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THE PARADOX OF WOMEN: THE LEGAL POSITION OF EARLY MODERN WIVES AND THOMAS DEKKER'S *THE HONEST WHORE*

BY BARBARA KREPS

The double function of marriage as the site of licensed sexuality and also as the creation of an economic unit links together two desires—sex and security—which may or may not reinforce each other and at times can enter into conflict. The relationship itself is obviously intensely private, but marriage represents at the same time a contract with the community, so that while sex and finance are to some degree regulated within the couple, these same issues are in all cultures also subject to communal laws and customs. Numerous studies focusing on gender conditions in early modern England have emphasized the extent to which sexual and financial questions were legislated to the disadvantage of women; but one purpose of this essay is to point out that there are a number of ways in which both sexual and financial matters, as far as women were concerned, were unevenly and at times conflictually provided for under the several jurisdictions of Tudor and Stuart law, and unevenly reflected and renegotiated in the literature of the period. The law's operation from general principles, from which follows its recognition of all individuals as in some way members of categories, left women few loopholes once the law had determined—long before the development of English common law—that women constituted a group for whom laws were to be made which distinguished them from men. This transformation of biological sexual difference into the disparity of legal, economic, and political gender roles created conditions which institutionally disabled almost all women—in particular married women—of whatever class; but that law makers were not blind to the difference between biological identity and the legal determination of gender roles can be seen in some special instances uncovering contradictions and double-think in the law's provisions for women, discrepancies I shall be exploring in the first part of this essay. Early modern dramatists, addressing issues of personal and social justice in their plays, frequently invoked real questions of English law, calling

attention to how legal praxis, in theory aiming for clarity and justice, is problematic in its application to specific circumstances. This is a tension apparently built into many of the history plays, for example, where the plots often explore and counterpoise the constitutional rights and duties of kings and the rights and duties of their subjects. In the numerous plays of the period either centrally or peripherally concerned with marriage, however—both marriage formation and the relations between husband and wife once marriage has been contracted—still other considerations than the law's sex-gender constructions are visible, and many dramatists waver between, on the one hand, depicting women as interesting and sympathetic individuals and, on the other, making dramatic use of the traditional orthodoxy that all women share an essential nature (a nature morally and intellectually inferior to that of men). As an example of this wavering, which creates one of the major fault lines in the ideology of early modern drama, I turn in the second part of this essay to Thomas Dekker's open engagement with the law and culturally defined gender roles in the two parts of *The Honest Whore*.[1]

How thoroughly the law affected, or how truthfully literature reflected, the real lives of women is difficult to assess. Obviously the levels of companionship and satisfaction found in sexuality were highly personal, just as the real arrangements for organizing family finance, though legislated from above, were also negotiated in some way within the couple. It is far easier to have access to institutions and to know what the prescriptive principles were than it is to have full knowledge about private lives, although diaries, letters, and wills help to give some insight into how esteem and economic responsibility were distributed between individuals. Other factors also make it difficult to recover the full meaning of women's legal situation. As Janet Senderowitz Loengard observes, "One cannot know from Bracton's many pronouncements about dower rights how often those rights were thwarted by intimidation or harassment of the widow, any more than one can know how much *de facto* control over her land an heiress with an incompetent or permissive husband might in fact retain."[2] In short, though we know what people could or could not do, it is far more difficult to know what they actually did. As I go on to treat women's relationship to the law, my readers should therefore bear in mind that I am mostly discussing the institutional aspects of the law's provisions for women, and that because these provisions were almost always repressive they fail to account for the kind of power, financial and political, that some women—Susan Villiers,

Countess of Denbigh, is only one example—are known to have exercised.[3] Another point I wish to make before getting into the main concern of the first part of this essay—the incongruities and doublethink revealed in some of the law's provisions for women—is the importance that class distinctions had in determining the conditions of early modern lives. The different possibilities left open within class stratification clearly interacted with gender in the production of women's identities in early modern England, but they also present important factors that are independent of gender—factors that in some respects made men and women of the same class far more like each other than married women or widows from dissimilar classes could be. One such instance is certainly represented in the procedure of marriage formation; where class directly affected the choice and availability of sexual partners. Mutual consent was the prescriptive norm, the fundamental element theoretically necessary to the making of all marriages; but consent was in reality a function of class rather than gender, since choice was a possibility more open to young women and men whose union did not also involve large property transactions, and contrasts noticeably to the limits on choice available to those daughters and sons whose parents were principally concerned with making financial and dynastic arrangements through their children's marriages. The economic realities of class structure also highly qualify the validity of generalizations about women's legal condition, since financial matters refracted in very different ways through the legal possibilities and the real quality of life lived by women. To start with, their sexuality: the conditions affecting women from the middle and upper classes were in many ways significantly different from those of women lower down. Statistically, women from families with wealth were far more likely than poorer women to produce a large number of offspring, partly because of their different lactation patterns, and partly because there was no economic need to limit the family through abstinence or *coitus interruptus*.[4] Obviously, too, women from the upper classes were not likely to be faced with the same kinds of legal problems stemming from their sexuality which could affect poor women, notably bastardy and infanticide; nor were they in the position, which faced some women, of having to turn to prostitution in order to support themselves, nor were they quite as exposed as poorer women to the possibility of rape.[5] On the other hand, the occurrence of adultery was more democratic: obviously women and men both engaged in it, and though for reasons I shall discuss later it was mostly the middle classes who had to answer for it,

the phenomenon affected all classes. (Because I am at the moment dealing with the impact of class on gender, I reserve for later the nature of punishment for adultery.)

Sexual matters were usually, although not exclusively, under ecclesiastical jurisdiction, but with economic considerations we move into the jurisdiction of common law which, as Holdsworth tells us, "made the law of the nobles the law for all."[6] Under common law, married women of all classes were united under the extensive property disabilities of coverture, the legal status of married women: husband and wife were legally as well as spiritually considered one flesh and one body, but coverture reserved to the husband alone the role as that body's head. All women of all classes therefore took their husband's surname and consigned into his keeping all their property and chattels, over which they could no longer exert any decisional or administrative powers. No married woman could in her own right contract debts, enter into covenant, alienate her own property, or make a will without her husband's permission. Though at her husband's death she could recover her own immoveable property if it had not been sold during the marriage (dower or jointure interest in it was protected, however), her moveables—her chattels—were consigned away utterly and were not recoverable unless her husband chose to return them to her in his will:

> whatsoever [wives] have before marriage, as soone as mariage is solemnished is their husbandes, I meane of money, plate, iuelles, cattaile, and generally all moveables . . . and what soever they gette after mariage, they get to their husbands. They neither can give nor sell anie thing either of their husbandes, or their owne. Theirs no moveable thing is by the lawe of England . . . and yet in moveables at the death of her husbande she can claime nothing, but according as hee shall will by his Testament.[7]

As Holdsworth succinctly puts it, "Marriage is a gift of the wife's chattels to her husband."[8]

Unlike the *femme sole*, who could act as her own agent, the *femme covert* had no legal identity independent of her husband's, which meant that in all financial matters she was subject to her husband, in whose identity she was subsumed. In an age that only in the rarest cases granted divorce and was strict in its provisions for legal separation, the only sure relief the woman unhappy with her disenfranchisement could look to was the death of her husband:

> And although our lawe may seeme somewhat rigorous towards the wives, yet for the most part they can handle their husbandes so well and so doulcely and specially when their husbands be sicke: that where the lawe giveth them nothing, their husbandes at their death of their good will give them all.[9]

Smith limited his considerations to the goods a wife could inherit, but the anonymous writer known as The Womans Lawyer recognized that the widow's most important gain was independence, a consideration he thought—with the verve that typifies his tract—ought to go a long way in alleviating grief:

> Time must play the Physitian, and I will helpe him a little: Why mourne you so, you that be widowes? Consider how long you have beene in subiection under the predominance of parents, of your husbands, now you be free in libertie, and free *proprii iuris* at your owne Law. . . . [M]aidens and wives vowes made upon their soules to the Lord himself of heaven and earth, were all disavowable and infringible, by their parents or husbands, unlesse they ratified and allowed them. . . . But the vow of a widow, or of a woman divorced, no man had power to disallow of, for her estate was free from controlment.[10]

I would add to this, however, that the death of a husband meant something very different to the poor. Death released wealth to the well-born widow, who would find herself with economic freedom for the first time in her life, but the death of a husband in the wage-earning class meant that the family had lost its principal source of income.[11] Women performed work outside the home in this period—as they have in all periods—but the status of their work and the wages they earned were subject to community and guild restrictions that became increasingly harsh throughout the early modern era, so that even those women who had been in trade together with their husbands were subjected to new, and unfavorable, conditions for carrying on after their husband's death: Merry Wiesner's research on tax records, for example, "indicate[s] that over two thirds of widows were in the poorest income category."[12]

This is a very brief outline of the economic position of married women under the common law, but, as I said at the beginning, there were some inconsistencies and contradictions in the laws affecting women. One of these regards the *femme covert* who exercised a trade independently from her husband:

> The conjuncture of commercial and common law somewhat confused the legal status of economically active women. Under law merchant or commercial law, a married woman could maintain independent status and plead as a "femme sole" . . . if she traded separately from her husband. The Exeter courts upheld this juristic distinction; several husbands successfully declined legal responsibility for their wives' trading debts. Under common law, by contrast, women were mere adjuncts of their husbands.[13]

This was an unusual situation, however; far more usual was that the extent of women's participation in trade with their husbands was submerged by the customary requirement that the man, as head of the family economy, pay the yearly fine for conducting their business.[14]

Though common law denied married women legal identity with regard to property, it nonetheless recognized, as William Holdsworth notes, "that the married woman is capable of committing a wrong."[15] Legal procedure depended, however, on the nature of the criminal action. On the one hand, if a wife committed a tort or a trespass, the husband's name would appear together with hers in the writ even though he was personally innocent. On the other hand, if a woman committed burglary or larceny in her husband's company, sixteenth-century law presumed that she had been coerced and did not charge her.[16] If the husband was not present when she committed petty crime, though, she lost coverture, as she did in any case for crimes such as robbery, murder, or treason; as a criminal she thus had an identity for the law and had to respond in her own right as would a *femme sole*.

Some historians of crime have found that, quite apart from the far lower incidence of crime among women, once women were brought to court juries—always male, of course—were statistically far less prone to convict a neighborhood woman than a neighborhood man.[17] The tendency to show greater compassion for females noticeably diminished, though, if the woman was a stranger.[18]

If the statistics involve a certain amount of conjecture in reconstructing the psychological makeup of juries, there are, however, at least two ways in which sexual disparity more directly affected legislative measures regarding female conviction for crime. One is the appeal to clergy available to first-time felons; the other is the law on petty treason. For different reasons, they are also both issues that reflect class discrimination.

In 1623 Parliament operated to correct at least one area of unfairly gendered privilege by passing the statute (21 Jac. 1, cap. 6) that extended the right to claim benefit of clergy to women. If benefit of clergy had always been, as J. A. Sharpe puts it, "nonsense," this statute only further emphasized that absurdity, since in early modern England "the ordination of women as priests would have been unthinkable."[19] Here too the importance of class divisions can be seen. Although this measure theoretically applied to all women, it is clear that the relief it envisioned could only apply to women who had been educated, so that poor women were effectively excluded.

Ben Jonson is a notable example of how helpful benefit of clergy could be to an educated man who committed murder. The value of the Jacobean statute extending benefit of clergy to women was effectively limited for women, though, by the law of petty treason. For a number of reasons, women were far less likely than men to commit murder; but when they did the victim was most likely to be their husbands, and under the law this crime was not classified as murder, but petty treason.[20] Petty treason was conceived of as an egregious crime against hierarchy. According to the feudal logic which likened the household to the kingdom, servants who killed their masters or mistresses—and women of whatever class who killed their husbands—had killed the lords to whom they owed their duty and obedience. Under this logic such a crime was not murder, but rebellion and treason. And it was subject to the particularly atrocious kind of death sentence specifically reserved for traitors, which was different for women than for men: men were to be hanged, cut down, disembowelled and quartered; women were to be burned at the stake.[21]

In some respects, the two laws I have just been referring to represent opposite impulses, both of which can be discerned in the corpus of legal thought and machinery that concerned women: on the one hand, there was a vast body of measures that enacted and enforced male domination; but on the other, some legal measures were designed to make protection available to women, and not all of them were ultimately so meaningless as the statute that made women legally eligible for benefit of clergy. Dower (or, alternatively, after the Statute of Uses, jointure) was one of these. A woman's dower rights (which were her financial cushion against widowhood) were protected throughout her marriage, and her dower property could not be sold by her husband without her consent. To this end the law foresaw that transactions involving a woman's property were to be conducted

in court, where she would be privately examined to ascertain that she was agreeing voluntarily and without her husband's coercion. It would be naive to think, however, that the law's provisions thus eliminated all pressure on a wife.[22] Indeed, further protection of women's economic interests than that provided by the common law was sometimes needed, and this protection could be sought in Chancery, the court of equity which developed in opposition to the common law courts. To see how this protection could operate, it will be useful to look at a case argued in Chancery involving an early attempt to establish a trust—another measure women were just beginning to take in order to protect themselves and their children. The judges had to determine the validity of the will which, countermanding the original terms of the trust, the woman had subsequently made in her husband's favor. Under common law, the *femme covert* could not make a will without her husband's permission (though in the case in point, since the husband stood to benefit, it is eminently clear that the will had been made with his permission). This suit was brought in 1478, but the 1540 Statute of Wills and the Explanation of the Statute of Wills enacted by Parliament in 1542 reiterate and make statutory the common law issue at stake in the earlier debate which, as can be seen from the following excerpt from the 1542 Explanation, is that married women—together with legal minors and the feeble-minded—constitute a category of persons judged legally incapable (and who are therefore in the care of a guardian):

> it is further declared and enacted by the authority aforesaid that wills or testaments made of any manors, lands, tenements or other hereditaments by any woman covert, or person within age of 21 years, or by any person *de non sane memory*, shall not be taken to be good or effectual in the law.[23]

The case debated in Chancery in 1478, much earlier than the Statute of Wills, resulted in the decision that the woman's will was not valid, and the arguments made in invalidating it—all of which admit and revolve around the legal incapacity of women—are instructive of how judges in a court of equity might be determined to ascertain and protect a woman's interests when she herself could not:

> [VAVASOUR:] . . . the law will not allow anything done by her during the marriage to be good. If she makes a feoffment of her land during the marriage, it is void: and this well proves that nothing done by her during the marriage concerning any inheritance is good. For the writ

> of *cui in vita* says, "whom in her lifetime she could not gainsay," and this proves well that her act and will is void during the marriage.
> *Jay* to the same effect. If this will were good, a wife's inheritance would not be safe from her husband's alienation during the marriage; for the feoffment made before the marriage was made with the intention that the husband's alienation should be of no effect. Moreover, if the will were to be effective, it would prejudice the heir. *Sulyard* conceded this.
> THE CHANCELLOR: The will cannot be good, for she may not gain or lose the land during the marriage without her husband; and since she may not do it at common law, and since any act done by her is absolutely void, the law of conscience likewise says that her will shall be void and of no effect.[24]

Clearly recognizing here that a woman might well need protection from her protector, the law of equity manages to use the terms of the common law to rectify the abuses of the common law; it represents an attempt to intervene to some degree in the problems the common law had itself created by putting women so totally under their husband's dominion.

The inequality written into and enforced by the law as far as women's economic arrangements were concerned did not, however, apply to the sexual regulation of marriage, so long as this remained in the hands of the ecclesiastical courts. Though the medieval church provided immense ideological support for the common law's repressive provisions for women by naturalizing its teaching that all women, as daughters of Eve, were mentally and morally inferior to men, it also taught that women as well as men possessed souls and that these souls were equal in God's eyes. In its regulation of moral behavior, therefore, it applied the same rules to men as to women. Its teachings on fornication and adultery admitted no gender discrepancies, and though pregnancy obviously made it harder for an unmarried woman to hide illicit sexual behavior than it was for a man, efforts were made to find out male offenders, and once in court women and men received the same punishment (penance) for the same sin if they were convicted.[25] Chastity and fidelity were thus enjoined on women and men alike, and ecclesiastical law meted out its justice to offending men and women in the same measure.[26] Precept is one thing, however, and practice is another. Once a presentment was made to or by the church warden there were no gender discrepancies, but as Susan Dwyer Amussen points out, the community had its own methods of dealing with (or ignoring) irregular sexuality, so that though the "easiest controls to identify are the formal ones . . . they

were a last rather than a first resort."[27] Community monitoring of sexuality could work with the middle ranks, and at this level men were as likely as women to find themselves having to answer for their behavior. But aristocratic men or those who wielded power and influence in their local parishes were clearly not in a category subject to this kind of control, and post-Reformation ecclesiastical courts were nearly powerless to discipline the parish's most influential families: the double standard was most practiced by those who had the power to get away with it.

There were varying levels of tolerance and harshness in community treatment of premarital fornication (depending on such variables as the couple's intention to marry, their economic situations, and the strength of Puritan influence in the community), but adultery was always considered a serious sin which merited serious punishment. Increasingly throughout the period radical Protestants, dissatisfied with what were perceived as easy penances, wanted to institute measures as severe as those practiced in Calvin's Geneva.[28] The proposed *Reformatio legum ecclesiasticarum* drafted in the reign of Edward VI never actually came to anything, but when it was published in 1571, the punishment it envisioned for adultery was severe (though not as strict as Geneva's) and provided, among other things, that the guilty husband cede half his goods to his wife.[29] When, however, the Puritans finally did come to power and enacted (in 1650) the severer law on adultery they had long been agitating for, its provisions were both harsh and unequal: adulterous women, but not adulterous men, would be condemned to death. The ecclesiastical courts (abolished during the interregnum) had administered justice to men and women equally, but with this act the Puritans provided the double standard with statutory recognition by distinguishing between men and women who had committed the same sexual crime. In the local community, however, where surveillance and presentment would take place, Sharpe asserts that "the law proved virtually unenforceable. The 'well affected' of the village might wish to see the adulteress punished, but they apparently had little desire to see her hanged. The severity of punishment . . . had to correspond roughly to what the community . . . felt to be appropriate to the crime in question."[30]

The laws of the church and those of the state contributed differently to the conditions for married women's existence now summed up in that formula—chaste, obedient, and silent—so frequently repeated in studies focusing on women's roles in early

modern English society and its literature. Officially, chastity was not gendered, but the limited power of the ecclesiastical courts and the reality of community subservience to men with money and influence meant that frequently the men on top could, if they chose, ignore official doctrine for themselves at the same time they exacted fidelity from their wives. The common law, on the other hand, consciously and directly carved out the legal conditions of women's silence and obedience. Except for the two queens who reigned between 1552-1603, women were kept from all the forums where law was debated and authored: women's voices were excluded from juries, parliament, and the law profession. The Woman's Lawyer recognized this silence as the legal trunk from which branch out the myriad kinds of deprivation and inequality he went on to treat in *The Lawes Resolution of Womens Rights*, which is why he took note of women's obvious absence from Parliament and other arenas of the legal profession so very near the beginning of his tract: "they 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."[31] The rigorous laws which consigned women's property and goods to their husbands so disabled women economically that they perforce fostered obedience; but they also paradoxically fostered the necessity of finding a new kind of law in equity that would to some extent defy husbands who tried to coerce their wives out of what was still legally theirs.

In a 1565 case stemming from inheritance and disputed use, Edmund Plowden argued that "God has divided reasonable creatures into two sexes, namely male and female. The male is the superior . . . the female inferior. . . . Also men are for the most part more reasonable than women, and have more discretion in guiding things than women have; for men are more apt than women in all government and direction."[32] Queen Elizabeth had been on the throne for eight years at the time he put this argument: it ought not to have been a propitious time for such observations about the regiment of women, particularly in a court of law, but Plowden won his case. Neither he nor the judges seemed to notice any contradiction between Plowden's commonplaces and their own current political experience, or indeed to draw any connection between them. The commonplaces had become naturalized from too many influential sources—classical literature, the misogynies of the medieval church, and from the law itself. And all of these stand behind the curious kind of cultural double-think registered at various levels in a number of writers of this period.

The two parts of Thomas Dekker's *The Honest Whore* provide a clear example of how the contradictions among the culture's discourses concerning women could become thoroughly ingrained even in the same author. The play title announces Dekker's intention to deal in paradox, and both parts are accordingly constructed on situations which to some extent reverse normal expectations. On the surface, some of these seem to point to Dekker's independence of thought and a capacity to criticize old platitudes. Certainly he made an unorthodox choice when he made a whore the sympathetic titular heroine; and in part 2 he self-consciously addressed the double standard and rose to the defense of women by exposing the fallacious logic of sexual disparity on which it is based. Notwithstanding this vein of independence, however, Dekker's impulse to break away from stereotypes in *The Honest Whore* is only partly successful, largely because, as becomes clear upon examination, Dekker's thought as it appears in this play is itself fundamentally enmeshed in the prevailing ideology he apparently set out to contest. His maneuver away from the paradigm of the hardened and indifferent prostitute leads him only to the stereotype of the patient and long-suffering wife, and both part 1 and part 2 conclude without resolving either the contradictions in his position on women's legal rights or the other contradictions that emerge in these plays in his thinking about women's and men's roles.

Because I am particularly interested here in the legal reflexes of these roles, I shall be concentrating mostly on part 2 of *The Honest Whore*, where the law's intervention in the characters' lives is clearly foregrounded. But since the second play in several ways reverses the situations of part 1, a review of that play is in order. In the first play the Candido/Viola plot combines the standard misogynies of Viola's cursed wife syndrome with Candido's male version of Patient Griselda, another (and opposite) gender role that flourished contemporaneously with the shrew in domestic comedies of the period.[33] Counterbalancing the subplot's comic woes of marriage are exactly the opposite problems in the other plots, the romantic difficulties attending young people's attempts at marriage formation. Hippolito and Infeliche are caught in the archetypal literary struggle of the young couple in love plotting against the repressive (and life-threatening) opposition of the father, while Bellafront—unable to obtain her ideal love for Hippolito—seeks what she considers sexual justice and stability through a reparative marriage with Matheo. It is not insignificant that the conditions necessary for the formation of both these marriages are realized only at Bedlam, the locus that, from the male

point of view, symbolizes marriage.[34] Part 2 reverses the structural distributions of part 1. Here Candido is at the moment of a second marriage formation with his "Bride"—no proper name of her own is given her—while the Hippolito/Infeliche and Bellafront/Matheo plots on the other hand take over the woes of marriage that had sustained the Candido/Viola plot of part 1, reversing as well the gendered cause of those woes, since in both marriages of part 2 it is the husbands who cause women to suffer, and not the other way around.

Classical satire fed Renaissance misogynists with stereotypes of women who had some standard character flaws: vanity, lust, inconstancy, extravagant spending, and garrulousness; but the Candido/Viola plot of part 1 avails itself only of the latter.[35] However, though jokes about the vexatiousness of women's tongues abundantly pepper all parts of the play, they are often also gratuitous barbs not directly related to what is happening at that precise moment. The only real instance in which—and Dekker emphasizes this—blabbing threatens to have dire consequences is provided by two men, Matheo and Castruchio, who though sworn to secrecy, break their solemn vows because they cannot resist gossiping:

> [Hip.:] What villaine durst betray our being here.
> Flu.: *Castruchio, Castruchio* tolde the Duke, and *Matheo* here told *Castruchio.*
> Hip.: Would you betray me to *Castruchio*?
> Math.: Sfoot he dambd himselfe to the pit of hell if he spake ont agen.
> Hip.: So did you sweare to me, so were you dambd.
> Math.: Pox on em, and there be no faith in men, if a man shall not beleeue oathes: he tooke bread and salt by this light, that he would neuer open his lips. (5.2.49–58)

Unlike these two men, Viola is never guilty of gossiping, nor is her fidelity to her husband ever in question—a further contravention of the standard misogynist's catalogue of the sins to which women are prone. Nor is she a spendthrift. On the contrary, she is concerned with conserving the family goods from the costly depredations of the gallants as Candido is not, though in this case—since the goods are legally Candido's—the plot does not present as a sign of wifely virtue her worries about thrift in either the household or in the shop where she works with her husband.

The sins of the men in part 2 are far more serious than those of the would-be husband-provoker in part 1; and if the subplot of part 1 arrives at submission as the fundamental element of wifely duty, the marital problems of part 2 explore the limits of wifely duty and show that submissiveness can be stretched too far. The crisis between the two couples is represented as coming to a head in two companion scenes in act 3. In 3.1 Infeliche, informed by Orlando/Pacheco of Hippolito's adulterous intentions, confronts her husband with his infidelity. In 3.2 Matheo demonstrates that the reprieve he has already once had from the law's severity has not helped him to mend his ways, and that on the contrary he is confirmed in dereliction. Together these scenes illustrate husbands' and wives' culturally sanctioned expectations of each other, as well as women's and men's sexual and economic positions in law.

Orlando couches his revelation in his request that Infeliche help defend the property rights a woman factually had in law:

> my poore Mistris has a waste piece of ground, which is her owne by inheritance, and left to her by her mother; There's a Lord now that goes about, not to take it cleane from her, but to inclose it to himselfe, and to ioyne it to a piece of his Lordships. . . . my Mistris, I think, would be content to let him enioy it after her decease, if that would serue his turne, so my Master would yeeld too: but she cannot abide to heare that the Lord should meddle with it in her life time. (3.1.4–19)

"So my Master would yeeld too"—which refers to the legal necessity for the husband's consent—signals to Infeliche that the woman is a *femme covert*: "Is she then married? Why stirres not her Husband in it?" (3.1.20) But as the letters Orlando turns over to Infeliche will shortly demonstrate, the woman's property is her sexuality; chastity in marriage is the "inheritance . . . left to her by her mother," over which Bellafront is determined to maintain control.[36] To Infeliche's icy demand, "What creature is thy Mistris?" Orlando responds, "One of those creatures that are contrary to man; a woman" (3.1.66–67); but when Infeliche confronts Hippolito later in this scene, that difference between men and women is exactly what she questions and does not accept, as far as married sexuality is concerned. Accusing herself of adultery, she elicits from Hippolito the expected reaction of jealous fury, and a diatribe leveled against women in general:

> [Hip.:] . . . oh women,
> You were created Angels, pure and faire;

But since the first fell, tempting Deuils you are,
You should be mens blisse, but you proue their rods:
Were there no Women, men might liue like gods.
(3.1.161–65)

Turning the tables on him by presenting the evidence of his infidelity, she returns his message thus:

[Inf.:] . . . Oh Men,
You were created Angels, pure and faire,
But since the first fell, worse then Deuils you are.
You should our shields be, but you proue our rods.
Were there no Men, Women might liue like gods.
(3.1.186–90)

Through Infeliche, Dekker here confronts the sexual double standard head-on. But if through her mimicry of Hippolito's own words Dekker points out the ludicrousness of men setting a different standard for women than the one they maintain for themselves, he backs away from this position at the end of the play. Having raised the issue of sexual parity, he finally chooses to ignore it. Hippolito's adulterous love fizzles away into a conclusion of plot forgetfulness as, in the play's final scene at Bridewell, the accusing finger is turned away from Hippolito and criminous sexuality is comically shunted off instead onto those ready-made social scapegoats, the pander and the whores.

This can work because Hippolito's adulterous love never manages to get translated into full-blown adultery, and since he is subject to no action at law, the play lets him off simply with the discomfiture of discovery. The economic issues raised by Bellafront's troubled marriage have a significantly different relationship to law, however, than those raised by Hippolito's attempts to commit adultery. Until the very end, when Matheo falsely implicates Bellafront in a crime that would send her to the gallows, his treatment of her is shameful and reprehensible, but it is not, strictly speaking, illegal. Because the law consigned to men the administration of money, and because also nothing of chattels—not even the wife's clothing—was legally her own, Matheo is exercising his male prerogative by spending as he wishes the money that comes to him, without owing any accountability to his wife. Dekker clearly constructs Matheo's improvidence as selfish and shameful, but these are moral, not legal, considerations. As with Hippolito/Infeliche, Dekker erects instances of the double

standard in order to attack double standards, in economics as in sex: he constructs Matheo as a scoundrel by having him pawn the dress off Bellafront's back while he himself dresses in satins, and by showing him sitting down alone at table to eat the meat Bellafront has begged from a neighbor to serve him while, in her own words to her father, "I want bread to eate" (4.1.142). Since the law allowed a woman the clothes on her back, Matheo's removal of Bellafront's outer dress, leaving her in her smock, is probably of dubious legality—but the real point being dramatically made is that whatever the law's position on chattels, Matheo has stooped extraordinarily low and crossed a moral boundary. Matheo's legal right to dispose of Bellafront's chattels may help to explain why Orlando—who in any case is testing the limits of Matheo's foul character—does not intervene more vigorously in Bellafront's defense here, but it accounts too for the fact that, though the couple needs money to pay the rent, Bellafront reproves Orlando for holding out for her two of the ducats he has received from pawning her dress: "Thou shouldst haue giuen him all."

This case instances the crux of women's dilemmas in a number of early modern plays: although the suffering women are made to bear is wrong, they are right to put up with it. Their patience is a sign of the superiority of their characters to those of the men who oppress them; but they are not given the option of rebellion because, in the case of women, this would not be an action but a character defect. In order to show that they are good, women have to be better than men: what we are supposed to think of rebellious wives has been taken care of in the subplot. That Infeliche can stand up to Hippolito is because at base the rules about adultery were the same for both men and women; while the only area in which a woman can—indeed is expected to—resist a man is in defense of her chastity. (And Shakespeare turns even this area of resistance into a problem in *Measure for Measure*.) But in all other affairs, the law's dispositions for female submission show up in literary treatments as a test of their characters. We see how thorough Bellafront's redemption has been through the sexual and economic testing that two blameworthy men pose for her, and the measure to which she resists the one and submits to the other indicates her wifely virtue.

Her perseverance is rewarded in the end by the other man in her life, the father who has been there all along to help her. The final switch from the relentless tracks of justice to the path of mercy in the last moments of the play is uncomplicated by the fact that, in the

absence of inheriting sons, Bellafront is Orlando's only heir. Orlando's intervention thus provides Bellafront and Matheo with their much-needed reprieve from poverty as long as Orlando lives. Who will get his money when he dies? Orlando's attention switches back and forth at the end between Bellafront and Matheo, signaled through his admonitions in the second person singular "thou" and "thy" (rather than the plural "you"):

> Ile haue iustice of the Duke, the Law shall haue thy life, what, doest thou hold him? Let goe his hand: if thou doest not forsake him, a Fathers euerlasting blessing fall vpon both your heads: away, goe, kisse out of my sight, play thou the Whore no more, nor thou the Thiefe agen,
>
> My house shall be thine,
> My meate shall be thine,
> And so shall my wine,
> But my money shall bee mine,
> And yet when I die,
> (so thou doest not flie hie)
> Take all, yet good Matheo, mend.
>
> (5.2.474–85)

The script has no stage directions to indicate which of the two Orlando finally addresses with this forward glance at inheritance, and none are necessary. His use of Matheo's recurring trademark phrase ("fly high") identifies him as the member of the couple Orlando addresses last and, together with the law's dispositions for married women, makes clear that when the good Orlando is gone, not Bellafront but the undeserving Matheo will finally "Take all."

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NOTES

[1] Alan Sinfield addresses this in "When Is a Character Not a Character? Desdemona, Olivia, Lady Macbeth, and Subjectivity," in *Faultlines: Cultural Materialism and the Politics of Dissident Reading* (Berkeley: Univ. of California Press, 1992), 52–79.

[2] Janet Senderowitz Loengard, "Legal History and the Medieval Englishwoman: A Fragmented View," *Law and History Review* 4 (1986): 163.

[3] See Linda Levy Peck, *Court Patronage and Corruption in Early Stuart England* (London: Routledge, 1990), 68–74; Annabel Gregory, "Judicial Corruption in Early Modern England," *Past and Present* 133 (1991): 81.

[4] Because nursing reduces fertility, women who used the services of wet nurses and did not suckle their children were more prone to conceive than women who nursed.

[5] There were several reasons for this. Women of means were likely to travel with servants who would protect them, while women in service were, on the contrary, often victims of their masters as well as of their fellow workers and strangers. Miranda Chaytor offers another class-related explanation as well: the silence of aristocratic women who had been raped. "[I]n defiance of every practical consideration, the poor, servants included, continued to bring accusations of rape. It was the aristocracy, the gentry, the urban bourgeoisie . . . who did not. In the second half of the seventeenth and in the eighteenth and early nineteenth centuries as well, no woman or child from a family of aristocratic, gentry or professional status reported her rape" ("Husband(ry): Narratives of Rape in the Seventeenth Century," *Gender and History* 7 [1995]: 396–97).

[6] William Holdsworth, *A History of English Law*, 3rd rev. ed., vol. 3 (London: Methuen, 1923), 524. See also Frederick Pollock and Frederick William Maitland, *The History of English Law*, 2nd ed., ed. S. F. C. Milsom, vol. 2 (Cambridge: Cambridge Univ. Press, 1968), 402: "in England, with its centralized justice, the habits of the great folk are more important than the habits of the small."

[7] Thomas Smith, *De Republica Anglorum* (London, 1585; reprint, Amsterdam and New York: Da Capo Press, 1970), 101.

[8] Holdsworth, 531.

[9] Smith, 104.

[10] [The Womans Lawyer], *The Lawes Resolutions of Womens Rights* (London: 1632; reprint, Amsterdam and Norwood, N. J.: Walter J. Johnson, Theatrum Orbis Terrarum, 1979), 232.

[11] Hence the advice of a lawyer to a widow considering remarriage: "Therefore let me advise you, that is now a freed woman, a widow, that hath full power as any lord in the land, over your husband's estate, for the good of your children; . . . so you are the lady of all, and hath the possession of all, as your husband had; and for you to make over your estate to another man, you will become a mere servant, and your children mere servants to another man" (quoted in Alan Macfarlane, *Marriage and Love in England: Modes of Reproduction* [New York: Blackwell, 1986], 112).

[12] In the fifteenth century "the length of time during which a widow could continue operating the shop was limited. In some cases widows could only finish work which they had already begun; often they could take charge of the business only if there was a son who could inherit the shop. By the mid-sixteenth century, widows in most crafts could hire no new apprentices, journeymen or pieceworkers, and in some cases could not keep the ones they had. This often meant that a widow's workshop became so small that she could not produce enough to live on" (Merry Wiesner, "Spinning Out Capital: Women's Work in the Early Modern Economy," in *Becoming Visible*, ed. Renathe Bridenthal, Claudia Koonz, and Susan Stuard [Boston: Houghton Mifflin, 1987], 231).

[13] Maryanne Kowalesky, "Women's Work in a Market Town," in *Women and Work in Preindustrial Europe*, ed. Barbara A. Hanawalt (Bloomington: Indiana Univ. Press, 1986), 146.

[14] Indeed the real point of Kowalesky's article is that the work women did was largely unskilled, low-paid, and low-status (a) because Exeter did not permit women to enter the "freedom," the economic organization that controlled trade and politics; and (b) because they had to juggle their work with household demands. Her conclusion in fact is that, "Despite the occasional benefits bestowed on the *femme sole* under law merchant, the limits placed on economic activities of these medieval

townswomen through common law and local customary law were far more severe" (158). "Adult women were not yet the legal minors they would become by the Victorian period, but the laws grew decidedly more restrictive. Women's actual legal and economic activities, however, did not decrease proportionately—another example of the discrepancy between law codes and reality" (229); compare also Margaret L. King, *Women of the Renaissance* (Chicago: Univ. of Chicago Press, 1991), 62–80.

[15] Holdsworth, 531.

[16] Holdsworth, 530. This represents an advantage for female law-breakers with respect to earlier law where "marriage was not a bar to indictment and conviction, for fourteenth century legal practice did not assume, as did that of the sixteenth century, that married women were incapable of full and voluntary participation in criminal acts without their husband's coercion" (Hanawalt, "Female Felons and Prey in Fourteenth-Century England," in *Women and the Law*, ed. D. Kelly Weisberg, vol. 1 [Cambridge, Mass: Schenkman, 1982], 188). This partially qualifies Catherine Belsey's assertion "that women were always accountable," though her major point about women's "relationship to the law in its entirety [being] paradoxical at best" is true (*The Subject of Tragedy* [London: Methuen, 1985], 153).

[17] Hanawalt, "Female Felons," 168–79. See also J. M. Beattie, "The Criminality of Women in Eighteenth-Century England," in Weisberg, 197–238. For evidence of more leniency toward women in punishments meted out at the end of the period, see E. P. Thompson, *Customs in Common* (New York: New Press, 1993), 323–30.

[18] Hanawalt, "Female Felons," 187.

[19] J. A. Sharpe, *Crime in Early Modern England 1550–1750* (London: Longman, 1984), 67. S. F. C. Milsom's ironic comment that "parliament was obliged to prove in this respect it could turn a woman into a man" is quoted by Ruth Campbell in "Sentence of Death by Burning for Women," *The Journal of Legal History* 5 (1984): 52.

[20] Hanawalt, "Female Felons," 175.

[21] On punishment for petty treason, see Campbell. See also Fran Dolan, "The Subordinate('s) Plot: Petty Treason and the Forms of Domestic Rebellion," *SQ* 43 (1992): 317–40; Belsey, "Alice Arden's Crime," in *The Subject of Tragedy*, 129–48.

[22] A property dispute involving inheritance rather than dower (though threats on jointure eventually did come to bear on the matter) is recorded in Lady Anne Clifford's determined opposition to her husband as well as to King James I over her rights to the family property her father had willed to his brother rather than to his daughter. See her diary entries in *English Family Life 1576–1716*, ed. Ralph Houlbrooke (New York: Blackwell, 1989), 60–64.

[23] J. H. Baker and Milsom, *Sources of English Legal History* (London: Butterworths, 1986), 119.

[24] Baker and Milsom, 100. (They are clearly summarizing the arguments of two of the lawyers, Jay and Sulyard.)

[25] See Martin Ingram, *Church Courts, Sex and Marriage in England, 1570–1640* (Cambridge: Cambridge Univ. Press, 1987), 154, 278–80.

[26] In cases of sexual defamation in Salisbury between 1615–1629, Ingram found in fact that "males outnumbered females in a ratio of about 6:4" (304); these slanders variously "accus[ed] them of fathering bastards, begetting children illicitly on married women, committing fornication or adultery, being found in highly compromising circumstances, or tempting women to commit sexual sins" (302).

[27] Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (New York: Columbia Univ. Press, 1988), 129.

[28] William Monter notes that Geneva's 1566 edicts required "equal punishments for men and women for sexual misconduct: prison terms with a diet of bread and water for fornication; banishment for adultery with an unmarried person; and death for adultery between two married people. Only women, however, were ever executed for adultery. Male citizens managed to avoid banishment for adulteries committed with their servants" ("Women in the Age of Reformations," in *Becoming Visible*, 206).

[29] Ingram, 151.

[30] Sharpe, 92.

[31] *The Lawes Resolution*, 2.

[32] Quoted in Baker and Milsom, 490.

[33] Viviana Comensoli relates the testing of Bellafront in part 2 to the patient wife/abusive husband teams in *How a Man May Choose a Good Wife from a Bad*, *Fair Maid of Bristow*, and *The London Prodigal*. Candido's role as the patient husband is an inversion of the female stereotype, though Comensoli, who was interested in the play's relationship to rhetorical traditions, does not address this gendered role-swapping. See her "Gender and Eloquence in Dekker's *The Honest Whore, Part II*," *English Studies in Canada* 15 (1989): 251–52.

[34] In other words, "*Bethlem* monasterie: the place well fits . . . all love is lunaticke" (4.4.101–4); "none goes to be married till he be starke mad" (5.2.35); "let a man get the tamest wife he can come by, sheele be mad enough afterward, doe what he can" (5.2.422–23). *The Dramatic Works of Thomas Dekker*, vol. 2, ed. Fredson Bowers (Cambridge: Cambridge Univ. Press, 1955).

[35] On the connection between speaking and female lust, see Peter Stallybrass, "Patriarchal Territories: The Body Enclosed," in *Rewriting the Renaissance*, ed. M. W. Ferguson, M. Quilligan, and N. J. Vickers (Chicago: Univ. of Chicago Press, 1986), 123–42.

[36] Hippolito uses the same analogy to enclosure—in the sixteenth century, a serious economic problem of contrasting class power and confrontation—in his verbal duel with Bellafront at 4.1.288–90: "Thus (for sport sake) speake I, as to a woman, / Whom (as the worst ground) I would turne to common; / But you I would enclose for my owne bed."