

The Law in *The Duchess of Malfi*

Momoka Sato

Introduction

In reading English Renaissance drama or seeing a play performed, whether it be Shakespeare or one of Shakespeare's contemporaries, critical elements in the dramatic action is often missed from modern point of view because of differences between our understanding of law and the law as it was generally understood, during the time the play was performed in the early modern period. For example, in such Renaissance tragedies as *The Duchess of Malfi* (John Webster 1613-4), we tend to see female characters as merely victims of a tragic outcome from our modern perspective. However, according to Dymrna Callaghan, a woman hero in such tragedies is "both the agent and victim of the tragic outcome".¹ Originally, in "tragic theory," the contemporary tragedy is recognized as "the concept of providential justice" and also in the view of Calvinism, the loss of the characters' lives in the play seems to be caused by God.² Callaghan also states that tragedy has a connection with "punishment" and it was thought that all women as the daughters of Eve, were punished by God through "giving birth".³ That is why the death of pregnant heroines or the female protagonists who commit adultery or have sex with a man before marriage could be regarded as being justly punished by those in early modern

1 Dymrna Callaghan, *Woman and Gender in Renaissance Tragedy: A Study of King Lear, Othello, The Duchess of Malfi and The White Devil*, (Hertfordshire: Harvester Wheatsheaf, 1989), 50-55.

2 Callaghan, *Woman and Gender in Renaissance Tragedy: A Study of King Lear, Othello, The Duchess of Malfi and The White Devil*, 50-55.

3 Callaghan, *Woman and Gender in Renaissance Tragedy: A Study of King Lear, Othello, The Duchess of Malfi and The White Devil*, 50-55.

times. Additionally, though England separated from the church in Rome, much of traditional Catholic canon law was converted into English church law, and canon law sought severe punishments for women who had committed crimes of a sexual nature. Much of this law was based, as Callaghan observes on the biblical precedent that women were sinful in nature. The law and ever-changing court system in Reformation England is a large and complex subject, one too large to approach in any detail this essay. However, it is safe to say that in most modern industrialized nations, matters of consensual sex outside of marriage is not a crime that should might lead to severe or capital punishment. Here, I would like to offer one example of how we may not be aware of just how strict the laws were that governed sex and marriage in early modern England. I will do this by examining how the law was likely perceived in the minds of many early modern audiences when they saw a production of John Webster's *The Duchess of Malfi*.

John Webster (1580?-1634) birth year is uncertain.⁴ However, it is clear that Webster was educated at the Merchant Taylors' School.⁵ He may have also studied law in the Middle Temple from 1598, and his plays do include some "suggestion[s] of legal training": *The White Devil* (1612) and *The Devil's Law-Case* (1619) and *Appius and Virginia* (1634) have trial scenes in the plot and *A Cure for Cuckold* (1624) includes legal perspective in the subplot.⁶ In *The Duchess of Malfi*, Webster seems to create some scenes which related to the Duchess' secret remarriage with his legal knowledge gained from his time at the Middle Temple. In addition, he was related to some dramatists who were also trained at the Middle Temple. His contemporary, John Ford (1586-1639?), who wrote *'Tis Pity She's a Whore*, was one of them.⁷ As it can be seen from Webster's background, his works provide several fine examples of how the law

4 Antony Hammond, "John Webster (1579 or 1580-1634?)." in *Jacobean and Caroline Dramatists*, ed. Fredson Bowers, (Detroit: Gale, 1987), 284-302. <https://link-gale-com.hawking1.agul.in.aoyama.ac.jp/apps/doc/H1200003824/GLS?u=aoyama&sid=bookmark-GLS&xid=c71d9e> ed.

5 Hammond, "John Webster (1579 or 1580-1634?)."

6 Hammond, "John Webster (1579 or 1580-1634?)."

7 Hammond, "John Webster (1579 or 1580-1634?)."

was proceed in the early 17th century.

The author of *The Duchess* seems to be particularly interested in dramatizing the legal aspects of marriage. Though not presenting to audiences who were themselves uniformly trained in the particulars of the law, audiences would have been well aware of the mandates for marriage required by the church and, unlike many modern audiences would have understood that women could be prosecuting in church courts under church law. This essay will analyze the female protagonist in *The Duchess of Malfi* and closely examine the Duchess' remarriage in the play in the light of how a 17th century English audience would generally understand the law. Matters of morality, including such areas as marriage, divorce, adultery, or, in the case of John Ford's *'Tis Pity She's a Whore* (John Ford 1629-33), were still generally viewed under the mandates of medieval Canon law, that law that set statutes based on biblical scripture.⁸ In short, marriage had to be recognized by the Church of England in order to be legal.

With that in mind, this paper will focus on how audiences of the time would, generally speaking, respond to the plight of the Duchess in Webster's *The Duchess of Malfi*.

The Background of The Duchess of Malfi

The Duchess of Malfi premiered at the Blackfriars theater in 1614.⁹ According to Leah S. Marcus, it was clear from the research of Amendola, the author of *The Mystery of the Duchess of Malfi* (Barbara Banks Amendola 2002) that there was an actual duchess with a similar story. This play points to the real-life story of Giovanna d' Aragona, the Duchess of Amalfi, who historians of the period think lived from 1493 to 1511 (however, these birth and death years are not certain).¹⁰ She was attached to the House of Aragon and married the son of the Duke of Amalfi at the age of 12. She had two children with her

8 Martin Ingram, in "Introduction," *Church Courts, Sex and Marriage in England 1570-1640*, (Cambridge: Cambridge UP, 1990), 1-24.

9 Hammond, "John Webster (1579 or 1580-1634?)."

10 Leah S. Marcus, "The Play and The Historical Sources", *The Duchess of Malfi*, (London: Bloomsbury, 2021), 16.

husband before he was killed in battle.¹¹ After approximately 10 years, she secretly remarried Antonio de Bologna, at least according to legend. When the public learned of this secret marriage, the couple tried to escape to Siena with the two children they had in their marriage.¹² Finally, the Duchess and her children were captured in Amalfi and it is thought that the Duchess' brothers had Antonio killed when they found him in Milan.¹³

In Webster's play, the title directly echoes the story of the Duchess of Amalfi. The duchess in the play is also a royal widow and marries in secret against the will of her two brothers, represented in the play by the Cardinal and Ferdinand. Of course, Webster has to take creative license with parts of the story that can never be confirmed. In the play, the Duchess asserts to her brother Ferdinand that she will never remarry, largely because her powerful brother cannot bear the thought of his sister taking a new husband. Ferdinand does not believe her and commands Bosola, a soldier and courtier, to keep an eye on her. Ferdinand's prediction is accurate and the Duchess has relations with Antonio, who is the Duchess' steward, and gives her wedding ring to Antonio as a pledge of marriage. Though Bosola is in the dark about the secret marriage, he finds out that the Duchess is pregnant through a trick he plays of her that involved urging her to eat some apricots and noticing that he immediately got ill.¹⁴

Ferdinand and the Cardinal learn from Bosola that the Duchess has not one but two children. They then decide to execute her. The Duchess develops the plan, and have Antonio and one of her children to escape to Mirano. She also confirms to Bosola and her brothers that Antonio is indeed her husband. Ferdinand and the Cardinal, have the Duchess confined and eventually executed. In Webster's *The Duchess*, this execution comes after she endures extended hazing and psychological torture. Also, in the play Antonio is killed by Bosola, by accident. Bosola then kills the Cardinal then engages in a duel with Ferdinand

11 Marcus, "The Play and The Historical Sources", 17.

12 Marcus, "The Play and The Historical Sources", 19.

13 Marcus, "The Play and The Historical Sources", 19.

14 This confirmed a popular belief that pregnant women cannot tolerate apricots. Leah S. Marcus, "The Annotation", *The Duchess of Malfi*, 175. Robert Palter, *The Duchess of Malfi's Apricots and other Literary Fruits*, 270-281.

in which they stab each other to death. The Duchess' oldest son then inherits his mother's estate.¹⁵

The play leaves us as a modern audience in wonderment as to why and how the duchess and Antonio are so brutally treated for being single people who consent to marry and have children. As Asuka Kimura and others have pointed out, early modern drama is full of examples portraying widows as "lusty" and unwholesome, and overhasty in marrying again.¹⁶ Perhaps the most famous example is Gertrude, Hamlet's mother, who marries her late husband's brother very soon after her husband's death. Hamlet views this marriage as incestuous and as such illegal.¹⁷ However, the Duchess's marriage, while some may be critical of such a secret arrangement, does not appear on the surface to be in violation of church law. Therefore, the next section will take a look at the actual legality of the Duchesses marriage as it is presented in the play for audiences in early-modern England.

The Duchess' Engagement and Remarriage

The Wedding Ring

The Duchess and Antonio completely understand that marriage is a sacrament, therefore they should follow the rules that were then established canon or church law in England and in Rome to get married. Antonio shows a knowledge of biblical precedent when he says "begin with that first good deed began I'th' world/ After man's creation—the sacrament of marriage."¹⁸ The Duchess presents ring to Antonio, the one that was given to her by her previous husband:

DUCHESS. One of your eyes is blood shot; use my ring to't.

[Gives him her ring.]

They say 'tis very sovereign: 'twas my wedding ring,

15 John Webster, *The Duchess of Malfi*, ed. Leah S. Marcus, (London: Bloomsbury, 2021).

16 Asuka Kimura, "Widows in Cultural Representation and History : The 'Lusty Widow' Trope and Jacobean Comedies." (2011). https://repository.dl.itc.u-tokyo.ac.jp/?action=repository_action_common_download&item_id=36492&item_no=1&attribute_id=19&file_no=1.

17 William Shakespeare, *Hamlet*, ed. Ann Thompson and Neil Taylor, (London: Bloomsbury Publishing, 2020).

18 Webster, *The Duchess of Malfi*, I.II.300-1.

And I did vow never to part with it

But to my second husband.¹⁹

According to the annotation, people of this time believed that gold worked effectively against “eye ailments.”²⁰ Therefore, ostensibly, she seems to give the ring as the treatment to him. However, the presentation of a marriage ring clearly represents the Duchess’s intention to marry Antonio. Giving her next husband her prior husband’s ring might seem to people then and now as inappropriate, but it is not illegal. In addition, she does not only hands Antonio the ring, but also “[put the ring on his finger]” to remove “a saucy and ambitious devil” in the ring.²¹ This series of actions could be taken to represent the exchange of rings in the wedding ceremony.

In 17th-century’s church law, the exchange of rings was not just a symbolic part of the wedding ceremony ritual. It was the significant act of publicly establishing a contract, and contracts of course have legal weight. According to Moore, marriage is “more than a contract,” or just a legal agreement alone, but he also concedes that marriage “springs from a contract and is the union of one man with one woman for life.”²² Therefore, although “a contract” is part of “marriage,” it is difficult to define marriage as “a contract” exclusively. However, when marriage ends, either by divorce or death the original “a contract” becomes more important from the early modern view or from our view. According to Martin Ingram, when “a contract” was established, the couple were requested to exchange their rings as “tokens of marriage.”²³ The contract therefore is folded in with the symbolism of the wedding ceremony. In Webster’s time the groom put the ring on “the fourth finger of the bride’s left hand” first, so that she would close her heart from other men’s loves and show that she has transformed from maiden to legal wife.²⁴ Thus, the Duchess’ action with the

19 Webster, *The Duchess of Malfi*, I.II.317-321.

20 Marcus, 163.

21 Webster, *The Duchess of Malfi*, I.II.323-6.

22 Garth Moore, *An Introduction to English Canon Law*, (Oxford: Oxford UP, 1967), 82.

23 Martin Ingram, *Church Courts, Sex and Marriage in England 1570-1640*, 197

24 David Cressy, *Birth, Marriage and Death: Ritual, Religion, and the Life-Cycle in Tudor and Stuart England*, (Oxford: Oxford UP, 1997), 342-3.

ring was seen as the imitation of a wedding ceremony. A representation of a holy sacrament outside of church and on a public stage could easily have been punished by law, so this scene provides extra dramatic tension. This tension would have been felt for the couple within the action. The exchange of vows of love would be fine, though perhaps a little “lusty,” the ring exchange could have been taken by many as disrespectful to church approved prior marriage and such disrespect could quickly bring legal trouble even for powerful people.

Pregnancy before Marriage

The Duchess and Antonio surely come to recognize that they have a marital relationship, and the Duchess even cites a legal precedent for the legal validity.

DUCHESS. I have heard lawyers say a contract in a chamber

Per verba presenti is absolute marriage. [*They kneel.*]

Bless, heaven, this sacred Gordian, which let violence

Never untwine.²⁵

She also adds “What can the church force more?” and “How can the church build faster?” However, audience members during the Jacobean period would likely understand that the then current church would not be likely to recognize this marriage.

In the eyes of the medieval Roman Church, if the male and female showed their consent to marry each other, using the present tense, their marriage could be confirmed without a priest, but it was more “preferable” if there were some witnesses in the ceremony.²⁶ Indeed in the time in which *The Duchess of Malfi* was set, the Duchess may have had a strong case. Under revised canon law or the statutes developed by the Roman church before and during the time of the play, the future tense of this standard became more acceptable; “*per verba de future.*” From Elizabethan age, the required words returned to the present tense. In sum, Webster uses an ambiguity in the way in which a private vow of mar-

25 Webster, *The Duchess of Malfi*, I.II.384-7.

26 Cissie Fairchild, *Women in Early Modern Europe 1500-1700*, (Edinburgh: Pearson, 2007), 58.

riage should be spoken and this enhances the drama in the minds of audience members. This would be similar to how Shakespeare plays with legal ambiguity in cases of suicide when the gravediggers in *Hamlet* (William Shakespeare 1600-1) discuss how suicide is legally determined.

But there was no ambiguity in the fact that the attendance of “plaintiffs,” “impartial witnesses,” “members of the family and other interested parties” became, not preferred, but required. Also, the Church of England required the saying of banns and a priest to administer the rite of marriage almost always on holy ground.²⁷ Therefore, audience members with an understanding of these differences in legal mandates might see the Duchess’ knowledge of marriage to be too old to form the marriage with Antonio in the Jacobean period. In other words, the Duchess and Antonio’s marriage is imperfect in the context of 17th-century church law. Cariola, the Duchess’ servant, makes a comment that would reflect the feelings of many in Webster’s audience, that this private marriage “it shows /A fearful madness. I owe her much of pity”²⁸

With regard to a woman getting pregnant before marrying the man who got her pregnant, there was some flexibility in cases where a couple confirms their legal marriage after a private promise had been made. The problem with the case of the Duchess and another reason that Cariola pities her, is that her brothers are powerful, with one being a cardinal, are they evil and fully against her marriage. It is hard to imagine anyone taking sides with the brothers in Webster’s audience, but many would understand how strongly they were backed by church law when they reject the Duchess’ marriage and the legitimacy of her children.

As mentioned above, although the Duchess and Antonio regard their marriage as genuine, if they are not recognized by the church as being married, then the Duchess is guilty of pre-marital sex, which could be punished harshly under church law.

In the Church law, sex before or outside of marriage was treated harshly

27 Ingram, *Church Courts, Sex and Marriage in England 1570-1640*, 190-2.

28 Webster, *The Duchess of Malfi*, I.II.410-1.

and children who were the product of illicit sex were deemed illegitimate. From 1570 to 1640, the Church courts insisted “that betrothed couples should remain chaste before they were married in church: that a properly solemnized marriage alone made sexual relations licit” so that the Church court established the only position which could certify “a socially and legally acceptable marriage.”²⁹ Some couples who could not wait until the official solemnization were denounced by lawyers, but as mentioned above this regulation was generally not strictly enforced and indeed many women who planned to get married were pregnant on the day of their church weddings.³⁰ However, the regulation could be enforced severely in some church courts because of the support by “some parochial interests,” so the enforcement of this law could vary depending on where a couple lived.³¹ Even if the couple intended to marry soon and “had been contracted before witnesses,” they could not legally have sexual intercourse before the solemnization in Church.³² So, pregnancy before marriage, though often tolerated, was also subject to punishment.³³

The Duchess’ knowledge about marriage law is one which is incongruous with 17th-century law and the general understanding of how the church would recognize a marriage under the law.

The Remarriage of Widows in Church Law

The Duchess’s secret marriage and pregnancy would have been regarded as illegal by the perspective of many in the 17th century audience. However, she would not have broken the law should she have followed the mandates of church courts. Indeed, the Bible does not find a widow’s marriage as explicitly against God’s law. According to St. Paul:

The wife is bound by the law as long as her husband liveth; but if her

29 Ingram, *Church Courts, Sex and Marriage in England 1570-1640*, 219.

30 Ingram, *Church Courts, Sex and Marriage in England 1570-1640*, 155, 219.

31 In some areas, the couples were prosecuted because of having a sexual intercourse before marriage, however, there were cases that they were overlooked and they did not get punishment. Ingram, *Church Courts, Sex and Marriage in England 1570-1640*, 219.

32 Ingram, *Church Courts, Sex and Marriage in England 1570-1640*, 154-5, 219-221.

33 Ingram, *Church Courts, Sex and Marriage in England 1570-1640*, 223-8.

husband be dead, she is at liberty to be married to whom she will; only in the Lord.³⁴

The widow could marry “in the Lord” or as long as the new husband is a Christian.

Though not illegal there was still a strong feeling in Webster’s time that widows should not marry again, and that marry again was in some way against God’s will. Indeed, St. Paul is famously known for not being married himself and not being enthusiastic about marriage. Therefore, widows have liberty to remarry and even though no biblical or church law would be broken, there was a disapproval in some quarters of widows’ remarrying. One imagines that this disapproval would be strongest within the family and immediate friends of the deceased. In addition, in the play (but not in the source story), the Duchess marries (or attempts to marry) a man well below her station. The play does not deal with this matter in detail, but many church and civil legal problems can be created when a woman (or a man) marries again and has children.

In *The Duchess of Malfi*, this strong feeling against the widow, Duchess’ remarrying is made clear. Firstly, in Act 1, scene 2, Ferdinand and the Cardinal display disgust at just the idea of the widow’s remarriage as follows;

FERDINAND. You are a widow.

You know already what man is, and therefore

Let not youth, high promotion, eloquence—

CARDINAL. No, nor anything without the addition ‘honour’

Sway your high blood.

FERDINAND. Marry? They are most luxurious

Will wed twice.³⁵

There is no legal precedent forwarded by the brothers here. They seem concerned about low blood entering their family. Ferdinand is already hinting about what we see later as his inability to face the thought of his sister being sexual luxurious, and later gives the impression that he has a sexual attraction to his sister.

34 *Holy Bible King James Version*, (New York: American Bible Society), 1 Corinthians 7:39-40.

35 Webster, *The Duchess of Malfi*, I.II.209-214.

Both men are corrupt and evil. However, the warning against remarriage can be also interpreted that they are warning her based if not on Christian law, but on the basis of other problems that arise when a widow marries again. Perhaps the most famous of the chaos caused by widows marrying, especially quickly, is the case of Gertrude in *Hamlet*. Even above the murder of his father is Hamlet's sense of betrayal by Gertrude's marriage to Claudius.³⁶

Like *Hamlet*, the tragedy of the Duchess could be seen as the didactic proverb that "what goes around comes around." A widow who marries again can throw a family out of balance, particularly a powerful family. In a male dominated culture, a widow has a worrisome freedom that is out of the control of men. The role of the woman's father is diminished because he has already given her away.³⁷ She no longer has to answer to her dead husband and, in the case of the Duchess, she does not feel obligated to be controlled by her brothers and there is no law that can keep her from choosing her next husband. Or, this is how it might seem. However, Ingram states that "if either or both parents were dead, other relatives might step in and assume a quasi-parental role".³⁸ Thus, audiences might see these brothers as the substitute of the Duchess' parents, but even with their powers it does not seem that they can legally prevent her from her remarriage with Antonio. The Cardinal in particular, though he is a horrible person, is right to be concerned that the Duchess will marry below her blood, given that such a marriage could well throw the families estate out of order, which of course leads to legal problems.

Contrary to two brothers' will, she secretly gets married with her servant, something that does not seem as irregular to us as it might to a 17th-century audience. However irregular, her brutal punishment and murder does seem out of keeping with anything she has done, whether it is against the church law or somewhat reckless and then present civil legal problems.

However frowned upon, in western European Christianity (except for Catholic France), remarriage was very often conducted among "widowers" and the

36 Shakespeare, *Hamlet*.

37 Fairchilds, *Women in Early Modern Europe 1500-1700*, 55-78.

38 Ingram, *Church Courts, Sex and Marriage in England 1570-1640*, 140.

church generally allow them to find new wives because they believed that the wife who could take charge of “women’s work” was essential to new household.³⁹ Although widows, too, had the liberty of remarriage, most of the widows remained single for the rest of their life.⁴⁰ According to Fairchilds, usually widows were too old to remarry the new spouse (because the contemporary women found the first husband when they were 12-24 years old), and they also inherited the dead husband’s property and they could be “wealthiest women in their communities,” therefore, this is one of the reasons why widows stayed single was that widows did not have the any reasons to find new spouse.⁴¹ The case of *The Duchess of Malfi* might to apply to this, although given her youth audiences might have ambiguous responds to her behavior. The ideal image of the widows is that they were expected to enter into grief and show their attitude toward “a duty they [(widows)] owed to their husbands in recompense for all they received from them.” This idea is derived from the *univera* of Rome and such an image of good widowhood would have been present in Protestant England.⁴²

This said, widows did not fall afoul of the law unless they were caught in unlawful sexual relationship outside of marriage. In the view of a 17th-century audience, the Duchess’ sexual behavior, her quick pregnancy, would be grounds for legal action, even if, again, her brutal murder seems out of step with actions that arguably did not fall outside of the intentions of church law.

The Innocent Duchess of Malfi

Members of a 17th-century audience would have a different understanding of legal marriage and illegal sexual intercourse and pregnancy, and this understanding could make some members see the Duchess as something more than an innocent victim. Either through her misunderstanding of law or dismissal of the power of the state and church as represented by her two brothers, she would have acted in the minds of many much like the stereotypical widow in 17th-

39 Fairchilds, *Women in Early Modern Europe 1500-1700*, 104-5.

40 Fairchilds, *Women in Early Modern Europe 1500-1700*, 106.

41 Fairchilds, *Women in Early Modern Europe 1500-1700*, 104.

42 Univera means that the woman must have the sexual intercourse with the only man in her life. Fairchilds, *Women in Early Modern Europe 1500-1700*, 106-7.

century folklore. She wasted no time to engage in sex with a lower-level young man in her court, and she attempted to cover up the relationship and the children. She provided weak grounds for the legality of her marriage and the legitimacy of her children.

This said, and as she says in the end, she is still The Duchess of Malfi, and she or anyone by law must be afforded a proper trial with a proper hearing. Instead, she was murdered. And, in fact the ending of the play suggests that the chaos of murder followed by more killing is the outcome of people trying to deliver justice outside of legal courts.

Even evil and deluded Ferdinand admits this:

FERDINAND. Or, bold in a good cause, opposed thyself,

With thy advanced sword above thy head,

Between her innocence and my revenge.

[...]

Mine? Was I her judge?

Did any ceremonial form of law

Doom her to not-being? Did a complete jury

Deliver her conviction up i'th' court?⁴³

From this soliloquy, it is obvious that he understands his accusation of the Duchess is not legal and he illegally sentences her to death in an outburst of rage. At the same time, the audience realizes that the Duchess is not killed because she broke the law, but by her brother's revenge.

Given that she was a committed wife and mother, her death is unjustified as well as tragic, even in a society with strict legal standards for marriage and sexual behavior.

Conclusion

This essay analyzes how the 17th century's audiences in England might generally respond to the legal elements in Webster's *The Duchess of Malfi*, focusing on law concerning marriage and sexual misconduct. The Duchess has

43 Webster, *The Duchess of Malfi*, IV. II. 265-92.

a case for the legality of her marriage from traditional Roman church perspectives perhaps in presented a ring to Antonio and making a vow of marriage. This said, the Duchess' argument would have been weaker under the church laws of the early 17th century than during the time and place where the source story is set. One could speculate that this play offers a critique of strict church laws. Also, the widow's place in early modern English society is examine. A widow's remarriage was not illegal, but it was frowned upon both socially and religiously and the Duchess' two brothers might potentially have some say in who she marries or if she marries at all. Their legal grounds for this would be unclear, but could be a matter taken up by a civil rather than a church court. What is clear is that the Duchess' death is not a punishment which is sanctioned by church law.

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