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Marking the Woman a Sinner:

Testimony and Legal Fiction in Renaissance England

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Throughout Medieval England, ordained clergy could avoid secular punishment for felony by claiming a privilege known as benefit of clergy. During the Reformation, this privilege was repurposed by the ministers of Henry VIII and offered as a lay benefit. The plea of clergy left women ineligible, as they could not be priests and were rarely convicted in the same numbers as men. Even when accused of crimes, women could rely on legal fictions and evasive testimonies to escape conviction. Then in 1624 and 1691, Parliament redesigned benefit of clergy to include women, first for slight theft and then on equal footing as men. The apparent benevolence of the grant was misleading. Following its implementation, women were convicted in higher numbers. The effect of employing mercy was to draw women within royal jurisdiction. The brand they received marked them as both sinner and subject within England.

The tradition of English common law often is designed with the family unit at its core.¹ Heads of households control children, wives, sisters, and servants. Because of this assumed focus of many laws, the relationship between women and the law in early modern England endures complications. Much has been written on this subject, from the variations in female defense testimony to the variations in expectations afforded to women of sole or covered status.²

1 For a recent background on this subject, see Randall Martin, *Women, Murder, and Equity in Early Modern England*. Routledge: New York, 2008, especially pp. 11-40, and the recent *Cambridge Companion to Early Modern Women Writing*, Cambridge UP: 2009, especially the article "Women in the Courts" by Frances E Dolan, 140-52.

2 Jenny Kermode and Garthine Walker, eds *Women, Crime and the Courts in Early Modern England*. Chapel Hill Press, North Carolina and London: 1994; Amy Louise Erickson, *Women and Property in Early Modern England*. Routledge Publishing, London and New York: 1993; and Tim Stretton, *Women Waging Law in Elizabethan England*. Cambridge UP: 1998.

Marginalized groups often do not fit neatly into a singular code of law. The needs and special status of “othered” groups does not make them powerless against a legal structure, but the unique social positions of various groups pose a challenge to the central authority of government. To investigate these complex relationships with the law, the methods used by early modern women in order to evade punishment and the tactics employed by a responding government can reveal the unique position of women in early modern England. The language of conviction and the performance of defense can illuminate the intersection of women, crime, and legal fiction. The period of focus is the immediate aftermath of the English Reformation, that religious and political movement that fundamentally altered social institutions and allowed for the centralization of government within England. Such enormous institutional changes affected women in real terms, often captured by women’s writing.³ The language of laws contributed to changing ideas of womanhood, while trials recorded the specific conditions and explanations for criminal events. By analyzing the language in both legislation and litigation, we may better understand the relationship between English women and the law.

My research explores the rise and fall of a diplomatic immunity called “benefit of clergy” that enabled certain people to enjoy a level of immunity from the full punishments of the criminal justice system. Its origins served as a form of diplomatic immunity protecting priests during the turbulent medieval struggles between church and state. During the course of the Reformation, this ecclesiastical privilege was appropriated by the King. In the decades following the Break with Rome, it was slowly applied to particular groups of English laypeople. The post-Reformation version of the immunity embarked upon a project of increasing the power of the courts by

³ Kimberly Coles, *Religion, Reform, and Women Writing in Early Modern England*. Cambridge UP: 2008. Melissa Franklin-Harkrider reveals this turbulent change in her case study *Women Reform and Community in Early Modern England: Katherine Willoughby, Duchess of Suffolk, and Lincolnshire’s Godly Aristocracy, 1519-1580*. Woodbridge: Boydell, 2008.

tying forgiveness to nationalism and subjecthood.⁴ At the center of debate during these legislative changes was the question of who was a “subject” and who could claim the immunity: who was English enough?

In answering this question, marginalized groups come into sharper focus. Laws struggled to maintain homogeneity while addressing the needs of minority groups, religious dissidents, sexual deviants, beggars, immigrants, criminals, and women. The relationship between this law and its special application to women was one that focused on an exertion of power over individuals who held an ambiguous position in society: not quite responsible for their actions, but not innocent, either. Subject or subjected? By tracing the options of female defendants before and after they were allowed to claim benefit of clergy, we may understand better the methods employed by the state to create a more uniform trial experience. Women were not allowed this mercy out of concern for their lives, as the law pretended, but as a way to mark these women as sinners, literally by branding them, and to draw them more fully into royal jurisdiction. The rhetoric of mercy set women up for future convictions and harsher punishments.

Benefit of clergy had protected ordained men from secular punishment in royal courts for centuries. The idea was to protect the rank-and-file clergy from the tension during power struggles between Church and State.⁵ Essentially, any ordained person was considered exempt from the secular courts, even if they were guilty beyond reasonable doubt. While this preserved the lives of God’s “anointed,” it also served to prevent mass persecution for unpopu-

4 Alan Maccoll, “The Construction of England as a Protestant ‘British’ Nation in the sixteenth Century” in *Renaissance Studies* 18:4, Winter 2004, 582 to 608; see also Anthony Fletcher, “The first century of English Protestantism and the Growth of National Identity” and DM Loades, “The Origins of English Protestant Nationalism” both in Stuart Mews, editor, *Religion and National Identity: Studies in Church History* (1982).

5 Leona Gabel *Benefit of Clergy in England in the Later Middle Ages*. Northampton, MA: Smith College: 1929.

lar ecclesiastical policy.⁶ As the English Reformation dawned, one might imagine that this ecclesiastical privilege would have been abolished along with all the other clerical abuses. However, during the 1530s, a series of political pamphlets began to use benefit of clergy and its history as one of the justifications for the bold changes associated with the Reformation. Christopher St German wrote two pamphlets recasting the history of clergy as evidence of the rights of a king to throw off the papal yoke.⁷ Anonymous writers supported this line while expanding the ideology of a special English state.⁸ Jasper Fyllol criticized the clergy for pretending to be above an average Englishman and argued that benefit of clergy ought to be a right to all Englishmen.⁹ The line of thinking proposed by such pamphlets added value to the tradition of granting clergy to literate defendants and facilitated its new role as a secular rather than ecclesiastical privilege.¹⁰

In addition to justifying radical actions through Parliament, benefit of clergy could also enhance the reputation of the King, whose grants of mercy formed a balance between power and loyalty

6 J. S. Cockburn, *Introduction: Calendar of Assize Records, Home Circuit Indictments Elizabeth I and James I*. London: Her Majesty's Stationary Office, pp 117-121.

7 Christopher St German, *Prouyng by the King's Lawes* (1535) and *Diuisiion Betwene the Spirituality and the Temporality* (1532).

8 Anonymous, *A Treatise Prouyng by the Kyng's lawes that the bishops of Rome, had neuer right to any supremitie within this realme* (1534), Anonymous, *A treatise wherin Christe and his teachinges, are compared with the pope and his doings* (1534), Anonymous, *Oration of True Obedience*, Thomas Berthelet: 1535 and Alexander Alesius, "Of dyuers powers that the clergie hath by the law of god The. ii. Chapit" *A Treatise Concerning General Councille, the Bishop's Council, and the Clergy* (1538).

9 Jasper Fyllol *The Enormities of the Clergy* (1534) and *Agaynst the Possessions of the Clergy* (1533); for authorship, see Richard Rex, "Jasper Fyllol and the Enormities of the Clergy" *The Sixteenth Century Journal*, 31, No. 4 (Winter, 2000), 1043-1062.

10 See John Baker's article, "Benefit of Clergy in England and its Secularization 1450-1550" in Mario Ascheri, ed "Ins Wasser geworfen und Ozeane durchquert": *Festschrift für Knut Wolfgang Nörr*. Berlin: 2003, 27-37. For a longer more focused explanation, see Lesley Skousen, *Redefining benefit of clergy during the English reformation: Royal Pre-rogative, Mercy, and the State*. MA Thesis, University of Wisconsin, Madison: 2008..

among the populace.¹¹ The secularized benefit was offered to a select collection of laity: specifically, the literate and wealthy.¹² Upon proving their literacy, such defendants would forgo execution and receive a small branding mark on the brawn of the left thumb for the first offense. The judgment of how successfully a person completed the literacy test often relied more on the reputation of the defendant and the threat of the crime; judicial discretion could judge more or less harshly depending on how well the community would benefit from applying mercy to that case. Accordingly, variation was commonplace. In fact, the focus on literacy led to a booming trade among thieves and jailors, assisting defendants with their letters or rote memorization as they waited for trial.¹³

Women could not claim benefit of clergy. As they could not be priests, allowing them a priestly privilege—even one that had been distorted and secularized—appeared foolish nonsense. According to the law, female convicts were to be executed for felonies regardless of their literate abilities. Yet denying women this privilege did not mean that their options were limited. A study of the trial

11 Krista Kesselring, *Mercy and Authority in the Tudor State*. Cambridge University Press: 2003. Helen Lacey, *The Royal Pardon: Access to Mercy in fourteenth Century England*. York Medieval Press: 2009.

12 Education was important since tradition dictated that a successful claim was tied to the demonstration of literacy, assuming originally that the educated clerks would hold that special skill. The Reformation coincided with a rise in literacy among laypeople, however; see David Cressy for discussion on rates and complications, “Literacy in Seventeenth-Century England: More Evidence” in *The Journal of Interdisciplinary History*, 8, No. 1 (Summer, 1977), 141-150. Finally, in a law under Edward VI, peers were granted the right to claim benefit of clergy regardless of literate ability. See 1 Edward VI, c 12 and confirmed by 4/5 Philip and Mary c 4. Following the benefit’s repeal in 1827, Victoria’s Parliament had to confirm in 1841 that indeed, Peers of the Realm could no longer claim clergy for their crimes. 4&5 Victoria, c 22.

13 In fact, Sir John Bennet was charged with taking bribes and teaching illiterate criminals how to read while they awaited trials. He wrote about the morality of his experiences from house arrest. Sir John Bennet, *The psalme of mercy, or, A meditation vpon the 51. psalme by a true penitent. Imprinted by Felix Kyngston, and are to be sold by Robert Milbourne, at the great south-doore of Pauls*. London: 1625. See as well Sheila Doyle, “Bennet, Sir John (1552/3–1627),” *Oxford Dictionary of National Biography*, Oxford UP, 2004; online edn, Jan 2008. <http://www.oxforddnb.com/view/article/2106>, (Accessed 21 Oct 2012).

records at the beginning of the seventeenth century shows a wealth of options for women who stood accused of a crime in the King's Courts.¹⁴

Perhaps the most important of these options was the feminine claim of "benefit of belly." This privilege allowed pregnant women a brief reprieve in light of their condition. If a woman stood on the verge of conviction, she could claim her pregnancy and a jury of twelve matrons would then examine her body to ensure she was indeed pregnant.¹⁵ The jury of matrons could declare the woman to be "quick with child," after which the justice would allow her to go home and give birth. And so, benefit of clergy and benefit of belly allowed mercy in light of a felony conviction. However, as Krista Kesselring has pointed out, the privileges were not comparable.¹⁶ Claimants of clergy were released at the conclusion of their legal ordeal; claimants of belly went home with their sentence merely postponed until they had given birth. Once their children were born, such women had to wait for the King's officials to collect them for punishment and execution.

In the trial records, we encounter a number of variations on a case by case basis. An example of this variation can be found in women who claimed belly successfully despite being well beyond child-bearing age. Frances Dolan conveys the example of a post-menopausal elderly woman, Anne Bodenham, who was allowed benefit of belly at a shocking seventy years of age.¹⁷ She was allowed to go home to "give birth" but the Justice never had her re-

14 For this paper, I am drawing information primarily from JS Cockburn's transcription of the Assize Records, cited above, and the Old Bailey pamphlets housed at the British Library and catalogued at OldBaileyOnline: The Proceedings of the Old Bailey (<http://www.oldbaileyonline.org/> Version 7.0 Accessed 6 October 2012).

15 T. R. Forbes, "A Jury of Matrons" in *Medical History*, 32 No 1 (January, 1988), 23-4.

16 Kesselring, "Appendix II: Benefit of Belly" *Mercy and Authority in the Tudor State*, 212-214.

17 Frances E Dolan, "Reading, Writing, and Other Crimes" in Valerie Traub and Lindsay Kaplan, eds. *Feminist Readings of Early Modern Culture: Emerging Subjects*. Cambridge UP, 142-166.

arrested. Her proven literacy might have contributed to this odd case of declaring an older woman pregnant. After all, had she been a man, she would have qualified for benefit of clergy and received mercy at the Court. This is mere speculation, however. Ultimately such cases of elderly “pregnancies” were atypical.¹⁸ The importance of variation and secondary exemptions shows the complex role of performance and legal fiction in the early modern court room. The pregnancy of a post-menopausal woman was one of many alternative fictions a woman (or man) might adopt in the absence of benefit of clergy.

Statistical evaluation of the trial records suggest that women were notoriously difficult to convict in the secular courts. An analysis of the Assize trial records from 1559 to 1680 reveal a number of curious forms of legal fiction contributing to an unnaturally low conviction rate for female defendants, particularly in the beginning of the seventeenth century. Women accused of being a part of thieving gangs were often declared innocent as their male counterparts were convicted. Consider the 1596 case of Margaret Ellis, charged with burgling a house with her husband Peter. The evidence stood against them both, but only Peter was convicted and allowed his clergy, while Margaret was found not guilty.¹⁹ Her release was not atypical when women were arrested alongside men for clergyable crimes. Women were often found “*ignoramus*” or “unknown” when a male partner in crime received benefit of clergy. Of cases where there is a mixed-gender group of defendants, the woman is declared not guilty or *ignoramus* 53% of the time.²⁰ We find eight such cases in the final fifteen years of Elizabeth’s reign, and even more under the Stuarts.

18 James Coldham, “On Pleading the Belly: A History of the Jury of Matrons” in *Criminal Justice History*. 6 (1985), 1-64, especially 19-20, 32..

19 Assize Records, Elizabethan Kent, Case No 2374 p. 391

20 This statistic comes from an analysis of JS Cockburn’s multi-volume Assize records, from Elizabeth to Charles II (1559-1685), where I simply counted the number of cases with multiple defendants where the female defendant was allowed free even though her accomplices were executed or convicted and allowed clergy.

Most striking of all was the invention of strangers to take the blame of crimes committed by women. Peppered throughout the Assize trial records are the cases of women who seem on the verge of certain conviction for murder, as parades of witnesses weave a tale of certain guilt—only to have the jury come back with a verdict of “Not guilty.” Their reason for their verdict: “John Death did it.” Other names include William Stranger, John Lellowe, John ap Love, John of Noke, or many other curious names of almost certainly fictional criminals.²¹ Even God took the blame of some female murderers. Consider the example of Anne Lamb, who struck her husband on the head after he beat her. Committing murder of a natural superior was petty treason, but the jury found Anne not guilty due to divine visitation.²² In other words, during the throes of argument, God had come down to occupy her husband’s body. The sheer overwhelming power of the Lord in the soul of Peter Lamb had led him to expire; the blow Anne delivered was coincidental to his death, not causal. Such a striking case of legal fiction was not unique. Similar judgments blamed the presence of God for the crime throughout the Assizes, from a case in 1596 to multiple cases in 1628 and then scattered consistently throughout the 1630s.²³ Presumably, jurors struggled with the task of sentencing a woman to death for acting in self-defense or overwhelming misery.

In 1621, Parliament proposed a bill to change the options of women who stood trial specifically for theft.²⁴ The 1621 Parliament ended abruptly over international concerns, but the bill was

21 A few examples of this include: Hertfordshire under Elizabeth, No 999, p. 160 and No 101, p. 18; in the Essex Assizes under James I, Nos 484, 485, 490, pp. 76-77; Kent under Charles I, No 926, pp. 192-193. Cockburn, *Calendar of Assize Records*, HMSO: 1977-1993.

22 Kent Charles I, Case No 926, pp. 192-193..

23 For examples, see the cases out of Kent, pp. 369, 926, 1038, 1437, 1944 and 1954. JS Cockburn, *Calendar of the Assizes: Kent*. HMSO: London, 1997.

24 21 James c 6.

signed into law by 1624.²⁵ The Act itself claimed that “Whereas by the Lawes of this Realme the Benefitt of Clergie is not allowed to Women convicted of Felonie, by reason whereof, many Women doe suffer Death for small Causes.”²⁶ Stating shock at the number of women dying from this gender inequality, the law granted benefit of clergy to women for a small number of theft-related crimes. Scores of lives could be saved if only they could claim benefit of clergy in small cases. Yet an analysis of the trials during this same period shows that women were not in fact suffering death in large numbers. Women were, on the contrary, very difficult to convict and punish according to the fullest extent of the law.²⁷ If they were convicted at all, the value of goods stolen was often undervalued. Sympathetic jurors found them innocent more often than guilty. In fact, an analysis of the trial records shows that as soon as this law passed, courts then began convicting them in droves.²⁸ In feigning mercy, the law worked to secure convictions for women.

The sessions of trial immediately following the publication of this act reveals women claiming clergy, probably under the advice of the presiding Justice. See the cases of Mary Lesford, Mary Jordan and Elizabeth Jordan, and Joan Thomas, Margaret Thompson, and Mary Leigh in the 1625 session of the Kent Assizes: the first meeting for which women could claim their clergy. The speed from new Act to trial use in the age before defense lawyers suggests that these women received advice from the Court. Before and after the bill’s passage, women were put to trial and allowed to go home. The difference was that before 1625, women tended to go home “not guilty,” whereas after 1625 they went home a “criminous clerk”,

25 Robert Zaller, *The Parliament of 1621: A Study in Constitutional Conflict*. University of California Press: 1971.

26 Quoting the preamble of 21 James c 6 “An act concerning Women convicted of small felonies” in *The Statutes of the Realm*, Vol IV, p. 1216.

27 Deborah Oxley, “Representing Convict Women” Duffield, Ian; Bradley, James (ed.), *Representing Convicts: New Perspectives on Convict Forced Labour Migration*, London: Leicester University Press: 1995, 88-105 and Shani D’Cruze with Louise A. Jackson, *Women Crime and Justice in England since 1660*. Palgrave MacMillan: 2010.

28 Cockburn, ed. *The Calendar of Assizes: Kent*, pp. 10-11, 19.

with a brand on their thumbs as a mark of their criminality. Future jurors would see that mark. A second offense would not be treated as the mistake of a delicate woman in need of sympathy, but as a series of crimes by a hardened criminal who must be executed in order to preserve the social order of the kingdom.

The ultimate goal of granting women an escape from first-offense punishment was not to offer them new options to build a defense. Instead, benefit of clergy was employed as a way to draw women into royal jurisdiction. The law effectively exchanged one fictional explanation for another: rather than blame a nonexistent highway man “John of Death” or even God’s presence for women’s crimes, they would be called “priests” and allowed to go home convicted “clerks.”²⁹ Rather than waive accusations of crimes, juries began convicting them under clergy to the detriment of female lives. Marked a sinner in the eyes of society through the brand on their thumbs, second offenders were then executed as lifelong criminals rather than repeatedly forgiven for the weakness of their sex.

The scope of the 1624 Act was slight, allowing clergy only for minor thefts of goods valued under 10 shillings. It had little effect on larger crimes like burglary, infanticide, or murder. Women did not receive the full claims of benefit of clergy equal to men until 1691.³⁰ The timing of this later law coincided with a crime wave in London. When such shop-lifters stole goods beyond ten shillings, conviction became difficult once again.³¹ The Act specifically sought “to bring other [criminals] to punishment” indicating clearly the desire for increased convictions.³² Through the offer of exemptions and second chances, the law could more effectively bring

29 The classic article on clergy claiming the benefit is F. W. Maitland “Henry II and the Criminous Clerks” in *The English Historical Review*, 7, No. 26 (Apr., 1892), 224-34.

30 3 William & Mary c 9.

31 J. M. Beattie, *Policing and Punishment in London, 1660-1750: Urban Crime and the Limits of Terror*. Oxford UP: 2001, 313-362.

32 Quoting the title of 3 William & Mary c 9, *Statutes of the Realm*, Vol VI, pp 311-312.

women to punishment for their subsequent crimes. Between 1663 and 1689, only five women were executed for property crimes.³³ For most women, each appearance at court was taken as her first offense, and each jury gave her the first-offense benefit of the doubt. In 1691, Parliament granted women the ability to plead clergy for all cases where a man might have it. Now female criminals began leaving a legal trail of criminal behavior that facilitated a conviction for subsequent offenses. The “frail and childlike” female shop-lifter now could be seen as a hardened criminal with no respect for law and order.

Directly following this development, courts witnessed what I have called a “feminization of benefit of clergy.” The 1690s was either a period of high criminal activity or increased law enforcement. The records reveal an increase in convictions across the board. In particular, there is a measurable spike in female convictions. While most societies see a gendered division of convicts hovering around 20% female, the 1690s witnessed a rise in female criminality, with 52% of convicts being women.³⁴ Most of these female convicts pled their clergy and escaped death as they might have in previous years. But with their pleas of clergy, they returned home having felt the pain of burning flesh as their thumbs were branded in court.

We can see the sudden increase in female convictions in the wonderfully preserved pamphlets telling the “True Proceedings” of the Old Bailey Court in London. Between 1674 to about 1720, publications of the sordid details of crimes, testimonies, and convictions became very popular among Londoners.³⁵ Each pamphlet concluded with a break-down of the penalties of each session. For instance, in 1683, nine convicts were sent to execution, four were sentenced

33 Beattie, 303.

34 Beattie demonstrates the feminization of clergy in statistical charts in *Policing and Punishment*, 17, 65.

35 Old Bailey Online (<http://www.oldbaileyonline.org/static/Proceedings.jsp>, Version 7.0. (Accessed 6 October 2012). Wherever possible, I have endeavored to use the manuscript version found at the British Library.

to whipping, and fourteen men and two women were “burned in the hand”—granted clergy—for various forms of theft.³⁶ Prior to the 1691 law granting women full clergy, the overwhelming majority of claims for the benefit were for men. Ten years later, we see that 28 women and only 18 men were allowed clergy.³⁷ Two years after that, in 1695, Justices granted clergy to fourteen women but only nine men.³⁸ In 1697, seventeen women and just three men claimed clergy.³⁹ The trend persists and women take over the majority of clergy convictions.

For approximately twelve years, benefit of clergy was dominated by women who might have gone free through other loopholes had the 1691 law not been passed to offer them this new “benefit” that actually served to strengthen the case against them. The increase in female convictions was enabled through the Act that feigned an

36 Anon. *The True Proceedings of the Sessions begun at the Old Bayly on Thursday the 24th of May 1683 Giving an Account of the Several Tryals viz for murders felonies etc with the Condemnation of those Convicted*. London, Printed by George Croom, in Thames Street over against Baynard’s Castle, 1683, 4. The British Library Cup Collection, 21.g.32/34.

37 First pamphlet was Anon, *The Proceedings on the King’s Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Baily on Wednesday and Thursday being the 15th and 16th Days of January, 1690*. London, Printed for Langley Curtis at Sir Edmonbury Godfrey’s Head near Fleet Bridge: 1690. BL 112.f.46.19. The second two pamphlets were as follows: Anon, *The Proceedings on the King’s Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Baily on Wednesday, Thursday, Friday, and Saturday the 6th, 7th, 8th, and 9th Days of December 1693*. London, Printed for Richard Baldwin at the Oxford-Armes in Warwick-Lane, 1693. BL 1480.d.21.6. Third pamphlet was Anon *Proceedings on the King’s Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Baily on Wednesday, Thursday, and Friday being the 12st, 22nd, and 23rd Days of February, 1693/4*. London, Printed for Richard Baldwin at the Oxford-Armes in Warwick-Lane, 1693/4 BL 1480.d.21.7.

38 “Punishment Summary: 20 February 1695” *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.0, Accessed 6 October 2012).

39 Anon, *Proceedings on the King’s Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Baily on Wednesday, Thursday, Friday, and Saturday, being the 8th, 9th, 10th and 11th Days of December 1697*. London, Printed by JD for Andrew Bell at the Cross-eyes and Bible in Cornhill, and Sold by R Bldwin at the Oxford-Armes in Warwick-Lane, 1697. BL, 1480.d.21.8/

interest in preserving the lives of such delicate women. The Act embraced the legal fiction of generosity, benevolence, and mercy to clinch a conviction that otherwise was difficult to procure.

Benefit of clergy used the rhetoric of mercy to build the illusion of a benevolent King. With men, who were often convicted more easily than women, the effect of this mercy served as a reminder of the King's generosity. The brand on the skin became an advertisement for royal benevolence. We might say the same about women who were branded, once they received the right to plead benefit of clergy. But in the case of women, the use of legal fiction was more significant. Here, the ability to declare them guilty without automatically sentencing those women to death meant that jurors could rest easy with their decision. Accordingly, women were subject to large rates of conviction after receiving benefit of clergy. The story of offering women equal access to legal defense and loopholes is not one of a system concerned with equality and second chances. Rather, the process drew women within the system to mark her as both "sinner" and subject to the King's power.

Lesley Skousen is a PhD candidate at the University of Wisconsin, Madison. Her work explores the law as an expression of social expectations, particularly in light of the treatment of marginalized peoples including criminals, immigrants, women, children, sexual deviants, and slaves. She is a Scholar-in-Residence at the Newberry Library working on benefit of clergy in England, the American Colonies, and the British Caribbean.

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