



Courting Failure: Women and the Law in Twentieth-Century North American Fiction

Slettedahl Macpherson Heidi

Pour citer cet article

Slettedahl Macpherson Heidi, « Courting Failure: Women and the Law in Twentieth-Century North American Fiction », *Cycnos*, vol. 19.2 (Droit & littérature), 2002, mis en ligne en 2021.

<http://epi-revel.univ-cotedazur.fr/publication/item/853>

Lien vers la notice <http://epi-revel.univ-cotedazur.fr/publication/item/853>

Lien du document <http://epi-revel.univ-cotedazur.fr/cycnos/853.pdf>

Cycnos, études anglophones

revue électronique éditée sur épi-Revel à Nice

ISSN 1765-3118

ISSN papier 0992-1893

AVERTISSEMENT

Les publications déposées sur la plate-forme épi-revel sont protégées par les dispositions générales du Code de la propriété intellectuelle. Conditions d'utilisation : respect du droit d'auteur et de la propriété intellectuelle.

L'accès aux références bibliographiques, au texte intégral, aux outils de recherche, au feuilletage de l'ensemble des revues est libre, cependant article, recension et autre contribution sont couvertes par le droit d'auteur et sont la propriété de leurs auteurs. Les utilisateurs doivent toujours associer à toute unité documentaire les éléments bibliographiques permettant de l'identifier correctement, notamment toujours faire mention du nom de l'auteur, du titre de l'article, de la revue et du site épi-revel. Ces mentions apparaissent sur la page de garde des documents sauvegardés ou imprimés par les utilisateurs. L'université Côte d'Azur est l'éditeur du portail épi-revel et à ce titre détient la propriété intellectuelle et les droits d'exploitation du site. L'exploitation du site à des fins commerciales ou publicitaires est interdite ainsi que toute diffusion massive du contenu ou modification des données sans l'accord des auteurs et de l'équipe d'épi-revel.

Le présent document a été numérisé à partir de la revue papier. Nous avons procédé à une reconnaissance automatique du texte sans correction manuelle ultérieure, ce qui peut générer des erreurs de transcription, de recherche ou de copie du texte associé au document.

EPI-REVEL

Revue électronique de l'Université Côte d'Azur

Courting Failure, and Judged by Appearance: Women and the Law in Twentieth-Century Fiction

Heidi Slettedahl Macpherson*

Inevitably in the current context, feminist law and literature is about canonicity in all its facets: the tug towards shared histories and stories, the search for uncovering silenced voices and hidden injuries, the effort to shape a new arena of academia [...] and the quest to conceive of plots yet written and contexts yet to be developed.¹

In their foreword to an excellent collection of essays on law and literature, *Beyond Portia*, Carolyn Heilbrun and Judith Resnik do both *look forward*, but also lament the fact that much of feminist law and literature focuses on the abuse of women and the mark of women's pain — the “silenced voices and hidden injuries” mentioned above. Similarly, “Courting Failure” is a title that acknowledges the always already assumption of guilt and punishment that seems to accompany stories of women and the law. Indeed, countless feminist authors have supplied portraits of women who, facing the judicial system, are judged wanting and thus judged always already guilty. The court is an arena in which many of these fictional or fictionalized women fail; when they do succeed, like Minnie Foster Wright in Susan Glaspell's *Trifles*, or Elizabeth in Sarah Dunant's *Transgressions*, it is through subversion or circumvention of the system. More likely, though, the fictionalized women who encounter the courts do so in a mute or muted fashion, attempting to abide by court rules, and thus ruling themselves out of justice. Such a statement needs justification. If the law is famously blind, why would abiding by the rules of court suggest women's failure? The answer is a complex acknowledgement of the limitations of the law. As Martha Fineman argues, “Law as an institution — its procedures, structures, dominant concepts, and norms — was constructed at a time

* University of Central Lancaster, U. K. E-mail: <hrsmacpherson@uclan.ac.uk>.

1 Heilbrun and Resnik, “Foreword”, p. xii.

when women were systematically excluded from participation" (p. 59). She further argues that "neutral treatment in a gendered world or within a gendered institution does not operate in a neutral manner" (p. 59). Indeed, Fineman's postegalitarian feminism acknowledges difference as a key facet of women's experience:

a theory of difference is necessary in order to do more than merely open the doors to institutions designed with men in mind. Arguing for a theory of difference questions the presumed neutrality of institutions, calling into question their legitimacy because they are reflective of primarily male experiences and concerns. In that way, a theory of difference has the potential to empower women

(Fineman, p. 54).

Postegalitarian feminism is a complex theoretical stance that seeks to address the ways in which women do indeed constitute a "special case." Whilst not unproblematic, it opens up a space in which to speak of women separately — as well as collectively — and to examine the implications of gender and the courts. Conversely, perhaps, one of the projects of Anglo-American feminist literary criticism is the attempt to dismantle a canonicity that excludes the female — in this instance, to speak of women's literature within the larger context of Literature itself: to embrace the woman's text as equally valuable and instructive. These two stances, which seem contradictory, can actually be complementary, especially if one deconstructs the purpose and nature of the literary canon. One solution — the erection of an alternative canon — is critically contested, and perhaps more a move sideways than forward; however, it is certainly important to acknowledge the structures of power that ensure women's exclusion. It is with this knowledge in mind that this article looks beyond Portia (and thus Shakespeare); beyond Kafka, beyond the figure of the male magistrate or judge except as he is implicated in upholding the patriarchal law. Instead, my focus is on the always already guilty, as she displays or hides her guilt. Assuming the centrality of the female defendant rather than her marginality, this article explores the ways in which her very gender might conspire against her.

A case in point is Grace Marks, a character whom Margaret Atwood constructs from historical documents and then proceeds to manipulate textually in *Alias Grace*. Atwood reconstructs a multi-layered narrative in which she explores whether Grace was a devious and overtly sexual murderess (her preferred term), or a simple woman caught up in an act beyond her control. The historical Grace was convicted of the murder of her employer, and given life imprisonment; James McDermott (her co-conspirator? accomplice? dupe?) was hanged. These are the facts. But, as Atwood says, "If you are after the truth, the whole and detailed truth, and nothing but the truth, you're going to have a thin time of it if you trust to paper; but with the past, it's almost all you've got" ("In Search of *Alias*

Grace...”, p. 33). It is in the inevitable gaps left by historical documents that Atwood felt “free to invent” (*Ibid.*, “In Search of *Alias Grace...*”, p. 35) though she was determined not to change a single known fact. The result is an exceptional book which details historical inconsistencies in confessions, eye witness reports and legal frameworks — a novel which reveals the fictions of legal certainty and authority. It was also a text that links to a number of other, earlier texts in which women are put on trial for crimes ranging from shoplifting to murder — and then judged not so much on what they did, but on how they appeared. (It is, it transpires, Grace’s idiosyncratic choice to wear the murdered woman’s clothes to her trial that helps convict her.) It seems that, in feminist stories of women and the law, evidence is, at least partially, taken *from* the suspects, and willfully or innocently misinterpreted. As a result, the women’s stories are made to fit a template that they themselves did or do not necessarily want to voice, and they are judged by rules that they had no hand in erecting.

Over the whole of the twentieth century, North American writers have explored the role of the judicial system in condemning female transgressions, often by using historical sources for their tales of female criminals. A few diverse examples prove the point. Atwood rewrites *Grace Marks* and cleverly suggests an alternative reading of ghostly possession, though whether this supernatural explanation is concocted or correct, the reader is left to guess. Toni Morrison “rememories” slave mothers whose claims to their children are offset by the property rights of their owners; indeed, *Beloved* limns the fate of a slave mother who chooses to commit infanticide rather than return her children to slavery, an act that puts her beyond the reach of property law. In partially destroying her position of mother, she ironically frees herself from the position of slave, too. Susan Glaspell rewrites the murder of a farmer by his wife in the play *Trifles*, also known as the short story “A Jury of Her Peers.” Both titles imply that women and their concerns are essentially different from men and theirs; and perhaps, as Freud suggests, the different genders occupy different moral frameworks, too. Minnie Foster Wright, whose name inscribes her claim to justice, is the silenced, offstage woman whose guilt is both uncovered, and covered up, by trifles. If one of the projects of feminist legal studies is to examine “the role of law in the construction and perpetuation of a gendered social existence” (Fineman, p. 55), then texts such as these stand out as particularly apt ones to explore.²

It would be comforting to think that the above literary representations, situated in the nineteenth or early twentieth centuries, were anomalies, or quaint historical texts with no relevance to the ways in

2 My work-in-progress, a monograph also entitled *Courting Failure*, examines these literary cases in more depth.

which women are treated in contemporary society — comforting, but wholly inaccurate. A case in point is that of Evelyn Dixon who, in 1989, killed her abusive husband and claimed self-defense (a defense which, to a lay person, seems utterly justified: he was drunk, high on PCP³ and wielding an iron bar when Ms. Dixon, attempting to save her unborn child, stabbed him in the chest). The appearance of self-defense was not, however, enough to save her from imprisonment. During the trial, as Heilbrun and Resnik note, “the prosecutor reminded the jury several times that Ms. Dixon had not appeared teary, helpless or fearful when she spoke to the police after her husband’s death (Heilbrun and Resnik, “Convergences”, p. 33). Heilbrun and Resnik rightfully ask, “How much was the jury that decided the case affected by the police and prosecutor’s report that Ms. Dixon failed, when speaking about her husband’s death, to appear conventionally female, that she did not cry, did not seem as helpless or distraught as might have been expected?” (Heilbrun and Resnik, “Convergences”, p. 34). Appearances count, and in this case and others, count *against* the female.

It is clear that anyone who examines female transgressions takes on the political task of engaging with and battling these cultural constructions of the female. British author Sarah Dunant, for example, in her aptly-named novel *Transgressions*, actually transforms an attempted rape into a perverse seduction stage-managed by the potential victim. Instead of “asking for it,” the character takes control of it; it is no coincidence, I feel, that the law only ever gets into the text sideways. There are no courtroom scenes, no battles of words and rights; there is simply one woman, one man, and a crime that is revenged.

Not all texts are so decisively (if uncomfortably) resolved in favor of the female. Indeed, in the fictionalizations of real-life female murderers, writers come to their texts with the endings “already written” by historical facts. Thus emphasis is necessarily placed on telling the tale rather than inventing an empowering conclusion. As Maria Aristodemou argues, “To interrogate the messages created and inscribed by both legal and literary fictions we must go back not only to the narratives they tell but to the language they employ to tell their stories” (p. 11). Ironically, many of these tales invoke silence as a defining feature and render the primary subject mute; as a result, issues of guilt and innocence become related less to actual crimes than to the perceived relinquishing of the “feminine.” Moreover, guilt is sometimes assigned as a cover for another, possibly less acceptable crime, as I will show below.

3 Common appellation of phencyclidine, illegally marketed under a number of street names including *Angel Dust*, *Supergrass*, *Killer Weed*, *Embalming Fluid*, etc. (editor’s note).

A key example of a text in which guilt which masks another crime is Morley Callaghan's "A Wedding-Dress." This short story "ironizes the sentimental tale, vignette, and sketch" while simultaneously functioning as "an exercise in sexist pathos" (Boire, p. 83). In the story, Lena Schwartz is a woman who has been engaged for 15 years, awaiting her lover's ability to support her financially: she is constantly in the state of deferral, of void, awaiting the beginning of her tale. When her lover finally lands a good job, she lands in prison — accused of stealing a dress from a department store. She wears the dress itself to the prison cell and in court the next day, thus there is no doubt about her guilt: like Grace Marks, she is marked by clothing. But what is she actually guilty of? — Theft, according to the store detective; temporary kleptomania, according to her lawyer. But her guilt is, in fact, less related to her "crime" than to her desire: to be beautiful, admired, and desired herself.

This sparse short story enacts a tale of compulsory heterosexuality and delineates the regulation of female desire; indeed, it appears that this is the whole premise of the law in relation to Lena Schwartz. She is called an "old maid" four times in the five-page text, her unmarried state a matter for prurient rumination and disapproval. She is first called an old maid by men at a boarding house, who salaciously suggest that "it" is about to "happen to her" at long last; second by a "saucy-looking" salesgirl who is set up in opposition to her as a young, desirable woman (at 32, Lena is no longer considered remotely desirable herself); third by a sergeant who feels that being an "old maid" is reason enough to keep her in cells overnight, since old maids tend to be "foxy" — in the wily sense, of course, not the sexual one. The "wisdom" that accrues to the (slightly) older woman cannot co-exist with sexuality in the narratives that seek to set women up in binary oppositions to each other. Finally, she is called an old maid by the magistrate, who notes that the dress she has stolen "doesn't even look good on her" (Callaghan, p. 57), thus the theft itself is doubly inappropriate. However, he is lenient enough to let her go, so long as her *fiancé* pays for the dress and promises to marry her. Clearly, when she moves from the position of single woman, she will no longer be a threat. She will be containable and indeed renamed: no longer old maid, no longer Miss Schwartz.

It is a slight story, almost dry in its narration, and unlikely to arouse great sympathy or intense feeling. Yet, as Gary Boire comments, the text itself simultaneously hides and unmask signs of Lena's sexuality "as a potentially unruly force — a force that she herself finds alienating" — indeed unspeakable (p. 83). After such a long wait to get married (in traditional narrative terms, to either begin her story or to end it), Lena is denied a voice in the text even as her body enacts covert sexual messages. She intends to buy a "charming" but "serviceable" dress for her long-awaited wedding, yet confronted with just such a dress, she is

disappointed. The dress she envisions is one that will "keep alive the tempestuous feeling in her body," a dress which will "startle" her *fiancé* (Callaghan, p. 54), but more importantly, perhaps, make her "wantonly attractive" and "slyly watched" by other men. Lena herself appears unaware of the contradictions of her desires. However, once she surreptitiously slips the dress into her coat, she feels "a guilty feeling of satisfied exhaustion" (Callaghan, p. 55), a reaction that can clearly be read as sexual orgasm. Moreover, she feels almost immediate regret, crying because doesn't know how to return the dress: that is, return to her previous, unblemished ("virgin"?) existence. It is no coincidence that the dress is "loose" on her, as it represents metonymically her own imagined state.

The law is not long in getting involved in regulating Lena's desire, and from the moment she is arrested, she is told not to speak. As the sergeant who picks her up says, "it won't do any good to talk about it" (Callaghan, p. 56). Despite this prohibition, Lena speaks "almost garrulously," according to the text, but we as readers are denied her words. Moreover, her lawyer never engages her in conversation; instead, he consults her *fiancé* and argues for clemency on the basis of her long wait for marriage. Her *fiancé* also speaks *for* rather than *to* her, calling her "a good woman, a very good woman" (p. 58), containing her within a proper, gendered space.

"What makes Lena Schwartz's trial so interesting," according to Boire, "is that it functions within the story, not simply as a tragi-comic resolution, but as a male-centred normalizing ritual" (p. 84). With only men speaking, and only their thoughts recorded — apart from a brief, if telling note that Lena felt "strong and resentful" (Callaghan, p. 57) — the trial becomes a series of conversations within which the principal subject is excluded, indeed, almost invisible. (The specter of the invisible Minnie Foster Wright from Glaspell's play is invoked again). The male actants in the courtroom find Lena amusing or pathetic, and Lena herself becomes little more than a cipher. As Boire comments, "whereas up to this point Lena has been portrayed as a sexualized body whose energy is potentially transgressive (indeed wanton!), here in the legal rituals of normalization her desires are placed squarely back within the confines of a mandated heterosexual marriage" (p. 84).

This is in marked contrast to the other woman who is on trial that day, a "coloured woman" accused of running a bawdy-house who "went to jail for two months rather than pay a fine of \$200" (Callaghan, p. 57). Of the fate of the male prisoners who share Lena's journey from prison to courtroom — a bigamist, a betting shop owner, a drunk — we hear nothing. What we do have recorded is the fact that the female is put away, her "sexuality" reduced to commerce and further connected with money through an imposed fine, or sent away — into marriage that is

intended to sublimate her unruly passions. What is also clear is that the brothel madam, a woman who commodifies the female body and who may thus invoke our moral disapproval, is allowed to *choose* her fate, whereas the old maid Lena's is chosen for her. In this way, then, it appears that stepping outside of "proper" gender roles affords more space for movement.

According to Boire, "the very prevalence of legal imagery suggests that when Callaghan 'reads' the world (and therefore its language) in his writing, he simultaneously 'reads' and interrogates their organization by means of power relations, by means of legal *formulae*" (pp. 79–80). In "A Wedding-Dress," this results in a text in which a real crime (theft) stands in for a seemingly more disturbing and indeed disruptive "crime" (female sexuality). The court enforces repression and boundaries (as part of her release, Lena is forbidden from shopping for a year) and in doing so, re-establishes "appropriate" power relations. The text ends, "and they went out to be quietly married" — no doubt, "happily ever after." "A Wedding-Dress" is a legal fairytale, where the heroine is tempted from the path, comes to potential harm, but is rescued by her handsome prince and led back to safety. In Sophie Treadwell's work, this traditional closure is subverted.

Treadwell's *Machinal* is loosely based on the 1927 trial of Ruth Snyder, the first woman executed by electric chair in the state of New York. It is an expressionist drama which, like "A Wedding-Dress," engages with compulsory heterosexuality and marriage. The main character, known throughout simply as Young Woman, is accused of murdering her husband, an act that takes place conveniently off stage and between episodes. The most important episode, "The Law," is a scene "read" for us by various court reporters, who all take the same information and interpret it in significantly different ways. Acting as individual judges of her appearance, they write her up on a continuum from innocent victim to calculated murderess; "pale and trembling" in one account, she is "flushed and calm" in another (Treadwell, p. 245).

These competing voices signal the adversarial nature of the courtroom, as well as the nature of law texts which provide "multiple versions of the same events," and which have at their heart "re-creation and distortion" (Heilbrun and Resnik, "Convergences", p. 30). Moreover, the battle in *Machinal* is clearly one between *two lawyers* rather than the sides they are engaged to represent. The lawyers make a series of objections — essentially to each other — and take part in a verbal argument (though that is too sophisticated a word for what happens). Ginger Strand argues that the play "stages the process through which event becomes representation, and a woman's experience is obscured, as legal and journalistic forces transform it into narrative" (p. 163). A simple example of this transformation comes from the

woman's own testimony. Asked if she had a happy marriage, she hesitates. Her lawyer then rephrases: "Did you quarrel?" She answers, "no sir." He then replies triumphantly, "then it was a happy marriage, wasn't it?" (Treadwell 235). As Strand notes, "already the truth of the woman's experience is obscured by a restrictive legal logic" (p. 167).

Despite her lawyer's best efforts to construct a scenario in which she is not guilty of murder, the Young Woman eventually confesses, and it is in this move from silence to voice that she is condemned. What is clear, however, is that her words remain largely misunderstood. Asked why she killed her husband, she claims she wanted freedom. A perplexed prosecution lawyer then asks why she simply didn't file for a divorce. She replies, "Oh I couldn't do that! I couldn't hurt him like that!" (p. 248), a response that elicits only laughter.⁴

In her article "Hard Cases, Easy Cases and Weird Cases: Canon Formation in Law and Literature, Susan Sage Heinzelman argues that the familiar legal distinctions between these hard, easy, and weird cases rest on an idea of language as generally transparent and only occasionally opaque (an idea that literary scholars dispute). Thus, easy cases are ones in which "language speaks for itself" whereas hard cases are cases where "the judge is called upon to intervene between the language of law and the actions of those before the court" — essentially, cases that require the interpretation of rules (Heinzelman, p. 60). Weird cases, by contrast, are ones in which "the language is clear, but hypothetical events can always be made to intervene and confuse the interpretation" (p. 60). Heinzelman argues that "[t]he designation of certain cases as hard, easy or weird determines what texts the legal and literary canon acknowledge and what texts they silence: consistently the woman's case is marginalized as weird" (p. 59). For *Machinal*, this weirdness works in two ways. First of all, the woman whose explanation for murder rather than divorce is "freedom" cannot be accommodated — so her words must be transformed; it doesn't matter that the confession itself does not "make sense" to the jury, since they can disregard this weirdness and judge her guilty anyway. Secondly, the play itself is "weird" in Heinzelman's terms through its exclusion from the dramatic canon. Although it is a text that feminist critics have begun to recuperate — Judith Barlow notes that Treadwell "has company in anonymity" (p. xxix), and seeks in her anthology of women dramatists to counteract the forces that "have unfairly consigned these plays to obscurity" (p. xxx) — *Machinal* remains outside of the American dramatic canon. This is in part because

4 Indeed, as was pointed out by Joanne Karpinski, the Young Woman was not entitled to divorce her husband at this juncture in New York history; that privilege was a male privilege alone.

of its episodic nature; the expressionist formula remains a minority interest. The American dramatic canon is particularly focused on domestic realism, and texts which stand outside this space also stand outside extended critical debate — especially when they are also penned by women.

Weirdness aside, the Young Woman is, as the play stresses throughout, an ordinary, normal woman. Indeed, this is her lawyer's defense of her: "she is a normal woman; normal women don't kill their husbands, *ergo*, she didn't kill her husband" (Strand, p. 169). The Young Woman's normalcy is bound up in femininity. Like the historical Ruth Snyder, one of the ways in which she expresses this femininity is through a focus on her hair. Whilst newspaper accounts found the fact that Ruth Snyder washed her hair before her execution inexplicable, Treadwell has the Young Woman guard her hair as a sign of her individuality. That even this attempt is unsuccessful — despite her wishes, she has her head shaved — says much about the ways in which the guilty must not also be feminine. This links into Shoshana Felman's argument that madness "is precisely what makes a woman not a woman" (p. 146). Felman suggests that "the textual paradox can be created according to which the woman is 'madness'" since she is different from the male norm, "while at the same time 'madness' is the very 'absence of womanhood'" (p. 147) since the "mad woman" does not adequately perform her femininity; she steps outside of her assigned gender role. Here, then, a woman is not a murderer if she is a devoted daughter, mother and wife; her femininity — or consent to feminine roles — absolves her from any possible guilt. However, the Young Woman has confessed, and therefore given up any right to femininity; she must be made to "submit." As Linda Ben-Zvi argues, "Women who kill evoke fear because they challenge societal constructs of femininity — passivity, restraint, and nurture; thus the rush to isolate and label the female offender, to cauterize the act. Her behavior must be aberrant, or crazed, if it is to be explicable" (p. 141). And since crazed is the absence of the feminine, a circular argument unfolds regarding femininity or lack thereof as proof of innocence or guilt.

It is indeed the search for proof that may act as the possible savior of the accused woman in other circumstances. Returning to *Trifles*, we witness the aftermath of murder, as Minnie's neighbors enter her home seeking motive; crucially for this play, the men and women are physically set apart. The men are the law, and move out of the kitchen, the main setting; the women are the law's appendages — wife of the sheriff and wife of the man who found John Wright dead — and stay where they are put. These appendages, however, eventually act on their own, and conceal evidence from the men about the murder, evidence men have dismissed as "kitchen things" and "trifles."

Again, we have a woman silenced, but also condemned for her apparent lack of femininity. The house itself is deemed a mess—and evidence, it seems, that she has rejected femininity (therefore, on the basis of the earlier argument, setting herself up as a possible criminal). Her cupboards are sticky (from broken jam jars); her towels are dirty; she is “not much of a housekeeper” (p. 76). In fact, the country attorney proclaims, “I shouldn’t say she had the homemaking instinct” (p. 76). What the men miss in this recitation of her faults, however, is the way that Minnie Wright clings to her femininity, and ironically, the way that the domestic space provides evidence of her crime. Minnie asks for her apron to be brought to her in prison, to make her feel more “natural,” and the women, interpellated into their husbands’ ideology, take that as evidence that she has *not* committed the crime. Indeed, the whole concept of crime undergoes revision in the play, as the women begin to feel their own guilt at leaving Minnie Wright to her lonesome and possibly abused existence on an isolated farm. As Mrs. Hale says, “Oh, I *wish* I’d come over here once in a while! That was a crime! That was a crime! Who’s going to punish that?” (p. 84)

Sherri Hallgren argues that the play “is radically subversive in all it implies about the different experiences, modes of interpretation, and potential for power in men and women [...] what Glaspell explores [...] is a parallel system of justice, one in which women can be judged according to context and truly by their peers” (p. 204), (indeed, one of Ruth Snyder’s comments about her all male-jury was that she felt a jury of women would judge her more fairly; and understand her better.) The men in the play fruitlessly search for a motive that the women conceal, for the men know that, without some evidence of “sudden feeling,” Minnie will not be convicted: “You know juries when it comes to women” (p. 85). This is, indeed, the same thinking that applies to *Machinal*; until they find evidence of an extramarital affair, the Young Woman looks likely to “get off.” The reality is, in the courts, that women have failed — and continue to fail — in proving their innocence if they reject an(y) aspect of their femininity. In literature, there is a space to represent women’s success in the courtroom, but this is both a utopic and a subversive project that has more often than not given way to a more realistic picture of women’s failure.

It is perhaps an obvious point that “both law and literature are, in the first instance, signs on a page” (Aristodemou, p. 1), but its obviousness does not preclude its need for reiteration. Nor is it unnecessary to point out that both legal and literary texts are “sites of struggle” (Aristodemou, p. 10). These points are indeed the foundations upon which any law and literature project must be based. As critics examine the struggles of the text — struggles over power, meaning, and appearance — they read the signs that may well point in opposite

directions. Reading Atwood's *Grace* is a case in point. Atwood's protagonist is, to a certain extent, the author of her own narrative. She takes up many positions: model prisoner, madwoman, patient servant, possessed female; they are positions of extremes. Concomitantly, her story is one that is warped by these various positions, and by how Grace herself is perceived. As she herself notes,

When you are in the middle of a story it isn't a story at all, but only a confusion; a dark roaring, a blindness, a wreckage of shattered glass and splintered wood; like a house in a whirlwind, or else a boat crushed by the icebergs or swept over the rapids, and all aboard powerless to stop it. It's only afterwards that it becomes anything like a story at all. When you are telling it, to yourself or to someone else.

(*Alias Grace*, p. 298)

As Aristodemou helpfully reminds us, "in the psychoanalytic scenario, the ability to retell one's own story in language evokes the hope of some, albeit temporary and limited, cure" (p. 51). Indeed, it is Dr. Simon Jordan's attempt to "cure" Grace of her supposed amnesia surrounding the murder that forms the basis of the novel. But Grace, a long-term old maid, is foxy in the sense indicated above, and she says, at various points, "I had come to feel that the truth was not a thing I owed him" (*Alias Grace*, p. 169). Indeed, here words — and appearance — can be deceptive. Her lawyer argues that she is a nineteenth century Scheherazade: "the stories she told ought never to be subjected to the harsh categories of Truth and Falsehood [...]. Perhaps Grace Marks has merely been telling you what she needs to tell, in order to accomplish the desired end" (*Ibid.*, p. 377). Indeed, even Simon Jordan comes to realize that in wanting the truth from her, he is wanting too much: "why should she be expected to produce nothing but the pure, entire, and unblemished truth? Anyone in her position would select and rearrange, to give a positive impression" (*Ibid.*, pp. 321–322). A postmodern author, Atwood plays around with meaning, intention, and words, indicating their provisional nature. Unlike Callaghan, who allows Lena to speak but does not record her words, Atwood records Grace's thoughts — but voices only a few of them, and even these are suspect. Moreover, she utilizes that now familiar sign of women's guilt: appearance.

At Grace's trial, and indeed in her flight from Canada, Grace wears the slain woman's clothing. This, she says, was merely practical, but it is interpreted differently by the court. She is a servant, wearing her mistress's clothing (and her mistress, a former servant herself, is also presumed just a little bit guilty herself, for setting herself higher than her station). We have, at best, theft; at worst, evidence of murder. As Cristie March notes,

As an object, then, Nancy's clothing becomes a space where language affects characters in devastating ways, not only because it elicits specific social and moral responses, but because the subtext

of the clothing also reveals ideological links that shift among characters and the language that defines those characters. Grace's own inability to "properly" negotiate with the object [...] and her attempts to render Nancy's clothing as a neutral term, not imbued with the event of Nancy's death, are irreconcilable with its social significance. (p. 73)

It is the clothing, then, that ultimately convicts her, in part because her words — and her many, confused and contradictory confessions — cannot be forced into an "easy" case. Whether she is guilty is, of course, another question altogether.

Finally, in the novel *Affinity*, Sarah Waters produces a stunning portrait of a woman imprisoned — wrongfully, shamefully it seems. The spiritualist Selina Dawes is a compelling character, introduced to us by our narrator, Margaret Prior, a Lady Visitor at a prison in London in the year 1874. What follows is a text made up — and I use those words advisedly — of Victorian women's journals, moving, in true postmodern fashion, both forwards and backwards at the same time. One feels the echoes of *Alias Grace*; indeed, at the very beginning of the text, one is not sure whether the voice that starts the text — Selina's — is not the same voice that continues it—Margaret's. Moreover, Margaret's chapter starts, "Pa used to say that any piece of history might be made into a tale: it was only a question of deciding where the tale began, and where it ended" (Waters, p. 7), echoing clearly Grace's own musings on story and history. Furthermore, as the reader is drawn into the story, she may, in fact, start to believe the supernatural explanations that are proffered to us, and guilt looks very circumstantial indeed.

Margaret begins her story with "a lady and her servant, and petticoats and loose hair" (Waters, p. 7), only to feel the weight of propriety against it. However, her second beginning also deals with clothing: "I am about to step across the grounds towards the prison proper — Before I can do that, however, I am obliged to pause a little to fuss with my skirts, which are plain, but wide, and have caught upon some piece of jutting iron or brick" (Waters, p. 8). This, she says, is a detail which would not be recorded by men, but it is a significant one for her and for the reader. Margaret is "caught" by Millbank, the prison, and indeed soon the "gate is made fast" behind her. The narrative waits for three pages before revealing that Margaret is not a convict — and many more chapters before we discover that it is only in her being a lady that she is free at all. In the cells are women who have attempted suicide, and Margaret, having also done so, is free only because she is not a "common, coarse-featured woman" (Waters, p. 256). Thus both crime and punishment are seen to be contingent things. Of Selina Dawes, the spiritualist convicted of assault, we learn both more and less, and not all of it can be untangled. What we do discover, however, is that she is indeed guilty — but here again, the question, guilty of what? is not what we

might expect. In prison for "assault," Selina uses her spiritualist tricks to convince Margaret of her essential innocence. Indeed, in her own voiced sections of the narrative, she clearly implies her innocence, in words that somehow obscure the fact that the claim of innocence resounds in prison walls. It is only when she is spirited away — as if by magic — that one learns of Selina's actual guilt. A lesbian, Selina is always already outside the patriarchal law, performing acts that cannot be named and remain virtually unspeakable. Her crime of "assault" thus takes on a different meaning as well. She is a con artist, trading on women's love to ensure her release. As such, she is, like the other fictional women examined in this article, indeed guilty at some level, but judged by values that are gender-imbued and thus, perhaps, contentious.

Lena Schwartz is "guilty" of desire, as well as theft; the same could perhaps be said of Grace Marks, and more besides. The Young Woman is "guilty" of trying to imagine an existence beyond marriage, an institution overtly critiqued as a capitalist enterprise that exchanges women's sexuality for material security, a critique that is also fundamental to *Affinity*. When Aristodemou argues that "criticism must challenge rather than submit to the ideological messages hidden in all texts, literary or legal" (p. 6), she calls on critics to politicize their reading in law and literature, a call that most feminists have already heeded. In the canon of feminist literature — the shared stories and histories of which Heilbrun and Resnik speak — texts of women's subjugation and subjection fit neatly into the pattern of always-already guilty. The ideological messages within these texts are not covert and coded, but rather overtly challenge readers to ask why it is that women fail in courtroom settings, why it is that they are judged through femininity.

Returning to my title, I think it is clear that for the historically guilty (Grace Marks, Ruth Snyder), feminists rewrite the texts that judged them so, probing beneath surface appearances for a different kind of story. For the fictionally guilty, writers foreground the unlevel ground upon which such women are judged, perhaps calling into question the supposed gender-blindness of the law. In doing so, these authors, too, court failure — but win literary success. As women writers in particular engage with the space of legislated patriarchy, and subvert further the grounds upon which women are judged, they open up spaces in the courtrooms that will not be filled with women's silence but with, as Heilbrun and Resnik hope, women's "right to anger, their use of power [...] their noncomplicity in the role of sex object" ("Foreword", p. xii). Clearly it is in those roles that Selina Dawes and Grace Marks excel, and challenge the reader to examine both guilt and innocence as roles that are played, and replayed, from a number of angles, pointing out the struggles

of the texts as well as the law in positioning them appropriately. Taken together, these texts of women and the law provide a welcome counterbalance to the established canon of law and literature, and open up new avenues for explorations of equal treatment under the law.

Fineman calls the social world "a kaleidoscope of potential realities, any of which can be readily evoked by altering the ways in which observations are framed and categorized" (p. 55). In framing women differently, the feminist law and literature movement looks beyond any facile connections between appearance, guilt and crime, to explore instead multiple expressions of guilt and the ways that crimes themselves can be renamed. As a result, to court failure in the courtroom may not, in the end, entail accepting the proposal. It is rather in subverting this proposal that *fictional* women, at least, can turn towards justice.

Works Cited

- Aristodemou, Maria. *Law and Literature: Journeys from Her to Eternity*. Oxford: Oxford University Press, 2000.
- Atwood, Margaret. *Alias Grace*. London: Bloomsbury, 1996.
- . "Spotty Handed Villainesses: Problems of Female Bad Behavior in the Creation of Literature." <www.web.net/owtoad/vlness.html>.
- . "In Search of *Alias Grace*: On Writing Canadian Historical Fiction". University of Ottawa, Public Lecture (November 21, 1996).
- Ben-Zvi, Linda. "'Murder, She Wrote': The Genesis of Susan Glaspell's *Trifles*". *Theatre Journal* 44, 2 (1992), pp. 141–162.
- Boire, Gary. "The Language of the Law: The Cases of Morley Callaghan", pp. 75–86 in *Dominant Impressions: Essays on the Canadian Short Story*, ed. by Gerald Lynch and Angela Arnold Robbeson. Ottawa: University of Ottawa Press, 1999.
- Bywaters, Barbara L. "Marriage, Madness, and Murder in Sophie Treadwell's *Machinal*", in *The Female Canon*, ed. by June Schlueter. Cranbury, NJ: Associated University Presses, 1990.
- Callaghan, Morley. "A Wedding-Dress", pp. 53–58 in *Morley Callaghan's Stories*. London: Ebenezer Baylis, 1962 (1959).
- Dunant, Sarah. *Transgressions*. London: Virago, 1997.
- Felman, Shoshana. "Women and Madness: The Critical Phallacy", pp. 133–154 in *The Feminist Reader: Essays in Gender and the Politics of Literary Criticism*, ed. by Catherine Belsey and Jane Moore. Houndsmill: Macmillan, 1989.
- Fineman, Martha Albertson, "Feminist Theory in Law: The Difference it Makes", pp. 53–72 in St. Joan and Bennington McElhiney.

- Heilbrun, Carolyn and Judith Resnik, "Convergences: Law, Literature, and Feminism", pp. 11-52 in St. Joan and Bennington McElhiney.
- . "Foreword", pp. xi-xii in St. Joan and Bennington McElhiney.
- Hallgren, Sherri. "'The Law is the Law — and a Bad Stove is a Bad Stove': Subversive Justice and Layers of Collusion in 'A Jury of her Peers'", pp. 203-218 in *Violence, Silence and Anger: Women's Writing as Transgression*, ed. by Deirdre Lashgari. Charlottesville: University Press of Virginia, 1995.
- Macpherson, Heidi Slettedahl. *Women's Movement: Escape as Transgression in North American Feminist Fiction*. Amsterdam: Rodopi, 2000.
- March, Cristie. "Crimson Silks and New Potatoes: The Heteroglossic Power of the Object in Atwood's *Alias Grace*". *Studies in Canadian Literature*, 22, 2 (1997), pp. 66-82.
- Morrison, Toni. *Beloved*. London: Picador, 1988 [1987].
- St. Joan, Jacqueline and Annette Bennington McElhiney, eds. *Beyond Portia: Women, Law, and Literature in the United States*. Boston: Northeastern University Press, 1997.
- Strand, Ginger. "Treadwell's Neologism: *Machinal*", *Theatre Journal*, 44, 2 (1992), pp. 163-75
- Tobin, Elizabeth. "Imagining the Mother's Text: Toni Morrison's *Beloved* and Contemporary Law", pp. 140-174 in St. Joan and Bennington McElhiney.
- Treadwell, Sophie. "Machinal", pp. 171-255 in *Plays by American Women 1900-1930*, ed. by Judith E. Barlow. New York :Applause, 1985.
- Ward, Ian. *Law and Literature: Possibilities and Perspectives*. Cambridge: Cambridge University Press, 1995.
- Waters, Sarah. *Affinity*. London: Virago, 1999.

