: Lust is sin and cause of sin, and nothing but sin (11),” and marriage is the only social space, ordained by God, that sins of lust can take place without further tarnishing peoples’ souls. As Whately demands:

why shouldst not thou (O man) be satisfied with thine owne wife, and thou (O woman) with thine own husband? By taking Gods gift in marriage, thou neither rebellest against him, nor woundest thy conscience, nor defilest another, nor pollutest thy selfe, nor breakest thy covenant, nor wrongest thy family, nor transgressest the Lawes of men, nor dishonestest thy name, nor procurest any other evill: But in imbracing a stranger, thou bringest infamie one thy name, a curse upon thy posteritie, a sinne upon thy soule, and wrongest at once, God, the Church, the Commonweale, thy yoke-fellow, thy selfe, and many others moe. (*Care-Cloth* 38)

The husband, in all these treatises, is not immune to charges of adultery.

As a result of the Decalogue’s straightforward condemnation, Cranmer’s *Reformatio* proposed to deal swiftly and harshly with both men and women who let lust reign outside the marriage bed. According to his proposals, the man who commits adultery “is to restore his wife’s dowry to her. He is also to give up to her the half of all his goods. Furthermore, he is either to be condemned to perpetual banishment or committed to prison for life.” Offending wives,

if the crime of adultery be proved against them and the judge give his decision against them, shall be deprived of their dowries and of all

benefits which might accrue to them from the property of their husbands, either under any *law* of our realm, or by custom, or contract, or covenant; and shall, moreover, either be condemned to perpetual banishment or imprisoned for life. (100)

As for private separations for adultery, Cranmer condemns them outright (101). He further recommends that the innocent party, "if desirous shall be allowed to proceed to a fresh marriage. For the innocent party ought not to suffer for another's crime to such an extent that celibacy should be forced upon him against his will (100)." If both parties are guilty of adultery "the equal guilt of each party shall involve equal punishment, and the former marriage between them shall remain valid (105)." His proposals address a number of jurisprudential and social debates: the question of remarriage after divorce for adultery, the attempt to constrain the number of false accusations brought against women, and a more equitable approach to penalties. However, while his propositions highlight the difficulties women were experiencing, they were never legislated, and women were left unprotected by law in the courtroom and the social construction of the female legal subject.

II. CHALLENGING THE CANON LAW: SOCIAL ATTITUDES TOWARDS ADULTERY AND ADULTERESSES IN EARLY-MODERN ENGLAND

The previous section demonstrates that the written law governing adultery did not differentiate between men's and women's guilt, and that Cranmer's proposed reforms attempted to ensure more equality in legal practice. Because these reforms were not legislated, however, the onus of guilt continued to be placed, for the most part, on women, despite the obvious recognition by some that many guilty verdicts were misplaced. Evidence in this section suggests that the different treatment of men and women in matters of adultery was driven more by social mores and patriarchal fears than commands in the Decalogue. Although theological tenets, particularly the belief that man and woman become one after marriage, did affect law to a limited extent in favour of women (*39 Eliz., c. 9* makes the man who "entices her away" guilty of "forcible abduction"),¹⁶ this legislation did little to change the way in which women were treated in the courtroom. Courts punished wives more readily and severely than husbands because early-modern ideology touching on matters of adultery – women's subordinate legal position in the "natural" hierarchy, representations of cuckoldry, and a socioeconomic system based on patrilineal succession – paradoxically creates the potential for female sexual power which consequently threatens male social control.

The Office of Christian Parents states that adultery is grievous in both sexes, but the anonymous author's rhetoric reveals the social bias that rewrites the canon law: "Christians know, that their bodies are the members of Christ: should we then take the members of Christ, and give them to an harlot (23)?" Although he addresses

¹⁶ It works from the jurisprudential assumption that in a legal situation where the wife is conjoined to her husband, she is seen to be legally incapable of committing adulterous acts – her will is not her own, but her husband's. This rhetoric can just as easily be used to argue for the husband, however. As Bullinger states, "if the losse of a good thing sould be valued after the estimacion of the owner / then (as touching this life) ther is no greater dammage / then a man to lose his owne body. Now is it certayne / that both the parties married / art but one body (xxxvii)."

“Christians” in general, it is the “harlot,” a word with overtly feminine connotations, who destroys the marriage. Capel describes enticement itself as feminine: “[f]or *Lust* is such an enticing harlot, as will undoe the party enveagled for ever, and leave him nothing but shame and misery, loocheth [sic] him from his right master, and makes him a slave of slaves (23).” The feminisation of lust in these examples demonstrates the perception that the responsibility for sexual transgression lies firmly with women.

A woodcut from Sebastian Brant’s *Ship of Fools*, entitled “Of Adultery”



Fig. 5. [“Of Adultery”], woodcut from Sebastian Brant, *Nauis Stultifera a Domino* ([Basle], 1406 [actually 1506]) Fii^v.

exemplifies the social attitude towards women’s “natural” role as adulteresses. The foolish husband covers his eyes, blinding himself to his wife’s activities, while she feeds him fruit. The text of the modern translated edition clarifies the scene, asserting that “If all those people should be beaten / Who e’er adulterers’ fruit have eaten, / As Sallust for his crimes once suffered, / Many be welts would now be

covered (137).” The visual metaphor of the cat chasing the mice beneath the table suggests that women’s nature drives them to hunt and devour as many men as they can.

Brant’s illustration, which appeared at the beginning of the early-modern period and the later writings of Capel and the anonymous author of *Office* show that despite the wording of the Decalogue historically there are strong social undercurrents which place the responsibility for adultery with the wife. As the anonymous author of the *Flower of Friendship* writes, “the happinesse of matrimonie, doth consist in a chaste matrone (D4’),” not a chaste husband, and ironically, given the equal onus of the seventh commandment, Christian dogma about the Fall strongly contributes to social attitudes about women’s sexuality in the early-modern period, and bears heavily on the construction of the female legal subject, despite the Decalogue.

IIA. EVE AND ADULTERY: THEOLOGY AND THE CONSTRUCTION OF THE ADULTERESS’ PRECEDENT

The Eve myth taught that woman’s “foundation was a crooked rib . . . And from hence a crookednesse both in manners and behaviour hath ever since descended by way of propagation, from hir to hir posteritie (*Asylum* 8).” Eve the temptress, God’s transgressor and Satan’s ally, is the precedent and prototype for all women, and Whately illustrates how she is interwoven into the social beliefs of his time:

some women are proud, arrogant and scornefull; some, violent, headstrong, and masterfull; some, sullen and dogged; some, scolding and snappish; some, talkative; some, tongue-tied; some, light; some, coy; some, sinish; some, sluttish; some, over-spending; some, over-sparing; some, lewd and unchaste; some, raging and jealous: yea, an

hundred, and a thousand faults, doe lie hid in the painted box of the
bosome of everie of *Evahs* daughters. (*Care-Cloth* 44)

The notion that every one of Eve's daughters carries with her the same hypocritical, vain, lascivious traits, means that all women, without exception, are dangerous to their husbands' souls.

When Eve joined Adam, she undid the good of all women for all time: "it was not long of her husband that she proved naught, but that *she* drew her evill *imediately*, from the divell, and, *her husband* from her; which may be (I thinke) a good reason, why, a bad woman so farre surpasseth a bad man, in devilish condition (Wing G3^v)." Wing's attitude illustrates how stereotypes about the female sex-drive, women's potential demonic power, and masculine innocence and weakness play themselves out in the legal sphere. Women, because they are responsible for the Fall, are more legally culpable for social wrongs. As he argues:

[t]he wicked woman draw'es *downe the hill*, for she draw'es *downe to hell*, (and that *descent* is more easy, then any *downefall* on the earth) and how soone is *presuming* man, pull'd into perdition *irrecoverably* . . . What man, or son of man, that will come neere her, can hope to be out of her *gun-shott* and *battery*? considering, he is but a *naked defendant*, against her *deadly darts*, and she, (through Satan) as *politike* and *prevayling* an *adversery* as ever. (M4^f)

The familiar tropes of female evil and demonic sexual power hearken directly back to the serpent and Adam's temptation. The wicked woman in Wing's writing is an aggressive, armed, militant vanquisher; the "naked" man, defenceless and innocent, is helpless before her (and Satan's) onslaught. Wing's work, with its images of war, male vulnerability, and Satanic power, describes one of the strongest underlying

factors affecting decisions against women in adultery cases of the time: male anxiety about female sexuality.

Thus, although when the wife marries “shee voweth to forsake all other men, and to keepe her selfe wholly & onely to her Husband, here is the effect and end of her love, to be chast, pure, and without spot (Carter 73),” in the general vilification of Eve’s daughters, Carter can argue that society need

[I]ooke but into one of their actes . . . I meane their breach of wedlocke, those Adultrous workes, and then where is this love? how many forsake their Husbands unto whom they have made this vow of Love and chastity, and yet live adulterously with other men: oh how many have their secret friends & loves as they terme them at home in their Husbands absence, or meeting them abroad in private places! nay, haunting common brothell houses, so insatiate, that even whores in stewes are not more common: and what is the cause of this, but their disobedience unto the Commandement of God. (74-6)

Eve, the wife who disobeyed the first law commanded by God, who tempted her husband, who did not meekly follow hierarchical mandates, and who brought Original Sin into the world, is the prototype for the lawless, dangerous, tempting woman, and this stereotype is used in the early-modern period to women’s extreme legal disadvantage in adultery cases.

In its most severe manifestations, the stereotype of the temptress leads to arguments such as those found in Chartier’s *Delectable Demaundes*. In it, he asserts that women’s subtlety lies “[i]n that that [sic] they seme to love one alone, and neverthelesse doe gyve them selves to many (5⁵);” that they are not content to love one person “[b]icause a woman is nothing but Lecherie, insaciabile. And for this

cause she careth neyther for number, nor for any thing that is honest, so that he be able to cover her skinne, he is welcome (23^v).” Even if men are involved (and in acts of adultery in the early-modern period, they undoubtedly are), “[f]or Women only is this Place ordain’d (*Asylum* A6^v),” because, as daughters of Eve, they are considered to be the primary transgressors. By continually resurrecting Eve for careful scrutiny and rampant criticism, the patriarchy finds itself in the paradoxical position of creating and sustaining that which it most fears.

Ania Loomba explains that “[i]n patriarchal thought, the slide of woman from goddess to whore is premised simultaneously upon her potential for sexual activity, and upon her passivity as a receptacle for sin (102).” Masculine fear about female sexual power thus leads to the vilification of women in general – a pre-emptive strike against what is seen to be women’s inherent potential for sexual mastery and mass destruction. Under such circumstances, suspicion and rumour alone, as the Howard evidence in the previous chapter demonstrates, are enough to label women whores, and those who are singled out as lascivious only confirm male fears about women’s nature. Thus, male anxiety is provoked further, and the myth of the insatiable, evil, temptress continually sustains itself, becoming part of the social construction of women, and leading to male-dominated systems of female containment.

II B. INSATIATE WIVES AND JEALOUS HUSBANDS: CUCKOLDRY AND CONSTRAINT

Because all women are defined as potentially unfaithful, the male fear of adultery leads to jealously constrained wives. The construction of women as wily hypocrites, however, suggests that men fight a losing battle when they try to contain their wives’ sexuality, as the illustration “Of Guarding Wives,” from Sebastian Brant’s *Ship of Fools*, suggests. The inscription below the illustration reads: “He

guards grasshoppers 'neath the sun, / Pours water into wells for fun. / Who guards his wife as 'twere a nun (134),” implying that women cannot be contained, that the



Fig. 6. [“Of Guarding Wives”], woodcut from Sebastian Brant, *Nauis Stultifera a Domino* ([Basle], 1406 [actually 1506]) Fi^v.

husband’s task is fruitless, and that men who try to keep their wives safely locked away indoors – try to keep them chastely within the home – are fools. As the text goes on to explain: “For e’en a padlock placed before / The entrance, be it gate or door, / And many guards about the house / Can’t keep her honest toward her spouse (135).” The argument is cemented by the wife in the illustration, who, although in the house, leans through the window, smiling at the outside world.

Jealousy and gender constraints are an inevitable outcome of a system which labels all women as potential adulteresses, making men’s position as their “heads” precarious from the outset. Husbands who guard their wives, the anonymous author of *Asylum Veneris* explains, are infected by “that adulterate & spurious brat of love and feare . . . and indeede this is a monster, which never looketh upon virtue, but

with a forward and suspicious eye (28)” – specifically the “feare” of how the “love” a man has for his wife can make him weak and cause his downfall, as it caused Adam’s. This “feare” carries with it the fear of cuckoldry, of emasculation and of social chaos – the world turned upside-down, wherein women enjoy the sexual prerogatives of men and are no longer men’s possessions.

The idea that women are their husband’s chattels plays an important role in defining early-modern jealousy. An anonymous author writes that jealousy is “a certaine care of mans minde, least other shoulde possesse the thing, which he alone woulde enjoye (*Flower C7’*),” and Benedetto Varchi, in *The Blazon of Jealousie*, describes it as springing from “the Propertie or Right that wee [men] have, when we (enjoying our Lady or Mistresse) would have her soly and wholly unto our selves, without being able (by any meanes) to suffer or endure, that another man should have any part or interest in her, in any way, or at any time (5. My addition).”¹⁷ These definitions indicate the importance of male control over women, the importance of maintaining one’s possessions as one’s own, and precisely why the construction of women as concupiscent works to both strengthen male power (by giving men a reason to keep women indoors, to deny them access to legal rights and public space) and to make men vulnerable (all women, as Eve’s daughters, have the potential to upset the natural order and undo their husbands’ reputations).

Alison Sinclair argues, in *The Deceived Husband*, that “as soon as a man establishes the situation – marriage – in which it becomes possible to have proof of manhood [fathering children], he opens himself to the danger of that union proving fragile (19. My addition).” Thus, female sexual activity is refracted through masculine fear, and the “adulterous wife” commonplace is only exacerbated by the

¹⁷ The emotion was thought to be caused by imbalanced humours.

belief that adulteresses “emerge when men are womanish and fail to assert control over their wives and daughters (Howard and Rackin 72).” The frontispiece to *The Merry Cuckold* exemplifies the patriarchal fear of female strength and male weakness, the fear of a chaotic world turned upside-down. The wife described in the



Fig. 7. Wife beating her husband with a ladle, woodcut from *The Merry Cuckold* ([London, 1629]) frontispiece.

pamphlet’s text never attacks her husband, yet this is precisely what the picture depicts, suggesting that cuckoldry gives women absolute power which they are then able to wield over weak, unmanly (and unmanned) husbands.¹⁸

This pamphlet is only one of its genre, and the husband in it is joined by cuckolded husbands in plays and poems, as well as in numerous moral tracts. Literary representations of the cuckold range from humorous to dishonourable. The brunt of jokes, the humorous and foolish cuckold is shadowed by the much darker cipher of the weak, easily-overpowered man who cannot control his wife and thus

¹⁸ See also, for example: *The Contended* [sic] *Coucould*.

becomes her subordinate instead of head. Breitenberg argues that “the very *copia* of representations of cuckoldry and jealousy can be read as a response to the impossibility of certainty about” female fidelity (183). A husband only ever has his wife’s word that his children are his own, and by continually reviving the cuckold stereotype in bawdy jokes, men are able to cope with the unknowability of female sexuality by creating a discourse in which adultery becomes a joke amongst men, often against women, that works to cohere male camaraderie against women’s hazy and potentially indecipherable sexuality.

Thus, representations of cuckoldry, which are used to mock weak men, also paradoxically work to silence and contain women. As Sinclair argues, although

[t]he cuckold represents a fissure in the presentation of hegemonic masculinity in the patriarchal society that produces him, and allows the possibility of failure to be glimpsed. In so far as this occurs, and the occurrence is presented as an occasion for laughter, the cuckold and his fate are envisaged and accepted as possibilities. (56)

Despite the fact that “in the act of cuckolding . . . it is the husband who is the silent and absent butt of the joke, while a woman takes the active and powerful role (C. Cook 80),” cuckold jokes by men, in literature or in dramas written and performed by men, become a safety-valve for cuckoldry anxiety. Such representation “restores the male prerogative: it returns the woman to silence and absence, her absence authorizing the male raconteur to represent her in accordance with particular male fantasies, and produces pleasure through male camaraderie (C. Cook 80).” The woman, safely silenced, once again becomes “a cipher, the target of unconscious fantasies and fears, and is dangerously vulnerable to the representations and

misrepresentations of men (C. Cook 80),” a definable object within the patriarchal system.

While cuckoldry anxiety is spurred by loss of honour and power, the word itself reveals what is ultimately at stake: “[t]he Cuckow hatcheth her eggs in other birds nests, & the eggs she findeth of theirs, she devowreth;” it is

drawne in many languages fro[m] the Cuckows name to note their calamity, or (if they suffer it willingly) dishonesty, who receive other men into their bedds & foster up their childre[n], may be a sufficie[n]t les[o]n for a father what co[m]fort & benefit his childre[n] are to looke for by having such a mother to feede & oversee them. Beside to omitt suspicio[n] of bastardy, where by his children also may be discouraged & stained) himselfe shal be cou[n]ted a bawd unto his wife. (Rainolds 88)

Rainolds’ argument demonstrates how cuckoldry is perceived as masculine weakness – the husband is his wife’s pimp, not her head. An epigram by John Owen makes a telling distinction between adultery and cuckoldry, and suggests that despite the jokes, behind cuckoldry always lurks the phantom spectre of dangerous adultery – there cannot be an adulterer without a cuckold, and *vice versa*: “Th’*Adult’rer* and the *cuckold*, different bee, / As *Comedy* is from a *Tragedy* (No. 73).” While adultery can be likened to comedy because it is an activity men are free to pursue with little or few social repercussions, the cuckold must bear the full tragic weight of social ridicule and the demise of his public honour.

Thus, ironic though the use of cuckold jokes may be, they do establish a masculine containment system for what the early-modern patriarchy seems to fear most – female sexual indecipherability which potentially leads to illegitimate

children inheriting the “nest” – and bolster homosocial bonds. False adultery charges, within the early-modern climate of male fear, are a direct result of the masculine anxiety that produces cuckold jokes; a “husband’s accusation functions to pre-empt and thus compensate for the impotence and dishonor he seems to have regularly feared as a result of anticipating his own cuckoldry; in short, he exercises discursive power in advance of the disempowerment he anticipates (Breitenberg 183).” Men who guard their wives out of jealousy or fear of cuckoldry do so in order to protect their marriage and their progeny from being adulterated, or rendered “poorer in quality by adding another substance (*COD*);” but what “pure substance” is corrupted by the new element an adulterous wife introduces to the marriage? The first, is the marriage itself. When a woman marries she vows “the love shee must performe unto her Husband must bee pure, holy, and chaste, it must allow no mixture, no copartner in this fellowship (Carter 68).” If she breaks this vow, the sanctity of the marriage-bed is defiled and the marital union is rent and destroyed. The second, is the children of the marriage, and it is to progeny and systems of inheritance that I will now turn.

IIC. PATRILINEAL SUCCESSION AND THE GOOD OF THE COMMONWEALTH

The previous sections argued that the fear of cuckoldry is primarily a fear of unknowingly raising illegitimate children. Paternal legitimacy is vital in a patriarchal society. Thus, inheritance is the reason that the rhetoric spawned by the Eve myth which defines women’s sexuality as dangerous, perseveres.¹⁹ The *Office*

¹⁹ See, for example: Bullinger xxxix^{r-v}; Howard and Rackin 63; Rainolds 87-9; Sommerville 148; Whately, *Care-cloth* 48. For those who did not have to concern themselves with rightful lines of succession, financial concerns constrained women in a different way. The pastoral care of the parish system meant that if a woman had an illegitimate child, the village bore the economic brunt of raising it (Quaife 50).

of Christian Parents inquires how a man with an adulterous wife can “hope to have lawfull children, hopeful heires, and a blessed issue (23)?” Adulterous acts, Capel explains,

do pervert, the order and course of man-kinde irregulating the right succession of families; and in the point of adultery, and that kinde of bastardy, it doth put a strange bird to inherit the nest, and weare away the feathers, which is unspeakable theft, and to be confessed of the adulteresse; lest to her foule adultery she adde horrible theft that the child of a stranger carry not away the goods or lands of the family.
(345)²⁰

The primary social concern is for succession – for “lawfull children,” legitimate heirs, and the rightful transference of material property and land.

Succession, of necessity, is refracted through the wife who bears the children; and, like the Eve myth, the early-modern inheritance system ironically gives women social power by ensuring that a man’s economic and social position must literally be born(e) by women. Thus, the social discourses that often vilify women are a direct response to patriarchal uneasiness about adulteresses and filial purity. Phyllis Bird points out that “[t]he wife’s primary contribution to the family was her sexuality, which was regarded as the exclusive property of her husband . . . Her duty was to ‘build up’ his ‘house’ – and his alone. This service was essential to the man in order for him to fulfill his primary role as pater-familias (51).”²¹ Maintaining a pure

²⁰ The idea that a wife and her children are a man’s possessions, so that his material possessions can be properly handed down, causes many writers of the time to describe adultery as theft. See, for example: Ainsworth P3^r; Dod and Cleaver, *Treatise* 54^r; Whately, *Care-cloth* 38-9. This concept is certainly evidenced in Terracae’s poem when, as I discussed in the previous chapter, he tries to defend Frances Howard’s remarriage by describing it in economic terms.

²¹ See also Sommerville 141-2.

system of inheritance was such an integral part of early-modern economics that woman's primary role as childbearer was evidenced in both the social attitudes and the name Adam gave the First Woman – "HEVAH, a name . . . of her fruitfullnes . . . because (saith Adam) she was the mother of all living (Wing B2')." Theological and social discourses thus confirm the corporeality of the female subject, and bind her definition in relation to her physiology. It comes as no surprise, then, that female honour, and the honour of the family is often defined by a wife's sexual conduct. Because a wife's social role is physiologically determined, her body becomes the focal point of masculine anxiety, and husbands therefore have more power at law (in a legal system created and interpreted by men to protect male interests) to punish their wives for any act they deem to be adulterous.

The cohesion of the family, as I argued in the previous chapter, was seen to be of the utmost importance to society. According to Bodin, the family is the foundation of the commonwealth, and no family is complete without a wife (9). Families provide the moral and social coding which sustains the *status quo*. If a family is ruptured by adultery, the commonwealth is affected, "[l]ike as sicke or feeble bodies cannot abyde any great panges or fittes, or old cracked shippes anye great waves or windes: so disturbed and maymed common wealthes are sone overturned and cast under foote, by soden and straung mutations (Aylmer B1^r)."
Strange mutations, in a society based on hierarchical order and patrilineal succession, are social transgressions that generate marginal elements in society.

The Office of Christian Parents agrees that "the wickednesse of mans corruption hath brought in a bastardly broode, and so some by dishonouring their owne persons, and sinning against their owne bodies, become parents of such as are called base children (2)," who lead to the destabilisation of social values, because

“the ignomenie thereof is a blemish, & that blemish bredeth basenes of courage; & bastards are not brought up so well by their parents as lawfull children use to be: neither are they priviledged a like; & preferred to place of publique government, or Benefit of inheritance, by Lawes divine or humane (Rainolds 87).” Thus, illegitimate children are marginalised and seen as a potential threat because – by the very act of their exclusion – they are anomalies best ignored in a system of patrilineal succession. Masculine fears of cuckoldry and succession aside, wives who produce marginalised elements are seen to be simply not good for the commonwealth.

IID. CONCLUSION: LEGAL IMPACTS OF SOCIAL CONSTRUCTS

The three paradigms cited in this section by no means provide an exhaustive coverage of how ideology impacted on the female legal subject and adultery in the early-modern period. They are, however, the most common arguments used against (potentially) adulterous women, and lay the foundation for the courtroom interpretations of adultery law. All these social codes fall very hard on women. A wife who oversteps pre-subscribed social boundaries is labelled “a *home-rebell*, a *house-traytor*” and warned, “that, wherein her *matrimoniall King may not*, or *cannot touch her*, in case of her delinquence, the *King of Kings*, the Lord God almighty, will *reach* her, and (in his just wrath) be *avenged* on her (Wing S2^v).” Sommerville points out that because “[o]nly the wife’s adultery posed a threat to lineal succession . . . for centuries her adultery seemed the most dangerous (148).” Thus, adultery could be proved by husbands in the court on conditions of, for example, “suspicious company” and “suspicious circumstances (Quaife 48).” In short, most of the social anxieties surrounding female sexuality are due to “the arbitrary and conjectural

nature of patriarchal succession and the suppressed centrality of women to it (Howard and Rackin 130),” and the legal system responded to these fears in a way which would only strengthen their validity. Because male identity – whether or not their family is honourable, whether they are weak, whether they are cuckolds – in the early-modern period relies so heavily on “the act of reading and interpreting the *signs* of female chastity or adultery (Breitenberg 184),” signs which are prejudiced by the presupposition that women are naturally and inherently prone to adultery, it creates social codes that render suspicion enough evidence to vindicate an attack on a wife as an adulteress.

The pressure on a woman to maintain acceptable social behaviour was a pressure to maintain her, and more importantly, through her, the family’s “good name.”²² The husband, although the head of the family, ironically relied upon his wife to maintain his honour. Thus, the groom-to-be in Whately’s *Care-Cloth*, can legitimately wonder about his future wife: “[w]hat if she be loose and wanton, and discredit my family with an evill name (48),” while women can be warned that those who commit adultery “dishonoureth hir father / hir mother & kynred: Hir children (even those that are lafull) must be ashamed of her / & be doubted of the worlde / whether they be lafully begotten or no (Bullinger xxxix^{r-v}).” Surprisingly, the marginalised woman has the power to destroy everyone to whom she is connected.

For women, who are both the determinant conduit for legitimate child-birth and the marginalised keystone of the family unit, social behaviour falls under rigorous evaluation and harsh legal controls. Law, one of society’s most powerful control mechanisms, steps up to condemn the errant wife if she is unlucky enough to enter through its gates. In the courtrooms, as Lawrence Stone explains, “a single act

²² See, for example: Ames 137; *Flower* E2^v; Brathwait 29; Breitenberg 12; Capel 53; Dusingberre 33; and Sommerville 141-2.

of adultery by a wife was an unpardonable breach of the law of property and the idea of hereditary descent . . . It was also seen as a breach of the moral order, since it involved an invasion of a husband's property rights on his wife's body (*Road 7*).” Equal in canon law, but condemned outright (sometimes even when innocent) by popular belief, women found themselves time and again in impossible legal situations.

The Adulteresses Funerall Day and *The Insatiate Countess* represent two sides of the female legal subject embroiled in adultery charges – unjustly and justly accused women. Popular writing that relegates all women to the position of potential adulteresses implies that there should be no real distinction between the treatment of the two in the courtroom. The next sections of this chapter demonstrate whether or not that is true, and define the female legal subject in matters of adultery more fully than legal or moral writings do, by contrasting literary representation with the non-literary discourses already discussed.

III. INNOCENT OR GUILTY? ADULTERY AND THE FEMALE LEGAL SUBJECT

In the first two sections of this chapter I have shown that in matters regulating women's sexuality, social opinion held sway in the courts. The law is very clear in and of itself, but its clarity is confused by social beliefs that assume that women are "naturally" more prone to adultery than men, the early-modern inheritance system, and male anxiety centring around the "unknowability" of a marginalised yet paradoxically centralised female sexuality. It is important to bear in mind that court orders came down to the interpretation of those hearing the case. If the judges trying cases of adultery shared the popular view that women were inherently lascivious, or that female sexuality in marriage was much more important to succession than was a husband's (the wife's adultery creates illegitimate heirs, whereas the husband's does not disrupt the system in the same way), then they were apt to find in favour of the husband. Such was the case of Alice Clarke, burned at the stake on May 20, 1635 for committing adultery with Henry White and allegedly poisoning her (rather unfortunately named) husband, Fortune Clarke.

IIIA. MURDERING FEMALE AGENCY: THE CASE OF ALICE CLARKE

The representation of Alice Clarke in Henry Goodcole's pamphlet reveals the social prejudices surrounding women and adultery that were impacting on all forms of discourse, including literature and law, in the early-modern period. As I have already mentioned, by the time Alice Clarke's story was printed for public dissemination, the facts of the case and Alice herself had been so distorted by Goodcole's bias as to make her almost fictional. Goodcole takes the same liberties in his representation of Alice Clarke that Terracae and Osborne take with Frances Howard in the previous chapter, transforming a real woman into a stereotype, a cipher of male fears and fantasies.

Henry Goodcole was Alice Clarke's confessor, and his pamphlet, *The Adultrresses Funerall Day*, purports to contain confessions "taken from her owne mouth (A1ⁱ)" on May 18, 1635, and at the time of her execution on May 20. Although Alice Clarke was sentenced to die for committing a murder she swears she did not commit, "[f]or which being arraigned, convicted, and condemned, shee suffer'd by Fire (A2^r)," adultery, as the pamphlet's title suggests, is her most notable character flaw.²³ What the pamphlet reveals about attitudes towards adulteresses, women in general, and how the legal system prioritises one sex over the other, while at the same time it professes to be a true account in Alice's own words, is telling.

Goodcole condemns Alice for committing adultery early on, stating: "how much more horrid appeareth it in [God's] eyes; when the husband and Wife, who in the matrimoniall Contract, are no more too, but one flesh, shall barbarously and treacherously insidiate one anothers life (A2^v)."²⁴ Goodcole describes adultery as worse than "so many nefarious acts, equalling, if not farre surpassing these perpretated [sic] in former ages" because it shows "contempt of the feare of God, and the neglect of his Sabbath (A3^v)."²⁴ His attitude sets the tone for the remainder of the pamphlet, and his attacks on Alice for her "Godlessnes" and "barbary" are acerbic.

There is little doubt that Alice Clarke was guilty of adultery: "she confessed, because she often companied with *White*, that stirred up her Husbands just anger against *White* and her selfe (B2^v)," and

her Husband finding her and *White* shut up together privately in a Chamber in the house, on *Ascension-day* last in the afternoone, was thereat so with fury enraged, that hee did beate *White* going out of the doores, and after that, freshly fell foule upon her, and so cruelly added

²³ This issue heavily impacts upon the Howard trial and Cary's *Mariam and Salome*.

²⁴ Original text reads "his."

blowe upon blow upon her body, that the markes thereof were very visible on her body at this present. (B2^v)

However, as I have indicated, there is some doubt that Alice murdered her husband, and she herself never confesses to killing him – in fact, she vehemently denies it. The rhetoric Goodcole uses, however, to define Alice's behaviour within complex female stereotypes erases her individuality, private motives and possible innocence and rewrites her in generic, misogynistic terms which easily make her a murderess as well as a confessed adulteress, despite the facts of the case. His arguments show how the individual woman (and her plight) are easily contained by early-modern tropes that construct women as evil and lascivious. Her adultery overshadows any pleas of innocence in the murder charge.

Goodcole writes that Alice committed adultery because “unto selfe-will shee to be so addicted, disobediently to frequent the company of one *White*, of whom oftentimes her Husbands hand had interdicted her his society and familiarity (B2^r).” He relies on the early-modern assumption that women's agency is connected to concupiscence, Alice's “self-will” makes her disobedient and lascivious. Lisa Jardine argues that early-modern female independence is “inevitably represented . . . as adultery and sexual rapaciousness (*Harping* 38-9),” thus linking any public action by a woman to dangerous sexuality. In Alice's case, her actions unfortunately do lead to adultery, and it is easy for Goodcole to make the connection between women's will and infidelity.

To Goodcole's credit, he recognises that Clarke's abuse is partly to blame for Alice's rebellious “self-will:” “the smart whereof she feeling, incontinently begot in her heart dislike, and resolution of revenge on her Husband *Clarke* for the same, a fit humour for the devill to worke on (B2^v).” Instead of sympathising with her plight,

however, Goodcole focuses on her “incontinent,” unreasonable anger which makes her, unsurprisingly, a target for demonic influence (B2^v). Alice’s amenability to evil influences, not Fortune Clarke’s attacks, is thus her motive for murder. Goodcole draws on two social truisms when he describes Alice as an easy receptacle for the Devil: the first is that a wife must bear the hardship of a violent husband because she is subject to him; the second is that all women, because their prototype was Eve, are easily swayed to evil, Satanic impulses.

When Goodcole expounds on Alice’s claim that her husband, in fact, killed himself (B3^f), he comments: “[w]hether this be not a lame excuse, or strange delusion, I referre it unto the censure of the Judicious (B3^f).” His editorial comment refers to one of the underlying early-modern assumptions about adultery and sin. Capel explains in his treatise on temptation that “lust hath in it all sins; and when it is so great and breaketh out so grossely that nature cries shame of it, why then wee call that sin an unnaturall lust a sinne against nature (56-7).” Alice can be nothing but guilty of murder because her adultery marks her as culpable of all sins; one lust leads to another.²⁵ It is therefore inconceivable in Goodcole’s representation, rooted in these extant teachings, that Alice’s husband might have killed himself, despite her assertion that he had “violently attempted to drowne himselfe (B3^f)” earlier on the day he died.

Having assigned Alice to an indefensible position, Goodcole begins his attack. He describes her as an “obdurate Malefactor . . . who in Adultery was so Rooted, and insensible of the heavy burthen, and most intolerable plagues insuing for it (B4^v),” and declares that her evil nature is so all-encompassing “[t]hat at the first and second times of my visiting of her, little or no Repentance I found in her, or her

²⁵ Thomas Goodwin, in *Aggravation of Sinne*, argues that “the least sinne virtually more or lesse containes all sinne . . . And so every sinne in us by a miraculous multiplication inclines our nature more to every sinne than it was before (C2^v-C3^f).”

heart to be touched for her most horrid clamorous crimes (B4^v-C1^r).” He describes how, on the day of her execution, none of the “multitudes of people” who came to see her successfully got her to repent “for shee was of a stout and angry disposition, suddainly intraged (C1^r),” and how “[l]ike my selfe, they stood as men amazed, to perceive that none of theirs, or any other serious perswasions could for a great while prevayle with her, joynd in opinion with me, that she was no fitting guest for the Table of the *Lord Jesus* (C1^r).” Goodcole does not attempt to understand why Alice would be “angry” and “intraged” by those trying to make her see the error of her ways. He represents her as an evil adulteress-*cum*-murderess, a transgressor of all laws, and within such a representation she is irredeemable.

He is only satisfied when suddenly “it pleased God, so to mollifie her heart, that teares from her eyes, and truth from her tongue proceeded, as may appear by this her ensuing Confession at the very Stake, where she was executed (C1^v).” The

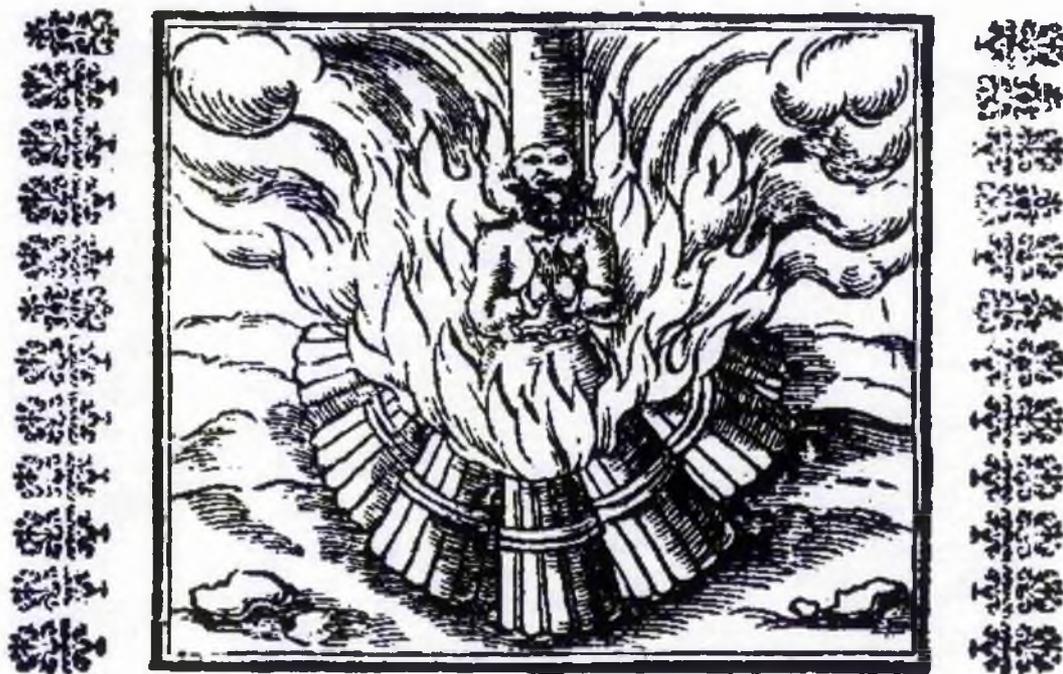


Fig. 8. Alice Clarke burning at the stake, woodcut from Henry Goodcole, *Adultrresses Funerall Day* (London, 1635) frontispiece.

illustration on the frontispiece depicts her hands in an attitude of prayer, reflecting the penance she sought in her second confession, whilst waiting for the executioner's torch to light the inferno beneath her. I will, for the moment, gloss over the fact that Alice breaks down in tears when tied to "the very Stake" about to be set fire to execute her, or that in her second (more acceptable in Goodcole's terms) confession, she still asserts that her husband accidentally consumed the poison that killed him because he was drunk (C2^f). Instead, I will analyse Goodcole's representation of Alice's case and confessions, to illustrate how the facts are misrepresented by Goodcole's stereotyping. Despite claiming to relate her confessions as they were given "from her owne mouth," his account is so full of biased, leading comment and condemnation that Alice remains effectively silent. When her arguments do find their way into the tract, as when she asserts that her husband killed himself by mistake, they are dismissed.

The case history for Alice Clarke, based on the information she gives to Goodcole in her confessions, is as follows: she and White, her lover, had a relationship prior to her marriage, which made it difficult for her to forget, or "shake off" as Goodcole writes, "such former ancient entertainments (B2^f);" one year prior to her arraignment she had been "gotten with Child by her Master (B3^f);" her Master, "perceiving the same, with a small summe of money, matched her unto *Fortune Clarke* her Husband," despite her claim that "she could not love" him (B3^f); her Master persuaded her to agree to marry Clarke, "payed the costs thereof, and further promised her maintenance during her life, if she did condescend unto his desiers [sic], which were most unlawfull, dishonest, and unchaste, before and after her *Marriage with Fortune Clarke* her husband (C1^v);" her master, having made her "promises for the same" maintenance, failed to fulfill those promises (B3^f); she

continued to see her lover, White, despite “admonitions or threats to either parties” from her new husband (B2^{r-v}); her husband beat her so “that the markes thereof were very visible on her body (B2^v);” she was arraigned and condemned for the murder of her husband, despite protestations of her innocence, and burned at the stake for murder (A2^f). In a modern courtroom it is likely the findings of the jury would have been very different.

Goodcole, again to his credit, does not completely disregard the role Alice’s master plays in her downfall, stating that it was only after he failed to supply her with the promised maintenance that Alice fell “into folly and wickednesse (B3^f).” He quickly downplays the impact the master’s decisions have on her fate, however, stating directly afterwards: a “great clog unto such a mans conscience, *if it be true*, to seduce a woman unto his will, and so leave her (B3^f. My italics).” He undermines Alice’s position as a victim of the patriarchal system which binds her first to her master and then to the husband that master chooses for her after he has impregnated her, by openly questioning whether or not her claims are true. Because Alice is clearly a servant, she faces twice the social prejudice before the law: she is a woman and she is lower class. Her master’s conscience may be bothering him, but she is the one burning at the stake.

The question this case poses to a modern reader is obvious: why is it that a woman impregnated by her employer, married off by that employer to a man she does not love (instead of the man she does), denied the maintenance promised by that employer and beaten by her new husband, is not worthy of any sympathy when she denies poisoning her husband so that (as Goodcole attests) “she should live more quietly and contentedly with” White who “would marry with her (C1^v. My addition)?” Evidence of the early-modern period suggests that there is a glimmer of

sympathy for women in Alice's situation; if a woman marries a man and "hate him, and dispise him, she is in danger everie day, to be defiled (Dod and Cleaver, *Treatise* 55^f)," because she is more open to the attentions of other men. Goodcole admits that a "just cause, all persons may conjuncture, was given on [Alice's] part, of great dissensions likely to arise betweene her Husband and her selfe (B2^f),"²⁶ thus putting some of the onus on her master and the arranged marriage to an husband she does not love. However, the responsibility of the men involved is ignored by the court – she is the one who ultimately suffers.

The reason the court and Goodcole reject any sympathetic view of Alice is simple: despite some voices of dissent, the majority of writing makes it obvious that Alice Clarke, as a woman, would have been latently inclined to any manner of sexual transgressions and evils; secondly, the treatment of her case clarifies how male anxiety about adultery is so extreme that it is the highest priority in trials against women who are charged with a number of crimes. Her adultery is proof enough of her guilt in all charges. Alice's case history shows sufficient motive for wanting to be rid of her husband, but she also protests her innocence, even when tied to the stake in her second confession, and relates that when her husband drank the mercury that killed him she "was thereat so perplexed, that she uttered these words unto her Husband, that he had undone both him selfe and her (C2^f)." Despite these factors, the female legal subject is enveloped and refracted through masculine systems of anxiety and containment in such a way as to erase Alice's experiences and motives entirely.

Thus, the fact of her adultery is enough to brand her as a murderess, despite her assertions to the contrary. Her case history is dismissed in Goodcole's pamphlet

²⁶ Original text reads "her."

and the court in favour of a reading which makes Alice solely responsible for the murder. Her voice is continually edited and undermined by Goodcole who claims to be relating the story “from her owne mouth (A1’),” in her own words, in order to make it clear that the woman represented in the pamphlet is a malefactor at worst and delusional at best (particularly when she protests her innocence).

Goodcole’s pamphlet suggests that for the female legal subject embroiled in matters pertaining to adultery, there is little hope. The legal and social systems show extreme bias in favour of masculine fears about woman’s potential for evil, despite evidence of overwhelming hardship, as in Alice’s case. It seems that the court system is prepared to protect the rights of the patriarchy to possess women, and to treat them as possessions (which can be bought and sold, as Alice’s employer buys and sells her), and to control female sexuality. Goodcole’s editing is a product of social views that label women as possessions, describe their transgressions in terms of female agency, assume that they are latently capable of all evil, that they are a “beaste unperfecte, geven to ten thousand passions and pleasures, abhominable to be thought wel of (Chartier 23^v),” and which therefore give no quarter in cases of perceived female sexual transgression.

In the social climate these attitudes create, it is little wonder that Alice, despite the fact that she was obviously treated poorly by the men who had power over her, is the villain in this specific case. Her sexual transgressions against her rightful head are signs of her dangerous “self-will” and clear indicators of her guilt as a murderess, despite her protestations of innocence. She is the one who must pay, in a legal sense, for the troubles in her life, because her adultery cuts too close to patriarchal fears and uncertainties. The court is therefore in a position where it must contain that most dangerous of social elements – female sexuality – by killing it.

Goodcole's pamphlet reflects a purely masculine perspective, and forces the woman into the reflexive Other defined by that perspective. Like his pamphlet, "[t]he masculine, in the world of the play, is the place of speaking and reading subjects, of manipulators and interpreters of signs (C. Cook 76)," and it is to representations in the world of the *Insatiate Countess*, equally affected by extra-textual bias, to which I will now turn.

IIIB. ADULTERY, FEMALE STEREOTYPES AND THE COURTS: THE INSATIATE COUNTESS OF SWEVIA AND THE VIRTUOUS WIVES OF VENICE

John Marston's *Insatiate Countess* is a *tour-de-force* of stereotypical women. These stereotypes, as hyperbolised norms, go a long way to outlining women's position *vis-à-vis* adultery law, in the same way that the recurring stereotypes in Alice Clarke's trial proved to be her legal undoing. There are three plotlines in the play: the main plot deals with the Countess, her many lovers, and her indictment; the sub-plot I will discuss in this thesis involves a comedic bed-switch by virtuous wives who are then falsely accused of adultery; and a third plotline, a love story of the Count Mendosa and Lady Lentulus, which acts a foil to the characters' attitudes in the other plots. Because the quartos on which modern editions are based are so poor, the third sub-plot disappears completely by the end of the play, the anticipated reconciliation and marriage between the Count and widow, as with the characters themselves, failing to materialise. Although potentially useful in examining the female legal subject (when the widow, Lady Lentulus, is last heard from in IV.iv, she and the two virtuous wives, Thais and Abigail, are going to the court to reprieve their respective men), because she drops out of the play completely I will not be addressing the third sub-plot in this thesis.

The Countess' and the virtuous wives' stories, however, carry through to legal fruition in the final Act, and both reveal the extent to which early-modern assumptions about the "nature" of women colour men's interpretation of events, even, as in the sub-plot, when the women are innocent. Morse Allen points out that "Marston's attitude toward the bar is interesting, as his father was a lawyer, and he himself tried law-studies for a time (109)." The trial scenes in the play are complex, and ultimately (unambiguously, despite Allen's wording) condemn the legal system, suggesting that Marston, like Cary, is questioning the validity of a discourse that attempts to homogenise the female legal subject into easily-codifiable stereotypes.

This approach breaks with most extant criticism of Marston's work. His reputation in the Jacobean period "seems to have been as a satirist and a malcontent (Geckle 18)," and historically critics have been happy to view his characters as the broad brush-strokes of the satirist which challenge social conventions through the use of "exaggerated character types, ludicrous contrasts and absurd juxtapositions (Colley 1)," in which "[t]he characters play 'roles,' they are types, and are as one-dimensional as Marston can make them (Colley 181)." Thus, R. Ingram can describe Marston's temptress in *The Dutch Courtesan* as "a caricature of a villainess (118)," a charge which is easily attached to Isabella in *The Insatiate Countess*, and Allen and Wiggins can dismiss Isabella as a nymphomaniac (157, xiii).²⁷ I will argue,

²⁷ Senapati soundly, and convincingly, rejects any critical assumptions that Isabella is simply a nymphomaniac driven by insatiable sexual desires; "[u]nlike a nymphomaniac she does not move from one man to another after sexual encounters that leave her insatiate (thereby causing male sexual anxiety), but falls in love before the relationships are consummated (138)." The Countess is not, in fact, sexually "insatiate", rather she falls in love too often. The play thus becomes less a satire about "lust and women (Allen 156)," and more a satire of conventional courtly love, particularly the "love-at-first-glance trope that dominated Elizabethan romantic comedies (Scarr 94)." Gniaca, in the play, compares true love to passion when Isabella first tries to seduce him, arguing: "Your love is violent, and soon will end. / Love is not love unless love doth persevere, / That love is perfect love that loves forever (III.ii.81-3)." He creates the blueprint against which all the play's relationships can be measured and found either sufficient or lacking. See also Axelrad 202-4 for a discussion about Isabella as a satire on women and courtly love conventions.

however, that while Marston's satires do use stereotypes, and undoubtedly "the demonizing of female attractiveness is a theme fully pursued" in *The Insatiate Countess* (Senapati 136), he is a much more able and complex playwright than the man described by Morse Allen, whose "plays show that he lacks almost entirely the lyrical gift of the Elizabethan age (125)." Stereotypes *are* important in *The Insatiate Countess*, but not because they are only the "exaggerated types" common to satire.

The representations of these women as legal subjects caught in the stereotypes that both the law and society propagate, lends itself to a better understanding of how stereotypes of women who enter the court system (like those evident in Mr. Justice Harman's alleged 1991 statement, highlighted in section II of my general introduction, in which he refers to all women as "mothers, wives and whores") leave them open to charges of infidelity even if they are innocent, and without recourse to the mechanisms men had to protect themselves from adultery charges. These are misogynistic stereotypes, and Marston uses them to good effect; "misogyny is an important part of the social and cultural fabric of all his plays One thing that is striking about *The Insatiate Countess*, however, is the range and variety of its female characters (Wiggins xii)." For a cultural criticism of law and literature, this range and variety become the cracks through which the stereotypes begin to slip, begin to melt away, and are made more complex, perhaps more dangerous as subjects because of that complexity, and ultimately work to deconstruct both generalised attitudes toward women and the easy categories of "good" and "bad" which the law tries to create.

Marston's play works to rewrite the traditional stereotypes that surround whoredom and chastity. This is not to say that Marston does not work, for the most part, from within the socialised dictates of the *status quo*. Allen Morse argues that

“[l]ust is the most prominent subject of Marston’s literary work (96),” and within that theme “his principal interest is in men. He not only warns them in too forceful words from whores, but condemns them bitterly for their open lewdness (98).” In *The Insatiate Countess*, however, Marston appears to be most interested in women – in the end, it is the women who are given scope and depth while the men are reduced to stereotypes of homo-socially bonded, anxious masculinity.

Unlike the men, there are ruptures in the representations of the insatiate Isabella and the chaste wives which lead to questions about the validity of extant female stereotypes – specifically, stereotypes about women’s sexuality through which court decisions regarding adulteresses are often refracted. The play achieves this by carefully setting up the stereotype in which the women are to be encoded, and then giving the reader and audience glimpses of thoughts and actions on the part of these women which are not normally associated with the extant stereotypes they represent. In doing so Marston undermines the stereotypes, and suggests a multidimensional, unstable subject who, like Cary’s Salome, Doris and Mariam, challenges the validity of the subjective female position which the legal patriarchy tries to sustain.

Through these stereotypes, Marston’s play examines attitudes towards women and the law, women who use the law, and the interaction between what can best be described as “private” law – what would have been defined in the early-modern period as natural law or God’s law – and “public” law – the statutes and courts – as it correlates to the private and public spheres thought best to be inhabited by women and men, respectively. The virtuous wives’ use of this “private” law and their juxtaposition with the “public” law used by the men in the Countess’ plot,

raises questions about justice and gender, and how women and the law interact in “appropriate” and “inappropriate” ways.

That the Countess, who enters the public sphere of the courtroom in order to clear her name with brash arguments and attempted bribery,²⁸ meets with a condemning wall of male camaraderie and death, whereas the wives are successful in clearing their names through their private, secret plot, their quiet, respectful words to Duke Amago, and, ultimately, the silent proffering of letters written in their husbands’ hands, suggests that if women were to try to defend themselves openly against adultery the stereotype that attaches itself to the Countess would be insurmountable. Juxtaposing the attitudes that surround these stereotypes in the legal world with the fissures the women constantly open with their words and actions, fractures the stereotypes the law and society try to create and ultimately, as in Cary’s play, questions the validity of the constraining generalisations law places on the female legal subject.

The play is full of the familiar social themes discussed throughout this chapter: jealousy; illegitimacy; female lasciviousness; and cuckoldry. Both plots show the degree to which women were felt to be culpable for male desire, and reveal high levels of masculine anxiety about female sexual power, illustrating how those fears can affect legal proceedings as they did in the cases of Alice Clarke, Lady Allan and Mariam of Jewry. The sub-plot broadens the scope of the attitudes in the main plot, undermining them and creating a space where women who are unjustly accused of adultery can experience female camaraderie and action. Like the stereotype in the main plot, the virtuous wives are also constrained by generic

²⁸ Methods, it might be ventured, not far removed from those used by upper-class English gentlemen who did the same in the early-modern period to such an extent that Strype announces in his *Memorials of Archbishop Cranmer*, “the nation grew famous for this crime (182),” and that such divorces to avoid charges of adultery “became a great scandal to the realm, and to the religion professed in it, and gave much sorrow and trouble in good men to see it (184).”

assumptions and social pressures which were exerted on the legal system, and it is the power these stereotypes hold, and the conclusions that can be drawn from Marston's treatment of them, that makes this play a worthwhile juxtaposition with the Alice Clarke account, as well as a strong contribution to a cultural criticism of law and literature. Like Thomas Dekker's *The Honest Whore* and Ben Jonson's *The Silent Woman*, the play's title sets the running stereotype for the main plot, and it is with this, its legal ramifications and its deconstruction, that I will begin my discussion.

During the course of the play John Marston's insatiate Countess, Isabella of Swevia hastily remarries after the death of her first husband, leaves her new husband and takes three consecutive lovers. Duke Medina, in the final Act, accuses her of having had "[t]hree earles, one vicount, and this valiant Spaniard . . . Besides her secret lovers, which charitably / I judge to have been but few, but some they were (V.i.57-60)." Condemned from the title onwards, the Countess plays out her role, on one level, as a lascivious, murderous, dangerous woman. How she is reduced to this stereotype by the men she encounters throughout the play, and the ramifications that stereotype carries with it at her trial, are, as with the Alice Clarke account, indicative of the role allocated to the female legal subject in matters of adultery. However, she challenges the stereotype and the patriarchy which would constrain her.

Like Cary's Mariam, Isabella of Swevia is a very vocal woman – Melchiori points out that she has "one of the longest female speaking parts in the whole of Jacobean drama: she has over 550 lines, while the longest male roles in the play (Claridiana in the comic and Guido in the tragic plot) do not reach 250 lines each (39)." Ninety-two lines of her dialogue are spoken during her trial, suggesting the negative truism used to attack women who went to law, that of "the transformation

of articulateness into promiscuousness: ‘the woman of fluent speech is never chaste’ (Jardine, *Harping* 57).” Women who argue their case in a public courtroom, particularly in matters of adultery where promiscuity is foregrounded anyway, would easily fall into this commonplace.²⁹ Isabella’s speeches during her trial and throughout the play serve a double purpose, however. While they do easily connect her to charges of lasciviousness they also give her “a defiant counter-voice” to the patriarchal paradigms in which she is constrained (Senapati 137).

When the play opens, Countess Isabella appears in mourning for her recently-deceased husband. She tells the Lords who tease her: “do not mock my grief: / Tears are as due a tribute to the dead, / As fear to God, and duty unto kings, / Love to the just, or hate unto the wicked (I.i.32-5).” Her words are sympathetic, but shortly thereafter she reveals her true feelings, and her true nature:

I mourn thus fervent, 'cause he died no sooner:
 He buried me alive,
 And mew'd me up like Cretan Daedalus,
 And with wall-eyed jealousy kept me from hope
 Of any waxen wings to fly to pleasure.
 But now his soul her Argos eyes³⁰ hath closed,
 And I am free as air. (I.i.46-52)

She quickly confirms that the late Duke was right to be suspicious, telling the audience:

You of my sex,
 In the first flow of youth use you the sweets

²⁹ As in Osborne’s and Terracae’s accounts of the Frances Howard trial.

³⁰ Actually Argus; the many-eyed herdsman sent to watch Io (Ovid 19-22).

Due to your proper beauties, ere the ebb
 And long wane of unwelcome change shall come.

Fair women play: she's chaste whom none will have. (I.i.52-6)

Although she blames her husband's jealousy for her unhappiness, she defines happiness as the "pleasure" she can get in his absence, a dubious pursuit she knows would make her fall from Heaven, as her allusion to Icarus, his "waxen wings" and over-reaching demonstrates. She also rejects the myth of female chastity (only the undesired remain chaste) and begins the process whereby she will claim her body as her own and do with it what she wants, despite patriarchal dogma which would have her remain a man's possession. Far from making her sympathetic, her admonition confirms that men should jealously guard their wives, and shows that, from a patriarchal perspective, her late husband was right to keep her locked up.

By the end of the scene she seduces one of the Lords, Roberto, "a man of a most mild aspect, / Temperate, effeminate, and worthy love (I.i.57-8)," his "effeminacy" foreshadowing his inability to keep his wife in check.³¹ The hatred the Countess felt for her late husband comes from her sense of entrapment in a monogamous relationship, and Roberto unwittingly steps into her late husband's shoes. She falls in love with someone else on the very day of their wedding, proving that he would have done well not, as he says, to kill off jealousy so early in their relationship (II.i.106-117).

This passion associated with having a wife, jealousy, frames Marston's play, creating tension between men who must legitimately guard their wives (as the Countess' husbands should) and those who are fools for not trusting them (like Claridiana and Rogero in the bed-switch sub-plot). After the first scene, jealousy is

³¹ As I discussed in section IIB of this chapter, one of the assumptions made about men who were cuckolded was that they were inherently weak and unable to control their female charges.

not mentioned until Claridiana's closing speech in V.ii, when he advises the audience:

Now I see great reason why

Love should marry Jealousy:

Since man's best of life is fame,

He had need preserve the same.

When 'tis in a woman's keeping,

Let not Argos' eyes be sleeping.

.....

Therefore, shouldst thou Diana wed,

Yet be jealous of her bed. (V.ii.223-236)

His advice, with its repetition of imagery from the Countess' speech at the beginning of the play, draws attention back to the moment the first woman to appear onstage lived up to generalised male expectations of uncontrolled and uncontrollable female sexuality. Claridiana's closing words reiterate the major underlying stereotype of the play: women, all women, even if they are goddesses like Diana, are the same; they are like the Countess whose husband was correctly suspicious of her sexual nature.

Jealousy, as I explained in section IIB of this chapter, is linked to fears about female sexuality, and Marston represents the Countess in such a way as to confirm those fears, making male suspicion an apt frame for the play's action. Jealousy is also, however, closely linked to the representation of women as possessions – commodities on which are written the scope of masculine desire. The fear of female sexuality in the early-modern period is a fear of the loss of male power, but it is also the fear of upsetting socialised, hierarchical roles. Women, like those in Cary's play, whose actions run contrary to what their "natural" social roles are meant to be,

dangerously reveal the artificiality of the early-modern social structure. Women who claim their bodies as their own, denying “patriarchal ideology to be inscribed on” them (Senapati 138), as the women’s parliament does, strike at the very core of the socialised teachings that pronounce women’s bodies belong to men alone. As Senapati argues, “[s]ince the female, sexual body is the site for the most intense patriarchal control, the transgression of it may be regarded as a deliberate and defiant challenge of patriarchal ideology (137-8).” The demonisation of women in this play has more to do with the shift in the power dynamic that sexually aggressive women enable, than with the Countess herself – by “[r]efusing to surrender control of her body to any man, she uses and abuses it to defy the controlling ideology of female (though not male) chastity (Senapati 138).” Furthermore, the men’s vilification of female sexuality is so sexualised itself that the double-standard is too glaringly obvious to be simply ironic.

Attacks on the sexual nature of women are frequent and fierce, and begin with the play’s first words. Mizaldus, one of the three Lords charged with teasing by the Countess, asks the other two, “What should we do in this Countess’ dark hole (I.i.1),” immediately setting the tone towards female sexuality, and women in general, which lasts throughout the play. His ribald remark is directed toward a woman who, by all accounts at the play’s opening, is genuinely mourning her husband’s death. It implies disrespect to her and her widowed state, and reduces her to nothing more than her “dark hole” and what men can “do in” it. In making his remark, Mizaldus connects women, sexuality and danger – the Countess possesses the unknowable “dark hole” of all women, which men struggle to possess and contain through social institutions like marriage and law. His innuendo suggests male confusion and anxiety about female sexuality, and reflects on the patriarchy’s

need to “do something” about it, to fix it, or contain it in a way directly controlled by the masculine “we” to whom he refers. The suggestion is, as illustrated by my discussion about the unknowability of patrilineal succession or female sexuality in section IIC of this chapter, that the stereotype adheres to the Countess because it is in some ways unavoidable for women, whose physiology alone produces the male anxiety to which Mizaldus refers.

Once Isabella reveals her sexual drive, rhetorical attacks on her move swiftly toward imagery of the lascivious woman, and work to constrain her within that stereotype. Guido, Count Arsena, tells Mizaldus, “A player’s passion I’ll believe hereafter, / . . . / And think it a more worthy act to me / Than trust a female mourning o’er her love (I.i.120-5),” when he hears about the impending marriage between Isabella and Roberto. The Countess, remarrying so quickly, confirms for him women’s lying nature; she represents the paradoxical role women play, acting as precedents for all women, and reconfirming what the Eve myth teaches men to suspect about women’s predisposition. Coming from Guido, however, this remark is somewhat hypocritical. He was one of the lords vying for her at the beginning of the play, and if she had chosen him instead of Roberto he would have welcomed her amorous attentions (I.i.112-5). His attack on women’s (not men’s) fickle desires is an ironic yet easy move because women are so easily slotted into extant stereotypical constructs of lustful deceit.

Although the Countess is in no way redeemable – she is dishonest, lustful and murderous, the representation of a lascivious woman, who embodies all the negative signifiers of the generic adulteress³² - she is not without self-reflexive, sympathetic moments, and therefore is “a more complex figure than her bad reputation might

³² In the same way the rhetoric describing Alice Clarke’s case reduces her to nothing more than the generic “evil woman.”

suggest . . . one who is allowed a degree of audience sympathy (Wiggins xiii).” Like Cary’s Salome, who would lead women to a new freedom, Isabella vows: “Then, queen of Love, a precedent I’ll be / To teach fair women learn to love of me (II.i.222-3);” she vows to show women that they are able to exert choice and control over the use of their own bodies.³³ As she boldly declares when she falls in love with Guido’s friend, Gniaca, neither “Hell [the teachings of the Church] nor earth [social expectations] can keep love in subjection (III.ii.51. My additions).” Although for the most part she rejects the legal subject the law would have her embody – the silent and chaste wife – she is as much a part of the patriarchal system that binds her as the men are. Thus, “[c]onditioned by patriarchal ideology she nonetheless wrestles internally with it each time she falls uncontrollably in love with a man (Senapati 137).” When in Act II, Scene i, she falls in love with Guido at her wedding masque, she muses in an aside: “Was I not deep enough, thou god of lust, / But I must further wade (158-9);” and when she leaves Roberto for Guido (who said he would never trust women again when he heard she was marrying), she reflects:

did my lust beguile me of my sense?
 Making me feast upon such dangerous cates,
 For present want, that needs must breed a surfeit.
 How was I shipwrecked? Yet Isabella think,
 Thy husband is a noble gentleman,
 Young, wise, and rich; think what fate follows thee,
 And nought but lust doth blind thy worthy love.
 I will desist. O no, it may not be. (II.iii.50-7)

³³ Her pun on “queen” and “quean” makes it clear that this will make them whores in the eyes of society.

Her private moment, punctuated by doubt and regret, is overcome by the stereotype she embodies – perhaps this is why “it may not be”. Another reason it “may not be” is perhaps due to the external forces she feels exert themselves upon her by the gods and fates, references to which resound throughout the play. Cupid stands often in her presence, “Disguisèd like a pretty torch-bearer, / And makes his brand a torch, that with more sleight / He may entrap weak women (II.i.87);” and she begs Desire “thou quenchless flame that burnest our souls / Cease to torment me (III.iv.18-9). The connection she makes between Cupid and the Devil, another deity infamous for ensnaring weak women and leading them astray, indicates the conflict and torment Desire stirs within her – she knows what she is doing is wrong, but feels powerless to prevent it.

As Wiggins argues, Isabella is often “represented as someone powerlessly watching herself spin out of control: she regularly speaks of the forces which drive her – Cupid, Desire, Revenge – in personified terms which establish her sense of them as external (xiv).” While the gods are represented as working against her from the heavens, men work against her on earth. When Guido’s angry and condemnatory pamphlet against her falls into her hands she accuses men of “conspir[ing] to work [her] honour’s fall (IV.ii.34),”³⁴ and when Don Sago, her last lover, woos her and begs her to set him a task so he can win her she demands:

You are a stranger to this land and me,
 What madness is’t for me to trust you then?
 To cozen women is a trade ’mongst men,
 Smooth promises, feigned passions with a lie,
 Deceives our sex of fame and chastity:

³⁴ Original text reads “conspire” and “mine.”

What danger durst you hazard for my love? (IV.ii.186-91)

Thus, although certainly fickle, Isabella is not a one-dimensional “caricature” of the lascivious villainess. She is often sympathetic, and “a victim of her own sexuality (Wiggins xiv).” It is in this dual representation of meaning that the complexity in Isabella’s character lies.

Although she declares she will not adulterate her marriage she does, thus confirming that women are ultimately weak, easily swayed, and cannot control their passions. She can, however, yearn for stability, can tell Gniaca that “My faith to thee, like rocks, shall never move, / The sun shall change his course ere I my love (III.iv.102-3).” While these contradictions can on one reading be interpreted as the general unconstant nature of the adulteress, Isabella is not solely to blame for her actions – Guido, her first lover, who disparages her in his pamphlet “is hardly in a position to attack her when she rejects him in turn (Wiggins xi),” but the men’s responsibility, as the adulterers to her adulteress, is neatly swept away by the way the men constantly revert to female stereotypes.

When Roberto, her second husband, hears she has left him for Guido, he attacks all women for being weak, changeable and wavering, and his argument resurrects the tropes that dictate the lascivious woman stereotype:

Women, your eyes shed glances like the sun:

Now shines your brightness, now your light is done.

On the sweetest flowers you shine, ’tis but by chance,

And on the basest weed you’ll waste a glance.

Your beams once lost can never more be found,

Unless we wait until your course run round. (II.iv.36-41)

He cannot know about the Countess' unsure moment when she wonders why she is unhappy with him and blames lust for unsettling her affections. He does not attempt to understand her motives – she is a stereotype and he does not have to; nor does he take any responsibility for her leaving, a responsibility an early-modern audience may have assumed of an “effeminate” man.

Instead, he summons the rhetoric that makes adultery an inherent attribute of the female gender, and him an innocent. The masculine anxiety that refracts male honour (whether or not men can “Enjoy the noble title of a man [II.iv.44],” as Roberto puts it when he discovers the Countess' infidelity) through female sexuality, while also defining all women as potential adulteresses, reduces the Countess to nothing more than the predictable generalisation on which Roberto can play. The audience, however, is aware of her indecision and her inner conflict, and the way in which Roberto over-simplifies the situation by drawing on misogynistic tropes seems incongruous with the psychological complexities Isabella has recently exhibited. The first masculine reaction to Isabella taking her first lover, which is voiced by Claridiana *at the same moment* he is on his way to cuckold his enemy, leaving his own wife at home, and reiterated by her first lover Guido when she leaves him in turn, is that she is simply going “to the devil (II.iv.7);” her actions are an intrinsic part of her nature, “where the devil has the fee-simple (III.iv.149).”

The men in the play constantly and hypocritically rely on stereotypical tropes to condemn her. When Guido discovers she has been unfaithful, he, like Roberto, leaps to generic female categories:

Farewell thou private strumpet worse than common.

Man were on earth an angel but for woman,

That seven-fold branch of hell from them doth grow,

Pride, Lust, and Murder they raise from below,
 With all their fellow sins. Women were made
 Of blood, without souls: when their beauties fade,
 And their lust's passed, avarice or bawdry
 Makes them still loved; then they buy venery,
 Bribing damnation, and hire brothel slaves.
 Shame's their executors, Infamy their graves.

.....

Then soulless women know, whose faiths are hollow,

Your lust being quenched, a bloody act must follow. (III.iv.175-90)

He refers to the beliefs that cause male unease: Eve and the Expulsion at line 176; the seven deadly sins which suggest women's connection to the demonic at line 177; and the association between adultery and murder at lines 189-90, thus sustaining the social truisms that define the Countess' (and women's) character.

The connection he makes between adultery and murder, so evident in the case of Alice Clarke and Salome, is an early-modern commonplace – Isabella the adulteress easily becomes Isabella the murderess. When her second lover, Gniaca, comes to kill Guido on the Countess' behalf, Guido asserts: “This curse pursues female adultery, / They'll swim through blood for sin's variety: / Their pleasure like a sea groundless and wide, / A woman's lust was never satisfied (IV.ii.80-3);” Duke Medina, who sentences her, tells the court that “Murder's the shadow of adultery / And follows it to death (V.i.26-7).” As I have argued, these stereotypes, while prevalent, are continually undermined throughout the play.

Not only the Countess' private doubts and uncertainties, but sometimes the male characters as well work to undo the stereotype. Controversially, Gniaca, the

Countess' second lover, suggests that she is confined in her role as seductress and temptress simply because she is a woman. He tells her when she seduces him:

Thou creature made by Love, composed of pleasure,

That makest true use of thy creation,

.....

This is the fate fixed fast unto thy birth,

That thou alone shouldst be man's heaven on earth. (III.iv.41-6)

He recalls the Eve myth for the audience, asserting at the same time women's predisposition to evil transgressions. According to theological writings, woman was created because God felt it was not meet for man to be alone. The Countess is simply fulfilling the reason for her, and all women's, existence – to provide pleasure and company to men. In his speech, Gniaca also alludes to the Fall, and Eve's implicit role therein. Women are men's "heaven on earth" because, paradoxically, men have been denied heavenly paradise by women. He suggests that the roots of dangerous female sexuality lie not only in the Expulsion, but also because it draws men's minds away from the true heaven, which cannot be obtained by lascivious behaviour. For all women, "this is a fate fixed fast" by their birth as females. When he alludes to women's role as the natural companions for men he evokes the male superiority and female subjection of the creation myth; that he refers to the Countess within this paradigm, a woman who is neither controlled by, nor subject to men (and not a particularly reliable companion, either) only emphasises the artificiality of the constructed female subject.

Every time Isabella transgresses, men invoke the generic, evil, socially-destructive woman. In doing so, they try to contain her within that stereotype – the stereotype associated with the "dark hole" Mizaldus refers to in the first line of the

play – and render her rare moments of regret and self-reflection pointless. As with Alice Clarke, Isabella's agency attacks the very foundation of early-modern masculine anxiety, and the men can only control her by controlling how they represent her. By describing Isabella as a stereotype, the men represent her in such a way that removes any responsibility that could fall to them.

Senapati argues that “in this play homo-social bonds lose their primacy and the gender hierarchy is reversed through sexual power, Isabella, the sexually potent woman responsible for this disruption, is destroyed (139).” While I do agree with her latter statement, and that at times homo-social bonds are disrupted, as when the Countess is able to set Gniaca against Guido and later Don Sago against both, I would argue that they are never in danger of losing their primacy. In fact, the disruption Isabella causes only strengthens the homo-social bonds of the men. Like the paradoxical camaraderie that cuckold jokes sustain, the men in this play set themselves as innocents against a malicious female Other, thus creating an “us” and “them” scenario which works to Isabella's extreme detriment when she is finally arraigned.

Not surprisingly, as with Alice Clarke's case, the law deals very harshly with Isabella once it catches up with her. She receives a pamphlet, written by Guido, that reads:

Who loves Isabella the insatiate,
Needs Atlas' back for to content her lust,
That wand'ring strumpet, and chaste wedlock's hate,
That renders truth deceit for loyal trust,
That sacrilegious thief to Hymen's rights,

Making her lust her god, heav'n her delights (IV.ii.12-7),³⁵
and in her shame she begins to plot the revenge that will finally bring her before the court.

As a female legal subject, the Countess, like Alice Clarke, is well outside the acceptable norm. For all her sympathetic moments, she is an adulteress and her passions have led to Guido's death at the hands of Don Sago. Her quick arraignment and condemnation are, based on the stereotype she personifies, just and right. However, as Morse Allen so ambiguously points out, the attitude expressed "toward the bar" in Marston's plays "is interesting (109)," and it is the legal hypocrisy and the disruption of justice in the case of the insatiate Isabella that makes this play a perfect vehicle for a cultural criticism of adultery law.

There are two Dukes in *The Insatiate Countess*. The first, Duke Amago of Venice, is connected to the virtuous wives' sub-plot. The second, Duke Medina of Pavia, tries the Countess. Like the main plot and sub-plot themselves, these Dukes stand juxtaposed. Both are personifications of law in the play, but they represent different styles of governing and justice. The first to appear onstage is Duke Amago who defines what justice should be and highlights the importance of objectivity and equitable judgment:

Justice that makes princes like the gods,
Draws us unto the senate,
That with impartial balance we may poise
The crimes and innocence of the offenders.
Our presence can chase bribery from laws:
He best can judge that hears himself the cause. (IV.i.1-6)

³⁵ That he, as an adulterer, is also "chaste wedlock's hate" is conveniently ignored.

This is the jurisprudential foundation for the play, and the ensuing trial scenes are meant to be filtered through the definition of “unpartial balance” that Amago gives to his senators. It is the framework within which the law, and the rulers who control that law, exist. Importantly, it only works to undermine the first trial scene of play, in which Duke Medina handles the Countess’ case. Thus, it deconstructs the violent backlash born out of the prevalent double-standard that exists against adulteresses as a whole, and questions the validity of the stereotypes into which the Countess is so easily slotted by the legal system. Medina is self-consciously neither equitable nor just, and a gendered legal double-standard runs rampant in his court.

Isabella intends to evade punishment by using “the marker of power in patriarchal society – wealth – to buy off both men . . . and their laws (Senapati 139).”³⁶ She is, however, unsuccessful, and is brought before the court to pay for her crimes:

Messenger. The countess comes, my lord, unto the death:

But so unwillingly, and unprepared,
That she is rather forced, thinking the sum
She sent to you of twenty thousand pound
Would have assured her of life.

Medina. O Heavens!

Is she not weary yet of lust and life?
Had it been Croesus’ wealth, she should have died;
Her goods by law are all confiscate to us,
And die she shall: her lust
Would make a slaughter-house of Italy. (V.i.46-55)

³⁶ Much like the upper-class men I discuss in chapter two, who pay for a Parliamentary bill to put aside their wives and remarry, thus avoiding charges of adultery or bigamy.

Medina suggests that it is not the Countess' adultery which leads to her arraignment, but the murder that has sprung from that adultery. Indeed, the murderer, Don Sago, stands before the Duke on trial as well, before Isabella enters the court. However, although the Duke swears he will see justice done, even to his "father's daughter (V.i.111)," he gives Don Sago, a confessed killer, a "free pardon . . . / On this thy true and noble penitence," and reinstates him as colonel of the horse (V.i.29-30), because he assumes Sago has been bewitched by Isabella, "the serpent's jaws, / That vild adulteress, whose sorceries / Doth draw chaste men into incontinence, / whose tongue flows over with harmful eloquence (V.i.10-3)." In fact, Isabella only tells Don Sago to revenge her after he begs her for twenty-one lines to set him a task in which he can violently prove his love to her (IV.ii.174-202).

Duke Medina does not consider this, however, and the stereotype of the dangerous, lascivious woman is enough to blind him; thus he frees a confessed murderer before beheading Isabella onstage for her lust. As Senapati points out, "[t]he disparity is too grotesque to be without irony (137)," and it completely ruptures any faith the audience might have in the justice Medina is supposed to represent. Justice is not served in his court – a confessed murderer walks free – and his condemnation of Isabella, disguised as the impartial working of the law, reveals that it is not justice but gender, and the stereotyping of women as devils, against which law raises its double-standard. Furthermore, what is most notable about Isabella's entrance to the court is her absolute guilt. Don Sago was given the chance to repent and mend his ways (V.i.16-22); Isabella's death sentence is announced, by a messenger no less, before she even appears.

During her hearing, the Countess is unrepentant until her husband, Roberto, dressed in Friar's clothing, reveals himself to her. As I have already argued,

Isabella's verbosity during her trial acts as a strong counter-point against the patriarchal institution she faces. She constantly refuses to give Medina's court the reverence the law deserves. When she enters and is told that she is in "the castle green" she declares "There should be dancing on a green I think (V.i.67-8)," belittling the power the location should hold for her. When the Cardinal responds "Madam: to you none other than your dance of death," she tells him: "Good my Lord Cardinal do not thunder thus, / I sent today to my physician, / And as he says he finds no sign of death (V.i.69-72)." She mocks the power of the law, refusing to accept it as an harbinger of doom. She refuses "to be dictated to, shamed, or frightened by patriarchal representatives who break the same rules but blame her only for the transgressions (Senepati 137)," thus highlighting the hypocrisy of the men (and the system) before whom she stands.

When she turns to the Duke and asks: "May we not be reprieved (V.i.104)," the audience is reminded of the clemency the Duke showed Don Sago only moments before. His reply in this case, however, is quite different: "Mine honour's passed, you may not (V.i.105)," and when he immediately commands, "Up to the scaffold with her, 'tis late (V.i.125)," she angrily responds: "Better late than never my good lord, you think: / You use square dealing, Medina's mighty duke: / Tyrant of France, sent hither by the devil (V.i.126-8)." She thus exposes the legal double-standard and biased, partial rulings of which Medina is guilty, openly accusing him of inequity.

The Duke himself seems somewhat uneasy about his decision. After Isabella is beheaded he remarks: "None here, I hope, can tax us of injustice: / She died deservedly, and may like fate / Attend all women so insatiate (V.ii.228-31)." The Duke can only defend his ruling by slipping into the patriarchal discourse that transformed Isabella into a stereotype, the "penchant for the necessary subjection of

women (Senapati 136),” and the strong belief that female sexual transgression is demonic and far outweighs the same transgressions on the part of men.

This final word on the Countess, and potentially the female legal subject caught up in matters of adultery as well, explains the significant absence of legal advice in Dodderidge’s *Laws Resolutions* for women accused of adultery. As I suggest in this chapter’s introduction, and as the evidence in Alice Clarke’s and the Countess’ case shows, there is no recourse to law for women so accused. They stand guilty before the patriarchal system – like Isabella who stands before the united front of male camaraderie at her trial – which reduces them to dangerous temptresses and unredeemable stereotypes. The Countess’ trial scene suggests that such women will be given no legal quarter; even if they are redeemed in Heaven, in society they never will be. Little use, then, for a section in a legal manual on how to defend accused women in adultery cases.

The reason the Countess (and, Medina’s comment implies, all women) is so highly constrained in her legal subjecthood comes from the very stereotype she embodies, and the fears that female sexuality can produce in the patriarchal *status quo*. The Countess’ story touches on a number of the social views I raise in section II of this chapter. She represents uncontrollable female desire, and despite her complexity, is more often than not described by the men around her in damning generic terms that apply to all womankind; she is linked, implicitly like all women, to the Eve myth, and the way in which the men continually dehumanise her draws attention to masculine anxiety about being unmanned in the face of her transgressions. Their fears are fueled by social dictates which define male strength and honour, in part, by the power men hold over women and the construction of women’s bodies as men’s possessions. Finally, her trial reinforces what I argue in

the early part of this chapter, that women accused of adultery can in no way defend themselves – her death sentence is passed by a messenger before she arrives at court.

Although the Countess, unlike Alice Clarke, does not seem to have sympathetic or clear motives for her actions, and therefore in a Jacobean framework deserves the charges brought against her, if not her punishment, Marston's play is a very useful aid in defining the female legal subject. Specifically, through the way in which those in a position to exert power, the men of the play, use rhetoric that vilifies all women when they condemn the Countess. The Countess' and Alice Clarke's cases show that women charged with adultery cannot escape the masculine assumption that women are simply "like that" (the title of the play decrees that the Countess is morally doomed from the outset). There is no room in Alice Clarke's case for the individual experiences that led up to her arraignment because she is represented as fulfilling the generalised expectations men have of female stereotypes. As in the Alice Clarke case, tirades against the Countess are attacks on all women because she meets the masculine preconception that all women cannot be trusted and must be jealously guarded.

These stereotypes show how social pressures exerted themselves on the otherwise egalitarian adultery law, placing women in strictly encoded roles if they did commit adultery, thus denying them motives, complexity and case history. However, both these works, despite being written in two very different genres, reveal how the stereotype is constructed. Goodcole's assessment of Alice Clarke denies the case history that can be gleaned from her confessions to him, and the fracture of the female subject in his pamphlet (we can also read her as a very unhappy woman who is the victim of a lascivious master, denied the man she loves and married off arbitrarily) is most likely unintentional.

Marston's Countess' complexity, however, is deliberate and exposes the artificiality of the stereotype in which the men and the legal system categorise her. Thus Marston's play suggests that the stereotyping of women (so evident in Alice Clarke's case) is both a ludicrous fantasy and women's ultimate persecutor in adultery trials. Unable to escape the shadow of the stereotype, the female legal subject in matters of adultery is doomed to guilt and association with all sins, particularly murder. Significantly, no hardship falls to the men who are the Countess' co-conspirators and lovers (or the master who impregnates and then discards Alice Clarke). In the Countess' trial scene they stand united, condemning her.

Given this representation of women, the feminine state-of-affairs seems bleak. There is, however, another female stereotype at work in Marston's play: that of the virtuous, chaste wife. Like the Countess, these women break down expectations of what their behaviour should be according to their stereotype, challenging ideas about female chastity and the construction of women as silent and submissive. As Wiggins points out, "[i]t is especially important that all the female characters are explicitly shown to be interested in sex (xiii)," and yet at the same time not all of them "would support the generalizations that are made about female depravity (xii)." Thais and Abigail *are* virtuous; when Thais warns Abigail "Sister, see you be constant now (I.i.286)," Abigail hotly responds: "Why, dost think I'll make my husband a cuckold (I.i.287)." However, they are virtuous wives with a twist. In many ways they are "Truth telling a lie, / Virtue a bawd (II.i.87-8)," and ironically only in this way are they able to maintain their chastity. In doing so, they, like the Countess, create cracks in hierarchical constructs and implicitly demand that the social construction of women be renegotiated – redefined – and suggest that

women's relationship to their bodies and their husbands can exist in a different form than the extant dominant discourse of adultery laws would allow.

While it is true that, "[w]hen Marston deals with two wives employing the bed-trick in the comic subplot of *The Insatiate Countess* . . . he is less concerned with exploring the issues the convention raises than with exploiting the possibilities for comic satire (Desens 71)," it is also apparent that the united front Thais and Abigail form to perform the bed-switch is a female foil to the united male front in the Countess plot, and the way these women use the law "privately" contrasts with the open, public, legal space that the men in the Countess' plot are able to occupy.

The husbands who wrongly believe they have cuckolded one another parody the masculine assumptions about women so evident in the main plot. This parody is driven to extremes because the husbands in the sub-plot are complete fools – a charge which could easily be laid on the men who get involved with the Countess thinking she will be faithful and then being surprised when she is not (she is, after all, *the insatiate* Countess). The plot's action begins when the foolish husbands, the sworn enemies Claridiana and Rogero, make the mistake of marrying the best friends Abigail and Thais, and separately plan to cuckold one another to get revenge for past grievances.

On their wedding day, Claridiana vows he will "Strumpet [Rogero's] wife, branch my false seeming friend, / And make him foster what my hate begot, / A bastard, that when age and sickness seize him, / Shall be a cor'sive to his griping heart (I.i.453-6)."³⁷ Rogero, meanwhile, sets his sights on Abigail, Claridiana's wife, and tells her rather unconvincingly that "It is your love, and not the odious wish / Of my revenge, in styling him a cuckold, / Makes me presume thus far

³⁷ Original text reads "his."

(I.i.410-12).” The plot is easily discovered by the women, who exchange the letters they have received from one another’s husbands (II.ii.1-40).

This alone complicates their subjective position as chastity and virtue personified. Truly virtuous women would not have accepted love letters from another woman’s husband. Thais and Abigail, however, are not strictly bound to the stereotype they are meant to embody; they are flirtatious, they banter with each other’s husbands at the Countess’ wedding masque and they make bawdy jokes. They even go so far as to make arrangements to meet the men privately (in jest, most likely, given that they are quick to bring their respective husbands’ overtures to each other’s attention [II.i.101-146]).

They are highly sexualised women, and are aware of the role the men play in sexual politics. When Abigail reads her husband’s overly-passionate and verbose letter to Thais, she declares: “Three such words will turn any honest woman in the world whore: for a woman is never won till she know not what to answer; and beshrew me if I understand any of these (II.ii.24-7).” Like the Countess, they refuse to let sexual fault lie with women alone and are quick to point out the role that men play in seduction. These lapses in character make the women worthy adversaries for the husbands who would undo them.

The wives, as Abigail asserts, take the law into their own hands to save their honour, perhaps because they know they will not be successful if they bring a plea against their husbands in court (II.ii.35), and they successfully manage a bed-switch so that the husbands unknowingly sleep with their own wives (II.iii.70-121).³⁸ The

³⁸ Desens argues that bed-switch plots play an important role in reconstructing early-modern perceptions of women. Like the highly sexual, virtuous wives in Marston’s play, a discovered bed-switch unites the man’s fantasy of the idealised woman he would have in secret with the sexual woman in the wife (71). Both suggest that wives can be chaste and virtuous but, importantly, also sexual people.

language the women use to arrange the details of their plan is important in their deconstruction of the chaste wife.

Like their flirtations and jokes, their words are highly sexualised and the arrangements for the men's "entry" into the women's "chambers" is a drawn-out *double entendre* of the sexual act itself. Thais asks "But you mean they shall come in at the back-doors," to which Abigail replies: "Who, our husbands? Nay, and they come not in at the fore-doors, there will be no pleasure in't. But we two will climb over our garden-pales, and come in that way (II.ii.68-71)." The women not only take control of the situation in which they find themselves, but the sexual act they will perform with their husbands as well.

They will "climb over" their "garden-pales," which Scarr explains is "a euphemism for their husband's penises, which the wives, by climbing over, will straddle (Scarr 91)," to "come in that way." The wives thus assert their physical primacy over the men and ensure that they will enjoy themselves as well. In this way, they doubly undo their husbands; "[i]f sex, like marriage, is based on power, then the notion of the wives atop their husbands in a physical sense enacts their intellectual and moral superiority (Scarr 92)." Therefore these wives, who do embody virtuous women and act as a foil to the Countess' lust, do not embrace the stereotypical traits of female virtue – they are not submissive, subordinate, meek or silent – either in bed or without, and this adds complexity and discord to the virtuous wife stereotype.

Like their positions in the sex act, the women turn power relations upside down. When Rogero sets his plan in motion to sleep with Abigail and tells Thais to "get [his] breakfast ready," informing her that he has to go "into the country to a

farm” and thinks he “Shall not come home tonight (II.iii.109-112),”³⁹ she angrily says after his departure:

So, there’s one fool shipped away: are your cross-points discovered?
Get your breakfast ready! By this light, I’ll tie you to hard fare; I
have been too sparing of that you prodigally offer voluntary to
another. Well, you shall be a tame fool hereafter.

The finest sleight is when we first defraud;

Husband, tonight ’tis I must lie abroad. (II.ii.115-21)

She soundly denounces him and makes reference to how she will “tame” him by taking the position of power in the relationship. As Desens correctly surmises, “[t]he two wives see this bed-trick as a future means of controlling their husbands (72).” The wives, like the Countess, control their bodies, even at the expense of their husband’s power. The only difference lies in the fact that the wives use that control to ensure that only their husbands have access to them.

The deceit they use against their husbands, a trait reviled in the dominant discourse (wives are not to plot behind their husbands backs), is justifiable in their situation. When Lady Lentulus comments, “O you’re a couple of trusty wenches, to deceive your husbands thus,” Abigail pragmatically replies: “If we had not deceived them thus, we had been trussed wenches (IV.iv.7-10).” The men, however, think that they have been cuckolded because they are arrested “in their shirts and night-gowns (III.i.direction)” in each other’s houses for a murder they did not commit (III.i.125-7). At this point, the sub-plot takes a distinctly comic turn, revealing the extent to which male anxiety can obscure all other social concerns.

³⁹ Original text reads “my.”

Both men freely admit to committing murder, because, as Claridiana says, "I'll confess anything since I am made a fool by a knave. I'll be hanged like an innocent, that's flat," and Rogero concurs, "I'll not see my shame. Hemp instead of a quacksalver, you shall put out mine eyes, and my head shall be bought to make ink-horns of (III.ii.149-53)." For the husbands, the shame of cuckoldry is more horrible than death. Thais and Abigail, however, know the foolhardiness of the men's stance – they know that they, too, were in each other's houses the night the men fulfilled their secret trysts, and they mock the absurdity of their husbands' positions. Thais tells Abigail, "Our husbands will be hanged, because they think themselves cuckolds," to which Abigail responds, "If all true cuckolds were of that mind, the hangman would be the richest occupation, and more wealthy widows, than there be younger brothers to marry them (IV.iv.11-5)." Despite their wry assessment of the situation, the wives set out to save Claridiana and Rogero from certain death.

Thais and Abigail are finally able to confront them at their arraignment before Duke Amago of Venice – a trial held more for the Duke's entertainment than the men's sentencing, because he knows that his nephew, the alleged murder victim, is alive and well, and that Claridiana and Rogero had nothing to do with his injuries (IV.i.15-8). The men, however, refuse to believe that their wives are innocent, and openly accuse them of adultery. Claridiana rails to the Duke:

to our *quondam* wives, that makes us cry our vowels in red capital letters, I O U are cuckolds: O may bastard-bearing with the pangs of childbirth be doubled to 'em: may they have ever twins and be three weeks in travail between, may they be so rivelled with painting by that time they are thirty that it may be held a work of condign merit but to look upon 'em, may they live to ride in triumph in a dung-cart

and be crowned with all the odious ceremonies belonging to't: may the cucking-stool be their recreation, and a dungeon their dying chamber: may they have nine lives like a cat, to endure this and more: may they be burnt for witches of a sudden: and lastly, may the opinion of philosophers prove true, that women have no souls.
(V.ii.24-37)

When Abigail tells Rogero she is pregnant, he responds: "A bastard, a bastard, a bastard! I might have lived like a gentleman, and now I must die like a hanger on (V.ii.51-2)." Duke Amago becomes exasperated with Claridiana and Rogero's persistent accusations, and when he passes sentence on the men their reactions are as dogged as ever:

Duke. In God's name then, on to the death with them;

For the poor widows that you leave behind,

Though by the law their goods are all confiscate,

Yet we'll be their good lord, and give 'em them.

Clari. Oh hell of hells. Why did not we hire some villain to fire our houses?

Rog. I thought not of that, my mind was altogether of the gallows. (V.ii.92-9)

The men are removed from the court, and the wives kneel and beg the Duke's pardon, asking him to recall their husbands so they can be proved innocent; "the comic knitting up," of which, the women attest, "Will move your spleen into the proper use / Of mirth, your natural inclination (V.ii.120-2)." This is a strong visual echo from *Measure for Measure*, first performed in 1604, and would perhaps have

awakened in Marston's audience memories of Mariana and Isabella kneeling before Duke Vincentio, begging clemency for Angelo's life (V.i.422-446).

Associating Thais and Abigail with Mariana and Isabella is an important representation – the former are very chaste women who do not, like the wives in Marston's play, overstep the boundaries of the “good woman” stereotype. Thus this scene can be read as either a parody of the sort of virtuous words and actions that Mariana and Isabella employ, or as a way of evoking sympathy for Thais and Abigail, implying that like Mariana and Isabella, these virtuous wives of Venice are good, chaste women despite their lapses into sexual language, cunning self-devised plots and bawdy puns. Perhaps, the scene suggests, women can be chaste and virtuous without having to be the *stereotype* of a submissive, meek and weak woman.

The Duke recalls the men, to which summons Claridiana queries: “Now what other troubled news, that we must back thus? Has any Senator begged my pardon, upon my wife's prostitution to him (V.ii.133-5)?” When the Duke tells them that their wives are innocent Claridiana's response is driven by the underlying assumption that all women, even his wife, are incapable of chastity: “Who? My wife? Chaste? Has your grace your sense? / I'll sooner believe a conjurer may say his prayers with zeal, than her honesty (V.ii.150-2).” Significantly, the wives do not openly argue their innocence, instead they silently give their husbands the letters they have received, which convince the men that the women are not adulteresses (V.ii.159-97).⁴⁰

⁴⁰ The husbands' abrupt forgiveness of their wives is somewhat confusing here – the letters would only confirm that the wives have been speaking amorously (or at least receiving amorous letters) with a man outside wedlock, thus confirming adultery. This scene, however, is attributed by Melchiori to the “hack” writer responsible for the play's third layer of production, and it may be because of this that its conclusion is confusingly hasty.

Despite their wives' innocence, however, the final speeches given by Rogero and Claridiana continue to focus on cuckoldry and the evils of women, perhaps in an attempt to justify their mislaid suspicions by reminding the audience of the horrors associated with cuckoldry and the female stereotype so evident in the main plot. The men's speeches suggest that they reached the conclusions they did about their wives because of the extant social tropes that paint all women as wavering and weak. That they have painted innocent women with this brush, demonstrates the danger the "evil woman" stereotype holds for all women, and the extent to which that stereotype colours female subjecthood.

Again, however, the stereotype is undermined by the interactions in this trial scene. I would suggest that the echo of *Measure for Measure* in this play is meant to cast the wives firmly in the "virtuous wife" paradigm – they are chaste and their husbands are made to seem fools. Thus, Claridiana and Rogero's closing speeches, instead of teaching an important moral and social message about the potential evils of women or their own mistakes, only undermine the ludicrousness of the evil woman stereotype on which they and the law in the Countess' case so heavily rely. They are not cuckolds, but they *are* fools.

Rogero tells the audience:

What is a cuckold learn of me,
 Few can tell his pedigree,
 Nor his subtil nature conster,
 Born a man, but dies a monster.
 Yet great antiquaries say,
 They spring from our Methuselah,
 Who after Noah's flood was found,

To have his crest with branches crowned.

God in Eden's happy shade,

This same creature made:

Then to cut off all mistaking,

Cuckolds are of women's making.

From whose snares, good Lord deliver us (V.ii.205-17),

firmly placing responsibility for sexual transgression with wayward woman, and citing Adam as the original cuckold because of Eve's relationship with the serpent. Claridiana agrees with him, and gives the play's final speech about a husband's need to be jealous, which I discussed earlier in this section.

Their words are made absurd by the fact that their wives have not cuckolded them at all, and the plots to undo the women's and each other's honour were hatched by the men themselves. There is a clear implication in these later speeches that men will never accept that women can be honest; that they will always cast their own foibles onto the "weaker sex" and use women as a scapegoat for their own dishonest actions. Claridiana and Rogero's final speeches highlight the grip that the "evil woman" stereotype has on women (and, importantly, men) in matters of adultery, even though that stereotype does not apply to the majority of the women in the play, who are chaste.

Overall, the bed-switch sub-plot expands on the themes of the main action. It is concerned with the effects of adultery on the man, showing particular care to patrilineal succession and social position. The husbands would rather die than live out their lives as cuckolds. Their extreme position, while the source of much humour in the play, acknowledges the very real masculine fear which would have existed in an early-modern audience about the wife's role in maintaining the family

bloodline, the wife's power to adulterate that bloodline, and the husband's vulnerability because he simply cannot know that his children are his.

Sworn enemies at the beginning of the play, by the end Claridiana and Rogero exhibit male camaraderie in the face of their fears ("why did not *we*") and the trick their wives have played on them. They invoke the stereotypical lascivious woman who is responsible for all mens' downfalls in order to strengthen their positions as wronged husbands. When the wives speak, the husbands ignore them, and it is only their own letters that convince the men that Thais and Abigail are innocent, implying that only a husband's testimony can save a woman accused of adultery.

The sub-plot reveals how ineffectual women's voices are to erase the fears engendered by masculine anxiety. It also suggests that the only effective way for a woman to avoid adultery charges is to use private, secret manoeuvres to avoid adultery in the first place. The virtuous wives cannot openly use the law to protect their honour, but must first use subterfuge and counter-plots, like a sympathetic tragic-revenger, against their husbands to save themselves, and later respectful words on bended knee when they do enter the public sphere of the courtroom.

III.C. CONCLUSION: THE ADULTEROUS WOMAN

These texts illustrate how women's experiences and voices are publicly erased by a system that generalises and dehumanises them in order to protect the *status quo*. Although the Countess speaks extensively throughout her trial, her arguments are ignored by the men in power; although the wives speak openly and bawdily throughout the play, finally they approach the Duke on bended knees to plead for their husbands' lives; and Alice Clarke's confessions are interpreted for the

reader by Goodcole so that her testimony is effectively over-written by the stereotype that constrains her. While the Countess and Alice Clarke did commit adultery, and as such are rightly punished at law within the early-modern legal system, the extent of Alice Clarke's punishment, given her case history, shows the extremes to which the social norms that are defined by masculine anxiety affected a supposedly "objective" application of the adultery law, despite the pressures from reformers to make men equally accountable.

When the Countess is unable to bribe the Duke, a distinctly gendered division is made between the way she can interact with law and the way both Don Sago and her empirical male counterparts can. As I discuss in the general introduction to this thesis, law is created and sustained to support, among other things, social power relations. It does so by defending what the law-makers believe to be the foundations of traditional social order, such as the family and patrilinear inheritance, at the expense of the individual.

Within the early-modern ideology that puts women in a subordinate position but at the same time defines masculine honour, in many ways, through a wife's fidelity, law dictates that in matters of adultery, the female legal subject is closely bound by her construction as a receptacle and a conduit through which men can ensure future generations. In this way, wives are often not tried as individuals, but as generic home-wreckers because female infidelity has the power to undo traditional social institutions in ways that male infidelity does not. This is, of course, a cultural construction that relies heavily on stereotypes. The power wives have to undo the family and the commonwealth is a power given to them by an ideology that supports a patrilinear economic system and thus labels female agency and sexuality as evil. By throwing into doubt the cultural construction of women, and the evils associated

with female sexuality, the representations I discuss in this section all challenge the assumption that law works as an objective, extra-human discourse that is in some way a “natural” guardian of traits inherent in men and women.

The men in the Alice Clarke and Countess cases do not suffer at law. The women do because they are part of a social system that makes their transgressions political rather than personal. The two women in Marston’s sub-plot are falsely accused of adultery by their husbands and the way they cope with those accusations shows a distinct difference between the way men and women are able to use the law to their advantage. Simply put, women linked to adultery, even those who are innocent, cannot successfully enter the public arena of the courtroom to argue their case, but must work privately and respectfully if they want to clear their names. The deconstruction of the stereotypes that sustain this legal system in Marston’s play only helps to throw into question whether or not such a system is valid or right. As the Alice Clarke case proves, the law will adhere to stereotypes in order to justify the culture it both works to sustain and is created by.

IV. GENDER, ADULTERY LAW, AND REPRESENTATIONS OF THE FEMALE LEGAL SUBJECT IN EARLY-MODERN ENGLAND

In the third section of this chapter, I have shown that literary representations of the female legal subject in matters of adultery suggest that for women, whether innocent or guilty, the prospect of a sympathetic verdict is unlikely. Interpretations of the seventh commandment vary between writers, but most agree that it refers to “uncleanliness,” which can take the form of thoughts or physical acts.⁴¹ Edward Elton, writing in 1625, asserted that the law commands “thou shalt not thinke, will, speake, or doe any thing whereby thine owne chastitie, or the chastitie of another or others may be hurt or hindered (249),” and John Brinsley, in 1637, explained that the seventh commandment forbids

[n]ot onely those monstrous kindes of uncleannesse, which ought not to bee named amongst Christians, as fornication, adultery, incest, rape, Sodomy, and the like; which the very light of nature condemns; but even,

1. All wantonnesse alonely, or with others . . .
2. Nocturnall pollutions, coming of excesse . . .
3. Voluptuous abuse of the marriage bed. (85)

Adultery signifies any number of other “unclean” actions, and in the early-modern period is not confined solely to extra-marital sex, as Mariam’s dilemma in the divorce chapter suggests.

The works analysed in this chapter reveal that often simply being a woman is enough to link innocent people to lasciviousness, deviousness and untrustworthiness.

⁴¹ Although all writers of the period agree that adultery is a mortal sin, there are differing opinions as to what constitutes adulterous behaviour. The definition of adultery in the early-modern period was much more changeable than it is today, and could encompass all acts of lust and unruly behaviour, including overeating, rude songs and speech, whorehouses, idleness, immodest apparel, etc. See for example: Ainsworth P2^v; Bullinger A1^r; S. Crooke 114-116; Dering A4^{r-v}; Dod and Cleaver, *Treatise* 52^v-53^r; Downname I3^v-I7^r; M. Perkins 31; and Polanus 58-60.

Frank Whigham, in *Seizures of the Will*, argues that “[p]lays about powerful or sexually uncontrolled women may sometimes address interdicted matters of class or kinship authority (15),” as those social concerns manifest themselves through varying degrees of masculine anxiety. Fears about female sexual power stem from, as I argue in the earlier sections of this chapter, fears about patrilineal succession. In short, “the direct connection between romantic marriage and sexual jealousy (Belsey, *Shakespeare* 104)” is unavoidable in a system that paints women as inherently lascivious and places on them the responsibility of pure issue.

Thus, the personal relationships on trial in the courtrooms of these works “are never, except in appearance, *individual-to-individual* relationships, and . . . the truth of the interaction is never entirely contained in the interaction (Whigham 16).” What is really on trial is the power that men project onto women by placing them at the centre of patrilineal succession and relying on a wife’s chastity to uphold the public name and honour associated with patriarchal family structures. The women in these works are confined by gender boundaries which “[i]n early seventeenth-century England . . . were as fundamental to the ordering of everyday life as those dictated by class (Mendelson 1).” Such gender boundaries define women as adulteresses and create a situation in which any self-will on their part can be interpreted in sexually deviant terms.

As the anonymous author of *Asylum Veneris* writes, “[i]f Women have immodest looks, it will availe them little for avoiding the worlds censure, to have honest hearts (38).” By defining the legally acceptable female norm as chastity and the necessary absence of female sexuality, when sexuality is present it questions the social validity of the legal subject. Furthermore, active female sexuality deconstructs

what a man is in relation to the passive female receptacle, thus suggesting that the hierarchy of wifely subordination is nothing more than a constructed fantasy.

Marston's play emphasises the artificiality of the constructed "good" and "bad" woman by constantly revealing contradictions and tensions within those subjects. The Countess is a "bad" woman, but her character is not limited to the broadly-painted strokes of caricature – she has moments of doubt, she can be sympathetic and the men who lambast her are, for the most part, hypocrites. The wives are "good" women – they keep their bodies for their husbands' use alone and successfully manage to remain chaste despite masculine attempts on their bed-chambers – they are also, however, bawdy flirts who enjoy the sexual act as much as men do, and do not hesitate to take power from their husbands in order to protect themselves.

Sexualising the "good" wives is an important component of the deconstruction that occurs in this play; "in making its overtly good women sexual creatures too, the play undermines the assumed distinction between good and evil female behaviour on which [the Countess'] condemnation rests (Wiggins xiii)."⁴² Thus the audience is forced to question the validity of the stereotypes that condemn women for their sexuality or would constrain them to an impossibly one-dimensional lived experience. As with Cary's *Mariam*, the audience is confronted by women who fulfill a stereotype but also broaden the perception of that stereotype; who represent the very multi-dimensionality that divorce and adultery laws try to reduce and contain in the female legal subject.

Law works in this way because if a society constructs women "as an opaque, unreliable body of signs requiring interpretive regulation, if she is by the same

⁴² Original text reads "her."

construction already 'known' as adulterous (Breitenberg 186)," then that construction must be upheld at all costs. If it is not, it implies that the social structure (created by the patriarchy) is at fault for creating false signifiers in the first place. Because [p]atriarchal discourse . . . is heterogenously [sic] composed, unevenly imposed and subject to conflicts with the lived reality of the oppressed subject (Loomba 94. My addition), it is necessary for legal interpretation to constrain the lived reality of female subjects by homogenously adhering to verdicts which support precedents and extant social constructs. The female legal subject in matters of adultery is often defined by verdicts which interpret her as dangerously guilty because women's precedent is Eve.

The early-modern audience would have understood "[a]ctive female sexuality [as] not merely a breach of decorum but also a flagrant breach of the public and political order (Loomba 107. My addition)," for reasons such as succession, fear of cuckoldry, the centrality of women's sexuality to a family's honour, and fear of perceived male weakness. It is thus female sexuality, in general, and all the dangers the *status quo* associates with that sexuality, that is on trial in the works of this section; a trial born out of "an *a priori* fear of disempowerment and loss of identity that derives from two forms of male dependence – erotic and matrimonial – on women (Breitenberg 194)." Thus, "women are thwarted, not merely within the family, but . . . by public authority, by all the institutions of feudal and mercantile patriarchy; their transgression evokes a political disarray, even a chaos of cosmic proportions (Loomba 106)." These literary works show how "deep structural and ideological tensions in society are conveniently located and addressed in the figure of the unruly or disobedient woman (Breitenberg 23)," and how the law works to

sustain those tensions by making woman the primary transgressor in the dominant discourse.

If adultery exists at all, it challenges assumptions that the hierarchy is "natural," and the whole social structure is then called into question. If a woman fulfills her role as a chaste wife, she fulfills her pre-subscribed "natural" role according to the social and religious theory which create the social hierarchy. If a woman is adulterous, she fulfills the evil, antisocial role also paradoxically "natural" to her. In this binary system of female stereotypes, "a wife's chastity functioned to secure and preserve actual economic interests (patrilineal inheritance and the avoidance of bastardy), but . . . it also functioned symbolically as a more generalized guarantee of social order and cohesion (Breitenberg 24)," as well as the latent potential women had to destroy that social order.

What makes Marston's play so important is that the chaste wives upset the hierarchical structure as well. They, like Salome and Doris can be seen as representations of the real-life women who were also playing with the hierarchical structure by usurping traditionally masculine power-relations (like the position the wives take in bed) and claiming for themselves a space in which they can control their relationships. They thus challenge the patriarchal assumption that women's uncontrolled sexuality is, "by definition an anarchic force constantly besieging the gates of collective order and individual self-control (Breitenberg 1);" that it challenges the very root of patriarchal assumptions about "natural" hierarchies and social structures, while at the same time it confirms what the patriarchy most fears: loss of power.

Social constructs that define women as the cause of male weakness, ensure that women "need to be kept safely in a position of subservience, or rather, men for

their own safety need to keep them in this position (Sinclair 58).” One of the ways women are kept subservient is through the legal system. The representations of the female legal subject and adultery in the works discussed in section three of this chapter clarify how systems of containment engendered by the masculine anxieties highlighted in section two, manifest themselves in the courtroom to women’s detriment. Thus, an otherwise egalitarian law is impacted upon by social constructs in ways which make it, in interpretive practice, prejudiced in the interests of men. Alice Clarke burns for a murder she swears she did not commit because she is a confessed adulteress; Duke Medina is happy to let a confessed murderer walk free whereas the Countess dies for her lust; the virtuous wives can only work privately and later, through Duke Amago and their husbands’ own letters to clear their and their husbands’ names. Marston’s play, with its highly unstable female subjects, attacks the stereotypes that deny the female legal subject, such as Alice Clarke, an audible public voice and justice in matters of adultery.

**CONCLUSION. CULTURE, IDENTITY AND GENDER IN SELECTED JACOBAN LAW
AND LITERATURE**

This thesis has set out to explore the historical, cultural relationship between law and literature in the Jacobean period with specific reference to the female legal subject in matters of divorce and adultery. Specifically, it has placed these discourses within their broader cultural framework in order to better understand how law and literature work to construct the female legal subject, and what literary and legal representations of that subject reveal about early-modern female identity and gender construction.

A cultural criticism of the law accepts that law does not exist as an extra-human, objective institution, but is rather a product of culturally-specific ideology and theology. It supports this stance by using other discourses, specifically literature, to illustrate how law is not a successful dominant discourse standing free from public opinion and effectively controlling social subjects. Literature, with its imagined realities and possibilities, reveals law's artificiality, how law often fails to meet the needs of social subjects, or how it does not adequately reflect dominant social or cultural values.

Literature reveals that law is a cultural construct, with specific, political purposes, and not a divine or natural sense of right or wrong inherent in all humans. Catherine Belsey argues that “[a]s a space of play, where some of the prohibitions of the symbolic Law are temporarily suspended, fiction can permit inconsistency without irritable reaching after resolution (*Shakespeare* 1).” In this way, literature illustrates how law works as an interpretive discourse and how that interpretation is controlled very much by the other discourses which surround it – specific to this period, discourses such as Christian theology, the notion of a natural social hierarchy and the role of the family in the Commonwealth. Literature suggests that law is not objective, equitable or just by proposing new ways of interpreting laws, or new

systems of legal subjecthood, because the legal subject represented in literary texts is much more complex than the easily-codifiable subject law would prefer. However, literature, like law, does not stand in isolation to the discourses that surround it, and it is necessary to understand law, and the role law plays in controlling social actions, and, certainly in this period with the close ties between the Inns of Court and playwrights, how law impacts on literature and *vice versa*, in order to understand how literature interacts with this most authoritative subject-forming social discourse.

Throughout this thesis, I have placed both law and literature with regard to divorce and adultery alongside discourses affecting them in order to better understand how they work to shape female identity and gender. This is necessary because, as the cultural criticism of law avers (and I agree), subjects are not formed by any one single social discourse, but are instead impacted upon and affected by multiple, sometimes contradictory, social beliefs, customs and attitudes. By placing these contradictions side by side, this thesis reveals why married women were supposed to have no legal rights under law in the early-modern period, but why there was also an unprecedented rise in litigation brought by women by the time of James I. Of course this makes any easy definition of the female legal subject difficult – the impacting discourses create a space where unstable identities can exist, and some women took advantage of that instability to carve a place for women in the courtrooms despite the legal mandate for coverture.

The law would have married women defined as *femes covertas*, women covered by, or absorbed into, their relationship with their husbands – the silent, chaste and submissive ideal female legal subject, who lives her life without public voice or action. Clearly, however, there are points of instability rupturing the dominant discourse. The belief that women were “naturally” subservient,

“naturally” the property of their husbands, and were therefore, naturally, to be denied legal access which law attempted to protect led to a number of questions regarding women’s “nature,” her role in society and her right to legal recourse.

As I suggest in Chapter One, the points of crises in defining the female legal subject have to do with unstable social relationships: the relationship between law and the people, husband and wife, and authority and women. Jean Bodin argues in 1606 that whatever “change or varietie of lawes soever in such diversitie of Commonweals, there was never law or custome that exempted the wife from the obeysance, and not onely from the obeysance, but also from the reverence that shee oweth unto her husband,” and furthermore that there is nothing “greater, better, or more necessarie for the preservation not of Families only, but of Commonweals also, than the honest obedience of wives towards their husbands (*Six* 19).” Despite Bodin’s strong distinction between women’s and men’s responsibilities to the Commonwealth, theories which were an integral part of the extant dominant discourse, the assumption that women had no right to law was successfully being challenged by the rising numbers of female litigants during the Jacobean period, and literary representations of the female legal subject illustrate how this could be – how the relationships referred to above are often the crux of any trials in which women were involved.

Specifically at issue, in terms of divorce and adultery laws, is whether or not women legitimately have the right to define the parameters of their relationships in the legal realm; whether a wife is “naturally” subordinate to her husband; and women’s sexuality. While “in Renaissance legal tracts, the same underlying association of physical and mental weakness in the female sex can be detected as is in evidence in theology, medicine and ethics (Maclean, *Renaissance* 72),” in the

literary representations of the female legal subject I discuss throughout this thesis, the suggestion is that, in terms of divorce and adultery, law fails to adequately reflect the needs and / or history of female litigants who were showing few signs of the weakness thought to be inherent to their sex. Even the virtuous wives in *The Insatiate Countess* overcome their predicament by canny plotting, and do not hesitate to mock their husbands' foolishness. In fact, in the literary representations I discuss, it is this imaginary power relation between men and women that stands on trial, not just in the courtroom but throughout the plays. Thus, Cary and Marston, by redefining the female legal subject, offer radical texts that interrogate and pass judgment on the power dynamics so prevalent in the works of Terracae and Osborne, and also evident in Goodcole's pamphlet.

Relationships of power are on trial in cases of divorce and adultery simply because, as I argue in the Introduction, law is created by those who hold power with the overt aim of maintaining *status quo* gendered power relations – if the family unit is the basic building-block of the Commonwealth, then the spousal unit is the mortar and sand that holds that block together. In the early-modern period this relationship was defined by patrilineal inheritance, the theological construction of women, the role Eve played in the Fall, public honour, masculine anxiety about the “unknowability” of women's sexuality, and the fear of cuckoldry. All of these discourses impacted on both law and literature, and made the situation for the female legal subject difficult. Public opinion was swayed against her as soon as she set foot outside the home.

The divorce chapter of this thesis demonstrates a power difference between male and female discourse. Law is affected by public opinion (as the texts on the Frances Howard divorce trial make clear), but only if that opinion matters within the

socially-constructed power relations of the time. Women, who were excluded from law, did not have the social power to affect legal dictates or interpretations in the same way men could. In all accounts of the Frances Howard divorce trial, Howard's voice is significantly absent. Given this discursive inequality, if women successfully use law against their husbands, the natural hierarchy is completely deconstructed. As such, laws often work to the detriment of women in order to maintain an otherwise artificial social construction as legitimate and right, or, as Peter Goodrich argues, to protect "the symbolic indicia, the signs or outward tokens of the legal institution's spiritual past, its lineage and legitimacy as belonging to an order of judgment that somehow escapes the realm of secular rules or profane and political ends (6)." In other words, to give the social power structure the illusion of a naturalism which does not, in fact, exist.

The frustrations that Salome, Mariam and Doris feel when faced with women's inferior legal position in matters of divorce support divorce reform and strongly suggest that women, like men, should be allowed to legally define their relationship to their spouse. When these women openly speak out against a wife's legal and social subordination they challenge the "natural" subservience of women and imply, as do the number of women accessing the law during this period, that some women were trying to redefine the legal subject available to them in such a way as to give them more rights than those available to female subjects defined as *femes covertis*. The Frances Howard trial illustrates that while women could be successful at divorcing their husbands, male public opinion would condemn them for entering the legal sphere. Cary's play, written by a woman, and the Frances Howard accounts, written by men, show a distinctly gendered divide in perceptions about women and divorce law.

The majority of the female characters in Cary's play denounce the law for giving women too little legal redress, whilst Terracae and Osborne, the male commentators on Frances Howard, denounce the law for giving her redress at all. At work in the juxtaposition of these texts are contrary male / female perspectives – the women feel constrained by laws which bind them irrevocably to men they hate, or that erase them from society after their husband divorces them; the men argue against female legal agency because that agency is a direct attack on the value system that places men in the seat of domestic power – it implies that the system which empowers the male of the species is not natural, but rather arbitrary, and does not provide for the needs of a multifaceted (and multi-gendered) society. The male response to female legal agency seen in the divorce chapter is fuelled by the masculine anxiety most apparent in cases pertaining to adultery which arise in Chapter Three.

In these latter cases, female sexuality stands on trial before the patriarchal legal system, and a woman's identity is defined by her role as the familial child-bearer, thus reducing her to nothing more than the conduit through which patrilineal inheritance can securely pass. This reduction of the female legal subject to nothing more than a womb, and the male use that can be made of it, puts a husband's word well ahead of his wife's in the law courts. The evidence in the Alice Clarke pamphlet and *The Insatiate Countess* show that the law deals extremely harshly with women in adultery, whether they are innocent or guilty, because a woman's sexual agency completely undermines the hierarchical myth that she becomes one with her husband after marriage, that she is "naturally" subservient, and that her husband alone has the right to her body.

Adultery is complicated by patrilineal inheritance, which makes it an economic issue – by introducing an illegitimate heir into the household, the adulterous wife makes proper inheritance impossible – and by the stereotypes propagated by many discourses of the time that reduce women to weak-willed, malevolently-inclined potential homewreckers, or, alternatively, weak-willed, silent obedient virtuous wives. Marston's play successfully challenges the stereotypes into which women are so easily categorised by representing unstable female subjects – women who are, and yet are not, part of the stereotypical paradigm the patriarchal discourse would have them embody.

In doing so, like Cary, Marston reveals the artificiality of the “bad” woman stereotype so prevalent in Goodcole's pamphlet; he allows his female characters to redefine women's sexuality as something which is not necessarily always linked to evil, adulterating lasciviousness; and he challenges the “justice” that immediately condemns all women simply because they are women. Essentially, adultery, like divorce, throws into question the ideological soundness of the early-modern social hierarchy, and assumptions about women's “natural” role in the home. In cases of adultery and divorce the reconstructed, vocal, active female subject steps to the fore and denies the essentialised silent, chaste and submissive wife law would create, which is perhaps why such women are so quickly slotted into the “bad” woman paradigm.

This thesis reveals that while the law attempts to control the female legal subject in ways that work to maintain patriarchal power relations, literature explodes that same subject into plurivocity, depth and sometimes defiance. The women who appear on the page and stage in the works I have discussed, even when they are vilified by the playwrights or poets, all reveal law's inability to adequately contain or

define the female legal subject. They illustrate how the dominant discourse, law, must contort and essentialise women into little more than stereotypes in order to effectively work against them. In so doing, law is shown to be artificial, a social construction that is often undermined by the very voices it would try to silence. When Salome declares she will show her sex the way to freedom's door, she calls for a redefinition of women's legal subjecthood – a redefinition which will take into account the fact that women are able to be legally active (as the many women going to court in the Jacobean period prove), that women should be able to play a part in defining their relationship to their husbands and the public sphere, and that women are not “naturally” silent, chaste or submissive.

APPENDIX. SELECTED TRANSCRIPTIONS FROM *THE LAWES RESOLUTIONS OF WOMENS RIGHTS: OR, THE LAWES PROVISION FOR WOEMEN*

A
PREFACE TO
THE READER.¹

Various are the conceits and Judgements of Men: Nature teacheth each to preferre his Owne; Hence it is, that the number of Bookes multiply, insomuch, that, according to the Wise-man; *Thereof, is no end.*

To expect new Matter, were to give the old Proverb the Lie; *Nihil jam dictum, &c.*² It's enough, if what was before, be now so changed by Method and Application, that it shewes as new, and becomes more ready for Use. Habit and Apparell alter the Shape, sometimes the Conditions of Men. An old Theame in a new dresse ingeniously contrived makes the Composer an Author. Why then should this Booke blush to shew it selfe? or doubt to bee servant to the Printer, whose Master neverthelesse it is?

To give it as absolute, or free from faults, were to make it more then the Worke of Man, whose incident is Error: Such as it hath, are rather accidentall then originall, and may bee fairly excused; Not to insist, That the Author's dead, That it was long since collected, Alteration of some Cases by Moderne Statutes, Or this the first Impression. Goodnesse is the Parent of Confidence; The Act is crowned by the End, which was this, A publique Advantage and peculiar Service to that *Sexe* generally beloved, and by the Author had in venerable estimation. To implore their

¹ Throughout this transcription I have regularized long 's' and consonantal 'I' and 'U,' but have otherwise maintained the spelling and punctuation throughout. As I pointed out in chapter one, *The Lawes Resolutions of Womens Rights* exists only in the 1632 black-letter edition. W. Johnson published a facsimile in 1979, which does not include notes. The most extensive, edited, extracts appear in Joan Klein's *Daughters, Wives, and Widows*, and focus mainly on the later chapters to do with rape. Kate Aughterson's *Renaissance Woman* sourcebook includes three pages of extracts from throughout the work, which are simply transcribed with a short note introducing the text. A full, edited version of the entire text (which runs over 400 pages) is not as yet available. Although there are many references to the work in modern criticism, these are limited to footnote citations, short quotes from Section III, The punishment of Adam's sin, and a sentence or two on the author. For a list of these, see footnote 29, chapter one.

² There is nothing which has not been said already.

Patronage, and prevaile, were to guard this *Booke* beyond Opposition. The strong neither needs nor desires a Champion; Meeknes protects it selfe: What here you finde reall and perfect, therefore accept; It will subsist; Remit the rest, the rather for that nor the *Tract*, nor *This* is peremptory, But onely proposed for your favorable sense and Approbation. I. L.³

TO
THE READER.

By whom this following *Discourse* was Composed I certainly know not, neither by what inducement the Authors paines therein was procured: But if for no other consideration then to make this scattered part of Learning, in the great Volumes of the Common-Law-Bookes, and there darkly described, to be one entyre body, and more ready, and clearer to the view of the Reader, his love deserves thanks, and his endeavours kind acceptance. The Worke hath been carefully, and with much labour and diligence collected: The Theame, as the subject, is *The Lawes Resolutions of Womens Rights*; which comprehends all our Lawes concerning Women, either Children in government or nurture of their Parents or Gardians, Mayds, Wives, and Widowes, and their goods, inheritances, and other estates. It is profitable and usefull Learning to be well knowne. I am sure it will please all them whose actions are guided *virtutis amore*,⁴ and offend none but those ill manners, who can have no other antidote made them, then *formidine pœnæ*:⁵ for it sets forth Law, and Justice, things honest, and things convenient. I had such a good conceit of the

³ These initials have not been attributed to anyone by any of the extant criticism on this work. They are neither the printer's (John More) nor the seller's (John Grove), and remain anonymous.

⁴ By love of virtue.

⁵ By terror of punishment.

matter and frame of the whole Worke, that having a Copie thereof lying by me somtimes, within the Compasse of a Lent vacation, I pluckt my intentions from my own course of Studies, and cast them upon this. And those *vitia Scriptoris*, and *Authoris*,⁶ which I found, I amended, and have added many reasons, opinions, Cases and resolutions of Cases to the Authors store: wherefore those oversights or neglects that thou maist impose upon the Printer or mee, (which I suppose will be some (if not many) thou shalt have thanks to supply or amend, which is all I expected, and more then the Author, as I believe, had (or now being dead can receive:) and perhaps thou maist have a better reward; for the old Adage is true, *pretium non vile laboris*.⁷

Vale,
T. E.⁸

LIB. I.

THE WOMANS LAWIER.

SECT. I.

All law, saith *Justinian* in his Imperiall institutions,⁹ belongeth to persons, to things, or to actions: which division I acknowledge to bee good: and so in his method of the Civil Law, doth a Doctor and very learned man, *Conradus Lagus*,¹⁰ yet the same *Lagus* saith, it is too strait for his purpose, and therefore not feeling

⁶ Writer's and author's errors. The meaning of this is somewhat unclear; in modern parlance a writer is an author. In this case, however, he could be referring to the contributors to this specific work: the original author and the "writer" who took it up over vacation to edit and publish it.

⁷ The price of [the] labour is not cheap.

⁸ Identified as Thomas Edgar by Prest (180).

⁹ Roman Emperor (527-565 A.D.). The *Institutions*, first published in 533, was a textbook for law students (Evans par. 50).

¹⁰ Conrad Lagus (d. 1546), wrote *Juris Utriusque Traditio Methodica*, first published in Frankfurt, 1543 ("Conrad").

himselfe at ease in so narrow a distribution, to drive the formes of Civill Law to certaine heads, according to their materiall varieties, hee confesseth hee is compelled to constitute a pluralitie of Law members more then the very Law setteth down as appeareth in the 2. Part of his Method the 2. Chapter, yet a curious caviler¹¹ (I perceiv) might find in *Justinians* partition a very great redundance rather then any defect, for *Res*¹² is a *transcendente*, comprehending actions, persons, and what not.¹³ And actions in the widest signification seeme alone to bee the theame and right subject matter of Lawes and all Humane Constitutions: as for persons they are so many, and so differing, that I thinke there is no use, Custome, Injunction or Decree, but it appertaineth to some person, and that in some peculiarity of difference, either in state, age, sex, function, profession, merit, or some other like severall regard, so that in mine opinion, Law might bee dispersed into apt titles of this personall difference, in such sort as both Students, might come to the easier knowledge: the one of their learning generall, and the other of their particular duty. & though I bee farre unable to produce a perfect method of the Lawes of England, as *Lagus* following his owne artificiall project hath framed an excellent Deliniation of the Lawes of *Rome*, and though I bee unworthy to have the Marshalling of the titles of Lawe to bring all matter cohering under them, yet I will make a little assay what I am able to doe if I were put to it in a popular kind of instruction: following a frame by distinction of persons, chasing the primary distribution of them made before the World was seven daies old, *Masculum & Fæminam fecit eos*,¹⁴ of which division

¹¹ Someone who raises frivolous objections.

¹² The / a thing

¹³ Law cannot be affected by people because it transcends, and therefore exists outside, social systems.

¹⁴ Male and female, he made them.

because the part that wee say hath least judgement and discretion to bee a Law unto it selfe, (*Women onely Women*) then have nothing to do in constituting Lawes, or consenting to them, in interpreting of Lawes, or in hearing them interpreted at lectures,¹⁵ leets¹⁶ or charges, and yet they stand strictly tyed to mens establishments, little or nothing excused by ignorance, mee thinkes it were pittie and impiety any longer to hold them from such Customes, Lawes, and Statutes, as are in a maner, proper, or principally belonging unto them: Laying aside therefore these titles which include onely the masculine, as Bishop, Abbot, Prior, Monke, Deane and Chapter,¹⁷ Viscount, Coroner, together with those which bee common to both kinds, as Hereticke, Traitour, Homicide, Felon, Laron,¹⁸ Paricide, Cutpurse, Rogue, with Feoffor, Feoffée,¹⁹ Donor, Donée,²⁰ Vendor, Vendée,²¹ Recognisor, Recognisée,²² &c. I will in this Treaty with as little tediousnesse as I can, handle that part of the English Lawe, which containeth the immunities, advantages, interests, and duties of women, not regarding so much to satisfie the deep learned or searchers for subtilty, as woman kind, to whom I am a thankfull debter by nature.

¹⁵ Lectures at the Inns of Court; women are barred from legal education.

¹⁶ Leet (or manorial) courts.

¹⁷ Canon of a cathedral or other religious community or knightly order.

¹⁸ Robber.

¹⁹ One who conveys a freehold estate by a formal transfer of possession.

²⁰ One who donates land to another.

²¹ One who sells land to another.

²² One under a magistrate's bond to uphold a set condition.

SECT. II.
The Creation of Man and Woman.

God the first day when hee created the World made the matter of it, separating light from darknesse: the second day hee placed the Firmament which hee called Heaven, betwixt the waters above the Firmament and the waters under the Firmament: the third day hee segregated the waters under the Firmament into one place, calling the waters Seas, and the dry land Earth, which hee commanded to bring forth fruitifying herbes, plants and trees: the fourth day hee made the Sun, the Moone and the Stares in the Firmament, to bee for Signes, Seasons, Daies and Yeres, and to give light upon the earth: the fift day he made by his Word the Fishes of the Sea, Whales and every fethered foule of the ayre, commanding them to increase: the sixt day he made Cattle, creeping things, the beasts of the Earth: and now having made all things that should be needfull for them, hee created Man, Male and Female made he them, Bidding them multiply and replenish the Earth, & take the joynt soveraigntie over the Fishes of the Sea, the Foules of the Ayre, and over all Beasts moving upon the Earth, *Genesis I.*

In the second Chapter *Moses*²³ declareth and expresseth the Creation of Women, which word in good sense, signifieth not the woe of Man as some affirme, but with Man: For so in our hasty pronouncing wee turne the preposition with to woe, or wee,²⁴ oftentimes: and so shee was ordained to bee with man as a helpe, & a companion, because God saw it was not good that Man should bee alone. Then when God brought Woman to Man to bee named by him, hee found straight way that shee was bone of his bones, flesh of his flesh, giving her a name, testifying shee was

²³ 2. Gen. 21-23.

²⁴ "Woe-man," "with-man" or "wee-man."

taken out of Man, and he pronounced that for her sake man should leave Father and Mother and adhere to his Wife which should be with him one.

Now Man and Woman are one.

Now because *Adam* hath so pronounced that man and wife shall be but one flesh, and our Law is that if a feofment²⁵ bee made joyntly to *John at Stile* and to *Thom. Noke* and his wife, of three acres of land, that *Tho.* and wife get no more but one acre and a halfe, *quia una persona*,²⁶ and a writ of conspiracy doth not lye against one onely, and that is the reason, *Nat. br. fo. 116* a writ of conspiracy doth not lie against baron & feme,²⁷ for they are but one person,²⁸ & by this a married Woman perhaps may either doubt whether shee bee either none or no more than halfe a person. But let her bee of good cheare, though for the neere conjunction which is betweene man and wife, and to tye them to a perfect love, agreement and adherence, they bee by intent and wise fiction of Law, one person, yet in nature & in some other cases by the Law of God and man, they remaine divers, for as *Adams* punishment was severall from *Eves*, so in criminall and other speciall causes our Law argues them severall persons, you shall finde that *persona* is an *Individuum* spoken of anything which hath reason, and therefore of nothing but *Vel de Angelo, vel de homine*,²⁹ *fol. 154* in *Dyer*,³⁰ who citeth no worse authority for it than

²⁵ Transfer of a freehold estate.

²⁶ Because they are one person.

²⁷ Husband and wife.

²⁸ They cannot conspire because they are not regarded as separate individuals.

²⁹ Either of an angel or of a man. NB: The Latin noun *homine* and its singular *homo* literally means "men" or "man." During the Renaissance, however, writers were beginning to use it as the masculine generic to refer to both "man" (literal or woman) and "men" (literal or people) in accordance with the vernacular. This context, in which the author argues for woman's powers of reason, infers that in this instance *homine* refers to people in the masculine generic. The syntax makes the meaning of the

*Callepinus*³¹ own selfe, seeing therefore I list not to doubt with *Plato*, whether Women bee reasonable or unreasonable creatures,³² I may not doubt but every woman is a temporall person, though no woman can be a spirituall Vicar.³³

SECT. III.
The punishment of Adam's sinne.

Returne a little to *Genesis*, in the 3. *Chap.* whereof is declared our first parents transgression in eating the forbidden fruit: for which *Adam*, *Eve*, the serpent first, and lastly, the earth it selfe is cursed: and besides, the participation of *Adams* punishment, which was subjection to mortality, exiled from the garden of *Eden*, injoynd to labor, *Eve* because shee had helped to seduce her husband hath inflicted on her, an especiall bane. *In sorrow shalt thou bring forth thy children, thy desires shall bee subject to thy husband, and he shall rule over thee.*

See here the reason of that which I touched before, that Women have no voyce in Parliament, They make no Lawes, they consent to none, they abrogate none. All of them are understood either married or to bee married and their desires or subject to their husband, I know no remedy though some women can shift it well

sentence obscure, but it can be understood as follows: when society defines "people" as individuals with reason, it can only be speaking about either angels or men and women – both of which were thought to be the only creatures capable of reason at the time the piece was written.

³⁰ Dyer, James Sir (1512-1582), was a lawyer in the Tudor courts whose *Abridgement des Reportes Seignior Dyer* was first published in 1585 (Watt 1: 32).

³¹ Calepin, or Calepinus, Ambrose (d. 1510), published his dictionary, *Lexicon, seu Dictionarium xi. Linguarum* in 1506 (Watt 1: 184).

³² Greek philosopher (429-347 B.C.), whose *Republic* discusses in length the worth(lessness) of women (Hornblower 539 and Plato 159-89).

³³ Every woman can be regarded as an individual capable of reason even if she is barred from holding office.

enough. The common Law here shaketh hand with Divinitie, but because I am come too soone to the title of Baron and feme, and Adam and Eve were the first and last that were married so young, it is best that I runne backe againe to consider of the things (which I might seeme to have lost by the way) that are fit to be knowne concerning women before they be fit for marriage.

SECT. IV.
The Ages of a Woman.

The learning is 35. *Hen. 6. fol. 40.* that a Woman hath divers speciall ages, at the 7. yeare of her age, her father shall have aide of his tenants to marry her.³⁴ At 9. yeares age, shee is able to deserve and have dowre. At 12. yeares to consent to marriage. At 14. to bee *hors du guard*.³⁵ at 16. to be past the Lords tender of a husband.³⁶ At 21. to be able to make a feoffement: And per *Ingelton* there in the end of the case, a woman married at 12. cannot disagree afterward, but if she be married younger, shee may dissent till shee be 14.

The age of 7. yeares, when *Bracton*³⁷ wrote this aide, for making the sonne a Knight, or marrying the daughter, was due *de gratia & non de Jure*, and *pro necessitate & indigentia domini capitalis*:³⁸ measured by the indigence of the Lord,³⁹ and opulence⁴⁰ of the tenants: But *West I. Cap. 35.* in the third yeare of

³⁴ The tenants of a landlord must pay rent towards her dower.

³⁵ Out of tutelage.

³⁶ She can refuse her lord's / guardian's offer of a husband.

³⁷ Henry de Bracton (d. 1298), wrote *De Legibus et Consuetudinibus Anglioe*, the first complete printed edition of which was published in 1569.

³⁸ Of grace and not of right *and* for the necessity and need of the feudal lord.

³⁹ The financial need of the lord.

⁴⁰ Wealth.

Edward I. the Law was made certaine, the Lord shall have aide of his tenants, as soone as his daughter accomplished 7. yeares age for the marriage of her. Viz. xx.s. of a whole knights fee, and xx.s. of xx.l. land in soccage,⁴¹ and so forth, according to the rate more or lesse.

The King shall have this aide according to this proportion, by a Statute made 25. *Ed. 3.* and for this aide every Lord may either distraine⁴² or bring his writ *de auxilio habendo*⁴³ at his election, but tenant by grand serjeanty, or petit, shall not pay this aide.⁴⁴ *Mich. 21. He. 4. fol. 32.* no more shall cobby-holders,⁴⁵ as seemeth by the writ, both in *Fitzherbert*⁴⁶ and *Bracton*, for it is, *Precipimus ut habere facias rationabile auxilium de Militibus, et libere tenentibus.*⁴⁷ Now if the Kings writ runne for it before the Statute, how is it that *Bracton* saith it was due, but *de gratia*,⁴⁸ That perhaps he meant but for the quantity, *ipse viderit*,⁴⁹ if the father dye, the daughter being unmarried, shee shall recover so much as was gathered and not paied her at the hands of the executor or heire, but this aide is only for the marriage of the eldest daughter, and not for no daughter, where many make but one heire:⁵⁰ But see

⁴¹ A feudal tenure of land involving payment of rent or other non-military service to a superior.

⁴² Seize chattels to make a person pay rent or meet an obligation, or to obtain satisfaction by their sale.

⁴³ On [the] help which should be had.

⁴⁴ The tenant can, if he obtains a court order from a magistrate, refuse payment.

⁴⁵ Person holding a tenure of land based on manorial records.

⁴⁶ Sir Anthony Fitzherbert (1470-1538), wrote *La Grande Abridgement*, published 1514, and *Diversité de Courtz et Leur Jurisdictions*, published 1523, both important early works on English law ("Anthony" par. 1).

⁴⁷ We command you to make available reasonable help from soldiers and freeholders.

⁴⁸ Of grace.

⁴⁹ He himself will have seen.

⁵⁰ Any sums collected up to the death of the guardian may still be used by the eldest daughter as dower.

Bracton fol. 36.b. Where he saith, *primæ genitæ filicæ non dabitur auxilium tale, quia istud auxilium pertinet ad Cap. dom. sicut pertineret si non esset nisi unus hæres cum omnes sunt quasi unus hæres.*⁵¹

SECT. V.
Of Woman compellable to serve.

The next age of a Woman is 9. yeares when shee is vowable,⁵² but wee will stay a while with the virgins, concerning whom, if they be in the power and governance of parents, masters, or prochein amies,⁵³ or if they bee poore; the Law differeth little or not much from the common forme apperteyning unto males, unlesse it bee in cases of rape, which I reserve to the end of my discourse, where the poore have least need of subsidie, onely this I observe here, By a Statute made 5. *Eliz. ca.* 4. Two Justices of peace in the Countrie, or the head officer and 2. Burgesses in Cities, &c. may appoint any woman of the age of twelve yeares, and under 40. being unmarried, and out of service, to serve and bee retained by yeare, weeke, or day, in such sort and for such wages as they shall thinke meet, and if she refuse, they may commit her to prison, till she shall be bound to serve.

⁵¹ Such assistance of this kind will not be given to a first-born daughter, because this help belongs to the feudal lord, just as it would belong if there were only a single male heir, since all are as if [they were] one heir.

⁵² Marriageable.

⁵³ Close friends; guardians

LIB. II.

THE WOMANS LAWIER.

The second Booke.

SECT. I.

*Of Marriage, according to the Civill and
Common Law.*

Marriage is defined to be a Conjunction of Man and Woman, containing an inseparable connexion, and union of life. But as there is nothing that is begotten and finished at once, so this Contract of coupling man and woman together, hath an inception first, and then an orderly proceeding. The first beginning of Marriage (as in respect of Contract, and that which Law taketh hold on) is when Wedlocke by words in the future tence is promised and vowed, and this is but *sponsio* or *sponsalia*.⁵⁴ The full Contract of Matrimonie, is when it is made by words, *de præsenti*⁵⁵ in a lawfull consent,⁵⁶ and thus two be made man and wife existing without lying together, yet Matrimonie is not accounted consummate, untill there goe with the consent of mind and will Conjunction of body.

SECT. XI.

*Impediment of Marriage by Kindred
and Consanguinitie.*

In the worlds infancie men were inforced by necessity to marry with owne kindred, *propter hominum paucitatem*,⁵⁷ But that necessity is taken away and long

⁵⁴ A pledge in the future tense, such as a betrothal.

⁵⁵ A pledge in the present tense, such as marriage banns.

⁵⁶ Both parties consent to the marriage without coercion or deception.

⁵⁷ Because of the small number of people (it is obvious in this instance that *homine* is being used as the masculine generic – marriage in Christian terms usually refers to a man and a woman).

since by the very voice of God, they which are in certaine degrees of bloud are forbidden to marry, *Leviticus 18*. And because Marriage is an abundant seminarie of charitie and love, it is wisely and profitably ordeyned that it should be dispersed into many families.

Therefore by Naturall, Civill, and Common Law, Marriage is cleane forbidden betwixt all those, which are as Parents or Children one towards another, *in infinitum*,⁵⁸ and betwixt those persons, which are of kindred in the transverse⁵⁹ line, Marriage is forbidden till the fourth degree⁶⁰ bee past.

SECT. XII.

The impediment of Marriage by Affinitie.

There is further a certaine nigh alliance called affinity, *quasi fines duarum cognationum conjungens*,⁶¹ this riseth betwixt them which are married, and the kindred of one of them, as betwixt the husband and the kindred of his wife: now affinity prohibiteth Marriage onely to the persons contracted, &c for the Cosins or Consanguinity to my wife, are of affinitie onely to me, and not to my brothers or children by a former Wife; and my bloud and consanguinity are kindred of affinitie onely to my Wife, and not to her brothers or former children: here is it that the Father and the Sonne may marry the Mother and the Daughter, and two Brethren may marry two Sisters in another Family: for the Consanguinity, of which one is of bloud to the husband, and another to the wife, are betwixt themselves in no bond of

⁵⁸ For all time; meaning, a man cannot marry his granddaughter or great-granddaughter because the relationship is one of parent and child.

⁵⁹ Brothers, sisters, cousins, etc.

⁶⁰ The fourth degree of separation; therefore 3rd cousins and those further removed could marry.

⁶¹ As if conjoining the ends of two blood-lines.

affinity: And observe that in what degree a man or woman is to one of them that are married, by Consanguinity, they are accompted⁶² in the same degree to the other in affinity: As the wifes brother, who is *in primo gradu*⁶³ to his Sister, is in the same degree to her husband, and their children in the second, &c. And so forth their Childrens Children, which after the fourth degree, are againe by all lawes permitted to marrie, *contrahitur & affinitas per illicitum coitum*.⁶⁴

SECT. XX.

Wherefore Marriage ought to be made.

The causes of Matrimony principally are two: The first is *susceptio sobolis*,⁶⁵ increase of Children, for even by *Plato* every good man ought to desire that he may leave behind him worshippers of God, and propagators of piety: The second cause is the eviting of fornication and uncleannesse *I. ad Corinth. ca. 7* Saint Paul biddeth, that to avoid fornication every man have his owne wife, and every woman her own husband, and whosoever marryeth for beautie, age, order, splendour of birth, or for riches, rather then for these two causes, doth very perversly, though it be not expressly disallowed, but Marriage may be for the other things also, and the Consent may be given for them.⁶⁶

⁶² Accounted; understood to be.

⁶³ In the first degree.

⁶⁴ Affinity is also contracted through illicit sexual intercourse.

⁶⁵ The obligation to bear children.

⁶⁶ Marriages are customarily allowed for all these reasons, despite the lack of Biblical sanction.

SECT. XXI.

The Consummation and individuities of Marriage.

When to the Consent of minde, there is added Copulation of body, Matrimonie is consummate, the principall end whereof is propagation or procreation: But where the course after going is not observed, there riseth no lawfull Off-spring, the Children which are had, are not in power and commandement of them which beget or beare them, neither are they taken by Law for any other, then *vulgo quesiti*.⁶⁷ Otherwise it is in lawfull Wedlocke, the knot whereof is so straight and indissoluble, that they which are yoked therein, cannot the one without the consent of the other, (neither was it ever permitted) abdicate themselves, or enter into Religion, for Saint *Paul* in the above titled Epistle and Chapter, saith plainely, that the husband hath not power of his owne body, &c. And there cannot chance any feditie or uncleannesse of body so great, as that for it a man and wife ought perpetually to be segregated, yea so unpartible be they, that law saith, they may not utterly leave *conjugalem consuetudinem*,⁶⁸ though one of them have the very leprosie it selfe.

SECT. XXII.

Of Divorce.

Pactis Pœnarum cogi potest nemo ad Matrimonium contrahendum.⁶⁹ And as no man can be compelled by any convention of paine or penaltie to contract

⁶⁷ Children born out of wedlock or through adultery are illegitimate and not legal heirs. In common parlance, 'questionable.'

⁶⁸ Marital custom. *Consuetudinem* carries with it legally binding connotations as well, which makes it somewhat different than mere "habit" or "practise." For example, in modern Scotland, a consuetude is a custom with legal force behind it.

⁶⁹ No one can be compelled by means of punishments / penalties to contract a marriage.

Matrimony, so it is impossible, when it is once lawfully and evidently contracted, to distract it by any partition, covenant, or humane traction,⁷⁰ *Quos Deus conunxit, homo non separet*,⁷¹ yet there are Causes, for which divers are permitted: But Divorce, that onely separateth *a consuetudine conjugali*,⁷² taketh not away the bond of Matrimony, and therefore Divorces are sometimes perpetuall, as long as the parties live, sometimes for a season limited, and sometime, till reconcilment be had, and he that maketh Divorce with his wife being onely separated *a Toro* is forbidden to take another wife.⁷³

SECT. XXIII.
Causes of Divorce.

The Civill Law hath many causes of Divorce, but by Divine and Common Law, the onely sufficient cause is adultery and fornication, which by the Canons is carnall and spirituall: the spirituall is heresie and Idolatry: They dissolve Matrimony for spirituall fornication onely, where one of the parties is converted to Christian faith, and the other for hatred of his religion will not cohabit, &c. And this is taken also from Saint *Paul 1. ad Corinth. 7.* where he saith, If the unbelieving depart, let him depart, a Brother or Sister is not in subjection.

⁷⁰ A treatise brought by either another person or one of the couple.

⁷¹ "Those whom God hath joined together, let no one separate." The usual translation here is "no man," but I have deliberately chosen to read it, again, as the masculine generic. No woman was allowed to separate a married couple either.

⁷² From marital custom. Again, this means more than the modern understanding of "custom" because it carries legally binding suggestions.

⁷³ The author is here referring to separation *à mensâ et thoro*, literally, a separation from table and bed (more commonly referred to in English as "bed and board") wherein the marriage continues to be legally binding and no remarriage is allowed.

SECT. XXIV.
Impotencie or Disabilitie of Procreation.

There is admitted also, in dissolution of Marriage, the complaint of impotencie: And *Justinian* very discreetly, willed that in that exploration or prooffe of the defect there should be expected three yeares: but the Canons ordeine that Matrimony is dissolved by probation⁷⁴ of impotencie, without mention or limits of time. And this is more then a bare divorce or separation, *a Toro*;⁷⁵ for it dissolveth Marriage, avoyding it as it had never beene:⁷⁶ so that he or shee whose fellow is convicted of impotencie, may choose a new friend, and presently marry againe.

But this is to be understood of impotencie which was before the Marriage made: for indeede where the impediment was so precedent, there could not any Matrimony exist or have being, &c.

Otherwise it is, when this disability betideth after Marriage perfected and consummate, for in that case, he or she which remaineth potent, shall not leave and depart from the impotent, but be compelled to beare the discommodity, as well as any other ill fortune. And that which is here taught of Conjugall impotencie, stretcheth to all impediments of Marriage which are perpetuall, *ut per ea Matrimonium nunquam extitisse judicetur*.⁷⁷

⁷⁴ A period of testing the abilities of the person.

⁷⁵ From the bed [*a thoro*].

⁷⁶ The author here refers to divorce *à vinculo*, which assumes there was never a lawful marriage in the first place, and both parties are free to remarry.

⁷⁷ So that by these things the marriage is judged never to have existed.

SECT. XXV.
*Marriages inter ascendentes & descendentes.*⁷⁸

Those Marriages that are made betweene *ascendentes* and *descendentes*, are so detestable, that by the Civill Law they deserve exile and confiscation of goods. And there is a glosse that would extend this to all unlawfull Marriages: but by *Bartell* and others,⁷⁹ it is to be inflicted only upon those, which are *contra jura sanguinis*.⁸⁰

SECT. XXVI.
*Captivitie or long absence of one which
 is married.*

It falleth out not seldome, the one of them which are married to be taken captive, or otherwise so deteined, that it is uncertaine if he live or no.

Therefore because it is in some sort dangerous to expect long the incertaine returne of an absent yoake-fellow, here the Civill Law did ordaine, that after a husband had beene gone five yeares, and nothing knowne whether he lived or no, the wife might marry againe, and so might the husband, that had expected his wife, &c. But the Common Law commandeth simply to forbear Marriage till the death of him or her that is missing be certainly knowne.

⁷⁸ Between ascendants and descendents, such as parents and children, grandparents and grandchildren, etc.

⁷⁹ This is a reference to a case.

⁸⁰ Contrary to the rights of blood.

SECT. XXVII.

That no crime dissolveth marriage.

Of old time, some Crimes were numbred amongst the Causes of Dissolving marriage: but *Justinian* changed the Law here in part, and the Canons upon the saying of Christ, *Quos Deus conjunxit, &c.*⁸¹ will not by any meanes that Matrimony rightly made and consummate, can bee dissolved, *quoad ad vinculum Matrimonii*,⁸² though for fornication they suffer a parting, *quoad Torum*.⁸³ So that *nodus legitimi Matrimonii*,⁸⁴ is never dissolved but by death, and the wife as long as she liveth is subject to the law of her husband by Saint *Paul*.

Yet saith *Lagus*, seeing that in Contracts of Wedlock we regard as well what is decent and convenient, as what is lawfull, I cannot tell why we be not bound in dissolving of it to follow the like equitie: and for example, if a Wife cannot dwell with her husband without manifest danger of death, because he is cruell and bloody, why may not shee be separated *judicis ordinarii cognitione precedente*.⁸⁵

SECT. XXVIII.

The Authoritie of the ordinarie Judge, &c.

For if Spousals of future Marriage cannot be dissolved without publike authority, it must needes follow, that without like authoritie, there can bee no repudiation when Matrimony is fully contracted and consummate: But in pursuing

⁸¹ Those whom God hath joined, etc.

⁸² As far as the marriage bond [is concerned].

⁸³ As far as the bed (sexual intercourse) [is concerned].

⁸⁴ The knot of a legal marriage.

⁸⁵ By the previous cognizance of an ordinary judge.

of divorce the strict order of Judiciall proceedings is not alwayes severely kept: for regularly production of witnesses before contestation of suite, *non adjuvat producentem*,⁸⁶ yet if *Cornelia* sue a Divorce against *Sempronius*, *causa consanguinitatis*,⁸⁷ and *Sempronius* being cited will not appeare, if now *Cornelia* bring her witnesses, the Judge may receive them.

Marry this religious observation the Canons give him ever, when he commeth to point of Judgement, That the danger is lesse, in leaving men contrary to the Statutes of men, then in separating (contrary to the Statutes of God) those which are lawfully conjoyned.

Thus farre have I run my selfe in debt to Doctor *Conradus Lagus*, of whom in the third part of his *Method*, *ca. 22.* may be further learned the difference betwixt *Scortum*, *pellex* and *Concubina*,⁸⁸ Our English comprehendeth them all in one word,⁸⁹ and I would they dwelt all in one House, beyond Seas, *Concubinatus speciem conjugii ----- habet, Et ex Concubinae natis conceditur beneficium legitimationis*.⁹⁰ If maid, wife or widow, aske what I meane to tell them so much of Civill and Canon Law, seeing they be none of those Country women, I pray them not to looke for the Regions *in mappa mundi*,⁹¹ but for their owne Regiment in Christian dutie: The spirituall Law is here an Oracle to the temporall, which evermore sendeth

⁸⁶ Does not help the person producing them.

⁸⁷ Because of consanguinity.

⁸⁸ A prostitute, seductress, and a concubine.

⁸⁹ Whore.

⁹⁰ Concubinage has the appearance of marriage, and the benefit of legitimacy is granted to the children of a concubine.

⁹¹ On a world map.

to the Ecclesiasticall Judge, viz. the Bishop, for certification of lawfulness or unlawfulness of Wedlocks when Accouplements come in question.⁹²

SECT. XXIX.
Statutes concerning Marriage.

For it is true that *Newdigate*⁹³ saith, *12. He. 8. fo. 6.* that marriage and Divorcements with the circumstances of them be properly no parcell of Common-Lawes learning.

Yet it is very needfull here that I shew you here what the Lawes of England have needfully concerning Marriage established. *32. H. 8. ca. 38.* declareth all persons lawfully to marry which are not prohibited by Gods Law. And it was ordeyned, that all Mariages contracted and solemnized in face of the Church, and consummate with bodily knowledge, should remaine indefeatable, notwithstanding any pre-contract, &c. Further, that neither dispensation,⁹⁴ prescription,⁹⁵ law, reservation,⁹⁶ prohibition, or any thing (Gods law excepted) shall trouble or impeach any Marriage made without the Leviticall Degrees,⁹⁷ nor any man bee received in spirituall Court to processe, plea, or obligation, contrary to this Act. This Statute,

⁹² The author encourages women not to turn to worldly solutions to marital difficulties (such as adultery, desertion, etc.), but to the Bishop of the canonical court who will solve the case for them according to the law.

⁹³ I can find no evidence for this reference, but it is likely to be either John Newdigate (d. 1528) who established "a long lasting tradition of engagement in the legal profession (Larminie 8)," or, because it is a comment on a Statute of Henry VIII, it may be his son John (d. 1545), who was "called to the bar at Lincoln's Inn in 1518 (Larminie 8)." There is no reference to any Newdigate in Pollard and Redgrave or Watt.

⁹⁴ Imposed exemption from marital duty.

⁹⁵ Ordinance.

⁹⁶ Express or tacit limitation or exception to the agreement; or, a right or interest in estate being conveyed, the estate, in this case, being the woman.

⁹⁷ Within the proper degrees of consanguinity and affinity as stated in Leviticus.

though it seemed to be made upon good and great considerations, (because pre-contracts too too slenderly proved, and sometime but onely surmized, helped the Romish oppression, and separated those which were at quiet in an honest conjunction) yet many did after the making of it, very dissolutely come from their first vowes, and, as it were in spight of conscience and Ecclesiasticall censure, coupled themselves bodily with such as they newly fancied, slipperily leaving their former Contracts: it is repealed 2. & 3. *Ed. 6. ca. 3.* only in the points of pre-contracts: And they are left in the validity which they were of, by the Kings Ecclesiasticall lawes, immediately before the making of 32. with *proviso* that all the rest of the said Act standeth whole and in strength. So it is now againe by 1. *Eliz. cap. 1.* See also 5. & 6. *Ed. 6. ca. 12.* that the Marriage of Priests and Ecclesiasticall persons is lawfull, their Children legitimate, a Priest may be tenant by the courtesse, and his Wife have Dower.

SECT. XXX.

With what persons Women may not marry.

Such are her Grandfather, her Father, her Sonnes Sonne, &c. her Brother, though it be but the one part her Fathers or Mothers Brother, her Brothers or Sisters Sonne, or her Sonnes Sonne. Brothers or Sisters Children (saith *Ramus* in his Commentaries of Christian Religion, *lib. 2. ca. 9.*)⁹⁸ are forbidden to inter-marry, *sed more, non lege Divina vel Romana:*⁹⁹ Christians, he saith further, which have abrogated the Law 25. of *Deuteronomy*, whereby a Brother might bee challenged to raise up the house of

⁹⁸ Pierre de la Ramée (1515-1572). His *De religione Christiana* was first published in 1576 ("Ramus").

⁹⁹ But by custom, not by divine or Roman law. Here, custom is used in the modern sense of the word.

his deceased brother, have also constituted a prohibition, within certaine degrees of affinity, and therefore a man may not marry with the widdow of his Grandfather or of his Father, or with the widdow of his owne Sonne, or of his Sonnes Sonne, or with the widdow of his Brother, or of his Brothers Son, or of his Brothers Sonnes Sonne, &c. Nor with the Grand-mother, Mother, Daughter, Neece, great Aunt, Aunt or Sister of his deceased wife.

BIBLIOGRAPHY

Bibliography

Manuscript Sources

Osborne, Francis. *The True Tragi-Comedie Formerly Acted at Court*. Circa 1635.

BL MS 25348. Forty-six numbered pages.

Terracae, William. *A Plenarie Satisfaction, Out of the Holie Scriptures, Cannons, and Civill Lawes Authorised*. Circa 1613. NRO Finch-Hatton MS 319 fols.

Forty page poem with five pages of address.

Statutes of the Realm

25 Hen. VIII, c. 19 (1533)

32 Hen. VIII, c. 38 (1540)

2 and 3 Edward VI, c. 23 (1548)

39 Eliz., c. 9 (1598)

1 Jac. I, c. 11 (1610)

Primary Sources

Abbot, R. *A Wedding Sermon*. London, 1608.

Agrippa, Henry Cornelius. *The Commendation of Matrimony*. London, 1540.

---. *Of the Nobilitie and Excellencie of Womankynde*. London, 1540.

Ainsworth, Henry. *Annotations Upon the Five Bookes of Moses, and the Booke of the Psalmes*. London, 1622.

Ames, William. *Conscience With the Power and Cases Thereof*. London, 1639.

Aquinas, Thomas. *The Treatise on Law*. Ed. R. J. Henle. Notre Dame: University of Notre Dame Press, 1993.

Arthur, John. *Deeds Against Nature, and Monsters by Kind*. London, 1614.

Asylum Veneris, or a Sanctuary for Ladies. London, 1616.

Augustine, St. "On the Good of Marriage." *On the Holy Trinity Doctrinal Treatises Moral Treatises*. A Select Library of the Nicene and Post-Nicene Father of

- the Christian Church. Eds. Philip Schaff and Henry Wace. Trans. C. Cornish. Second Ser. Vol. 3. Edinburgh: T and T Clark, [1997]. 14 vols.
- Augustine, St. et al. *The Sinners Glasse*. [Ed. Anonymous]. London, 1609.
- Aylmer, John. *An Harborowe for Faithfull and Trewe Subjectes*. Strasborough, 1559.
- Ayrault, Pierre. *A Discourse for Parents Honour*. London, 1614.
- B., Ste. *Counsel to the Husband: to the Wife Instruction*. London, 1608.
- B., W. *The Philosophers Banquet*. 2nd ed. London, 1614.
- Babington, Gervase. *A Verie Fruitefull Exposition of the Commandements by Way of Questions and Answers for Greater Plainnesse*. London, 1590.
- Bacon, Francis. "Of Judicature." *The Essays*. Ed. J. Pitcher. London: Penguin Group, 1985.
- - - . "Of Revenge." *The Essays*. Ed. J. Pitcher. London: Penguin Group, 1985.
- Barlow, William. *The Summe and Substance of the Conference, Which, it Pleas'd His Excellent Majestie to Have with the Lords, Bishops, and Other of His Clergie [. . .] January 14, 1603*. London, 1604.
- Battista, Albertie Leone. *Hecatonphila, The Arte of Love. Or Love Discovered in an Hundred Severall Kindes*. London, 1598.
- Bodin, Jean. *Method for the Easy Comprehension of History*. Trans. Beatrice Reynolds. New York: Norton, 1969.
- - - . *The Six Bookes of the Commonweale*. Trans. Richard Knolles. London, 1606.
- Brant, Sebastian. *Nauis Stultifera a Domino*. [Basle], 1406 [actually 1506].
- - - . *The Ship of Fools*. Trans. and ed. Edwin H. Zeydel. New York: Dover Publications, Inc., 1944.
- Brathwait, Richard. *Natures Embassie: or the Wilde-Mans Measures*. London, 1621.
- Breton, Nicholas. *A Poste with a Packet of Madde Letters. The Second Part*. London, 1606.
- A Brief and Pleasant Discourse of Duties in Mariage, Called the Flower of Friendship*. London, 1568.
- Brinsley, John. *The True Watch and Rule of Life*. London, 1637.
- Brownd, Nicholas. *Sabbathum Veteris et Novi Testamenti: Or The True Doctrine of the Sabbath*. London, 1606.

- Bullinger, Heinrich. *The Christen State of Matrimony*. London, 1541.
- Bunny, Edmund. *Of Divorce for Adulterie, and Marrying Againe*. London, 1610.
- . *The Scepter of Judah*. London, 1584.
- Burton, Henry. *Conflicts and Comforts of Conscience*. London, 1628.
- Burton, William. *Certaine Questions and Answeres, Concerning the Knowledge of God. Whereunto are Adjoynd Some Questions and Answeres, Concerning the Right Use of the Law of God*. London, 1591.
- Camden, William. *Britannia: Or a Chorographical Description of Great Britain and Ireland, Together with Adjacent Islands*. Ed. Edmund Gibson. 2nd ed. London, [1722]. 2 vols.
- . *Remaines of a Greater Worke Concerning Britaine*. London, 1605.
- . *Remains Concerning Britain*. Ed. R. D. Dunn. Toronto: University of Toronto Press, 1984.
- Capel, Richard. *Tentations: Their Nature, Danger, Cure*. London, 1633.
- Carter, Thomas. *Carters Christian Commonwealth; Or, Domesticall Dutyes Deciphered*. London, 1627.
- Cary, Elizabeth. *The Argument. The Tragedy of Mariam The Fair Queen of Jewry with The Lady Falkland: Her Life*. Eds. B. Weller and M. Ferguson. Berkeley: University of California Press, 1994.
- Cary, Elizabeth. *The Tragedy of Mariam The Fair Queen of Jewry with The Lady Falkland: Her Life*. Eds. B. Weller and M. Ferguson. Berkeley: University of California Press, 1994.
- Caussin, Nicolas. *The Holy Court. Second Tome. The Prelate. The Souldier. The States-man. The Lady*. Paris, 1631.
- Chapman, George. *Andromeda Liberata*. London, [1614].
- . *A Free and Offenceles Justification*. London, [1614].
- Chartier, Alain. *Delectable Demaundes, and Pleasaunt Questions, With Their Severall Aunswers, in Matters of Love, Naturall Causes, with Morall and Politique Devises*. London, 1566.
- Chaucer, Geoffrey. *The Canterbury Tales*. Ed. A. C. Cawley. London: Dent and Sons Ltd., 1908.
- Church of England. *Constitutions and Canons Ecclesiasticall*. London, 1604.
- Clifford, Anne. *The Diaries of Lady Anne Clifford*. Ed. D. J. H. Clifford. Phoenix Mill: Alan Sutton Publishing Ltd., 1990.

- Coke, Edward. *A Systematic Arrangement of Lord Coke's First Institute of the Laws of England*. Ed. J. H. Thomas. Vol. 1. London, 1818. 3 vols.
- The Concise Oxford Dictionary*. Ed. Judy Pearsall. 10th ed. Oxford: Oxford University Press, 2001.
- The Contended [sic] Couckould, or a Pleasant New Songe of a New-Castle Man*. London, [1620].
- Cotton, Robert. *Field of Bloud: or, Rebellion Blazoned in All its Colours*. London, 1681.
- Cotton, Roger. *A Direct Way, Whereby the Plainest Man May be Guided to the Waters of Life*. London, 1610.
- The Court of Good Counsell*. London, 1607.
- Cranmer, Thomas. *Reformatio Legum Ecclesiasticarum: The Reformation of the Ecclesiastical Laws of England, 1552*. Ed. James C. Spalding. Sixteenth Century Essays and Studies 19. Kirksville: Sixteenth Century Journal Publishers, Inc., 1992.
- Crompton, William. *A Wedding-Ring*. London, 1632.
- Crooke, Helkiah. *Mikrokosmographia: A Description of the Body of Man*. London, 1615.
- Crooke, Sam. *The Guide Unto True Blessednesse. Or, a Body of the Doctrine of the Scriptures, Directing Man to the Saving Knowledge of God*. London, 1613.
- [Cumber, John]. *A Pleasant Comedie Called The Two Merry Milke-Maids. or The Best Words Weare the Garland*. London, 1620.
- Darcie, Abraham. *Honors True Arbor, or the Princely Nobility of the Howards*. London, 1625.
- Davies, John. *The Complete Works of John Davies of Hereford*. Ed. Alexander Grosart. Vol. 2. Edinburgh, 1878. 2 vols.
- Dawlman, Robert. *The Sinners Salvation: Resolving This Weighty Case of Conscience*. London, 1638.
- Dekker, Thomas. *The Honest Whore*. Ed. Nick de Sonogyi. London: Nick Hern Books, 1998.
- Dering, Edward. *A Briefe and Necessarie Catechisme, or Instruction for Housholders*. London, 1606.
- Dickens, Charles. *Bleak House*. London: Thomas Nelson and Sons, 1853.

- Dillingham, Francis. *Christian Oeconomy. Or Household Government.* London, 1609.
- A Discourse of the Married and Single Life.* London, 1621.
- Dod, John and Robert Cleaver. *A Godly Forme of Householde Government.* London, 1612.
- . *A Treatise or Exposition Upon the Ten Commandements, Grounded Upon the Scriptures Canonically.* London, 1603.
- Dodderidge, John. *The English Lawyer.* London, 1631.
- [---]. *The Lawes Resolutions of Womens Rights.* Ed. W. J. Johnson. Amsterdam: Theatrum Orbis Terrarum, 1979.
- [---]. *The Lawes Resolutions of Womens Rights: or, The Lawes Provision for Woemen.* London, 1632.
- [---]. *The Lawyers Light.* London, 1629.
- Donne, John. *Selected Prose.* Ed. Neil Rhodes. Harmondsworth: Penguin, 1987.
- . *The Epithalamions Anniversaries and Epicedes.* Ed. W. Milgate. Oxford: Clarendon Press, 1978.
- . *John Donne: The Complete English Poems.* Ed. A. J. Smith. New York: St. Martin's Press, 1971.
- . *The Poems of John Donne.* Ed. H. J. C. Grierson. London: Oxford University Press, 1929.
- Dove, John. *Of Divorcement.* London, 1601.
- Dow, Zachary. *A True Copie of a Writing Testimonial by Aucthority Devised to Cleere Z. Dow of London Draper...From that Injurious Clayme of 23.8.li by Sara Babington now Sara Gough the Wife of John as Appeareth.* [London, 1610].
- Downname, George. *An Abstract of the Duties Commanded, and Sinnes Forbidden in the Law of God.* London, 1626.
- Eburne, Richard. *The Royal Law: or the Rule of Equitie Prescribed us by Our Saviour Christ.* London, 1616.
- Elton, Edward. *Gods Holy Mind Touching Matters Morall, Which Himselfe Uttered in Tenne Words, or Tenne Commandements. Also Christs Holy Mind Touching Prayer.* London, 1625.

- Erasmus, Desiderius. "The Handbook of the Militant Christian." *The Essential Erasmus*. Selected and Newly Translated with Introduction and Commentary by John P. Dolan. New York: Mentor, 1964.
- Ferrers, Richard. *The Worth of Women*. London, 1622.
- Finch, Henrie. *Law, or a Discourse Thereof*. London, 1627.
- Foxe, John. *Christ Jesus Triumphant*. London, 1579.
- Gardiner, Samuel Rawson. *Report of Cases in the Courts of Star Chamber and High Commission*. Camden Society New Series 39. London, 1886.
- Gataker, Thomas. *A Good Wife Gods Gift: and a Wife Indeed*. London, 1623.
- Geree, Stephen. *The Ornament of Women. Or, A Description of the True Excellency of Women*. London, 1639.
- Goodcole, Henry. *The Adultresses Funerall Day*. London, 1635.
- Goodman, Godfrey. *The Fall of Man*. London, 1618.
- Goodwin, Thomas. *Aggravation of Sinne*. London, 1637.
- Gouge, William. *Of Domesticall Duties*. London, 1622.
- Greville, Fulke. *The Tragedy of Mustapha*. London, 1609.
- Griffith, Matthew. *Bethel: or a Forme for Families*. London, 1633.
- Harpsfield, Nicholas. *A Treatise on the Pretended Divorce between Henry VIII and Catharine of Aragon*. Ed. Nicholas Pocock. Camden Society 21. London, 1878.
- Hart, Andrew. *A Trewe Description of the Nobill Race of the Stewards*. Edinburgh, 1603.
- Heywood, Thomas. *The Captives or The Lost Recovered. Thomas Heywood: Three Marriage Plays*. Ed. Paul Merchant. Manchester: Manchester University Press, 1996.
- . *The English Traveller. Thomas Heywood: Three Marriage Plays*. Ed. Paul Merchant. Manchester: Manchester University Press, 1996.
- . *The Wise-Woman of Hogsdon. Thomas Heywood: Three Marriage Plays*. Ed. Paul Merchant. Manchester: Manchester University Press, 1996.
- . *A Woman Killed With Kindness. Five Elizabethan Tragedies*. Ed. A. K. McIlwraith. Oxford: Oxford University Press, 1971.
- Hic Mulier: or, The Man-Woman*. London, 1620.
- Hieron, Samuel. *The Bridegroome*. London, 1613.

- Hinde, William. *The Office and Use of the Morall Law of God in the Dayes of the Gospell*. London, 1622.
- Holy Bible: New International Version Containing the Old Testament and the New Testament. London: Hodder and Stoughton, 1978.
- Howesoun, John. *A Short Exposition of the 20 and 21 Verses of the Third Chapter of the First Epistle of S. John*. Edinburgh, 1600.
- Huxley, Aldous. *Brave New World*. Paperback edition (1993). Hammersmith: Harper Collins, 1932.
- James I. *The Kings Majesties Speech, as it was Delivered by Him in the Upper House of the Parliament...1603*. London, 1604.
- . *A Proclamation Against the Disorderly Printing, Uttering, and Dispersing of Bookes, Pamphlets, andc*. London, 1623.
- . *A Proclamation Declaring His Majesties Grace to His Subjects for Their Reliefe Against Publique Grievances*. London, 1622 [actually 1623].
- Jonson, Ben. *Epicoene, or The Silent Woman*. *Ben Jonson's Plays and Masques*. Ed. Richard Harp. Norton Critical Edition. 2nd ed. New York and London: W. W. Norton and Company, Inc., 2001.
- Josephus, Flavius. *The Famous and Memorable Workes of Josephus, a Man of Much Honour and Learning Among the Jewes*. Trans. Thomas Lodge. London, 1602.
- Juvenal. *The Satires of Juvenal: Satire II Moralists Without Morals*. Ed. and trans. G. G. Ramsay. Ancient History Sourcebook. 10 pars [1-149]. Online. Internet. 1 Nov. 2002. Available <http://www.fordham.edu/halsall/anceint/juv-sat2lateng.html>.
- Kafka, Franz. *The Trial*. Trans. Willa and Edwin Muir. London: Secher and Warburg, 1945.
- The Lamentation of a New Married Man*. London, [1625].
- Lykosthines, Konrad. *The Doome Warning All Men to the Judgemente*. London, 1581.
- Marston, John et al. *The Insatiate Countess*. Ed. Giorgio Melchiori. The Revels Plays. Manchester: Manchester University Press, 1984.
- Mayer, John. *A Patterne for Women*. London, 1619.
- The Merry Cuckold*. [London, 1629].
- A Merry Dialogue Betwixt a Married Man and his Wife*. London, [1625].

- Milton, John. "The Doctrine and Discipline of Divorce." *Milton's Prose Writings*. Ed. K. M. Burton. Everyman's Library 795. London: J. M. Dent and Sons Ltd., 1958.
- . *Paradise Lost: An Authoritative Text; Backgrounds and Sources; Criticism*. Ed. Scott Elledge. A Norton Critical Edition. New York: W. W. Norton and Co., 1975.
- A Most Pleasant Comedie of Mucedorus*. London, [1629].
- Newstead, Christopher. *An Apology for Women*. London, 1620.
- The Office of Christian Parents*. Cambridge, 1616.
- Osborne, Francis. *Advice to a Son*. London, 1656.
- . *The True Tragicomedy Formerly Acted at Court*. Eds. John Pitcher and Lois Potter. New York and London: Garland, 1983.
- Owen, John. *Epigrams of That Most Wittie and Worthie Epigrammatist Mr. John Owen, Gentleman*. Trans. John Vicars. London, 1610.
- Overbury, Thomas. *A Wife, Now a Widowe*. London, 1614.
- Ovid (Publius Ovidius Naso). *Metamorphoses*. Ed. E. J. Kenney. Trans. A. D. Melville. Oxford: Oxford University Press, 1986.
- Parker, Martin. *The Bonny Bryer*. London, [1630].
- . *The Cooper of Norfolke*. London, [1630].
- . *The Married-Womans Case*. London, [1625].
- The Parliament of Women. With the Merry Lawes by Them Newly Enacted*. London, 1640.
- Perkins, M. W. *The Whole Treatise of the Cases of Conscience, Distinguished Into Three Bookes*. Cambridge, 1606.
- Perkins, William. *A Golden Chaine: Or the Description of Theologie*. Cambridge, 1600.
- . *A Salve for a Sicke Man: or, a Treatise Containing the Nature, Differences, and Kindes of Death; as Also the Right Manner of Dying Well*. Cambridge, 1597.
- Polanus, Amandus. *The Substance of Christian Religion, Soundly Set Forth in Two Bookes, by Definitions and Partitions, Framed According to the Rules of a Naturall Method*. Trans. E. W. London, 1595.
- Preston, John. *The Law Out Lawed Or, The Charter of the Gospell Shewing the Priviledge and Prerogative of the Saints*. Edinburgh, 1631.

- Pricke, Robert. *The Doctrine of Superioritie, and Subjection, Contained in the Fifth Commandement of the Holy Law of Almighty God*. London, 1609.
- Rainolds, John. *A Defence of the Judgment of the Reformed Churches*. London, 1609.
- . *The Overthrow of Stage-Playes*. 2nd ed. Oxford, 1629.
- The Reports of Sir Edward Coke, KT. In Verse*. London: J. and W. T. Clarke, 1825.
- Rich, Barnaby. *The Honestie of this Age*. Edinburgh, [1616].
- Ridley, Thomas. *A View of the Civile and Ecclesiastical Law*. London, 1607.
- Rogers, Daniel. *A Practicall Catechisme or, A View of Those Principall Truths of the Word, Which Most Directly Tend to Life and Godlinesse*. London, 1640.
- S., F. *The Picture of a Wanton: Her Leawdnesse Discovered*. London, 1615.
- S., T. *The Key of David, That Openeth the Gates of the Citie of God: Also, of Faith and Repentance*. London, 1610.
- Salkeld, John. *A Treatise of Paradise. And the Principall Contents Thereof*. London, 1617.
- Shakespeare, William. *Measure for Measure*. Ed. S. Greenblatt. The Norton Shakespeare Based on the Oxford Edition. New York: W.W. Norton and Co., 1997.
- . *The Merchant of Venice*. Ed. S. Greenblatt. The Norton Shakespeare Based on the Oxford Edition. New York: W.W. Norton and Co., 1997.
- . *The Winter's Tale*. Ed. J. H. P. Pafford. The Arden Shakespeare Ser. 3. London and New York: Routledge, 1963.
- A Shorte Treatise Against Stage-Playes*. [London], 1625.
- Snawsell, R. *A Looking Glasse for Married Folkes*. London, 1610.
- Sowernam, Esther [pseud.]. *Ester Hath Hang'd Haman*. London, 1617.
- Swetnam, Joseph. *The Araignment of Lewd, Idle, Froward, and Unconstant Women*. London, 1619.
- Taylor, Jeremy. *Selected Writings*. Ed. C. H. Sisson. Exeter: Fyfield Books, 1990.
- Taylor, Thomas. *A Good Husband and a Good Wife*. London, 1625.
- . *Regula Vitæ, The Rule of the Law Under the Gospel . . . Wherein is Manifestly Proved, that God Seeth Sinne in Justified Persons*. London, 1635.
- A Treasurie of Catechisme, or Christian Instruction*. London, 1600.
- Turner, Richard. *Nosce te (Humors)*. London, 1607.

- A True Relation of the Most Inhumane and Bloody Murther, of Master James Minister and Preacher of the Word of God at Rockland in Norfolke.* London, 1609.
- Tye, William. *A Matter of Moment: or A Case of Waight.* London, 1608
The Unnaturall Wife. London, [1628].
- Varchi, Benedetto. *The Blazon of Jealousie.* Trans. R. Tofte. London, 1615.
- Véron, John. *A Most Necessary Treatise of Free Wil.* London, 1561.
- Viret, Pierre. *A Christian Instruction, Conteyning the Law and the Gospell. Also a Summarie of the Principall Poyntes of the Christian Fayth and Religion, and of the Abuses, and Errors Contrary to the Same.* Trans. J. S. London, 1573.
A Warning for all Desperate Women. London, [1628].
- Webster, John. *The White Devil. Drama of the English Renaissance II: The Stuart Period.* Eds. Russell Fraser and Norman Rabkin. Upper Saddle River: Prentice-Hall, Inc., 1976.
- Weemse, John. *An Exposition of the Lawes of Moses. Morall, Ceremoniall, Judiciall.* London, 1632.
- - - . *The Workes of Mr. John Weemse of Lathocker in Scotland, in Three Volumes.* London, 1636.
- Whately, William. *A Bride-Bush.* London, 1617.
- - - . *A Care-cloth.* London, 1624.
- Wing, John. *The Crowne Conjugall or, the Spouse Royall.* Middleburgh, 1620.
Witts Tearme. London, [1610].

Secondary Sources

- Abartis, Caesarea. *The Tragicomic Construction of Cymbeline and The Winter's Tale.* Ed. James Hogg. Salzburg Studies in English Literature Under the direction of Professor Erwin A. Stürzl. Jacobean Drama Studies 73. Salzburg: Universität Salzburg, 1977.
- Abrams, Kathryn. "The Narrative and the Normative in Legal Scholarship." *Representing Women: Law, Literature and Feminism.* Eds. Susan Heinzelmann and Zipporah Wiseman. Durham and London: Duke University Press, 1994.

- Adair, Richard. *Courtship, Illegitimacy and Marriage in Early Modern England*. Manchester and New York: Manchester University Press, 1996.
- Allen, Morse S. *The Satire of John Marston*. New York: Haskell House Publishers Ltd., 1971.
- Allman, Eileen. *Jacobean Revenge Tragedy and the Politics of Virtue*. Newark: University of Delaware Press, 1999.
- Amussen, Susan Dwyer. "The Part of a Christian Man': The Cultural Politics of Manhood in Early Modern England." *Political Culture and Cultural Politics in Early Modern England: Essays Presented to David Underdown*. Eds. Susan D. Amussen and Mark A. Kishlansky. Manchester: Manchester University Press, 1995.
- "Anthony Fitzherbert, Sir." *Catholic Encyclopedia*. 2 pars. Online. Internet. 1 Nov. 2002. Available <http://www.newadvent.org/cathen/060856.htm>.
- Aristodemou, Maria. *Law and Literature: Journeys from Her to Eternity*. Oxford: Oxford University Press, 2000.
- Aubert, Vilhelm. "On Methods of Legal Influence." *The Imposition of Law*. Eds. Sandra Burman and Barbara E. Harrell-Bond. New York: Academic Press, 1979.
- Auchter, Dorothy. *Dictionary of Literary and Dramatic Censorship in Tudor and Stuart England*. Westport, Connecticut and London: Greenwood Press, 2001.
- Aughterson, Kate. *Renaissance Woman: A Sourcebook Constructions of Femininity in England*. London and New York: Routledge, 1995.
- Axelrad, A. José. *Un Malcontent Élizabéthain: John Marston (1576-1634)*. Paris: Didier, 1955.
- Baker, J. H. *An Introduction to English Legal History*. 3rd ed. London: Butterworths, 1990.
- - - . *The Legal Profession and the Common Law: Historical Essays*. London: Hambledon Press, 1986.
- Barish, Jonas. *The Antitheatrical Prejudice*. Berkeley: University of California Press, 1981.
- Baron, Jane B. "Interdisciplinary Legal Scholarship as Guilty Pleasure: The Case of Law and Literature." *Law and Literature*. Eds. Michael Freeman and

- Andrew D. E. Lewis. *Current Legal Issues* 1999 2. Oxford: Oxford University Press, 1999.
- Baron, Jane B. and Julia Epstein. "Language and the Law: Literature, Narrative, and Legal Theory." *The Politics of Law: A Progressive Critique*. Ed. David Kairys. 3rd ed. New York: Basic Books, 1998.
- Barthes, Roland. *The Rustle of Language*. Oxford: Blackwell, 1986.
- Baumgartner, M. P. "The Sociology of Law." *A Companion to Philosophy of Law and Legal Theory*. Ed. Dennis Patterson. Cambridge, Mass.: Blackwell, 1996.
- Beauvoir, Simone de. *The Second Sex*. Trans. and ed. H. M. Parshley. London: Picador, 1988.
- Beilin, Elaine V. *Redeeming Eve: Women Writers of the English Renaissance*. Princeton: Princeton University Press, 1987.
- Bellany, Alastair. *The Politics of Court Scandal in Early-Modern England: News Culture and the Overbury Affair, 1603-1666*. Cambridge: Cambridge University Press, 2002.
- Belsey, Catherine. *Shakespeare and the Loss of Eden: The Construction of Family Values in Early Modern Culture*. London: MacMillan, 1999.
- . *The Subject of Tragedy: Identity and Difference in Renaissance Drama*. London and New York: Routledge, 1985.
- Benson, Pamela Joseph. *The Invention of the Renaissance Woman: The Challenge of Female Independence in the Literature and Thought of Italy and England*. Pennsylvania: Pennsylvania State University Press, 1992.
- Berry, Boyd M. "Feminine Construction of Patriarchy; Or What's Comic in *The Tragedy of Mariam*." *Medieval and Renaissance Drama in England* 7 (1995): 257-74.
- Binder, Guyora. "The Law-as-Literature Trope." *Law and Literature*. Eds. Michael Freeman and Andrew D. E. Lewis. *Current Legal Issues* 1999 2. Oxford: Oxford University Press, 1999.
- Bird, Phyllis. "Images of Women in the Old Testament." *Religion and Sexism: Images of Women in the Jewish and Christian Traditions*. Ed. Rosemary Radford Ruether. New York: Simon and Schuster, 1974.
- Bix, Brian. "Natural Law Theory." *A Companion to Philosophy of Law and Legal Theory*. Ed. Dennis Patterson. Cambridge, Mass.: Blackwell, 1996.

- Black, Donald. *The Behavior of Law*. New York: Academic Press, 1976.
- Bloch, R. Howard. *Etymologies and Genealogies: A Literary Anthropology of the French Middle Ages*. Chicago and London: Chicago University Press, 1983.
- Bloom, Allan. *Shakespeare on Love and Friendship*. Chicago: Chicago University Press, 1992.
- Bowers, Fredson. *Elizabethan Revenge Tragedy 1587-1642*. Reprint of 1940 ed. Princeton: Princeton University Press, 1966.
- Bradshaw, Graham. *Shakespeare's Scepticism*. Brighton: The Harvester Press, 1987.
- Bray, Alan. "Homosexuality and the Signs of Male Friendship in Elizabethan England." *Queering the Renaissance*. Ed. Jonathan Goldberg. Durham and London: Duke University Press, 1994.
- Brinkworth, E. R. C. *Shakespeare and the Bawdy Court of Stratford*. Chichester: Phillimore, 1972.
- Breitenberg, Mark. *Anxious Masculinity in Early Modern England*. Cambridge: Cambridge University Press, 1996.
- Brundage, James A. *Sex, Law and Marriage in the Middle Ages*. Collected Studies Ser. 397. Aldershot: Variorum, 1993.
- Bruster, Douglas. *Drama and the Market in the Age of Shakespeare*. Cambridge: Cambridge University Press, 1992.
- Bullough, Geoffrey. *Narrative and Dramatic Sources of Shakespeare: Cymbeline, The Winter's Tale, The Tempest*. Vol. 8. London and New York: Routledge and Kegan Paul, 1975. 8 vols.
- Campbell, Jan. *Arguing With the Phallus: Feminist, Queer and Postcolonial Theory: A Psychoanalytic Contribution*. London: Zed Books Ltd., 2000.
- Carey, John. *John Donne: Life, Mind and Art*. New York: Oxford University Press, 1981.
- Carroll, David. "Narrative, Heterogeneity, and the Question of the Political: Bakhtin and Lyotard." *The Aims of Representation: Subject/Text/History*. Ed. Murray Krieger. Stanford: Stanford University Press, 1987.
- Carroll, William C. "The Virgin Not: Language and Sexuality in Shakespeare." *Shakespeare and Gender: A History*. Eds. Deborah Baker and Ivo Kamps. London: Verso, 1995.

- Chedgzoy, Kate. *Shakespeare's Queer Children: Sexual Politics and Contemporary Culture*. Manchester: Manchester University Press, 1995.
- Chedgzoy, Kate, et al. *Voicing Women: Gender and Sexuality in Early Modern Writing*. Keele: Keele University Press, 1996.
- Cixous, Hélène. *The Hélène Cixous Reader*. Ed. Susan Sellers. London and New York: Routledge, 1994.
- Clare, Janet. 'Art Made Tongue-Tied by Authority': *Elizabethan and Jacobean Dramatic Censorship*. The Revels Plays Companion Library. Manchester: Manchester University Press, 1990.
- . "Censorship and Negotiation." *Literature and Censorship in Renaissance England*. Ed. Andrew Hadfield. New York: Palgrave, 2001.
- Clarke, Elizabeth and Herbert Richards. *Women and Religion: A Feminist Sourcebook of Christian Thought*. New York: Harper and Row, 1977.
- Clegg, Cyndia Susan. *Press Censorship in Elizabethan England*. Cambridge: Cambridge University Press, 1997.
- Coleman, Jules and Brian Leiter. "Legal Positivism." *A Companion to Philosophy of Law and Legal Theory*. Ed. Dennis Patterson. Cambridge, Mass.: Blackwell, 1996.
- Colley, John Scott. *John Marston's Theatrical Drama*. Ed. James Hogg. Jacobean Drama Studies. Salzburg Studies in English Lit. 33. Salzburg: Institut für Englische Sprache und Literatur, 1974.
- Collinson, Patrick. *The Birthpangs of Protestant England: Religious and Cultural Change in the Sixteenth and Seventeenth Centuries*. The Third Anstey Memorial Lectures in the University of Kent at Canterbury 12-15 May 1986. London: MacMillan Press, 1988.
- Comensoli, Viviana. 'Household Business': *Domestic Plays of Early Modern England*. Toronto: University of Toronto Press, 1996.
- Comte, Edward Le. *The Notorious Lady Essex*. New York: Dial Press, 1969.
- "Conrad Legus." n. pag. Online. Internet. 1 Nov. 2002. Available <http://faculty.cua.edu/pennington/1298c-g.htm>.
- Cook, Ann Jennalie. *The Privileged Playgoers of Shakespeare's London 1576-1642*. Princeton: Princeton University Press, 1981.

- Cook, Carol. "‘The Sign and Semblance of Her Honor’: Reading Gender Difference in *Much Ado About Nothing*." *Shakespeare and Gender: A History*. Eds. Deborah Barker and Ivo Kamps. London: Verso, 1995.
- Dane, Perry. "Constitutional Law and Religion." *A Companion to Philosophy of Law and Legal Theory*. Ed. Dennis Patterson. Cambridge, Mass.: Blackwell, 1996.
- Davidson, Caroline. *A Woman's Work is Never Done: A History of Housework in the British Isles 1650-1950*. London: Chatto and Windus, 1982.
- Derrida, Jacques. *Acts of Literature*. Ed. Derek Attridge. New York and London and New York: Routledge, 1992.
- Desens, Marliss C. *The Bed-Trick in English Renaissance Drama: Explorations in Gender, Sexuality, and Power*. Newark: University of Delaware Press, 1994.
- Dolan, Frances E.. *Dangerous Familiars: Representations of Domestic Crime in England 1550-1700*. Ithaca and London: Cornell University Press, 1994.
- - - . "‘Gentlemen, I Have One Thing More to Say’: Women on Scaffolds in England, 1563-1680." *Modern Philology: A Journal Devoted to Research in Medieval and Modern Literature* 92.2 (1994 Nov.): 157-78.
- Donaldson, Ian. *The World Upside-Down: Comedy from Jonson to Fielding*. Oxford: Clarendon Press, 1970.
- Douglass, Jane Dempsey. "Women and the Continental Reformation." *Religion and Sexism: Images of Women in the Jewish and Christian Traditions*. Ed. Rosemary Reuther. New York: Simon and Schuster, 1974.
- Dunstan, A. C. Introduction. *The Tragedy of Mariam 1613*. Oxford: Oxford University Press, 1914.
- Dusinberre, Juliet. *Shakespeare and the Nature of Women*. 2nd ed. London: MacMillan, 1996.
- Dutton, Richard. "Receiving Offence: A Game of Chess Again." *Literature and Censorship in Renaissance England*. Ed. Andrew Hadfield. New York: Palgrave, 2001.
- Eisaman Maus, Katharine. Introduction. *Measure for Measure*. Ed. Stephen Greenblatt. The Norton Shakespeare Based on the Oxford Edition. New York: W. W. Norton and Co., 1997.

- Elton, W. R. *Shakespeare's Troilus and Cressida and the Inns of Court Revels*. Aldershot: Ashgate, 2000.
- Evans, James Allan. "Justinian." *De Imperatoribus Romanis: An Online Encyclopedia of Roman Emperors*. 54 pars. Online. Internet. 1 Nov. 2002. Available <http://www.roman-emperors.org/justinia.htm>.
- Ezell, Margaret. *The Patriarch's Wife: Literary Evidence and the History of the Family*. Chapel Hill: University of North Carolina Press, 1987.
- Finkelpearl, Philip J. *John Marston of the Middle Temple: An Elizabethan Dramatist in His Social Setting*. Cambridge, Mass.: Harvard University Press, 1969.
- . "John Marston's *Histrion-mastix* as an Inns of Court Play: A Hypothesis." *Huntington Library Quarterly* 29 (1966): 223-34.
- . "The Use of the Middle Temple's Christmas Revels in Marston's *The Fawne*." *Studies in Philology* 64 (1967) 199-209.
- Fish, Stanley. *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies*. Oxford: Clarendon Press, 1989.
- . *There's No Such Thing as Free Speech...and it's a good thing too*. Oxford: Oxford University Press, 1994.
- Fissell, Mary. "Gender and Generation: Representing Reproduction in Early Modern England." *Gender and History* 7.3 (1995 Nov.): 433-456.
- Fletcher, George P. *Basic Concepts of Legal Thought*. Oxford: Oxford University Press, 1996.
- Foucault, Michel. *Ethics Subjectivity and Truth*. Ed. Paul Rabinow. Trans. Robert Hurley and others. Essential Works of Foucault 1945-1984. Vol. 1. New York: The New Press, 1994. 2 vols.
- . *The History of Sexuality*. Trans. Robert Hurley. Vols. 2-3. New York: Vintage Books, 1985-6. 3 vols.
- . *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*. Ed. Colin Gordon. Trans. Colin Gordon et al. New York: Pantheon Books, 1980.
- Fraser, Antonia. *The Weaker Vessel: Woman's Lot in Seventeenth-Century England*. London: Weidenfeld and Nicolson, 1984.
- Friedmann, W. *Law in a Changing Society*. London: Stevens and Sons Ltd., 1959.

- Frye, Northrop. "Recognition in *The Winter's Tale*." *The Winter's Tale Critical Essays*. Ed. Maurice Hunt. New York and London: Garland Publishing Inc., 1995.
- Gabel, Peter and Jay Feinman. "Contract Law as Ideology." *The Politics of Law: A Progressive Critique*. Ed. David Kairys. 3rd ed. New York: Basic Books, 1998.
- Geckle, George L. *John Marston's Drama: Themes, Images, Sources*. London: Associated University Presses, Inc., 1980.
- Gibbs, Philip. *King's Favourite: The Love Story of Robert Carr and Lady Essex*. London: Hutchinson and Co., 1909.
- Giddens, Anthony. "Action, Subjectivity, and the Constitution of Meaning." *The Aims of Representation: Subject/Text/History*. Ed. Murray Krieger. Stanford: Stanford University Press, 1997.
- Gilmore, Myron Piper. *Argument from Roman Law in Political Thought 1200 – 1600*. New York: Russell and Russell, 1941.
- Goodrich, Peter. *Law in the Court of Love: Literature and Other Minor Jurisprudences*. London and New York: Routledge, 1996.
- Gourlay, Patricia Southard. "'O My Most Sacred Lady': Female Metaphor in *The Winter's Tale*." *The Winter's Tale: Critical Essays*. Ed. Maurice Hunt. New York and London: Garland Publishing Inc., 1995.
- Gowing, Laura. *Domestic Dangers: Women, Words and Sex in Early Modern London*. Oxford: Clarendon Press, 1996.
- . -. "Language, Power and the Law: Women's Slander Litigation in Early Modern London." *Women, Crime and the Courts in Early Modern England*. Eds. Jenny Kermode and Garthine Walker. London: UCL Press, 1994.
- Grantley, Darryll and Nina Taunton. *The Body in Late Medieval and Early Modern Culture*. Aldershot: Ashgate, 2000.
- Greenblatt, Stephen. General Introduction. *The Norton Shakespeare Based on the Oxford Edition*. Ed. Stephen Greenblatt. New York: W. W. Norton and Co., 1997.
- Gurr, Andrew. *Playgoing in Shakespeare's London*. Cambridge: Cambridge University Press, 1987.
- Hadfield, Andrew. Introduction. *Literature and Censorship in Renaissance England*. Ed. Andrew Hadfield. New York: Palgrave, 2001.

- Hallett, Charles A. and Elaine S. Hallett. *The Revenger's Madness: A Study of Revenge Tragedy Motifs*. Lincoln: University of Nebraska Press, 1980.
- Harding, Alan. *A Social History of English Law*. Middlesex: Penguin Books Ltd., 1966.
- Harvey, Elizabeth D. *Ventriloquized Voices: Feminist Theory and English Renaissance Texts*. London and New York: Routledge, 1992.
- Hays, H. R. *The Dangerous Sex: The Myth of Feminine Evil*. London and New York: Methuen, 1966.
- Helmholz, R. H. *The Jus Commune in England*. Oxford: Oxford University Press, 2001.
- Henderson, Katherine Usher and Barbara F. McManus. *Half Humankind: Contexts and Texts of the Controversy about Women in England, 1540-1640*. Urbana: University of Illinois Press, 1985.
- Henning, Clara Maria. "Canon Law and the Battle of the Sexes." *Religion and Sexism: Images of Women in the Jewish and Christian Traditions*. Ed. Rosemary Reuther. New York: Simon and Schuster, 1974.
- Herrup, Cynthia. "The Patriarch at Home: The Trial of the 2nd Earl of Castlehaven for Rape and Sodomy." *History Workshop Journal* 41 (1996): 1-18.
- Hill, Christopher. *The World Turned Upside Down: Radical Ideas During the English Revolution*. Harmondsworth: Penguin Books Ltd., 1972.
- Hillman, Richard. *Self-Speaking in Medieval and Early Modern English Drama: Subjectivity, Discourse and the Stage*. London: Macmillan Press Ltd., 1997.
- Hodges, E. Perry. "Writing in a Different Voice." *Texas Law Review* 66 (1988): 629-640.
- Hornblower, Simon and Antony Spawforth. *The Oxford Companion to Classical Civilization*. Oxford: Oxford University Press, 1998.
- Houlbrooke, Ralph. *The English Family 1450-1700*. London and New York: Longman, 1984.
- Houston, S. J. *James I*. Seminar Studies in History. 2nd ed. London and New York: Longman, 1995.
- Howard, Jean E. and Phyllis Rackin. *Engendering a Nation: A Feminist Account of Shakespeare's English Histories*. London and New York: Routledge, 1997.
- Huebert, Ronald. "The Gendering of Privacy." *The Seventeenth Century* 16.1 (2001): 37-66.

- Ingram, Martin. *Church Courts, Sex and Marriage in England, 1570-1640*. Cambridge: Cambridge University Press, 1987.
- Ingram, R. W. *John Marston*. Ed. Sylvia E. Bowman. Twayne's English Author Ser. 216. Boston: Twayne Publishers, 1978.
- Irigaray, Luce. "The Powers of Discourse and the Subordination of the Feminine." *The Irigaray Reader*. Ed. Margaret Whitford. Oxford: Basil Blackwell, 1991.
- Iser, Wolfgang. "Representation: A Performative Act." *The Aims of Representation: Subject/Text/History*. Ed. Murray Krieger. Stanford: Stanford University Press, 1997.
- Iwanisziw, Susan B. "Conscience and the Disobedient Female Consort in the Closet Dramas of John Milton and Elizabeth Cary." *Milton Studies* 36 (1998): 109-122.
- Jameson, Fredric. *The Prison-House of Language: A Critical Account of Structuralism and Russian Formalism*. Princeton Essays in European and Comparative Literature. Princeton: Princeton University Press, 1972.
- Jardine, Lisa. "Companionate Marriage Versus Male Friendship: Anxiety for the Lineal Family in Jacobean Drama." *Political Culture and Cultural Politics in Early Modern England: Essays Presented to David Underdown*. Eds. Susan D. Amussen and Mark A. Kishlansky. Manchester: Manchester UP, 1995.
- . *Still Harping on Daughters*. Sussex: Harvester Press Ltd., 1983.
- . "'Why Should he Call her Whore?' Defamation and Desdmona's Case." *Reading Shakespeare Historically*. London and New York: Routledge, 1996.
- Johnson, Cuthbert William. *The Life of Sir Edward Coke, Lord Chief Justice of England in the Reign of James I. With Memoirs of his Contemporaries*. Vol 1. London, 1837. 2 vols.
- Johnson, Marilyn L. *Images of Women in the Works of Thomas Heywood*. Ed. James Hogg. Salzburg Studies in English Literature Under the Direction of Professor Erwin a Stürzl. Jacobean Drama Studies 42. Salzburg: Institut Für Englische Sprache und Literatur, 1974.

- Jones, Ann Rosalind. "Writing the Body: Toward an Understanding of 'L'Écriture Féminine.'" *The New Feminist Criticism: Essays on Women, Literature and Theory*. Ed. Elaine Showalter. London: Virago, 1986.
- Jordan, Constance. *Renaissance Feminism: Literary Texts and Political Models*. Ithaca and London: Cornell University Press, 1990.
- Judovitz, Dalia. *Subjectivity and Representation in Descartes: The Origins of Modernity*. Cambridge: Cambridge University Press, 1988.
- Julius, Anthony. "Crack the Lawyers Voice." *TLS*. November 29, 1996. p. 8.
- Kahn, Victoria. "'The Duty to Love:' Passion and Obligation in Early Modern Political Theory." *Rhetoric and Law in Early Modern Europe*. Ed. Victoria Kahn and Lorna Hutson. New Haven: Yale University Press, 2001.
- . *Rhetoric, Prudence, and Skepticism in the Renaissance*. Ithaca and London: Cornell University Press, 1985.
- Kearney, Richard. *Poetics of Imagining: Modern to Post-Modern*. New ed. Edinburgh: Edinburgh University Press, 1998.
- Kelley, Donald R. *Foundations of Modern Historical Scholarship: Language, Law and History in the French Renaissance*. New York: Columbia University Press, 1970.
- . *The Human Measure: Social Thought in the Western Legal Tradition*. Cambridge, Mass.: Harvard University Press, 1990.
- Kelsen, Hans. *Pure Theory of Law*. Trans. Max Knight. Berkeley: University of California Press, 1967.
- Kennedy, George. *The Art of Persuasion in Greece*. London and New York: Routledge and Kegan Paul, 1963.
- Kennedy, Helena. *Eve was Framed: Women and British Justice*. London: Vintage, 1993.
- Kitchin, S. B. *A History of Divorce*. London: Chapman and Hall, 1912.
- Klein, Joan Larsen. *Daughters, Wives, and Widows: Writings by Men About Women and Marriage in England, 1500-1640*. Urbana: University of Illinois Press, 1992.
- Knafla, Louis. *Law and Politics in Jacobean England: The Tracts of Lord Chancellor Ellesmere*. Cambridge: Cambridge University Press, 1977.
- Kornstein, Daniel. "Scarecrow of the Law: Measure for Measure." *Kill All the Lawyers?* Princeton: Princeton University Press, 1994.

- Kramer, Matthew H. *Critical Legal Theory and the Challenge of Feminism: A Philosophical Reconciliation*. London: Rowman and Littlefield, 1995.
- Krieger, Murray. "The Literary, the Textual, the Social." *The Aims of Representation: Subject/Text/History*. Ed. Murray Krieger. Stanford: Stanford University Press, 1987.
- Krontiris, Tina. *Oppositional Voices: Women as Writers and Translators of Literature in the English Renaissance*. London and New York: Routledge, 1992.
- Larminie, Vivienne. *Wealth, Kinship and Culture: The Seventeenth-Century Newdigates of Arbury and Their World*. Royal Historical Society Studies in History 72. Woodbridge: The Boydell Press, 1995.
- Laurence, Anne. *Women in England 1500-1760: A Social History*. London: Weidenfeld and Nicolson, 1994.
- Lee, Sidney. *Dictionary of National Biography*. Vol. 42. London: Smith, Elder, and Co., 1895. 65 vols.
- Lewalski, Barbara K. *Writing Women in Jacobean England*. Cambridge, Mass.: Harvard University Press, 1993.
- Lindley, David. *The Trials of Frances Howard: Fact and Fiction at the Court of King James*. London and New York: Routledge, 1993.
- Lloyd-Bostock, Sally M. A. "Explaining Compliance with Imposed Law." *The Imposition of Law*. Eds. Sandra Burman and Barbara E. Harrell-Bond. New York: Academic Press, 1979.
- Lloyd-Jones, D. Martyn. *Exposition of Chapters 3.20-4.25 Atonement and Justification: Romans*. London: The Banner of Truth Trust, 1970.
- Longstaffe, Stephen. "Puritan Tribulation and the Protestant History Play." *Literature and Censorship in Renaissance England*. Ed. Andrew Hadfield. New York: Palgrave, 2001.
- Loomba, Ania. *Gender, Race, Renaissance Drama*. Manchester and New York: Manchester University Press, 1989.
- Lyotard, Jean-François. "Judiciousness in Dispute, or Kant after Marx." *The Aims of Representation: Subject/Text/History*. Ed. Murray Krieger. Stanford: Stanford University Press, 1987.
- Maclean, Ian. *Interpretation and Meaning in the Renaissance: The Case of Law*. Cambridge: Cambridge University Press, 1982.

- . *The Renaissance Notion of Woman: a Study of the Attitudes of Scholasticism and Medical Science in European Intellectual Life*. Cambridge: Cambridge University Press, 1980.
- Martin, Randall. *Women Writers in Renaissance England*. London and New York: Longman, 1997.
- Matter, Joseph. *My Lord and Lady of Essex: Their State Trials*. Chicago: H. Regnery, 1969.
- Melchiori, Giorgio. Introduction. *The Insatiate Countess*. The Revels Plays ed. Manchester: Manchester University Press, 1984.
- Mendelson, Sara Heller. *The Mental World of Stuart Women: Three Studies*. Brighton: Harvester Press Ltd., 1987.
- Menefee, Samuel Pyeatt. *Wives for Sale: An Ethnographic Study of British Popular Divorce*. Oxford: Blackwell, 1981.
- Merchant, Paul. Introduction. *Thomas Heywood: Three Marriage Plays*. Manchester: Manchester University Press, 1996.
- Miller, Naomi J. "Domestic Politics in Elizabeth Cary's *The Tragedy of Mariam*." *Studies in English Literature, 1500-1900* 37.2 (1997 Spring): 353-69.
- Miller, William Galbraith. "Some Analogies Between the Development of Language and Law." Reprinted from *Journal of Jurisprudence* (1887). *Pamphlets*. [Number 2 in a collection of 13 pamphlets bound together at the St Andrews University Library].
- Minow, Martha. "From Class Actions to 'Miss Saigon': The Concept of Representation in the Law." *Representing Women: Law, Literature and Feminism*. Eds. Susan Heinzemann and Zipporah Wiseman. Durham and London: Duke University Press, 1994.
- . "Politics and Procedure." *The Politics of Law: A Progressive Critique*. Ed. David Kairys. 3rd ed. New York: Basic Books, 1998.
- Moi, Toril. *Sexual/Textual Politics: Feminist Literary Theory*. London and New York: Methuen, 1985.
- Morawetz, Thomas. "Law and Literature." *A Companion to Philosophy of Law and Legal Theory*. Ed. Dennis Patterson. Cambridge, Mass.: Blackwell, 1996.
- Mount, Ferdinand. "A Golden Age of Privacy?" *TLS*. February 2, 2001. p. 11.
- Muir, Kenneth. *Shakespeare's Sources: I Comedies and Tragedies*. London and New York: Methuen and Co. Ltd., 1957.

- Murray, Mary. *The Law of the Father? Patriarchy in the Transition from Feudalism to Capitalism*. London and New York: Routledge, 1995.
- Notestein, Wallace. *Four Worthies: John Chamberlain, Anne Clifford, John Taylor, Oliver Heywood*. London: Jonathan Cape, 1956.
- Nuttall, A. D. *A New Mimesis: Shakespeare and the Representation of Reality*. London and New York: Methuen, 1983.
- . *Shakespeare: The Winter's Tale*. London: Edward Arnold, 1966.
- Olsen, Frances. "The Sex of Law." *The Politics of Law: A Progressive Critique*. Ed. David Kairys. 3rd ed. New York: Basic Books, 1998.
- Orgel, Stephen. *Impersonations: The Performance of Gender in Shakespeare's England*. Cambridge: Cambridge University Press, 1996.
- "Overbury, Sir Thomas." *Encyclopaedia Britannica Presents Shakespeare and the Globe: Then and Now*. 5 pars. Online. Internet. 22 Oct. 2002. Available <http://www.britannica.com/shakespeare/micro/455/8.html>.
- Oxford English Dictionary*. Oxford: Clarendon Press, 1933. 12 vols.
- Pafford, J. H. P. Introduction. *The Winter's Tale*. Ed. J. H. P. Pafford. The Arden Shakespeare Ser. 3. London and New York: Routledge, 1963.
- Parker, Patricia. *Literary Fat Ladies: Rhetoric, Gender, Property*. London and New York: Methuen, 1987.
- Parry, Edward Abbot. *The Drama of the Law*. London: T. Fisher Unwin, 1924.
- . *The Overbury Mystery: A Chronicle of Facts and Drama of the Law*. New York: Scribner's, 1925.
- Perry, Curtis. *The Making of Jacobean Culture: James I and the Renegotiation of Elizabethan Literary Practice*. Cambridge: Cambridge University Press, 1997.
- Phillips, Roderick. *Putting Asunder: A History of Divorce in Western Society*. Cambridge: Cambridge University Press, 1988.
- Plato. *Republic*. Trans. Robin Waterfield. Oxford: Oxford University Press, 1993.
- Pollard, A. F. "Henry VIII." *The Great Tudors*. Ed. Katharine Garvin. London: Eyre and Spottiswoode, 1956.
- Pollard, A. W. and G. R. Redgrave. *A Short-Title Catalogue of Books Printed in England, Scotland, and Ireland and of English Books Printed Abroad 1475-1640*. 2nd ed. London: The Bibliographical Society. 2 vols.

- Posner, Richard A. *Law and Literature*. Revised and enlarged ed. Cambridge, Mass.: Harvard University Press, 1998.
- Potter, Lois. Introduction. *The True Tragicomedy Formerly Acted at Court*. Eds. John Pitcher and Lois Potter. New York and London: Garland, 1983.
- Potter, Mary. "Gender Equality and Gender Hierarchy in Calvin's Theology." *Signs: Journal of Women in Culture and Society* 2.4 (1985): 725-739.
- Prest, W. R. "Law and Women's Rights in Early Modern England." *The Seventeenth Century* 6.2 (1991): 69-187.
- Prusak, Bernard P. "Woman: Seductive Siren and Source of Sin?" *Religion and Sexism: Images of Women in the Jewish and Christian Traditions*. Ed. Rosemary Reuther. New York: Simon and Schuster, 1974.
- Purkiss, Diane. "Blood, Sacrifice, Marriage: Why Iphigeneia and Mariam Have to Die." *Women's Writing* 6.1 (1999): 27-45.
- . Introduction. *Renaissance Women: The Plays of Elizabeth Cary The Poems of Aemilia Lanyer*. London: William Pickering, 1994.
- Quaife, G. R. *Wanton Wenches and Wayward Wives: Peasants and Illicit Sex in Early Seventeenth Century England*. London: Croom Helm, 1979.
- Quilligan, Maureen. "Staging Gender: William Shakespeare and Elizabeth Cary." *Sexuality and Gender in Early Modern Europe*. Ed. James Grantham-Turner. Cambridge: Cambridge University Press, 1993.
- Raber, Karen L. "Gender and the Political Subject in *The Tragedy of Mariam*." *Studies in English Literature 1500-1900* 35.2 (1995 Spring): 321-43.
- "Ramus, Petrus Pierre de la Ramée." *Market House Books Encyclopaedia of the Renaissance*. Market House Books Ltd., 1987. Online. Internet. 1 par. 1 Nov. 2002. Available <http://www.xrefer.com/entry/252942>.
- Resnik, Judith. "Singular and Aggregate Voices: Audiences and Authority in Law and Literature and in Law and Feminism." *Law and Literature*. Eds. Michael Freeman and Andrew D. E. Lewis. Current Legal Issues 1999 2. Oxford: Oxford University Press, 1999.
- Rowse, A. L. *The England of Elizabeth*. Bungay: Richard Clay and Co. Ltd., 1950.
- Sachs, Albie and Joan Hoff Wilson. *Sexism and the Law: A Study of Male Beliefs and Legal Bias in Britain and the United States*. Eds. C. M. Campbell and P. N. P. Wiles. Law in Society Series. Oxford: Martin Robertson, 1978.
- Said, Edward. *The World, the Text, and the Critic*. London: Vintage, 1984.

- Sanders, Wilbur. *The Winter's Tale*. Harvester Critical Introduction to Shakespeare. Kent: Harvester Press, 1987.
- Scarr, Richard. "Insatiate Punning in Marston's Courtesan Plays." *The Drama of John Marston: Critical Revisions*. Ed. T. F. Wharton. Cambridge: Cambridge University Press, 2000.
- Schelling, Felix Emmanuel. *Elizabethan Drama 1558-1642: A History of the Drama of England from the Accession of Queen Elizabeth to the Closing of the Theatres*. [New ed]. New York: Russell and Russell, 1959. 2 vols.
- Schochet, Gordon J. *Patriarchalism in Political Thought: The Authoritarian Family and Political Speculation and Attitudes Especially in Seventeenth-Century England*. Oxford: Basil Blackwell, 1975.
- Schoeck, R. J. "Shakespeare and the Law: An Overview." *The Shakespearean International Yearbook* 1 (1999): 219-239.
- Schwartz, Murray M. "Shakespeare Through Contemporary Psychoanalysis." *Representing Shakespeare: New Psychoanalytic Essays*. Eds. Murray M. Schwartz and Coppélia Kahn. Baltimore: John Hopkins University Press, 1980.
- Senapati, Sukanya B. "'Two Parts in One': Marston and Masculinity." *The Drama of John Marston: Critical Revisions*. Ed. T. F. Wharton. Cambridge: Cambridge University Press, 2000.
- Shannon, Laurie J. "The Tragedie of Mariam: Cary's Critique of the Terms of Founding Social Discourses." *English Literary Renaissance* 24.1 (1994 Winter): 135-53.
- Shapiro, Barbara J. *Probability and Certainty in Seventeenth-Century England: A Study of the Relationship Between Natural Science, Religion, History, Law and Literature*. Princeton: Princeton University Press, 1983.
- Sharpe, J. A. *Defamation and Sexual Slander in Early-modern England: The Church Courts at York*. York: Borthwick Institute of Historical Research, 1980.
- Sharpe, Jim. "Women, Witchcraft and the Legal Process." *Women, Crime and the Courts in Early Modern England*. Ed. Jenny Kermode and Garthine Walker. London: UCL Press, 1994.
- Sharpe, Kevin. *Remapping Early Modern England: The Culture of Seventeenth-Century Politics*. Cambridge: Cambridge University Press, 2000.

- Sharpe, Kevin and Steven N. Zwicker. Introduction. *Politics of Discourse: The Literature and History of Seventeenth-Century England*. Eds. Kevin Sharpe and Steven Zwicker. Berkeley: University of California Press, 1987.
- Shepherd, Simon. *Amazons and Warrior Women: Varieties of Feminism in Seventeenth-Century Drama*. Brighton: Harvester Press, 1981.
- Shiner, Roger A. "Law and morality." *A Companion to Philosophy of Law and Legal Theory*. Ed. Dennis Patterson. Cambridge, Mass.: Blackwell, 1996.
- Siegel, Robert. *The Onion America's Finest News Source: Dispatches from the Tenth Circle, The Best of The Onion*. UK ed. London: Boxtree, 2001.
- Sinclair, Alison. *The Deceived Husband: A Kleinian Approach to the Literature of Infidelity*. Oxford: Clarendon Press, 1993.
- Smart, Carol. *Feminism and the Power of Law*. London and New York: Routledge, 1989.
- Smith, M. B. E. "The Duty to Obey the Law." *A Companion to Philosophy of Law and Legal Theory*. Ed. Dennis Patterson. Cambridge, Mass.: Blackwell, 1996.
- Smith, Patricia. "Feminist Jurisprudence." *A Companion to Philosophy of Law and Legal Theory*. Ed. Dennis Patterson. Cambridge, Mass.: Blackwell, 1996.
- Solve, Norma Dobie. *Stuart Politics in Chapman's Tragedy of Chabot*. Ann Arbor: University of Michigan, 1928.
- Somerset, Anne. *Unnatural Murder: Poison at the Court of James I*. London: Weidenfeld and Nicolson, 1997.
- Sommerville, Margaret R. *Sex and Subjection: Attitudes to Women in Early-Modern Society*. London: Arnold, 1995.
- Stone, Lawrence. *The Family, Sex and Marriage in England 1500-1800*. London: Harper and Row, 1977.
- . *Road to Divorce: England 1530-1987*. Oxford: Oxford University Press, 1990.
- Stretton, Tim. "Women, Custom and Equity in the Court of Requests." *Women, Crime and the Courts in Early Modern England*. Ed. Jenny Kermode and Garthine Walker. London: UCL Press, 1994.
- . *Women Waging Law in Elizabethan England*. Cambridge: Cambridge University Press, 1998.

- Strype, John. *Memorials of Archbishop Cranmer*. Ecclesiastical History Society. [New ed.]. Oxford : Ecclesiastical History Society, 1848-1854. 3 vols. in 4.
- Symonds, J. Addington. Introduction. *The Best Plays of the Old Dramatists: Thomas Heywood*. Ed. A. Wilson Verity. Unexpurgated ed. London, 1888.
- Taub, Nadine and Elizabeth Schneider. "Women's Subordination and the Role of Law." *The Politics of Law: A Progressive Critique*. Ed. David Kairys. 3rd ed. New York: Basic Books, 1998.
- Taylor, Edward W. "Nature and Art in Renaissance Literature: Shakespeare's *The Winter's Tale*." *The Winter's Tale: Critical Essays*. Ed. Maurice Hunt. New York and London: Garland Publishing Inc., 1995.
- Thorne, Samuel E. "Tudor Social Transformation and Legal Change." *New York University Law Review* 26 (1951): 10-23.
- Traub, Valerie. "Jewels, Statues, and Corpses: Containment of Female Erotic Power in Shakespeare's Plays." *Shakespeare and Gender: A History*. Eds. Deborah Barker and Ivo Kamps. London: Verso, 1995.
- Travitsky, Betty S. and Anne Lake Prescott. *Female and Male Voices in Early Modern England: An Anthology of Renaissance Writing*. New York: Columbia University Press, 2000.
- Trevor-Roper, Hugh. *Renaissance Essays*. Chicago: University of Chicago Press, 1985.
- Tubbs, J. W. *The Common Law Mind: Medieval and Early Modern Conceptions*. Baltimore and London: John Hopkins University Press, 2000.
- Walker, Kim. *Women Writers of the English Renaissance*. Twayne's English Author Ser. 521. New York: Twayne Publishers, 1996.
- Ward, Ian. *Law and Literature: Possibilities and Perspectives*. Cambridge: Cambridge University Press, 1995.
- Watt, Robert. *Bibliotheca Britannica . . . in Two Parts: Authors and Subjects*. Edinburgh, 1824. 4 vols.
- Weller, Barry and Margaret Ferguson. Chronology of Elizabeth Cary's Life and Works. *The Tragedy of Mariam the Fair Queen of Jewry*. Berkeley: University of California Press, 1994.
- - - . Introduction. *The Tragedy of Mariam the Fair Queen of Jewry*. Berkeley: University of California Press, 1994.

- West, Candace and Don H. Zimmerman. "Doing Gender." *The Social Construction of Gender*. Eds. Judith Lorber and Susan A. Farrell. Newbury Park: SAGE Publications, 1991.
- West, Robin. "Adjudication is Not Interpretation." *Narrative, Authority, and Law*. Michigan: University of Michigan Press, 1993.
- Wharton, T. F. *Moral Experiment in Jacobean Drama*. London: Macmillan Press Ltd., 1988.
- Wheeler, Elizabeth Darracott. *Sir John Dodderidge: Celebrated Barrister of Britain, 1555-1628*. Lewiston: Mellen Research University Press, 1992.
- Whigham, Frank. *Seizures of the Will in Early Modern English Drama*. Cambridge: Cambridge University Press, 1996.
- White, R. S. *Natural Law in English Renaissance Literature*. Cambridge: Cambridge University Press, 1996.
- Wiggins, Martin. Introduction. *Four Jacobean Sex Tragedies*. Ed. Martin Wiggins. Oxford: Oxford University Press, 1998.
- Williams, Gordon. *A Dictionary of Sexual Language and Imagery in Shakespearean and Stuart Literature*. London: Athlone Press, 1994. 3 vols.
- Wilson, Luke. *Theaters of Intention: Drama and the Law in Early Modern England*. Stanford: Stanford University Press, 2000.
- Wofford, Susanne L. "The Social Aesthetics of Rape: Closural Violence in Boccaccio and Botticelli." *Creative Imitation: New Essays on Renaissance Literature in Honour of Thomas M. Greene*. Eds. David Quint [et al]. Medieval and Renaissance Texts and Studies 95. Binghamton, NY: Medieval and Renaissance Texts and Studies, 1992.
- Wright, Stephanie J. Introduction. *The Tragedy of Mariam The Fair Queen of Jewry*. Staffordshire: Keele University Press, 1996.