Athens Journal of Philology 2026, volume (13): 1-28
https://doi.org/10.30958/ajp.X-Y-Z

Famous Literary Trials in Medieval and Early Modern Literature as a Reflection of the Western Judicial System

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The current study concerns the relationship between law and literature in the early periods of European history with special emphasis on England's Renaissance. Law and literature are intertwined with each other and share common themes, notions, and meanings. Literary treatments of justice perform several functions: They reflect and then shape and *popularize a country's law system, inculcate in collective consciousness notions and categories of jurisprudence and form ideologically admissible perceptions and judgments. As a point of departure for a broader discussion, Deguileville's "The Pylgremage of the Sowle" has been chosen and served as a cognitive basis for critical analysis of literary texts. The heavenly trial in this romance is theological in content and supplies juridically accurate presentations of legal concepts accepted in the judicial European practices. Reflections on the idea of justice and its core components (equity, mercy, righteousness, etc.) can be found not only in philosophical and legal treatises, but also in belletristic narrations. The analysis of the sixteenth century literary trial scenes by prominent writers such as George Peele and Edmund Spenser has exposed their comprehension of the nature of justice and their illuminating insights into contemporary legal ideas, which they tried to bring to the knowledge of the reading public.*

Keywords: *Justice, Synderesis, Devil's rights, equity, righteousness, Gerson, Bracton, St. German.*

Postquam natus, pro salute nostra, Dei filius, Dominus et Salvator noster Jesus Christus venit in mundum, ait: "Non veni legem solvere, sed adimplere pietate sola et misericordia."

[After we were born for our salvation, the Son of God, our Lord and Savior Jesus Christ came into the world and said, "I did not come to abolish the law, but to fulfill it with piety and mercy alone."]

(Ancient laws 1840, p. 447)

Introduction

The judicial system of a country is tied to a nation's cultural and political history and is reflected in its literature. The genesis of the English legal system may be traced back to the Anglo-Saxon period, and its perfection and development took a great length of time. In order to come to a fuller and better understanding of the origins of England's legal system, we propose to turn to literary sources, which, though in bits and pieces, retell the early history of English jurisprudence. As law

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was gaining an ever greater place in the country's social life, writers from different backgrounds made an effort to introduce scenes of trials in their works and gradually began to understand the dramatic potential of such scenes. Diane Parkin-Speer postulates the existence of a sub-genre of allegorical trials in the early modern literature (Parkin-Speer 1992, p 494), which later developed into a full-fledged literary genre represented by such renowned works as Charles Dickens' *Pickwick Papers*, Agatha Christie's *The Witness for the Prosecution*, Harper Lee's *to kill a Mocking Bird*, Franz Kafka's *The Trial,* John Grisham's novels, and many others, in which trial scenes and law motifs are catalysts. The aim of this paper is to investigate literature's engagement with questions of law and justice in the late medieval and early modern period. Our methodology is based on the intersection of imaginative literature and respective law system. The objectives are: 1) to analyze literary representations of legal trials; 2) to study their conceptual structure; 3) to expose theoretical foundations of prime legal concepts; 4) to consider the effects of social and religious ideologies on the judicial system; and 5) to consider the influence of legal ideas on literary culture.

A logical question arises, to what extent we can rely on belles-letters and if there is any utility of literary texts. The current study does not claim to be exhaustive and give a comprehensive picture of the judicial system; nevertheless, I contend that literature can offer insights into legal practices of the time. As Classen & Scarborough put it, "literature is one of the central media of human consciousness and has offered both descriptive and prescriptive models of human interaction. Also, literary texts played a role in shaping as well as reflecting social realities" (Classen & Scarborough 2012, p. 5). An analysis of late medieval and early modern texts enables us to perceive the introduction and presentation of judicial ideas in collective conscience, as well as philosophical apprehension of conscience, mercy, and equity in relation to the common law.

The current study tries to highlight, with the help of literary texts, such aspects of the legal system as court procedures, testimony, verdicts, judges, advocates and witnesses, various types of courts and laws, which make up the paradigm of judiciary establishment. Of special interest for us are those authors whose works embody juridical thought, methods and approaches. The literary material for examination is confined to supernatural allegorical trials. Material pertinent to our analysis has been found in the works of Guillaume de Deguileville's *The Pylgremage of the Sowle* and Elizabethan authors, namely, Edmund Spenser's *The Faerie Queen*, and George Peele's play *The Arraignment of Paris.*

A Brief Story of the Anglo-Saxon Judicial System

If we consider the Anglo-Saxon judiciary system before the Norman conquest, it was characterized by decentralization and consisted mainly of local courts. "The ordinary Anglo-Saxon courts of public justice were the county court and the hundred court, of which the county court was appointed to be held twice a year, the hundred every four weeks. Poor and rich men alike were entitled to have right done to them" (Pollock 1893, p. 253). The hundred court was a judicial unit

that examined cases in all matters, civil and criminal, murders and theft. The county court had jurisdiction over all matters brought up for review from the hundred and also over all transactions taking place within the county. In case a suitor could not get justice in the local courts, he might appeal to the witan[1]. The king had judicial functions, but "his business was not to see justice done in his name, but to exercise a special and reserved power which a man must not invoke unless he has failed to get his cause heard in the jurisdiction of his own hundred. In such cases the king might be invoked" (ibid., p. 252). It should be noted that secular and ecclesiastical courts were not sharply separated and the two jurisdictions were but slightly distinguished. "Never, perhaps, in any country were church and state more closely united than they were in Anglo-Saxon times in England" (Lefroy 1917, p. 296). These courts "were of, for, and by the people and might be called a concrete embodiment of the notion of popular justice" (Ford 1918, p. 95). The procedures were governed by traditional rules and a strict devotion to ancient customs.

There were several modes of trial: Trial by witnesses, one of the oldest kinds, in which witnesses called the *secta*[2] were to produce *ut de visu suo et auditii* [what they saw or heard]; trial by oath, in which several people acted as compurgators, but not as witnesses; trial by the ordeal either by hot iron or cold water[3] as a way of clearing oneself of a charge; trial by combat/battle (duel), which came to England with the Normans, but very soon was abolished as alien to the English spirit.[4] Changes and innovations in local customary laws proceeded very slowly under the first Norman kings. After 1215, during King John's reign, England saw a rapid transition from trial by ordeal to trial by jury. The trial by combat is described in Shakespeare's *Richard II.* The duel took place between Henry Bolingbroke, future king Henry IV, and Thomas Mowbray, Richard's loyal courtier, who accused each other of treason and agreed to settle the matter with trial by combat; both were prepared to fight to the death for their honor. Richard stopped the duel and banished both men from the country, an unhappy decision that sealed his fate.

The conception of the trial in English speaking countries has generated and elaborated a doctrine called "Law of Evidence", legal principles that govern what evidence is admissible and acceptable as the proof of facts in legal proceedings. "No other country has it; we alone have generated and evolved this large, elaborate, and difficult doctrine" (Thayer 1898, p. 2). When the Normans came into England, they brought with them "the use of the inquisition" in judicial practice, i.e., "the practice of ascertaining facts by summoning together a number

[1]Witan is an assembly of higher ecclesiastics and important laymen that met to counsel the king on matters of judicial and other problems. The Anglo-Saxon name was Witenagemot, which meant a ′counsel of the wisest′. It was a kind of Supreme court for disgruntled plaintiffs.

[2]Secta, also called fore-oath. It was the office of the secta to support the plaintiff's case, in advance of any answer from the defendant. Oath-helpers swear that the defendant′s oath is clean and unperjured. "Ultimately they became mere witnesses to character, and not to facts" (Lefroy 1917, p. 300).

[3]The usual forms of ordeal were sinking or floating in cold water, recovery within a limited time from the effect of plunging the arm into boiling water, or of handling red hot iron. The church objected, and finally, banished them (Lefroy 1917, p. 301).

[4]For greater detail see James Thayer *A preliminary treatise on evidence at the common law*. Chapter 1.

of people most likely and most competent to know and tell the truth" (ibid., p. 7). They gave their answers under oath. This assembly was a fore type of the modern jury. It is difficult to overestimate its deep political significance. It is this institution which is the foundation of the common-law system of evidence. Another important conceptual feature of ancient trials was their adversarial nature, a judicial duel, of legal proceedings between the parties, carried on publicly" (ibid., p. 8).

From the 'Devil's Rights" to God's Grace

The concept of "the Devil's rights" emerged in medieval theology in the twelfth century and explored the ways of how the devil, who got rights over humanity, could be conquered. The basis of the Devil's rights, power over human kind, was humanity's sinfulness and transgressions of God's laws (Fig. 1). According to St. Augustine, it was by the justice of God that the human race was delivered into the power of the devil (Augustine 1887, p. 361). However, the devil could be conquered. "It pleased God, that in order to rescue man from the grasp of the devil, the devil should be conquered, not by power, but by justice; and that so also men, imitating Christ, should seek to conquer the devil by righteousness, not by power" (ibid., p. 363). Righteousness in this context is a synonym to justice. So, the Devil can be deprived of his power only by an unbiased justice of Heaven.

Figure 1. *The Devil Claims a Sinner's Soul for Punishment*



Source: Idle Speculations, Guillaume de Digulleville.

Deguileville's Heavenly Trial

For a long time, the medieval centuries were considered unworthy of notice. However, as far as the formation of the European law system is concerned, medieval literature makes an invaluable contribution. The celebrated allegorical romance by the Cistercian monk Guillaume de Deguileville, *Pèlerinage de l'ame* [*The Pylgremage of the Sowle*] written about 1355 - 1358 is the earliest full-fledged description of a trial. The work was published in English by William Caxton only in 1483. The romance stages the judgment of the narrator's soul. Though the significance of this work in medieval culture is impossible to overestimate, we still lack a thorough, comprehensive study of the romance, especially of its judiciary aspect – a trial as a specific area of interdisciplinary studies. In the *Pilgrimage* (in text references

l'Áme), moral and religious misconduct is treated not as a sin, but as a punishable crime. The romance reflects the changes in judicial thought patterns that delivered humanity from Devil's power and entrusted it to the Grace of God.

Conceptual Structure of the *Pilgrimage*

The Heavenly Assize

The Pylgremage of the Sowle belongs to a very popular dream-vision genre. The pilgrim lies asleep on a St. Lawrence night (eve of 10 August) and dreams that he has died and that his soul is being lifted up towards heaven for the Last judgment. The pilgrim-soul is beset by "the fowle horrible Sathanas", who claims it for eternal punishment. The guardian angel immediately comes to his rescue. The great fundamental thing of this scene is that no one can be called a criminal (sinner) without due process of law, and each is entitled to appear before the court. After some disputation, it is decided to let the heavenly assize[5], presided by the archangel Michael appointed by God, deal with the matter. In modern parlance, the soul is a defendant, Satan is a prosecutor aided by Reason, Justice and Truth. The role of the Angel is very specific but typical of the medieval trial procedures. The Angel belongs to what was called the *secta.* "They were merely guarantors of the party's good faith and might have nothing to do with the facts of the case." (Anglo-Saxon Trials 1918, p. 97). It becomes clear why later the Angel advises the Soul to invite an advocate or speak in defense himself.

Parties to the Trial

The processes of inquiry and investigation in the Divine court are modeled after those in European law-courts. The plaintiff is Satan. He defends the rights of the prosecution. When he learns that "Mychael the Prouost of Heuene" has been appointed by God to preside over the judgment of souls, he demands that the Judge be recused from handling the case because the assigned judge "is nought indifferent, but frend to one partye", that is he accuses the judge of partiality (*l'Áme,* p. 5v). The theme of partiality is developed further when the disgruntled prosecutors of other souls complain that "wardeynes" [lawers for the defense] have audience of the Prouost "at theyr owne wylle. And we ben here as rybawdes [ribalds] forclosyd withouten" (*l'Áme,* p. 5v). They remind the High Judge that in every righteous court, any party in a lawsuit should be admitted to bring about its case. The "manner of judgment" must be observed: the accusers should have first place and time of audience to say what they would, and after let the defendants excuse themselves if they could: "Syth it so is then that we ben here actours [a party in a lawsuit], let vs have place to ben herd, and then our adversaryes" (*l'Áme, p.* 6r). The pilgrim tries to exclude Sathanas from the lawsuit,

[5]Assizes as a special type of trial were long associated with prestige and omnipotence and compared to circling planets or the streams of paradise. Very popular in the 16th and 17th centuries, their prestige came to naught in the 18th century. See Cockburn (1972).

because the latter is his personal enemy and, more important, he had been "infamed and condemned by heavenly execucyon [judgement]" (*l'Áme,* p.15r). The defense team is led by Mesirecord (Mercy) and the guarding Angel.

In medieval literature, the Christian worldview had a significant influence on understanding justice. Justice was often understood as an attribute of God who rewards one and all according to one's work. Justice is depicted as a cosmic force, which punishes or rewards individuals in the afterlife, too. In Deguileville's *l'Âme*, allegorical Justice teams with Satan and accuses the soul of not obeying the Ten Commandments and not keeping God's Laws and councils contained in the Gospel. The essence of accusations is "No man can be overcome by Satan, but only of his own consent" (*l'Âme* 22r). Justice emphasizes the fact that Grace Dieu (the Grace of God) has shown the pilgrim the route to Christian salvation, which he ignored, so he deserves a guilty verdict. She, however, left the pilgrim's good deeds conveniently out. Then Reason added that Grace Dieu had taught the pilgrim how to eschew the snares of Satan, but he disregarded this advice. He had never turned to Lady Dame Penitence, who might have washed him of all sin. Dame Truth confirmed the veracity of the accusations. Supported by Justice, Reason and Truth, Satan demanded immediate sentence, so that he could bring the pilgrim to "eternal torment and pain" (*l'Âme,* 23r).

Medieval mindset regarded Mercy as a "form of charity, grandeur, and magnanimity towards wrongdoers, which justified punishing them less severely than they deserved according to justice" (Tasioulas 2003, p.101). As we can see from Deguileville's *l'Âme,* mercy is a value that justifies leniency in imposing a punishment, or as Seneca[6] put it, "moderation that remits something of a deserved and due punishment" (Seneca 1995, p. 160). And elsewhere:

> Mercy has a freedom of decision. It judges not by legal formula, but by what is equitable and good. It can acquit or set the damages as high as it wishes. All these things it does with the idea not of doing something less than what is just but that what it decides should be the justest possible (Seneca 1995, p. 64).

However, leniency in judgment must be shown for appropriate reasons, for example, sincere repentance.

The Jury

The next step was to choose assessors, i.e., advisers to the judge. Several chapters are devoted to the formation of the jury. The trial by the jury in England "inherited by the Normans from the Frankish kings, was brought into England at the Conquest" (Thayer 1898, p 47). Thayer considers that this procedure had been unknown to the old Germanic law:

[6]Lucius Annaeus Seneca, a Stoic philosopher of ancient Rome, tutor and political advisor to the young emperor Nero. He composed *On Mercy* in 55 or 56, early in the reign of Nero to whom he dedicated it.

> The characteristic of it is that the judge summons a number of the members of the community, selected by him as having presumably a knowledge of the facts in question, and takes of them a promise to declare the truth on the questions to be put by him (Thayer 1898, p. 47).

The Frankish king Louis I the Pious in 829, ordered that every inquiry shall be made not by witnesses brought forward [by the party], but "*per illos qui in eo comitatu meliores et veraciores esse cognoscuntur, — per illonim testimonium inquisitio fiat*" [by those who are known to be better and more truthful in that company, – through their testimony an investigation is to be made" (Thayer 1898, 48). The choice of the jury is indicative of the fact that Deguileville was well aware of the current judicial practices. The first juror invited by Michael was Cherubyn (Cherubim), the angel with a "flaming sword which turned every way" that guards the garden of Eden. In his turn, Cherubim suggested inviting Peter, who is "Porter of Heaven and Lieutenant of the Sovereign Lord in Earth" because he knows every pilgrim personally. He also invites Reason and Truth to sit together. All social layers of the time must appear on the jury represented by saints.

> As for the Gentyls lete clepe [call] seynt George, a martyr. For clerkes seynt Nycholas[7]. For heremytes and solytary men saynt Anthony[8]. And seynt Benet[9] for monkes. For weddyd folk also lete clepe saynt Powle the Appostel, not for hym self was maryed to ony woman, but for cause that he taught by wordes and by epystles to the peple of Corynthe the veray forme and rewle [rule] to be kepte in maryage. For wydowes also lete clepe seynt Anne, mother of the Virgin Mary . For maydens and yonge wymmen seynt Katheryn[10] shal be clepyd (*l'Áme,* p.7r).

Presentation of the Case

The Frankish judicial culture of argument and judgment made its presence felt in Deguileville's *l'Âme*. After the jury has been nominated, the argument of the parties begins. The first to speak is the narrator's guardian angel, who goes on about the pilgrim's good qualities and deeds. His speech is full of legal terms and constructions. "I presente to yow this pilgrym", "he was commytted to my gouernaunce"; "I bere hym good record"; "He oweth to be safe", etc. Two arguments that are cited in favor of the soul stress the fact that he kept his "skrippe and his burdon" [The pilgrim's bag and staff, representing faith and hope] (*l'Âme,* 23v) and that he was perseverant in his purpose to visit Jerusalem. So he deserves to be received into the Sovereign City of Heavenly Jerusalem.

[7]Saint Nicholas of Myra was a Christian bishop during the 3rd and 4th century whose legendary exploits gave rise to the popular Christmas character of Santa Claus.
[8]St. Anthony of Egypt, a religious hermit and one of the earliest Desert Fathers, considered the founder and father of organized Christian monasticism.
[9]St. Benedict of Nursia, founder of the Benedictine order, died. c. 550.
[10]Catherine of Alexandria, was one of the most popular early Christian martyrs, a virgin, who was martyred in the early 4th century at the hands of the emperor Maxentius, venerated for her power of intercession.

The Sathanas, in his turn, accuses the soul. His accusations are a direct reference to Deguileville's *The pilgrimage of the lyf of the manhode*, which describes the pilgrim's failure to take the right path; as a result, he was defeated by the seven deadly sins. He says that it is not enough to be washed and cleansed by water[11], but it is important to keep oneself "clean and honest" afterwards. However, after the pilgrim "passid the water, and was therynne wasshen and fully clensyd of alle his rather fylthe, as soone as he had knowyng of good and euyl, he cast hym self as a swyn [swine] in ordure and in fylthe (*l'Áme,* p. 7v). He fell into the sin of worldly vanity, indulged himself in gluttony and avarice, wrath and envy; when it was time to work "he slumbered in the bed of Sloth". Though he called himself a good Christian, he "always hath ben to his Lorde fals and vntrewe [untrue]", never kept God's Laws and day by day broke his Commandments. So he does not deserve to be "In Heuene aboue" as he always "hath ben deformynge in hym self the prent [image] and the figure that God hath set in him to his owne resemblaunce and lykenes"(*l'Áme,* p. 8v).

Earthly and Heavenly Advocates

The guardian angel insists that the pilgrim answer "to these artycles of accusement," but if he cannot, he should call an advocate to speak for him in the Court. The pilgrim knows only too well worldly advocates, who would not plead a case "without wages paid byfore in honde," for pleaders in worldly courts have tongues like the "tongue of a balance" that draws him always to a more solvent party that will better reward him. But the advocates of Heaven were ready to plead for the poorest (*l'Áme,* p. 9r). To support this statement, the pilgrim refers to Job's advice of *aliquem sanctorum* [some of the saints]. The scriptural quotation is important for the future procedure of the trial. *Voca ergo, si est qui tibi respondeat! Ad (ali)quem sanctorum converteris?*. ["Call now, if there be any that will answer thee; and to which of the saints wilt thou turn?"] (KJV 1611, Job 5:1). The soul plunges into a piteous lamentation saying that his poor condition was the result of an evil conspiracy against him orchestrated by Satan. He calls on Reason, Charity, Grace, Mercy, and the Virgin Mary to help him. Justice objects saying that, according to the rules of their Court, a person on trial cannot procure a new advocate.

Synderesis vs. Conscience

Eventually, the procedure moves to hearing witnesses. The prosecutor declares, "I ask none other wytnesse with me but he that hath alwey ben next of his counceyl [counsel]: his owne conscyence, that dare nought ne wil nought lyen [lie] in this mater" (*l'Áme,* p. 8v). He calls in *Synderesis*, the worm of conscience[12].

[11]Another reference to *The pilgrimage of the manhode*, in which the pilgrim is first taken by Grace Dieu across a stream into the Church, and a second time struggles to swim in the turbulent Sea of the World until he is rescued by the Ship of Religion. Both episodes are allegorical representations of baptism and cleansing of all sin.

[12]In scholastic philosophy, the inborn moral consciousness that distinguishes between good and evil.

The word 'conscience' is of Hellenistic origin – συνείδηση (Greek). The Latin *conscientia* is an exact translation from Greek. Timothy Potts postulates the original meaning of the word "knowing something (in company) with somebody else" (Potts 1980, p. 2), in other words, "to be privy to somebody's secret". The first mention of the word 'synderesis' is attributed to 415 A.D. and, according to Robert Green, "led to a medieval transformation of the European idea of conscience" (Green 1991a, 195). In the Middle Ages, Plato's tripartite soul (reason, emotion, appetite) was complemented by a fourth element – conscience − which has exerted a far-reaching influence on European and Catholic thought. "At the heart of the theory of synderesis lay endorsement of the light of nature" (ibid., p. 196), so there was formed an association with synonymous terms: "spark," "natural instinct," "the spirit of man," "the Candle of the Lord.".

In 1235, Philip the Chancellor[13] (1160 – 1236) wrote a treatise on conscience in which he established a distinction between *synderesis* and *conscientia*. The kernel of his reasoning is that in judging the actions of man "*conscientia* can be mistaken, whereas *synderesis* cannot" (Potts 1980, p 15). Philip also holds that *conscientia* involves free choice, whereas, *synderesis* is preordained. The main purpose of synderesis was the expression of the light of God in man's soul, which was lighted with Sun-beams from heaven" (Culverwell 1991, p. 25). Bonaventure, the Franciscan theologian of the thirteenth century, resolves this question by classifying conscience as a form of cognition, *logos*; *synderesis* is the affective part of human beings, not a form of knowledge. He regards *synderesis* as that which stimulates us to the good and directs us to the divine laws (Langston 1993, pp. 79-80).

The concept of conscience constantly appears in John Calvin's (1509 – 1564) discussions of theological issues. For Calvin[14], conscience with the ability to "discern between good and evil answers to the judgment of God" (Calvin 1813, p.171). Calvin's interpretation of the concept has clear reverberations with medieval theologists. Conscience is closely connected to law. Though Calvin never treats conscience as a person's inner judge, he admits that "the worm of a guilty conscience torments them [sinners] within, worse than if they were seared with hot iron" (ibid., p. 53). In his view, conscience acts as a witness in the last judgment testifying before God about the moral quality of an individual: "Our conscience does not permit us to sleep in perpetual insensibility, but is an internal witness and monitor of the duties we owe to God" (ibid., p. 329). David Bosco summarizes the nature of conscience:

> Conscience seems not only to present evidence, but it also weighs the evidence. On the basis of its finding it shifts into the role of either prosecuting or defense attorney. When the evidence points to sinful action and/or motivation, the inner prosecutor most vociferously lays its accusations before the Judge (Bosco 1986, pp. 338 -339).

[13]Also known as "Philippus Cancellarius Parisiensis" was a French theologian and Latin lyric poet. He was Chancellor of Notre-Dame de Paris starting in 1217 until his death,

[14]French theologian, pastor and reformer in Geneva.

The source of the Biblical image of synderesis is the prophesy of Isaiah in the Old Testament: "And they shall go forth, and look upon the carcasses of the men that have transgressed against me: for their worm shall not die, neither shall their fire be quenched" (KJV 1611, Isaiah 66:24).

Figure 2. *Sathanas recording Synderesis' testimony*



Source: New York Public Library. Digital collections

The description of Synderesis in Deguileville's *Pilgrimage* is rather repellent. In the miniature, he is presented as a snake with a male head. "He had vpon hym self no flesshe at al, ne no body had he vnder his hede, but only a tayl, whiche semyd the tayle of a worme and was despytously of lengthe & gretnesse." (*l'Âme* 15v) (Fig. 2). He showed his toothless gum and said that he had broken and lost all his teeth biting the pilgrim in order to warn him against sinful and evil conduct. But the soul was so hard and obstinate, had a wicked heart, that despite the sore biting it stuck to its sinfulness. The only justification that the soul could offer was that Synderesis could not be accepted as a witness because he was not made after the image and the likeness of the Sovereign Lord. Synderesis repeated all that the pilgrim had done from his youth and never was purged with penance. All the time Satan sat recording continually the tales told by the worm acting as a court's tabellion [clerk], or notary. Robert Green considers that the Biblical proverb "the spirit of man is the candle of the Lord, searching the innermost parts of the belly[15]" (KJV, Proverbs 20:27) helped to carry on into the English Renaissance the medieval idea of Synderesis (Green 1991b, p. 617), which God planted in the heart of man.

Justice against Mercy

The next party to speak was Dame Misericord, who pronounced her aim to "modify and amend the rigor of righteousness" (*l'Âme* 23r). She mentions that the "Blessid Lord Ihesu Crist: sometimes remitted his rigor. "No one should be shut out from the Great Grace which our Lord Ihesu did to sinful men" (*l'Âme* 23v). She reminds that the Virgin Mary was for sinners "special advocate" and got the power to do "in chaungyng his rygour to pyte and swetnesse" and take sinners to "Lordys Grace." She asks the Judge not to sentence the pilgrim to endless pain.

Justice objects saying that "Ihesu Cryst neuer ne suffred deth in mayntenaunce of synners," (*l'Âme,* 24r), but only for those who give up their sinful ways willfully. They discuss the role of laws in society and for what purpose they were first

[15]Belly in the Old Testament meant 'soul'.

devised. Justice says that the laws were written for chastising "misdoers and brekers of Goddes Lawe," in order to fill their hearts with fear of possible punishment and compel them to "kepe Goddes Lawe". For such folk, "tribulacion & anguysshe only maketh such men vnderstand that al is nouht leeful [lawful] that lusteth [pleases]" (*l'Âme,* 25r). Death penalty and "the iugement of eternal peyn" was made for all those who rebel against God's will (*l'Âme,* 25 v). A core tension in this discussion is between giving each person his due (justice) and relenting punishment undeservingly (mercy), which looks like failing to show fairness. In the following chapters, the conflict will go on.

The balance as the symbol of justice

An iconic emblem associated with Justice is the scales of justice, the weighing of evidence and arguments in favor of and against the defendant before rendering a final decision. The balance as a material representation of justice signifying the principle of impartiality and equity is present significantly in the narrative. Michael orders the balance to be brought and suggests that the pilgrim put his merits and good deeds on one scale-dish and his accuser on the other to weigh pros and cons (Fig. 3). The devil lays the list of the pilgrim's sins which he has written down on one pan; the pilgrim has only his staff and bag to be put on the other. It becomes evident that the bill of sins is much heavier than the pilgrim's few virtues.

Mercy asks Michael to delay his sentence, while she goes up to heaven to obtain a charter of pardon. She returns with the charter. Justice says that if this charter benefits the pilgrim, she cannot see what purpose she and her balance serve. She expresses traditional thinking that mercy nullifies the law. The chest with the charter of pardon is put in the scale with the pilgrim's bag and staff, and it immediately outweighs the pilgrim's sins. The pilgrim is sentenced to expiate his sins in purgatory.

Figure 3. *Justice is Weighing Virtues and Sins with Reason and Truth, the Pilgrim and Sathanas are standing on either Side Watching*



Source: New York Public Library. Digital collections

The question arises what caused this change of heart. Eugen Schoenfeld suggests a plausible explanation and gives us an important clue to understanding a turn in the plot: "Justice, the value dominant in the Old Testament in general, is absent from the New Testament. The ideal of justice has been replaced in the New Testament by love (agape)" (Schoenfeld 1989, p. 236). According to Frederick Whelan, the justice of Christians is an act of God's grace:

> Such grace is a free or unmerited gift; it is not deserved, nor is it in any sense something that is "due" to the believer. ... Strict justice would call for their condemnation. God nevertheless, by His grace justifies some of them declaring them to be just, acquitting them regardless of their inadequate works. ... God thus reveals Himself a merciful judge, one who deviates from rigid justice in favor of the defendant (Whelan 1982, p. 449).

Equity vs. Mercy

Full credit in developing the concept of equity[16] or *epikeia* must go to the late medieval theologian Jean Gerson[17] (1363-1429). The term *epikeia* was frequently used by him in his discussions of conciliarism.[18] Gerson's concept of equity is based on premises that no general rule can be applied to every individual case: "It is not enough to understand what is true and right. ... one must understand particular circumstances which are changeable and which come under neither art nor doctrine" (Gerson 1998, p. 263). Gerson derived his idea of equity from Aristotle, who laid down the foundations for the concept in his *Nicomachean Ethics* and *Rhetorics,* where he states that what is equitable is better than what is simply just.

> And the essence of what is equitable is that it is an amendment of the law, in those points where it fails through the generality of its language. The law does not hold good for all. ... the defect lies not in the law, nor in the lawgiver, but in the nature of the subject-matter, in the very conditions of human action (Aristotle 1906, p. 175).

A more comprehensive understanding of equity is found in Aristotle's *Rhetoric*, who wrote: "Equity is the justice which supplements the written law. ... equity consists in *merciful interpretation of one's action*" (Aristotle 1886, p. 96 - 97). Aristotle insists that the prerequisites to ensure the triumph of equity consist in making allowance for human "infirmities" [weaknesses], in "regarding the whole rather than the part, ... in remembering the good rather than evil" (ibid., p. 98). Gerson's ideal was justice tempered by love, an ideal fully reflected in the final chapters of *The Pilgrimage of the Soul.* Moderate justice was considered by Gerson as a prime political virtue of the Church, monarchs, and government because *epikeia* means the quality of being fair or equal to all subjects and provides a more nuanced approach to the culprit.

At the beginning of the twelfth century, the Church of Rome advanced a doctrine equating *epikeia* with mercy. The conception found the weakness of men a good cause for softening the harshness of the canonical law. It emphasized the need to save the weak and the necessitous (Cahill 1961, p.114). In this respect, Gerson's understanding of true mercy is of primary importance: "Severitas vel austeritas vel rigor judicii, spectat ad hoc vitium per excessum. Stulta misericordia vel nimius

[16]The source is the Latin adjective *aequus* (level, even, just). The word entered English from French *equité* (modern *egalité*) in the 14th century, as ' equyte ' around 1315.

[17]A French scholar, educator, reformer, and poet, Chancellor of the University of Paris, one of the first defenders of Joan of Arc, adviser to kings. See McGuire (1998).

[18]In his time, it concerned the Roman Catholic church. Gerson supported a theory that a general council of the church has greater authority than the Pope and may, if necessary, depose him.

dulcor, spectat ad hoc vitium per remissum" [Severity or austerity or rigor of judgment, pertains to this vice through excess (too great rigidity). Foolish mercy or excessive sweetness, pertains to this vice through remission i.e. lessening in the severity of punishment] (Gerson 1961, p.152). Medieval theorists developing Gerson's ideas, contrasted Mercy, "a virtue of the mind, which with judgement, enclineth from punishment, or revenge, to leniency," with Misericordia, or "vain pity, a sentimentality that is ultimately cruel and unjust" (Phillips 1970, p. 114). Later, Thomas More criticized the attempt to unite mercy with equity since mercy is not capable of performing equity's critical role in the legal process (Majeske 2006, p. 63). Equity rejects blind commiseration. It involves judgment based on the defendant's merits and individual circumstances, whereas mercy may pronounce judgment based on no justice at all, say nothing about capricious decisions.

The approach of making allowances for human weakness is vividly demonstrated by Deguileville. When the Judge advised the defendant to answer the accusations, the soul went into lengthy explanations of his sinful life. The Soul begged the Judge, to "vouchesauf to haue reward vnto my symplenesse" as he had never done anything in contempt of Creator. All his misdeeds were due to natural frailty and human inclination to sin and corruption. The pilgrim also accused Satan of deceiving him by "clothing the evil in semblance of good, and sometime covered the good under color of evil" (*l'Âme,* p. 17v). And finally he blamed "the wicked world beneath for it has showed me his riches & his vanities, his honors and wretchedness. This false world behyghte [promised] us muche thyng that he would never give" (*l'Âme,* p. 18r).

Compositional Structure of Book 1

Book I is constructed primarily for the purpose of giving the reader an idea of the Last Judgment. What is illuminating about the composition of the *Pilgrimage* is that it helps to expose various interpenetrations of Medieval justice (conservative and more liberal) and uncover deep political, social, and ideological meanings. Deguileville arranged episodes in Book I so that they developed consistently the idea of justice in the religious-historical context. The first thirty-three chapters of the book illustrate a rigorous execution of the letter of the law without leniency or mercy in full conformity with the idea of justice. The sudden shift in the attitude to Law in chapter 15 marks a turn to humanistic values of tolerance, equality and love. The pilgrim in his lamentation begs the Lord to be his advocate and calls him "the Souerayne Iuge of Equyte" (*l'Âme*, p. 11r). Though the new concept of equity is mentioned only once, it is indicative of a very important development in European and world jurisprudence.

The underlying reason for this change lies in socio-historical conditions. Early Christians were "the powerless class", who wished to get rid of injustices; they set up their own hierarchy of values. Justice, which featured importantly in the Old Testament and was placed ahead of the values of mercy and humaneness, disappeared altogether in the New Testament. It focused attention on other religious values: "Instead of justice, the ideal of love has been substituted. ... the New Testament's ideal

of love can be used in the quest for social justice" (Schoenfeld 1989, p. 243). It is righteousness that leads to salvation and redemption, and not justice.

The last six chapters of the *Pilgrimage* are illustrations of mercy and absolution of sins in conformity with the New Testament. As a result, Deguileville achieves a very effective arrangement of concepts of Justice and Mercy within an overarching concept of Law.

The Renaissance Concept of Justice

The concept of justice was fundamental in the Tudor worldview; it became an overwhelming concept for law and fairness. The Henrician age saw major changes in the legal doctrine and practices. Two important innovations were the rise of Chancery courts[19] and new educational institutions the Inns of Courts[20], which promoted the assimilation of the new principles and remedies to preclude unfair outcomes. A tripartite model of justice was suggested:

> Justice, Equity, and Mercy or Clemency – where Justice is the absolute, measure-for-measure equation of exact reward and punishment according to the letter of the law, where Equity is the taking into account of the individual circumstances in each case, and where Mercy or Clemency is the human and divine impulse to forgive (Phillips 1970, p.105).

As we can infer from this model, equity and mercy make up the conceptual core of the Renaissance approach to justice. Kieran Dolin thinks that "the medieval jurisdiction was fortified in the Renaissance period by the rediscovery of Aristotle's writings on equity" (Dolin 2004, p. 82). Aristotle's ideas were taken up by Aquinas. According to him, in some cases "judgment should be delivered, not according to the letter of the law, but according to equity," which takes into account "individual happenings" (Aquinas 1947, p. 1450). It becomes clear why the pilgrim tried to present his living conditions as extenuating circumstances.

Thomas More was upholding 'the golden rule of equity' to all subjects. Drawing upon a comprehensive understanding of equity, he presented equity as the core element of justice, and treated equity not only as a jurisprudential concept, but as part of the ideal political order (Majeske 2006, p. 1). At the beginning, equity was a prerogative of the Pope and princes as the Crown's pardon power; later it led to the establishment of a court of equity (Chancery court in England). More's opinion was that equity jurisdiction should be returned back to the Common Law courts, too.

Among the legal personalities, theologians and political theorists of the Renaissance, special prominence should be given to Christopher St. German (1460-1540), a barrister and main proponent of equity, who derived much from Gerson's interpretation of this notion in developing his idea in the contemporary

[19]Chancery courts are a type of court that originally developed in England as a court of "equity," focused on achieving fairness and avoid possible harshness (or "inequity") of the common law. It had the right to overrule the decisions of the common-law courts.

[20]Professional associations for barristers and solicitors played a crucial role in legal education and training.

judicial system. His book *Doctor and Student* became an important manual for English law students promulgating the notion. John Guy emphasizes that "St. German held that equity is not outside the law, but resides implicitly in, and should be observed in, every human law" (Guy 1986, p.181). In his view, it is a conceptual tool that is instrumental in achieving justice. As Mark Walters put it, "St German was the legal scholar whose *Doctor and Student* gave modern English equity its intellectual foundations" (Walters 2003, p. 337). St. German reinvigorated the discussion of the medieval notions of Sinderesis and conscience and brought the concepts of equity and conscience together: Acting equitably meant acting in accordance with conscience.

In gauging St. German's approach, Franklin Van Baumer describes "St. German's theory as distinctly medieval and in no sense reflecting the spirit of the New Monarchy which the Tudors had been erecting" (Baumer 1937, p. 639). According to St. German, Law eternal was created by Almighty God and "made known to his creatures reasonable" (mankind) (St. German 1751, p.4). "And this is the law, where it is said, *per me reges regnant* and *legume conditores justa discernunt*; [by me kings reign, and makers of law discern the truth] (ibid., p.5). St. German was conservative in the formulation of the relationship of a ruler to the law of a country. He revivified the medieval idea enunciated in the 13th century by Henry de Bracton (1210 – c. 1268), a cleric and jurist, that "the king is under God and the law, for it is the law which makes the king" (Bracton 1915, p. 33). Bracton's ideas about the nature of kingship and government became very popular during the Reformation, especially his conception of the king's relationship to law. He states that the monarch's moral duty lies in the strict obedience to the country's laws and customs:

> To rule well a king requires two things, arms and laws, that by them both times of war and of peace may rightly be ordered. For each stands in need of the other, that the achievement of arms be conserved [by the laws], the laws themselves preserved by the support of arms. If arms fail against hostile and unsubdued enemies, then will the realm be without defense; if laws fail, justice will be extirpated; nor will there be any man to render just judgment (Bracton 1915, p. 19).

Contemporary iconography provides evidence of Bracton's influence on the mindset of the elite. Before that, in pictorial art, the monarch used to be depicted with the sword and the Bible as his main regalia; now, the Scriptures gave place to the book of laws. As a special pictorial-literary genre, emblem books,[21] were the first to respond to the novel insignia.

[21]Emblem books are collections of allegorical illustrations of various concepts. Each emblem consists of three elements: an image, a motto, and an explanatory text either in verse or in prose.

Figure 4. *Illustration XXIX, book 3. Legibus et Armis (laws and weapons)*



Source: George Wither's Book of Emblems 3, p. 163.

In the emblem (Fig 4), the king is standing on the globe with the sword in one hand and a laws book in the other. The motto reads, "When Law, and Armes, together meet/ The World descends, to kiss their feet" (Wither 1635, p. 163). The poem explains the necessity of a strong army and navy, but also a due "regard to Courts for pleading and respect to pious Laws. ... Nor, by the tenure of the Sword, alone,/ Delighteth he to hold his awfull throne,/ But by wholesome Lawes and rightful Government".(Wither 1635, p.163), failing which, he may become a tyrant.

In the Elizabethan age, the role of justice hit an all-time high. It is illuminating to read the lines written by Elizabeth I in 1555 when the Princess was arrested on the orders of her half-sister Queen Mary[22] The merit of the poem is not literary but philosophical. It lets us get a glimpse of her personal perception of injustice/justice:

> OH, Fortune! how thy restlesse wavering state
> Hath fraught with cares my troubled witt !...
> Thou causedest the guiltie to be losed [loosed]
> From bandes, wherein are innocents inclosed:
> Causing the guiltles to be straite reserved,
> And freeing those that death hath well deserved.
> But by her envie can be nothing wroughte,
> So God send to my foes all they have thoughte.
> A.D. MDLV. ELIZABETHS, PRISONNER
> (Percy1840, p. 120)

In the Tudor formula of cosmology, justice became the central driver crystallizing Elizabethan spirit, and is visually presented in Case's *Sphaera civitatis,* where each heavenly sphere is assigned an astronomical symbol and a particular moral virtue.[23] According to the pre-Copernicus world view, the universe was geocentric and consisted of three worlds: Everything beneath the sphere of the Moon (the sublunary world

[22]Elizabeth was taken to the Tower of London on suspicion that she had taken part in the plot to dethrone the Catholic Queen. She might have been tried for treason; but instead, was taken to Woodstock where she was to remain under house arrest. It is believed the lines were written on a shutter of a window).

[23]The Moon is Prosperity, Mercury is Eloquence, Venus can be the royal Mercy. Piety (religion) is the Sun. Fortitude is Mars, Prudence belongs to Jove, and Majesty is Saturn. The eighth sphere is the Starry Chamber (heaven), defended by noble heroes and pious councilors. The outermost circle, which is above the Starry Chamber, declares that the queen is *regina and defensatrix* of her realm.

subject to decay); ″eternal lesser heavens″ containing planets, fixed stars, the Sun, and a special sphere of *primum mobile* (justice) which causes all the other spheres to rotate; and finally, the immutable *coelum empyraeum* (the outermost part of the cosmos, not a sphere, but fiery heaven that gives light to the other two worlds, the dwelling of God) (Tillyard 1960, pp. 38 - 39).

The central idea of the Elizabethan age was the idea of cosmic and earthly order. Though the Elizabethan legal system was ill-reputed for its ferocity and hardness, (capital punishment and torture were prevalent in early Modern England), Elizabeth's public image as a just, righteous, and merciful monarch was carefully constructed by artists and poets. In this respect, the figures of John Davies[24] and Edmund Spenser come to the fore. Davies wrote a series of acrostic[25] hymns devoted to Elizabeth's many virtues (published in 1599). Among multiple allegorical images of Elizabeth, Davies gave preference to Astraea, the goddess of justice. Hymn XXIII titled *Of her Justice* glorifies Elizabeth's allegiance to law and clemency.

> By Love she rules more then by Law,
> Euen her great mercy breedeth awe;
> This is her sword and scepter...
> Reward doth sit in her right-hand,
> In her left hand (wherein should be
> Nought but the sword) sits Clemency
> And conquers Vice with pardon.
> (Davies 1876, p. 151).

The *Bishops' Bible* produced under the authority of the Church of England in 1568 has the title page illustrative of the attitude to justice. It portrays queen Elizabeth accompanied by female personifications of Justice, Mercy, Fortitude and Prudence. Justice and Mercy hold the crown over the enthroned queen's head (Fig. 5).

[24]Sir John Davies can be viewed not only as a poet, but one of the most significant legal figures in English History. He was the first to introduce the English common law in Ireland. Davies set the criterion for common law that was not only implemented in Ireland but in other countries as well.
[25]The very first letters in every line, if read vertically, form some word; in Daivies' hymns, it is the royal name ELISABETHA REGINA.

Figure 5. *The Title Page of the Bishops' Bible of 1568*



Source: https://commons.wikimedia.org/wiki/File:Bishops_Bible_Elizabeth_I_1569_(cropped).jpg

Peele's Arraignment of Paris

George Peele's contributions to the English Renaissance drama are marked by a keen exploration of diverse themes. *The arraignment of Paris* is a combination of Greek mythology and 16th century legal discourse. Peele's play written in 1584 and performed before Elizabeth I, is based on the well-known story of the judgment of Paris between the contending goddesses for the golden apple. The novel element introduced into the play is the tribunal of Olympic major male gods headed by Jupiter.[26] So there's a judicial background spreading across the last part of the play. I think it is this part that contains the main ideas of the play. The legal activity begins in Act III (scene VI), and legal language dominates the rest of the play.

Paris is accused of having adjudged the apple to Venus, in all probability for a bribe. He is detained on charge of partiality by Mercury accompanied by two Vulcan's Cyclopes, forefathers of modern police. The poet explains that "At Juno's suit, Pallas assisting her, / Sith [since] both did join in suit to Jupiter,/ Action is entered in the court of heaven" (Peele 1910, line 828). This is a typical modern 'class action lawsuit'. Mercury has a warrant to "apprehend and find the man, /That gave from them that self-fame ball of gold.... [He must appear] Before the gods to answer his offence" (ibid., lines 830-832). Venus promises that Paris will not be arrested because she will be his bail "my selfe thy baile wilbe" (ibid., line 850). Nevertheless, Mercury demands a pledge.[27] Venus offers her cestus (marriage belt)[28] or her fan. Mercury accepts her fan and says that her word is as good as any pledge.

In this trial, Juno and Pallas were the appellants, and nine male gods were the jury. Jupiter was the chief judge. The question of advocacy is also discussed by Peele. Venus asks that Paris be permitted to employ a professional attorney or advocate to speak on his behalf at the trial. Pallas objects: "That may not be, the lawes of heauen denie,/ A man to pleade or answere by atturney" (ibid., line 924). Apollo explains, "that fauour is denyed him flatlie. He is a man and therefore by our lawes,/ Him selfe, without his aid, must plead his cause" (ibid., line 928). Juno is

[26]In Peele's play all gods go under Latin names.
[27]A physical object that would be forfeited if Paris failed to show up for the trial.
[28]Venus' marriage belt could make any male fall in lust with any female who wore it. During the Trojan War, Juno borrowed it to seduce her husband, Jupiter.

impatient and asks Mercury "to indict Paris", i.e., read the charges, which Mercury does proclaiming, "Paris, king Priams sonne, thou art araygned of parciallitie./ Of sentence partiall and unjust, for that without indifferencie,/ to Lady Venus here, thou gavest the pryze" (ibid., lines 937-940).

Paris, like the soul in the previous trial, points out that to err is human, "if then I erde, /I did no more then to a man belong'd" (ibid., lines 961-962). Paris pleads innocent, "arraign'de of parciallitie, he replyes unguiltie of the fact" (ibid., lines 977-978). Trying to justify himself, Paris points out that each of the goddesses has offered him bribes to get possession of the golden ball. He was tempted "With wealth, with beautie and with chiualrie [prowess in battle] (ibid., lines 1021-1022). He ends his speech reminding the judges of his good intensions, "And craue the torment [ask for punishment] of my guiltles soule/ To be measured by my faultles thought" (ibid., lines 1035-1036), i.e., his intensions were honest. Had the prize been intended for statecraft, Juno might have been awarded the golden ball, had the prize been dedicated to wisdom, Pallas would have got it, but the ball was meant to the fairest, so Venus received it for her peerless beauty. Then he adds that if Pallas or Juno are dissatisfied with the sentence, they can sue to reverse it by appeal. Jupiter appreciates Paris' line of defense and calls on Juno to act justly and impartially and agree that "The man must quited [acquitted] be by heavens lawes" (ibid., line 1049). Juno is displeased, so Apollo admonishes her not "in anie sorte from justice to decline" (ibid., line 1053). Juno and Pallas insist on appeal; they want the acquittal to be overturned. Juno appeals to Apollo, Saturn, Mars, and Pluto to support her, but they refuse. Jupiter pronounces the verdict:

> Sheepeherd, thou hast ben heard with equitie and law,
> And for thy stars do thee to other calling drawe.
> We here dismiss thee hence, by order of our senate
> Goe take thy way to Troie and there abide thy fate.
> (Peele 1910, lines 1075-1078).

Though Paris is acquitted, the price is too high; the gods know that Paris is fated to die during the Trojan War. There still remains the question of who deserves the apple. The final judgment is to be arrived at. To keep peace, Apollo suggests referring "this sentence where it doth belonge." He explains the concept of jurisdiction: "The holly Lawe of heauen denies/ One god to medle in an others powre" (ibid., line 1146). He recommends changing the judge. Each god or goddess has his/her own domain and tries not to interfere in the matters of others' domains.

> Yf *Jove* comptroll not *Plutoes* hell with charmes,
> Yf *Mars* haue sovraigne powre to manage armes:
> Yf *Bacchus* beare no rule in *Neptune* sea
> Nor *Vulcans* fire do the *Saturnes* sythe obay.
> Supprefle not then, 'gainft: lawe and equitie,
> Dianas power in her owne territorie
> (Peele 1910, lines 1150-1155)

On the ground that the act was committed in the vicinity of "Dianas bowre," near her dwelling, that is, in her jurisdiction, the final judgment should pass the responsibility to Diana. The end is well known: Diana awards the apple to a nymph Zabeta, who is called now Eliza and governs Elyzium[29] (England). "She giveth laws of justice and of peace" to her people. The play ends with the archetypal pattern of flattery that Elizabeth excels all Olympian goddesses in beauty, wisdom, state and war craft, which became a cultural universal of the Elizabethan reign.

Peele's *Arraignment* is characterized by conceptual density of judicial proceedings. The notions of arraignment and arrest, bail and pledge, acquittal and appeal, sentence and jurisdiction form a historical legal paradigm which gathers accumulated legal experiences and projects them into a budding genre of trial narratives. The dramatic structure of the play forms a frame in which Peele presents his understanding of justice. Though felt as extraneous material, the trial scene blends mythology with realism and adds an effect of surprise, vividness, and humor to the melancholy of the previous two parts. It is one of the first contributions which Peele made to the sub-genre of trials in the Elizabethan drama.

Edmund Spenser's Allegorical Trials

Spenser in his *Faerie Queene* (1596) devotes Book V entirely to justice, a cardinal virtue in the Tudor worldview. He defines justice as a meritoriousness "that both to good and bad he dealeth right" (Spenser 1909, p.161). Spenser's episodes of trials and allegorical characters have been selected and arranged so as to present his own idea of justice reflecting his personal distrust of the trials by jury and his antipathy to the common law of England, which in his opinion, had been imposed by William the Conqueror and was alien to the English ethos (Parkin-Speer 1992, p. 496). There are two major trials in *the Faerie Queen*: the trial of Duessa in Book V (a replica, an allegorical parallel to the historical trial and execution of Mary Queen of Scots, in 1586.) and the Mutabilitie trial in the last, unfinished Book, a purely illusory legal controversy between constancy and versatility.

The two trials, no matter how far apart they are thematically and semantically, have much in common concerning their juristic content. For more than a century, the questions of succession and the Tudors' doubtful legitimacy seemed to be the most important national problem. Spenser takes full advantage of the motifs and makes them the focal points of the both trials presenting them from different perspectives. Duessa and Mutability feel robbed of their lawful rights to rule the country, the world, or the universe. They choose different venues to put the wrong done right. Duessa takes the path of rebellion, plots, conspiracy and treason, which brings her to a tragic end. Mutability after an abortive attempt to dethrone Cynthia, takes legal recourse.

Spenser was a devotee of the idea of royal justice and believed "that law emanates directly from the sovereign's will and not from the community laws and customs" (Parkin-Speer 1992, p. 505). Following Renaissance political theorists, Spenser

[29]Elysium, originally the place in Hades where the blessed souls live in perfect happiness, Peele means a place of ideal happiness generally.

considered that the ultimate goal of justice is peace and good order. As Frances Yates summarizes, "Justice is the key virtue, the most sacred of all, for it reflects the 'imperiall might' of God which he 'lends' to princes, giving them a divine right, like his own" (Yates 1977, p.71). The idea of divine nature of justice is enunciated by Spenser, "Soverayne Goddesse, that doest highest sit/ In seate of judgement in th' Almighties stead" (Spenser 1910, p. 151).

Despite the fact that in legal practice of his time the jury was the only form of criminal trial, in his epic the trials are unmediated by this institution. Impartiality had top priority in litigation. Neither Mercilla nor goddess Nature exercise their right for inquisitional procedures: They do not interrogate witnesses or the accused, but listen and assure adversarial proceedings. In Duessa's trial, witnesses for the prosecution and for the defense are organized symmetrically. In Mutability's trial, clear superiority is on the side of the plaintiff, but its excessiveness turns out to be counterproductive.

Duessa's Trial

Mercilla, as a personification of Elizabeth is a wielder of imperial justice. She dispenses justice "with indifferent grace to all classes of society" (Duntheas 1979, p. 212). The site of the trial strikes the reader with awe. Mercilla sits on a throne of gold adorned with priceless gems "in soverayne Majestie,/ Holding a Scepter in her royall hand/ The sacred pledge of peace and clemencie" (Spenser 1910, p. 248). Over her throne a cloth is spread like a cloud upheld by little Angels, who sing hymns to God. At her feet her sword with a rusted blade has been laid to rest, but she can draw it from its scabbard any time her land is endangered. A huge great Lyon lies bound with a strong iron chain "that might appall/ An hardie courage" (ibid., p. 248). Dunseath suggests that the moral meaning of the lion beneath Mercilla's throne is the suppression of wrath.

> In this way mercy is reconciled with judicial severity. Such is the case with Mercilla's judgment of Duessa. The judge cannot pass judgment always in favor of the criminal because his first consideration must always be the common good (Dunseath 1968, p. 216).

Mercilla's throne is surrounded by Virgins dressed in white and by three allegorical figures, three daughters of Zeus: Εὐνομία (Eunomia, a minor but important goddess of law and legislation; her name can be translated as "good order"), Ἐπιείκεια (Epieikia, in Greco-Roman ethics, was prized as the virtue of a magnanimous ruler who softens rigid laws) and Εἰρήνη (Eirene, the Greek goddess of Peace). "The three handmaids of Mercilla form a hierarchy of justice, a hierarchy partially established by Aristotle and completed by Renaissance jurists" (Dunseath 1968, p. 210). Their presence is indicative of the ever-lasting continuity of the tripartite judicial model.

Mercilla invites two knights from Faerie Land Arthur and Artegall[30], who pay homage to her, to view the proceedings of "the tryall of a great and weightic case"

[30]The Champion of true Justice, "in justice was upbrought / Even from the cradle of his infancie" (Spenser 1910, p. 152). He was taught justice personally by Astraea. who taught Artegall to "dispence" with "rigor" in instances where adhering to the letter of the law would result in injustice.

(Spenser 1910, p. 249). The prisoner is a "Ladie of great countenance and place" but her rare beauty is obscured with "condition vile and base". Her name, Duessa, signals duplicity and suggests a duality, meaning 'falseness' under the guise of 'Faith'. She is a figure of evil who is capable of spreading discord and chaos. Dunseath considers that the trial "strictly follows normal legal procedure: arraignment, presenting of charges, prosecution, defense, and the verdict" (Dunseath 1979, p. 213). The prosecutor is Zele (the name may be associated with 'zeal of justice'), who accused the defendant "of many haynous crymes" among which the most serious was "wild treasons, which she against Mercilla oft did frame...to depryve Mercilla of her crowne" (Spenser 1910, p. 250). Her "trayterous desynes" and accomplices were discovered and brought to court to preclude any commiseration.

Zele introduces a number of witnesses: "a sage old Syre (The Kingdomes Care) with a white silver hed", then came Authority, then the Law of Nations, next Religion is given a seat of primary authority, then the Peoples cry and Commons presented public suit, "and lastly Justice charged her with breach of laws" (Spenser 1910, p. 251). To stress the contentious character of the trial, Spenser mentions the defendant's witnesses, who come to emphasize the poignancy of the defendant: "Pittie with full tender hart/ And with her joyn'd Regard of womanhead". Then came Danger, threatening with discontent of foreign powers. After that Nobility of birth that emphasized Duessa's social eminence and tried to arouse ruth to her tragic misfortunes: "And lastly Griefe did plead, and many teares forth poured" (ibid., p. 251). The discussion pivots around the question whether to send Duessa to the scaffold. Zele feels that the pendulum of public sympathy has swung in favor of the prisoner and presents many more fearful examples: all her plots and treasons, murder, sedition, adultery, and impiety. The most dramatic witness is Ate, the goddess of evil, who incites men to wickedness and strife, the spirit Duessa had earlier brought from hell to destruct justice and order, who testifies to Duessa's involvement in various treason plots.

The theme of mercy is raised once again by Spenser. In the beginning of Canto X Spenser asks whether "Mercie, be of Justice part" (Spenser 1910, p. 253). Many researchers consider that Spenser's trial reflects Queen Elizabeth's reluctance to have Mary Stuart executed, "As it is greater prayse to save then spill. And better to reforme then to cut off the ill" (ibid., p. 253).

The adduced evidence is so convincing that Duessa is found guilty by all of those present. Mercilla has no choice but to condemn Duessa. We might give a subtle interpretation of the trial: the imperial judge cannot mitigate the punishment, and extend clemency as it may be a calamitous error. Mercilla's mercy is manifested by a few tears she sheds: "Few perling drops from her faire lampes of light" (ibid., p. 252). Parkin-Speer makes it clear that "Spenser wishes to down-play the judgment against Duessa and her execution with a tactfully oblique narration. The execution is narrated abstractly and generalized to the point of vagueness" (Parkin-Speer 1992, p. 499).

> And yet even then ruing her wilfull fall
> With more then needfull naturall remorse,
> And yeelding the last honour to her wretched corse.
> (Spenser 1910, p. 254)

Concluding the analysis of Spenser's trial, it is worth noting that he adheres strictly to the tripartite model of justice. 1) Rigorous justice, which is "perform'd with dreadlesse might/ For powre is the right hand of Justice truely hight" (Spenser 1910, p. 182); 2) Equity is that part of justice which prevents judges from "wreaking one's wrath" on the accused (ibid., 218). 3) Mercy, a virtue ascribed to Mercilla-Elizabeth, adored by foreign nations and "thine owne people do thy mercy prayse much more" (ibid., p. 253).

Mutability's Trial

The other important heavenly legal trial is that of Mutabilitie in book VII of The *Faerie Queene*, published in 1609. The settings of the Mutabilitie trial are in the heavens and on Arlo hill[31]. Angus Fletcher sees the background of the unfinished poem as a period of rapid intellectual change (Fletcher 1971, p. 7) that involved, a new philosophy, a novel worldview, a new political order and ideology, and a shift to new themes and imagery. The last book is devoted exclusively to Change (Mutability). At the turn of the century, when it became clear that Elizabeth's reign was coming to its very end, there arose the question of changes in all spheres of life.

Mutability, the daughter of conquered Titans, acquired the powers of a goddess over men and now "cast in her ambitious thought,/ T' attempt the empire of the heavens height,/ And Jove himself to shoulder from his right" (Spenser 1910, p. 428). Mutability's claim to the heavenly throne is grounded on the legal principle of primogeniture, *i.e.,* the right of the elder legitimate child to succeed his/her parent as the ruler of a state. She feels entitled to the throne by her right of blood: "I greater am in bloud (whereon I build)/ Then all the Gods, though wrongfully from heaven exil'd" (ibid., p. 432). She accuses Jove of usurpation of power that "he injuriously hast held The Heavens rule from Titans sonnes by might" (ibid., p. 432), which means by right of conquest. All the gods were astounded at such impudence, but when Jupiter "looked on her lovely face,/ In which fair beams of beauty did appear/ That could the greatest wrath soon turn to grace" he agreed to her demand to take the case to the higher court of appeal "for trial of their titles and best rights"(ibid., 462) on Arlo-hill. It is not a question of Jove's magnanimity or his susceptibility to Mutability's beauty, though, but because according to the common law rule, one cannot be a judge, if one is a party involved in the case (Parkin-Speer 1992, p. 501). They send "Appellation sealed" to the Goddess Nature.

The time and place were appointed for the great trial "where all, both heavenly Powers and earthly wights, [inhabitants]/ Before great Natures presence should appeare" (Spenser 1910, p. 434). Spenser describes in minute detail the setting which was turned overnight from a deserted place with gloomy atmosphere to an admirable corner full of "dainty trees" forming a throne for the goddess and bowing "their bloosming heads full lowe/ For homage unto her." Under her feet were thousands of

[31]On Arlo Hill, Diana used to bathe with her nymphs. Faunus wanted to see Diana naked and watched her from a hiding place. When he was found there, the nymphs dressed him in a deer skin and set their hounds on him. Diana and her maidens left Arlo Hill forever. The area was abandoned to wolves and thieves.

bright and fragrant flowers "richer than any tapestry" (ibid., p.442). Nature's court is the highest; its judgment is final, there can be no appeals after that.

There came Dame Nature attired in a garment "so bright and of wondrous sheene." She was far greater and more tall of stature /Than any of the Gods or Powers on high" with her face covered with a veil because her face was either ugly and frightening "a leonine face expressing ruthless ferocity" or "so beauteous/ And round about such beams of splendor threw, / That it the Sun a thousand times did pass,/ Ne could be seen but like an image in a glass" (ibid., p.469). Mutability makes her "plaintiff Plea" to the goddess Nature. She flatters the goddess saying that she "Right to all dost deale indifferently, / Damning all Wrong and tortious Injurie,/ Which any of thy creatures do to other" (ibid., p. 443) (Fig. 6). Mutability accuses Jove and other gods of seizing "the whole worlds raign, [reign]/ Of which the greatest part is due to me,/ And heaven it selfe by heritage in Fee" (ibid., 443). Spenser uses an old law term (archaic today) "in Fee" meaning 'in complete subjection': Mutability claims the world power by reason of her "due descent" from her great grandsire Titan.

Figure 6. *The Goddess Nature and Mutability on Arlo Hill*



Source: Spenser's Faerie queene. Ed. by Thomas J. Wise, pictured by Walter Crane, pp. 1532-1533.

The plaintiff Mutability acts also as her own lawyer. To substantiate her claim, she mentions all the things that constantly change: men and beasts, fish and fowls, earth and water, air and fire. "So in them all reigns Mutability." Mutability calls as witnesses all the seasons and months of the year, Day and Night, the hours of the day, Life and Death to come and give evidence concerning their changeability and make an oath of loyalty to her as their sovereign. She pleads Nature to judge "Whether to me they are not subject all" (ibid., p. 474). She finishes her speech with the words:

> Lo! mighty mother, now be judge, and say
> Whether in all thy creatures more or lesse
> Change doth not raign and bear the greatest sway [power]; ...
> So nothing heere long standeth in one stay:
> Wherefore this lower world who can deny
> But to be subject still to Mutability? (Spenser 1910, p. 451)

Spenser shows convincingly that each litigant is given a fair chance to adjudicate his/her rights. Jove retorts Mutability's arguments saying the all changes are orchestrated by him and other gods. "Is not that namely wee /Which poure that vertue from our heavenly cell/ That moves them all, and makes them changed be? So them we gods do rule, and in them also thee" (ibid., p. 451).

At length, Nature "the silence brake, and gave her doom in speeches few." She begins her verdict with a well-known formula, "I well consider all that ye have said,/ And find that all things stedfastnesse do hate/ ...[but] They are not changed from their first estate" (ibid., p. 453). She stresses their enduring continuity which let things remain fundamentally unchanged: They never change their essence. Nature concludes: "Then over them Change doth not rule and reign/ But they reign over Change, and do their states maintain" (ibid., p. 453), that is the stability of substance is maintained in spite of casual occurrences. The goddess advises Mutability, "Cease therefore, daughter, further to aspire." Finally, "Titaness was put down [sent to the sublunary world] and whift [made silent]./ And Jove confrm'd in his imperial See,/ Then was that whole assembly quite dismist/ And Natur's selfe did vanish, whither no man wist" (ibid., 453).

Conclusion

After close readings of four trial scenes, several conclusions can be drawn about the influence of law on the choice and elaboration of themes in medieval and early modern literature, on the one hand, and on the social perception of justice, on the other. The rise of trial scenes may be traced back to the late medieval literary tradition of heavenly assizes which gained strength in l6th century Renaissance England producing valuable literary artifacts that combined judicial content with narrative semantics against immediate political, religious, and ideological background. Such questions of justice and legal entitlement, legitimacy of power and treason, equality and mercy were raised and received literary implementation. They form a range of sources and precedents for the future self-sufficient, full-fledged genre.

Philosophical and religious doctrines as well as judicial thought had a great influence on literary discourse. In the greatest part of the *Pilgrimage*, Justice is the first and last moral criterion. However, the impact exerted by Christianity, caused a turn of the law system to more leniency and lessening in the severity of laws. A new idea has taken root: Justice depends on facts and circumstances of each case. Important judicial notions were developed by philosophers from ancient Greece and Rome. Aristotle enriched the judicial system with the invaluable concept of 'equity'; Plato developed unparalleled ideas on consciousness; the power of righteousness was provided by St. Augustine; and Seneca's ideas of mercy sound modern even in the 21st century. Medieval thinkers such as Gerson or Bracton had their share in formulating the place of justice in society and its significance for kingly power and good government. Note should be made of a striking historical continuity of the core legal notions from ancient Greek philosophy until the Renaissance and even modern days.

The subject of justice in theoretical treatises and literature overlap and include discussions of conscience, mercy, equity, morality, pity and compassion, rigor and inevitability of punishment. We may ascertain that the use of legal motifs in belletristic texts adds depth, complexity and a sense of realism to allegorical or mythological motifs with their well-known patterns. Literary

sources not only offer bits of legalistic information on judicial proceedings and concepts, but express the writer's personal attitudes to justice based on different ideological premises and cognitive schemes. We discover the diversity of conceptions. In Edmund Spenser's works we witness his preference for royal prerogative: the power of the sovereign to act independently in cases of treason or heresy. Peele's text, on the contrary, emphasizes the "undoubted right" of the subjects to gain access to the legal system and courts of appeal.

In the article only heavenly allegorical trials have been analyzed. In the 16th century literature, there are works that concern this worldly crimes and trials, too. But that's the subject for another discussion.

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