Abstract

In the “Trial of Mary and Joseph”, a play from the late fifteenth-century N-Town cycle, Mary and Joseph are tried for adultery and breaking a public oath. The trial is the result of an indictment brought about by the public rumour concerning the origins of Mary's pregnancy and possibility that Joseph is not the father of the child. The setting of a contemporary fifteenth-century ecclesiastical court introduces a legal and procedural approach which cannot properly process such an extraordinary event as the miraculous origins of Mary's pregnancy. As a result, Mary cannot be acquitted in accordance to the fifteenth-century regulations and a legal modification in the procedure must be implemented. However, a direct change would have a negative effect on the credibility of the play and the legal system it represents. Therefore, a subtle alteration is introduced: a transition from a strictly rational and commonsensical ecclesiastical ex officio trial to the common law trial by jury as outlined in the Assize of Clarendon, which legally utilized ordeal as a form of purgation. As a result, Mary could be legally acquitted, and the system’s credibility would not have suffered from an intentional and highly irregular alteration, while the audience of the play would have been assured that a medieval legal system could deal with cases even as extraordinary as a miraculous virgin birth. The argument will unfold through a detailed comparative study of both procedures, their similarities and disparities, presented in the context of the social and legal perceptions of a contemporary audience.

1. Mary’s miracle in the fifteenth-century legal framework

In one of the N-Town Cycle plays, “The Trial of Mary and Joseph”, the Holy Couple undergoes a public trial, during which they are accused of adultery and oath breaking. The miracle of Annunciation and Mary’s subsequent pregnancy contradicted her public vows of chastity, which opened the way for public speculation concerning other possible circumstances of the concep-
tion. This eventually leads to her and Joseph’s being summoned before the local ecclesiarch, the Episcopus, for the purpose of elucidation. Unfortunately, during the presentment, Joseph and Mary’s assertions of chastity are contrasted with Mary’s visible pregnancy, which gives the Episcopus no choice but to issue a public accusation for adultery. Having no other choice, instead of admitting their guilt and facing the consequences, the Holy Couple remain firm in their assurances of innocence. Their position, initially ridiculed or interpreted as blatant negations of the obvious, eventually forces the Episcopus to order the use of an ordeal to grant them a final chance for purgation. When the ordeal is successfully passed, it proves, beyond any doubt, that despite all the evidence stating to the contrary, the accusation was groundlessness and Mary and Joseph are both innocent of the alleged transgressions.

This particular play, a part of a fifteenth-century East Anglian mystery cycle, adapts for the purpose of the theatrical representation a story from an apocryphal Gospel of Pseudo-Matthew (Spector 1991, 2: 467). However, while in the apocrypha the story is set in the ancient Galilee, the play incorporates the fifteenth-century legal surroundings of a consistory court, which poses a rather serious issue. While in the apocrypha the priests find Mary innocent the moment she successfully passes a biblical test for adultery, the fifteenth century setting of the consistory court demands conformity to the then contemporary legal procedures and employment of a commonsensical approach accompanied by a rational evaluation of available evidence. In this regard, the use of an ordeal as means of a legal purgation seemed to be highly dubious. The setting dictates that Mary’s acquittal is achieved under legally credible circumstances, which would establish an aura of certitude and trust in the contemporary system’s ability to serve justice. Therefore, if the author’s intention was to stage a real trial, and the number of introduced legal details seems to suggest that, all utilized solutions that aimed at Mary’s acquittal must have appropriate and reliable, or at least credible, legal explanations. The legal awareness of the fifteenth century audience was high enough to expect that the play would follow this initially established juridical context (Musson 2001: 84–85).¹ The number of legal issues encountered by a typical western medieval European demanded maybe not an intimate knowledge of the law, but at least one that would guarantee the ability to successfully govern and protect one’s property (McSheffrey 1995: 13; Musson 2001: 84–85).² This and the additional prevailing belief in the righteousness of the legal system raised an expectation that the play would use an appropriate solution and guarantee Mary’s purgation in accordance with the letter of the contemporary codes of law (Firth Green 1999: 416–417). The use of an ordeal, which was a common medieval solution to the unsolvable predicaments, might be considered
a fulfilment of such expectation for issuing swift and reliable justice. The problem, however, was that, while widely incorporated in tales of folklore and medieval chivalric romances, as a legal procedure the ordeal was officially abandoned by the Pope Innocent III in 1215 during the Fourth Council of the Lateran (Bartlett 1986: 98; Helmholz 1983b: 617). Consequently, its use in the post thirteenth-century legal surroundings of an ecclesiastical court would not have been sanctioned and deemed trustworthy, unless it was a part of another, similar procedure. Therefore, was there, in the fifteenth century legal system, a regulation that would sanction the use of such procedure for the sake of Mary’s purgation?

Mary’s pregnancy, caused by the miracle of the Annunciation, breaks the rules of the natural world and eludes any attempts at rational comprehension. In contrast, the fifteenth-century legal system commonly present in the English ecclesiastical courts was derived directly from the twelfth and thirteenth-century reforms that introduced legal procedures which operated in the sphere of facts, tangible evidence and attainable proof (Brundage 1987: 345; Brundage 2008: 75–77, 156–161). The Canon law drew on the earlier Roman codification, and consequently, both opted for common sense and rational approach towards the use and evaluation of evidence and depositions of witnesses (Brundage 2008: 15–19, 75–76, 233–234). Earlier legal devices, such as solitary purgatorial oaths, ordeals and other procedures that depended on luck, skill or divine intervention, were gradually considered untrustworthy and subsequently discarded in favour of more rational means of dealing with legal issues. Consequently, thorough questioning of witnesses and collection of viable evidence that was later diligently analyzed, verified and used in further proceedings became a standard judicial procedure (Brundage 1987: 224, 253).

This spirit of legal rationality, however, made it impossible for Mary to prove her innocence, since the true origins of her pregnancy could not have been explained through these methods. The fifteenth-century mode of assessing and analyzing evidence lacked the ability to acknowledge such event since the legal system did not possess appropriate procedures capable of dealing with a miracle occurring in the context of an everyday life. The common belief that medieval courts represented God’s justice on earth, and therefore were infallible, did not change the fact that the ecclesiastical courts were as prone to bad judgment as any other system of justice (Firth Green 1999: 416). On a stage, however, it would be presented in its idealized form due to highly didactic character of medieval theatre (Clopper 1999: 747, 759–763). In that case, a conviction of an innocent woman in accordance with the supposedly God-sanctioned legal order would contradict this image and potentially suggest that either God endorsed injustice or that ecclesiastical courts were corrupt and unreliable.
This created a demand for a legal solution that would reconcile the mutually excluding concepts of pregnancy and chastity in a way that was credible, system complaisant and acceptable for the audience. The paradox of the situation inspired certain procedural modifications in the execution of the trial, which would not have been possible under ordinary circumstances. As a result, the possibility of a legal acquittal emerges and is presented in the play in a form of a two skilfully intertwined legal procedures, comparable in execution, but disparate in their purposes, assumptions and overseeing authority, although, through that simultaneous concord and discord, they allowed two seemingly contradicting elements represented in Mary to gain a legal interpretation.

2. Procedure and limitations of the fifteenth-century ecclesiastical ex officio trial

The initial stages of the procedure that Mary is subjected to are an extremely faithful representation of a fifteenth-century ex officio ecclesiastical trial, which was conducted by consistory courts in a situation when there was no private accuser and the only evidence of the suspect’s guilt was the common knowledge of a presumed transgressive behaviour (Lipton 2002: 120–121). In such cases the indicter was the Church itself, represented by the justices of the local ecclesiastical court who acted ex officio out of concern for the moral well being of the community (Helmholz 1983b: 617–618, 622; Lipton 2002: 121).

The mode of the accusation used by the ex officio trials was unusual due to the character of the evidence on the base of which the citation was issued. In a typical case, it was the plaintiff who, after initiating the procedure, had to procure viable witnesses or other types of evidence, which was then subsequently verified by the court during the deposition stage, or confronted by the defendant during the court’s sessions (Helmholz 1974: 127–128). Without the accuser, however, the usual evidence could not have been acquired, unless the knowledge of a certain transgression was common among the local populace and not restricted to the immediately involved parties. The ex officio trial was designed for such occasions since it allowed treating the existence of mala fama, or public fame, as sufficient grounds for initiating the procedure and the evidence during the court proceedings (Brundage 1987: 411–412; Helmholz 1983b: 618).

Such mode of accusation and evidence collection might be considered prone to various abuses, not to mention its questionable effectiveness. However, in the late Middle Ages, the use of a public fame as evidence was a very reliable practice, considering the circumstances (Helmholz 1983a: 14).
Public fame revolved around, and was directly connected with, the person’s reputation, which identified one’s status and thus was surrounded with enormous importance. Established on solid grounds, reputation, either good or bad, had enormous influence on one’s business, career possibilities, marital prospects or legal credibility (Helmholz 1983a: 21; McSheffrey 1995: 16). Therefore, in medieval social reality this particular evidence appeared to be very reliable and, when the need arise, relatively easy to verify, mostly because of the character of medieval communities (Helmholz 1983b: 620; McSheffrey 1995: 26). United either economically or by the occupied territory, in the rural communities or urbanized areas populated solely by members of the same trade or craft associations, people were keen on maintaining the moral standards within their group (McSheffrey 2006: 10–11, 155–157, 161–162). In such conditions, various transgressions, especially those of repetitive kind, were extremely hard to hide from other cohabitants and resulted in a rumour, which spread becoming a public knowledge or even commonly known facts (Brundage 1987: 460–461; Helmholz 1983b: 620; McSheffrey 2006: 150–151).

Although public knowledge was sufficient to issue an accusation, it was preferable that the Church itself did not initiate the *ex officio* trial without prior outside initiative (Helmholz 1983a: 14; Helmholz 1983b: 616–617, 621). The design of this procedure was to allow the people, the *publica vox*, to present their concerns before the ecclesiastical court, which the Church interpreted as a plea to take necessary action (McSheffrey 2006: 153; Helmholz 1983b: 620–622). However, since they acted for the good of their community, the instigators had to meet a number of requirements that would guarantee the sincerity of their concern and absence of possible malicious intent. Known defamers, convicted criminals and people of dubious integrity were considered untrustworthy and their voice of concern was considered insufficient (Brundage 1987: 253; Helmholz 1983a: 14). Furthermore, such initiators, in number of at least two, had to be members of that particular community and men of good repute, which would guarantee their credibility and exclude possibility of false accusation (Brundage 1987: 411; Helmholz 1983a: 4–5, 14; Lipton 2002: 121).

In “The Trial of Mary and Joseph”, most of the conditions for initiating the *ex officio* procedure are met and presented to the audience. The two Detractors act as the *publica vox* and relay possible existence of public fame when they openly speculate about the possible causes of Mary’s pregnancy. The local Church official, the Episcopus Abizachar, overhears them, and, after scolding them for gossiping and impugning Mary’s reputation, he eventually decides to send the Den, the acting Summoner in the play, to bring the Holy Couple to determine the truth for himself (Spector 1991,1: 14, ll. 134–145). To his disbelief, Mary arrives in a state of a visible
pregnancy, which allows assuming the existence of public knowledge in a degree sufficient to force the Episcopus into initiating the trial.\(^7\)

The play diverges at this point from the standard procedure of an *ex officio* trial. In normal circumstances, when the existence of public fame was brought to the attention of the ecclesiastical court, it had to be verified before issuing the citation. For that purpose the court could summon an inquest, which consisted of a selected group of people (Helmholz 1983a: 14; Helmholz 1983b: 619–621).\(^8\) As a final assurance, Church courts allowed questioning of the members of the inquest if their reliability was in doubt (Helmholz 1983b: 625).

However, the play does not introduce inquest in the standard form since the circumstances presented in the play make its implementation unnecessary. The Church courts used this legal tool whenever they were unsure of the existence of the public fame. However, when the existence of public fame was beyond doubt or the evidence was plainly visible, like Mary’s pregnancy, the court considered further clarifications superfluous, despite Mary’s constant denial of the accusations made against her (Helmholz 1983b: 621–622; Spector 1991, 1: 14, ll. 210–211; ll. 226–229). The common sense and rationality of the late medieval legalism immediately considered such assertions of innocence untrustworthy, especially when Joseph is in the close circle of possible perpetrators and Mary herself is contradicted by her undeniable pregnancy. The Primus Doctor Legis expresses these concerns by saying that she is undoubtedly “…with chylde” which can be seen “in syght;” and that “To us þi wombe þe doth accuse!” (Spector 1991,1: 14, ll. 302–303), which is hardly a surprise considering the fact that in medieval courts pregnancy was always a crucial evidence in cases of adultery (Brundage 1987: 386).\(^9\)

When the inquest was not implemented, or its unfavourable result was not successfully challenged, the accused in the *ex officio* trial had a chance to prove his innocence through compurgation (Helmholz 1983a: 13; Poos 1995: 588). This very simplistic and quite effective method of proving innocence was introduced as a legal procedure by Pope Alexander III (1159–1181) in a decretal *Nos inter alios* (Helmholz 1983a: 4–5. During compurgation the defendant performed a purgatorial oath, in which he swore before God that he was innocent of the charges, and had to additionally gather a group of compurgators who were willing to support his word with their own, stating that they believed the accused to be trustworthy (Helmholz 1983a: 13–14; Helmholz 1983b: 622). In order to prevent any possible perjury, the oath helpers had to meet the same requirements as all the participants of the previous stages of the trial (Helmholz 1983a: 16–17).\(^10\)

Unfortunately, in Mary’s case this particular line of defence turns to be useless. While she does perform the oath in lines 211–213 by saying “God to wyttnes, I am a mayd” (Spector 1991,1: 14, l. 211), not a single compurgator
appears to support her words. Additionally, the Episcopus and the accompanying doctors of the law are too sceptical in their rational approach to accept the possibility that a pregnant woman might have retained her chastity. At this stage, the *ex officio* trial seems to have exhausted its legal devices that could assist Mary in her acquittal and the introduced legal setting of the play cannot provide the result expected by the audience and supported by a believable legal justification.

3. Searching for a legal solution

The Play can be described as legal not only because it presents a particular judicial procedure in great detail but because it seeks to find legal solutions to encountered problems and to apply them in order to achieve a desired legal goal. This interpretation of the law for the benefit of the defendant is essential for the members of the audience who, while being aware that Mary is innocent, are confronted with the language of reason used by the Detractors, Episcopus and the two Doctor Legis, and continuously subjected to their interpretation of events (Hayes 2000: 66–68). Therefore Mary’s acquittal must not only be acceptable, but also, legally applicable in order to convince the accusers, the audience and the rules of common sense, which are dictated by the play’s logic of accusation (Hayes 2000: 68–69).

Unfortunately, this particular goal could not have been achieved through application of the existing judicial procedures on the level of lower ecclesiastical courts, but through a similar procedure that would allow a less rational approach, yet still in accordance with the law. For this purpose, the play uses the contemporary mode of trial by jury which, when introduced over two centuries earlier, utilized in its initial form certain legal devices that could have been helpful in Mary’s acquittal. To introduce those however, a shift had to be performed from the ongoing *ex officio* procedure into the alternative one, which would allow introducing a new, but successful mode of legal purgation. This seemingly easy modification could not be performed directly, but must be justified in terms of legal interpretation; otherwise, the play’s goal of retaining its legal and procedural context might have been jeopardized by a sudden, easy to challenge, inconsistency. Thankfully, the extraordinary nature of the case presented in the play as well as the highly irregular initiators of the trial had been gradually preparing the audience for the implementation of an unusual, procedural solution to the problem.11

It is the character of the Episcopus who, as a figure of authority, is responsible for the change of the legal procedure in the play. By stating “If I may on the in any wyse be wrokyn” (Spector 1991,1: 14, l. 329) he declares his uncertainty about Mary’s guilt and becomes most active in seeking out the
possible legal ways of acquitting her. This allows the Episcopus to eventually utilize an element not present in the *ex officio* trials but taken from the twelfth-century mode of the trial by jury, which was introduced by the Assize of Clarendon. Although older, procedurally the Assize of Clarendon was extremely similar to the *ex officio* trial and legitimized the use of a *judicium dei*, the ordeal, as a mode of final purgation.

4. The Assize of Clarendon: similarities, differences and legal possibilities

The Assize of Clarendon was an enactment made by King Henry II in 1166 during his series of legal reforms that were aimed at consolidating the system of royal justice in twelfth-century England. Possibly inspired by the concepts present in the newly introduced Canon law, mostly in terms of procedure and evaluation of evidence, it was one of the first legal projects that implemented into the common law the concepts of the jury of presentment and the trial by jury in dealing with criminal cases (Janin 2004: 76).

In terms of the execution, the procedure described in the Assize of Clarendon was similar to the *ex officio* ecclesiastical trial, though not without differences. Like its ecclesiastical counterpart it was divided into two parts – of indictment and trial – and designed to administer justice to those who, according to public knowledge, were “suspected of robbery, murder, or theft or of receiving men guilty of those crimes” (Helmholz 1983b: 613). During the indictment stage a representative of justice called upon a jury of presentment, which consisted of a group of men who were to testify, under oath, if there existed a public knowledge that someone might have committed a crime (Helmholz 1983b: 616–617; Janin 2004: 76–77). The moment the jury provided such information, an indictment was issued and the accused was summoned to face the second part of the trial, which was the purgatorial oath (Helmholz 1983b: 617). Up to this moment the trial from the Assize of Clarendon, almost identically to the *ex officio*, relied on the existence of public fame to initiate the procedure and had the tools to verify its existence (Helmholz 1983b: 623–624). The main difference, however, was the method of purgation. Although both procedures utilized the public purgatorial oath, in ecclesiastical trial it had to be reinforced thorough oath helpers, while in the Assize of Clarendon the accused had to pass the ordeal (Helmholz 1983b: 617; Janin 2004: 77).

As one of the most recognizable elements of European medieval culture, the ordeal had its origins in a belief that in a situation when the representatives of justice had little or no evidence to deliver a judgment, one could always turn to God and expect His intervention at the right
moment to prevent injustice (Lea 1996: 201–202). Surprisingly, despite its obvious religious character, by the second half of the twelfth century the doctors of the Church and the legal reformers, such as Gratian, considered all ordeals unreliable and extremely easy to falsify and were increasingly against their use as a mode of issuing justice (Brundage 1987: 224, 253). Eventually, in 1215, during the Fourth Council of Lateran, the *judicium dei* was officially condemned and abandoned by Pope Innocent III, who additionally forbade all members of the Church to take part in any kind of ordeals (Bartlett 1986: 98; Lea 1996: 227).¹²

This sentiment towards the unreliability of the ordeal seemed to have been shared by King Henry II, since the purgation through the ordeal from the Assize of Clarendon theoretically cleared the accused of his crimes but did not leave him unpunished. Those “absolved by the law” but with proven bad reputation on their heads were banished, and if they were to return without permission, they would be subjected to the laws of outlawry (Janin 2004: 77). Apparently, King Henry II considered a successful ordeal an unlikely occurrence and treated the proof of *mala fama*, supported by the jury, as sufficient grounds for condemning the defendant (Bartlett 1986: 67–68).

Although similar in procedure, the fundamental difference between ecclesiastical *ex officio* trial based on public rumour and the Assize of Clarendon trial by jury was in their purpose. The Assize of Clarendon was designed to identify a felon, prove his guilt and punish him accordingly. A steadily increased number of strictly criminal offences and punishments clearly stated its punitive design (Helmholz 1983b: 613). The *ex officio*, however, was more lenient towards the plaintiff since the tried offences were less of a criminal but more of moral nature, and interested in transgressions against set moral codes that were fundamental for proper functioning of medieval communities on the social, not strictly legal level. They were not designed to physically expel any possible strays from the expected Christian behaviour but to teach, re-educate and reconcile the proven transgressor with the rest of the community (Helmholz 1971: 266–267). Therefore, the majority of the ecclesiastical cases aimed at restoring one’s stained reputation or at issuing public penance for a convicted offender (Helmholz 1971: 266). As a result, the individual could return to his daily duties as a man of either proven unstained integrity and cleared of all defamatory public fame, or as a reformed sinner who mended his ways and was ready to be reintegrated with his community (Helmholz 1983a: 22).

In the play, the transition to the Assize of Clarendon trial by jury commences right after Joseph and Mary’s purgatorial oaths when she says “My name, I hope, is saff and sownde. / God to wyttnes, I am a mayd” (Spector 1991,1: 14, ll.210–213), followed by Joseph’s assurance that Mary is
“a trewe clene mayde”, and that he is “clene also” (Spector 1991,1: 14, ll. 226–227). These purgatorial oaths should be followed by the oaths of the compurgators, but they are not. The nature of the evidence and the rational language of the trial ensure the audience that no such people would appear, especially when Mary’s oath is challenged by the Primus Doctor Legis who, after her affirmation in lines 210–213, says: “How xulde þi wombe þus be arayd, / so grettly swollyn as þat it is? / But if sum man þe had ovyrlayd, / þi wombe xulde never be so gret, iwys!” (Spector 1991,1: 14, ll.214–217). When the same Doctor Legis repeats his accusations in lines 298–305, by saying that “þer was nevyr woman 3itt in such plight þat from mankynde hyre kowde excuse” (Spector 1991,1: 14, ll. 304–305), the common sense and rational legal approach represented by the accusers seems to outweigh Mary’s arguments and dictates the outcome of the trial. To prevent that, the immediate transition to the Assize of Clarendon must be performed, which would allow to avoid the almost sure conviction. The subsequent ordeal, which till 1215 existed on a par with other, non-miraculous, judicial procedures, through its context of the trial by jury, permits the rational treatment of the irrational evidence and allows to legally interpret Mary’s miracle (Bartlett 1986: 68).

5. Mary’s legal purgation and public declaration of innocence

The Episcopus introduces this old mode of purgation and marks the procedural shift when, in the line 234, he presents the “[...] botel of Goddys vengeauns” and proposes the ordeal by informing the Holy Couple that “This drynk xal be now þi purgacyon. / þis [hath] suche vertu by Goddys ordenauns / þat what man drynk of þis potacyon / And goth serteyn in procession / Here in þis place þis awtere abowth, / If he be gylyt, sum maculacion / Pleyn in his face xal shewe it owth” (Spector 1991,1: 14, ll. 234–241). The ordeal in the play was taken from the Book of Numbers (Num. 5: 12–31) and it counts on the divine intervention to occur to prove the accused guilt, not innocence.13 While the majority of the ordeals worked on quite the opposite assumption – innocence was shown through breaking the laws of nature caused by divine intervention – in the play the context of rational legal accusation turns itself against the accusers and is used to issue justice. When Mary is subjected to the ordeal and passes it by not showing any reaction to the water, the Primus Detractor, following the rational legal argumentation that he utilized throughout the entire course of the play, accuses the Episcopus of staging the ordeal due to his affinity with the defendant: “here is gret gyle! / Because sche is syb of 3oure kynreed, / þe drynk is chaungyd by sum fals wyle / þat sche no shame xulde haue þis steed!” (Spector 1991,1: 14, ll. 354–357). The
Episcopus responds to this accusation by inviting the Primus Detractor to undertake the ordeal as well, to which he eagerly complies in hope of proving the presumed hoax (Spector 1991,1: 14, 358–363). To his surprise, the moment he drinks the potion, the Primus Detractor is struck with ailments and pains that were not experienced by Mary, which provides the final evidence of her innocence and the Detractor's defamation.

These two successful ordeals conclude the element of trial by jury from the Assize of Clarendon. The continuation of the common law’s trial by jury is no longer needed, since it served its purpose by presenting the legal means for identifying and interpreting a miracle through legal grounds that utilized another miracle. However, this particular procedure cannot conclude the trial and the play must return to its original ecclesiastical *ex officio* procedure, as it is shown in the play’s ending. The reason for this is that while the successful purgation in the Assize of Clarendon ended with banishment, it did not prove the common fame to be wrong, but ignored the fact of its existence. The ecclesiastical trial, however, did not declare the accused innocent of the crimes in the criminal sense, but publicly cleared the accused reputation, thus abrogating, not ignoring, the existence of the public fame (Helmholz 1983a: 22). That is why Mary in the play is not only acquitted, but additionally all the rumours concerning her person are publically declared as false and of defamatory origin. This marks the reconciliatory purpose of the *ex officio*, not the punitive one of the Assize of Clarendon. The play aims to show legally justified reconciliation between the quarrelling sides. It does so first by making the Detractors, the Episcopus, the two Doctor Legis and the Summoner fall to their knees and ask forgiveness for their “cursyd langage and schame onsownd” (Spector 1991,1: 14, l. 372). The second step is performed by Mary who grants them their forgivnes by saying: “Now God for3eve 3ow all 3owie trespace, / And also for3eve 3ow all defamacyon / þat 3e haue sayd, both more and lesse, / To myn hynderawnce and maculacion” (Spector 1991,1: 14, ll. 374–377).

Mary’s words mark the closure and the fulfilment of the design that was behind the *ex officio* trial. The attack on her reputation was denied, her status was publically acknowledged and her innocence was officially proven (Helmholz 1971: 266–267). However, none of the above would have been possible if it was not for the specifically performed procedural transition during the purgation stage between the two modes of trial, which allowed for the unusual circumstances of Mary’s pregnancy to be rationally and, most importantly, legally defended in court. All this was done without jeopardizing too extensively the audience’s belief in the medieval system of justice, its ability to defend the innocent from undeserved punishment and one’s reputation from defamation.
NOTES

1 Those were mostly laws concerning everyday aspects of life, e.g. marital contracts, hereditary issues and common transgressions in these areas (McSheffrey 1995: 11–13). Frederick Pedersen in Marriage Disputes in Medieval England (London: Hambledon Press, 2000) gives an example of a case from 1366, where William Bridsall, a local beggar, had the knowledge of the law sufficient enough to know that the overheard exchange of marital vows made in present tense signified a properly contracted marriage, not betrothal (Pedersen 2000: 70–73).


4 For example, Emma Lipton in her article “Language on trial: performing the law in the N-Town trial play” (New York: Cornell University Press, 2002) argues that Mary’s trial describes the failure of the fifteenth-century legal system, and an ex officio trial, to successfully confront and prevent defamation (Lipton 2002: 125).


6 The two Detractors discuss among themselves the existence of Mary’s pregnancy as well as the possibility that Mary might have committed adultery (Spector 1991,1: 14, ll. 74–105). Since it seems to be commonly known that Mary and Joseph, during their wedding ceremony, made a public oath to remain chaste (Spector 1991,1: 14, ll. 78–79) the only rational reason for Mary’s visible pregnancy is either Joseph’s breaking of the oath, which was immediately discarded due to his old age, or her being unfaithful (Spector 1991,1: 14, ll. 86–105).

7 Alas, Mary, what hast þu wrought?
I am ashamyd evyn for þi sake.
How hast þu chaungyd þin holy thought?
Dude old Joseph with strenght þe take?
Or hast þu chosyn another make
By whom þu art þus brought in schame?
Telle me who hath wrought þis wrake.
How has þu lost þin holy name? (Spector 1991,1: 14, ll. 202–209)

8 George Fullbyke from Chichester who has been accused of adultery was released, but only when the inquest revealed that there was neither public fame nor suspicion concerning his person (Helmholz 1983b: 619).

9 The characters of the two Doctor Legis prove that the play’s setting is that of a bishop’s consistory court, where it was customary for the presiding official to have a staff of trained jurists and clerics (Brundage 2008: 145–146).

10 According to Helmholz, compurgators had to know the accused as well as be his or her neighbours, people of good repute and, on occasion, of the same social status (Helmholz 1983a: 17). Otherwise, the compurgation could be challenged, as in a case from Canterbury (1452), when the oath helpers were accused of helping the defendant to commit the crime; or in 1454 in Hereford, when the purgation of John Honte was declared invalid when it became clear that the oath helpers were not his neighbours (Helmholz 1983a: 17).

11 “To reyse slaw[n]dyr is al my lay” (Spector 1991,1: 14, l.40); in normal circumstances the Episcopus would not have considered sending the Summoner and would have discarded the
Detractors' gossiping in the first place. As notorious defamers, responsible for numerous acts of slander, they had no legal credibility to initiate the trial (Helmholz 1983a:14).

12 After the Fourth Lateran Council the ordeal in the Assize of Clarendon was changed into petit jury (Helmholz 1983b: 617).

13 The ordeal described in the Bible suggested that if the wife was guilty of adultery she would show that the specially prepared potion, made of water and dust collected from the temple’s floor, was “bitter” or distasteful (Num. 5:12–31).

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(a) Sources


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