Before the Right to Remain Silent: The Examinations of Anne Askew and Elizabeth Young

Penelope Geng
University of Southern California, Los Angeles

In recent years, Anne Askew has attained something of celebrity status among scholars of Tudor women’s writing and, more generally, of Tudor Reformation history. In the course of privileging Askew’s examinations above those of other female defendants (such as Elizabeth Young), scholars sometimes equate Askew’s rhetorical expertise with legal expertise. Thus, it has been argued that Askew knew the latest developments in Tudor legislation and used this knowledge to her advantage during her examinations. Was Askew aware of legal reforms? How did she and other Protestant defendants formulate their responses? These issues and other questions are addressed by comparing Askew’s defense to those of three other Protestants—Elizabeth Young, John Lambert, and William Thorpe. All four examinations appear in John Foxe’s Book of Martyrs. All four defendants used the Bible to construct cogent arguments against, and critiques of, their examiners. From this, it is concluded that Protestant defendants such as Askew were highly skilled debaters, but not necessarily experts of Tudor law.

If any person or persons being arraigned or put to his or their triall upon any of thoffences conteigned in the said former Act concernyng the Sixe Articles, stand muet or will not directly answer to the same Offenc es whereof he or they be indicted as is aforsaid, that then … for his or their s contumacie shall have judgement to suffer lyke paynes of Deathe losses for faitures and imprisonment, as if the same person or persons so indicted had ben therof founde giltie by verdict of xij men.

35 Hen. VIII. c. 5

So parliamentary legislation instructed heresy commissioners to deal with silent defendants. The wording is nearly verbatim of previous legislation (33 Hen. VIII. c. 12), which stipulated that if defendants “obstinate ly refuse to answere directly to the same offences whereof he or they be indicted” or if they “stand muett and will not speake,” then they “shalbe convicte judged and demed guyltie

1The Statutes of the Realm (London: Dawsons, 1963), 3:962. The legislation, from 1543, is also known as “A Bill Concerning the Six Articles.”

An earlier version of this article was presented to the “Law and Literature” panel at the Renaissance Society of America meeting, 19–21 March 2009, Los Angeles, CA.
In Tudor trials, silence was equated with guilt and malice. Before the existence of the right to remain silent, defendants had little choice but to verbally engage with their interrogators. Many of these dramatic interrogations can be found in John Foxe's *Book of Martyrs*, a history of the persecution of Protestants by Catholics from the time of the early church to the reign of Mary I and Philip II. After the Bible, Foxe's book was the most important religious work in the Elizabethan era. The first English edition was based on Foxe's *Commentarii rerum in ecclesia gestarum*, published in Strasbourg while Foxe lived in self-imposed exile during Mary I's reign. In 1560, following the coronation of Elizabeth I, Foxe returned to England, expanded the book, and translated it into English. Three years later, John Day published the book in folio format. Translating the book into English ensured that it reached a broad audience. In total, four editions (1563, 1570, 1576, 1583) were printed during Foxe's lifetime. Some of these copies are preserved in their original condition and can be found chained to altars or bookcases alongside the Bible, the *Book of Common Prayer*, and other significant Reformation books.

Sixty of the stories in the *Book of Martyrs* concern female defendants. Two of the most detailed are the examinations of Anne Askew and Elizabeth Young. Of the two texts, Askew's has received the larger share of critical attention. Joan Pong Linton speaks for many in observing that Askew demonstrates "courage and wit in dealing with her questioners." In a much cited article, Paula McQuade praises not only Askew's rhetorical eloquence but her "great legal . . . skill" and argues that Askew attempts to subvert the heresy proceedings by asserting her

---

2Statutes of the Realm, 3:847. The legislation (dated 1541) was passed in the wake of Sir Thomas More's treason trial of 1535. More argued that he had the right to remain silent: "it is a maxim amongst the civilians and canonists, Qui tacet consentire videtur, he that holds his peace, seems to give his consent"; William Cobbett, *Complete Collection of State Trials* (London: Bagshaw, 1809), 1:389. Although the attorney general, Christopher Hale, conceded that the court lacked the evidence to convict More—"we have not one word or deed of yours to object against you"—he nonetheless treated More's silence as a sign of "malice of [the] heart"; Cobbett, *State Trials*, 1:389.


rights as a common law subject. McQuade’s approach is innovative. Few studies assess the legal expertise of early Tudor women. On occasion, however, McQuade strains the internal evidence to suit the idea that Askew displays a “shrewd, up-to-date awareness of her status under English jurisprudence.” McQuade’s conclusion that there exists a “juridical competition between the common law and ecclesiastical courts” is debatable in light of recent research in legal history on the complex relationship between the two systems.

Can it be demonstrated, based on the available evidence in the examinations, that Askew possessed extensive knowledge of Tudor law? According to the textual and historical evidence detailed here, the answer is negative. A comparison of Askew’s defense to that of John Lambert, Elizabeth Young, and William Thorpe shows that Askew’s responses do not differ significantly from theirs. When asked potentially self-incriminating questions, Askew deflects by quoting biblical passages. Other Protestant defendants employ the same tactic, including Young, a lowborn and illiterate smuggler of anti-Catholic books. Therefore, in speaking of Askew as a legal expert, a mistaken impression of her is perpetuated, in part, by unfamiliarity with the genre of early modern heresy examinations.

The first examination records Askew’s appearances before church officials on 10 March 1545 and 13 June 1545. Around the time of her arrest, Askew was a member of a high-profile “evangelical network” that included such notable figures as Edward Crome, Hugh Latimer, Nicholas Shaxton, and John Lascelles. Officials accused Askew of various offenses, including preaching in public, rejecting the Catholic mass, and not believing in transubstantiation. Several churchmen, including Edmund Bonner, the bishop of London, examined her. The state’s opinion regarding transubstantiation was spelled out in 31 Hen. VIII. c. 14: “in the most blessed Sacrament of the Aulter, by the strengthe and efficacy of Christ’s myghtie worde, it beinge spoken by the prest, is present really, under the forme of bread and wyne, the naturale bodye and bloode of our Saviour Jesu Criste . . . that after the consecracion there remayneth noe substance of bread or wyne, nor any other substance but the substance of Criste, God, and man.”

---


7McQuade, “Except That They Had Offended the Law,” 3–4.

8Beilin, Two Examinations, xxii. It appears that p. xxii is in the introduction; the textual introduction begins on p. xlv.


10Statutes of the Realm, 3:739. This legislation from 1539 is also known as the “Act of the Six Articles.” Askew risked her life in defending her beliefs; the legislation stated that any “person or persons” who rejected transubstantiation would “by the auctority abovesaide . . . [be] demed and adjudged
The latter examination provides an account of Askew’s second arrest in the summer of 1546. By then, Henry VIII’s health was on the decline, which precipitated a power struggle between conservative and reform factions in his court. Sir Richard Rich and Lord Chancellor John Wriothesley, two members of the Privy Council, were unable to attack their enemies at court directly, and thus tried to disgrace their enemies by other means. Askew was swept into this political maelstrom. On 28 June, Rich and Wriothesley examined her at the Guildhall for five hours, only to find her a recalcitrant examinee. The next day, they transported her to the Tower where they tortured her, hoping she would confirm their suspicion that “there were of the council that did maintain [her]” (732). They asked her to reveal details about Protestant sympathies of the wives of several prominent courtiers. Askew “confessed no ladies or gentle women to be of my [her] opinion,” and, as a consequence, she was racked “till [she] I was nigh dead” (732). When Askew appeared before the members of the Privy Council for her second examination, “wiggle room was gone.” Askew wrote from her cell, “the law is turned to Wormwood” (679). In the end, Askew was convicted of heresy and burned at Smithfield on 16 July 1546.

Given the differences between the two examinations, my analysis focuses on Askew’s defense as recorded in the first examination.

In 1543, Parliament passed 35 Hen. VIII. c. 5, “A Bill Concerning the Six Articles,” an amendment of the legislation previously mentioned, 31 Hen. VIII. c. 14. The bill afforded each defendant the right to be tried before a jury of his or her peers. It represented an attempt by Parliament to ensure fairness in heresy trials. Essentially, the bill stated,

> Be it therfor enacted by auctoritie of this present parliament, that no person or persons from hensforth shalbe arraigned or put to his or their triall, of for or uppon any accusacion informacion or presentm ent concerning any of thoffences compriced w’in the said former Act, but only uppon suche presentments and indictaments as be or shalbe found an and herticks . . . and that everie such offender and offenders shall therfore have and suffer judgment execution payne and paynes of death by waye of burninge” (740).

11Beilin, Two Examinations, xvi, xxii–xxiii.

12Beilin, Two Examinations, xxvii. According to Beilin, the “ladies” in question were Catherine Brandon, duchess of Suffolk; Anne Radcliffe, countess of Sussex; Anne Stanhope, wife of Edward Seymour; Joan Denny, wife of Sir Anthony Denny; and a “Lady Fitzwilliams,” possibly Jane Ormond, widow of Sir William FitzWilliam.


14Hickerson, “Negotiating Heresy,” 794. Hickerson’s conclusion is supported by Linton, “Scripted Silences,” who argues that Askew’s silence under torture “exposes the utter irresponsibility of a legal procedure that would forcibly appropriate the voices of subjects through their bodies” (13).

15Beilin, Two Examinations, xxxii.
made by the othes of xij men or moo, afore such Commissioners as be or shalbe specially auctorised to inquire of thoffences conteigned in the said former Statute by the King's Majesty's Comission or thrre of them at the lest, sitting in their Cessions, or before the Justices of the Peace sitting in thir Cessions or three of them at the lest, or before the Justices of Oyer and Termynner or thrre of them at the lest.16

Does Askew allude to the provisions in this bill during her defense?17 First, consider the ways she could have possibly learned of the bill.

In theory, Askew could have heard a report of the bill from one of her supporters, perhaps from the parliamentarian Edward Hall, whom she mentions twice in her text.18 Hall is among the group accompanying her cousin Christopher Brittayne when he comes to sue for her release—"immediatle after came my cosen Bryttaine in with diuers other as Maister Haule of Grayes Inne and such other like” (727)—and his signature ("Edward halle") appears (along with those of thirteen others) at the end of Askew’s confession (729). But there is no evidence in either the first or latter examination that Hall acted as her legal tutor.

That Askew was a resourceful defendant, and that she thoroughly understood the game-like structure of heresy examinations, there is little doubt. In the first examination, she points out various inconsistencies in the officials’ treatment of her. For example, she reasons if her examiners have not personally witnnessed women “go into the pulpit & preach,” they should “finde no faute in poore women, except they had offended the lawe” (726). On another occasi on, she asks to know her “accusers, for I knowe not as yet” (727). She also argues that “none [is] able to proue any dishonestie by me,” and if detractors can be found, “I pray you bring them furth” (728). As the following episode illustrates, Askew is quite capable of defending herself against even the most experienced of examiners—Edmund Bonner:

as I came before him, he saide he was very sory of my trouble and desired to know my opinion in such matters as were laid against me[.] He required me also in any wise boldly to vter the secrets of my hart, biddinge me not to fear in any point. For what so euer I did say in his house no man should hurt me for it. I answered. For so much as your Lordship appointed. iii. of the clocke and my frendes shall not come in the hour, I desire you to pardon me of geuinge aunswere til they come. (726)

16Statutes of the Realm, 3:961.
17According to McQuade, “Askew's real brillian ... lies in her insistent foregrounding of the times when the legal safeguards instituted by the passage of 35 Henry 8 c.5 are violated or suspended”; “Except That They Had Offended the Law,” 7.
18There is little chance that Askew could have read a printed copy of the bill. Although Thomas Berthelet printed acts from the thirty-fourth and thirty-fifth year of Henry VIII, he did not print bills; see his Anno tricesimo quarto et quinto henrici ocavi (1543).
Askew shrewdly insists on the presence of witnesses or “frendes” and refuses to speak to Bonner “boldly.” Intellectually and rhetorically, Askew was equal to her examiners. Nevertheless, her eloquence is no proof that she possessed knowledge of Tudor legislation.

How to understand the extent of Askew’s knowledge of Tudor law is conditioned, in part, by an understanding of the relationship between canon and common law in this period. Earlier research in legal history tells the story of a competition between the two systems. Leonard W. Levy, for example, argues that common and canon lawyers were adversaries during the sixteenth century, and that the common lawyers’ rejection of inquisitorial practices laid the foundation for the modern right to remain silent. Recent research complicates the narrative. Henry VIII’s break from the Catholic Church, and his subsequent banning of the study of canon law, had limited impact on the day-to-day life of the profession. Canon law continued to be read and studied by common lawyers. According to J. H. Baker, “The profession proved … to be remarkably conservative” and common lawyers “kept abreast of current continental literature produced by authors adhering to the Pope.” Baker’s view is supported by R. H. Helmholz, Charles Gray, and David J. Seipp. Writing in direct response to Levy, Helmholz argues that the “English common law principle forbidding compelled self-incrimination … turn[s] out to be [a] commonplace taken from the traditions of the European ius commune … and canon law.” Seipp claims the notion that common lawyers were antagonistic towards canon law during the sixteenth century is a product of “nineteenth-century nationalism, eighteenth-century Whiggism, and seventeenth-century anti-Catholicism.”

The scholarly debate indicates that understanding of early Tudor legal history continues to evolve. “Facts speak only when the historian calls on them.” It may be concluded that Askew was an able defendant; she was not, however, a legal expert. In her verbal engagements with interrogators, she quotes the Bible, but never legislation. Comparing Askew’s words to those of other Protestant defendants helps to illuminate the rhetorical conventions found in her defense.

*   *   *

Askew claims that her female shortcomings, specifically, her lack of scholastic learning, prevent her from answering the examiners’ questions. The following exchange exemplifies her tactic:

Fourthly he [an examiner] asked me, if the Host should fall, and abeast did eat it whether the beast did receive God or no? I answered, Seinge ye haue taken the paines to ask this question I desire you also to assoile it yourself… And he said, it was against the order of scoles that he which asked the question should aunswere it. I told him, I was but a woman and knew not the course of scoles. (726)

Askew’s dialogue with Bonner proceeds along the same lines. When he attempts to draw her into a theological debate, she states, “I believe… as the scripture doth teach me” (727). Frustrated, Bonner demands to know why she “had so few wordes” (727), to which Askew replies, “God has given me the gift of knowledge, but not of utterance…. Salomon sayeth that a woman of few wordes is a gift of God” (675). When the examiners threaten her with burning, she replies: “I had searched all the scriptures, yet could I never finde, that eyther Christe or his Apostles putte anye creature to death” (730). In grounding her defense in the Bible, she presents herself as a mere reader, not, as her interrogator would see her, an interpreter of the Bible.

The persona of a naïve reader serves a useful purpose not only for Askew but also for the examiners. Towards the end of the first examination, Askew recounts the following conversation between Bonner and Brittayne, her legal surety. Bonner claims that as Askew is a woman, he can be “nothinge deceived in [her]” (729). Brittayne accepts Bonner’s point and expresses his hope that the bishop will “take [her] as a woman, and not to sette [her] weake womans wit, to his Lordshippes verye greate wisdome” (729). The exchange shows that all parties can potentially benefit from the cliché of the “weake womans wit.” Bonner is able to save face; Brittayne is able to expedite Askew’s release with minimal cost to himself or her; and Askew is able to save her skin, at least for now.

Askew’s recitation of specific passages from the Bible to buttress her argument is a tactic employed by John Lambert during his 1532 heresy trial.24 Asked by the bishop of Canterbury “and other adversaries” whether he had ever been “suspect or infamed of heresy” (1126), Lambert argues that the “opinion of the people was neuer one,” and reminds his examiners that if “all men coulde not say wel by Christ … what should I need to regard, if at some time, some person for a like cause should suspect of me amisse, and euill report of me” (1126).25 Even if “infamy was put vpon [him],” he has “forgotten it” (1126). Lambert saves his boldest argument for last: he would be “twise a foole” to confess the existence of infamy for he would effectively be condemning himself by his own admission. “It


25The history of the worthy Martir of God John Lambert,” in Foxe, Book of Martyrs (1583), 1125–54. Among the forty-five articles leveled against Lambert, this is the first.
is written in your owne law,” Lambert informs the court, “nemo tenetur prodere seipsum: No man is bound to bewray himselfe” (1126). The canon law principle to which Lambert refers is nemo tenetur prodere seipsum, quia nemo tenetur detegere turpitudinem suam (no one is compelled to bear witness against himself, because no one is bound to reveal his own shame). The principle has its origin in medieval canon law commentary, which claims that “men and women should confess their sins to God, but they should not be compelled to make their crimes known to anyone else.”

The examinations of Elizabeth Young also expose the conventional nature of Askew’s speech. Sometime in 1558 (the precise date is unknown), London heresy commissioners arrested Young, a woman of “forty yeares and vpwarde” (2311), for selling copies of John Olde’s translation of Antichrist (1556), an anti-Catholic polemic by Rudolph Gualter. This was a serious offense. By royal decree, those caught disseminating anti-Catholic literature could be executed.

Young’s story appeared for the first time in the second edition of the Book of Martyrs published in 1570. This suggests that Foxe was unaware of Young’s existence before the publication of the first edition. It is doubtful Young composed her own text. Unlike Askew, Young was illiterate. Asked by a “Scribe” to “name . . . the booke” which she had been caught selling, she replies, “I can not tell.” He asks her “Why? wouldest thou bye booke, and know not their names?” and Young is mute (2313). Elsewhere, Young claims that her knowledge of the Bible derives from the hearing of it (2313).

Everything that is known about Young comes solely from Foxe’s introduction to her examinations:

Ye heard before in the treatise of the scourgyng of Tho. Greene, how he was troubled and beaten by Doct. Story, for a certeine booke called Antichrist, which he receaued of a woman, because in no case he would detect her. This woman was one Elizabeth Young, who commyng from Emden

26Quoted in Helmholz, “Origins,” 981n93.
28“Elizabeth Young,” in Foxe, Book of Martyrs (1570), 2308–14. Hickerson, Making Women Martyrs, 89–91, and Levin, “Women in the Book of Martyrs,” 196–207, discuss Young’s examination in some detail. As Foxe promised the reader in his introduction, Young’s story ends on a happy note. At the end of the thirteenth examination, the examiners allow Young to go home after two women, whose names are not provided, appear and “earnestly sued for [her]” release (2314). The women complain to the commissioners that they have become the involuntary caretakers of Young’s children. One of the women says she has been paying for a nurse: “I gat her child a nurse and I am threatened to stand to the keepyng of her child, and therfore it standeth me in hand for to sue to haue her out” (2314). It is a mundane ending to an otherwise serious tale. The ending demonstrates a theme of Foxe’s book: martyrdom does not belong only to the extraordinary people, but to all. A lowly person like Young could be transformed into a Reformation hero.

30The popularity of Foxe’s book caused Foxe to be “inundat[ed] with stories from witnesses of persecution”; Hickerson, Making Women Martyrs, 90.
to England, brought with her divers bookes & sparsed them abroad in
London, for the which she beyng at length espied and layd fast, was
brought to examination xij. tymes before the Catholicke Inquisitours
of hereticall prauitie. Of the which her examinations, ix. haue come to
our handes. Wherin how fiercely she was assaulted, how shamefully she
was reuiled, how miserably handled, & what answeres she made vnto
the aduersaries in her own defense, and finally after all this, how she
escaped and passed through þe pikes (beyng yet, as I heare say, alyue) I
thought to giue the reader here to see and vnderstand. (2308)

Based on this information, Andrew Pettegree argues that Young belonged to a
"network of contacts" that smuggled Protestant literature between London and
Emden.31 Little is known about the day-to-day operations of this network. The
members seem to have relied on the "normal channels of trade."32

During her examinations, Young readily confesses to being both a Protes-
tant and a member of John Scory's congregation in Emden.33 She calls Scory
her "Bishop" and "Superintendent" (2310). In her seventh examination with John
Darbyshire, the bishop's chancellor, Young bluntly declares her Protestant views:

Chancellor: Hast thou not sayde, that Masse was wicked, & the sacra-
ment of altar most abominable?
Young: Yes that I haue.
Chancellor: And art thou not sory for it?
Young: No Syr, not a whit. (2313)

Young's rejection of the Catholic mass should have enabled the commission to
convict her of heresy. The legislation 1 & 2 Phil. & Mar. c. 6 ("An Act for the
Renewing of Three Statutes Made for the Punishment of Heresy") outlined dire
consequences for nonconformists like Young.34 Furthermore, Young admits to
violating at least five of the thirty-three articles of faith established by Cardinal
Reginald Pole "touching the lay people" (1641).35 The examiners threaten Young
with racking, even burning, but they do not follow through with the threats.

It becomes apparent that the examiners are not interested in Young's Protes-
tantism. They see that she can be more valuable to them as an informant than as

32 Pettegree, Marian Protestantism, 29.
33 Scory, the former bishop of Chichester, took up residence in Emden beginning 20 June 1554.
He was regarded by the English Reformist community as the most senior former Edwardian church-
man abroad during the reign of Mary I. See Andrew Pettegree, "Scory, John (d. 1585)," ODNB, http://
34 Statutes of the Realm, 4:244.
35 Young violated articles 1, 2, 16, 25, and 30. Article 1 stated "whether any maner of person …
do hold, maintaine, or affirme, any heresies, errours, or erroneous opinions, contrayre to the lawes
ecclesiasticall, and the vnity of the catholike churche": article 2, "whether any person doth hold, affirm
a martyr. Thus, upon determining that Young had been a “messenger” (2309) for John Scory, the examiners ask her to reveal who “translated,” “printed,” and “sent … over” the anti-Catholic literature (2309). One of her examiners even promises to reward her for her cooperation: “the Queenes highnes will be good to thee . . . thou shalt finde as much fauour as is possible” (2269). When she rejects this offer of patronage, the examiners, chiefly Anthony Hussy and Thomas Martin, attempt to use the Bible oath to compel her to reveal the secrets of her trade. In so doing, the examiners follow established procedure.

Historically, the Bible oath was used to police the speech of defendants. In 1424, for example, a Lollard by the name of Richard Belward was asked by the bishop of Norwich to “sweare vpon the Euangelistes, that from that daye forwarde he shoulde not wittingly, preach, teach, or defend any error or heresie to the church of Rome” (400–401). During Edward VI’s reign, Thomas Somerset (“one of the byshop of wynchesters proctors”) was asked by the court to swear a “corporall oathe, vpon the holy Euangelistes, to depose the whole and plaine truth … vpon suche interrogatories as shoulde be ministred” (847–48). Belward and Somerset both swore the oath without resistance. The legitimacy of the practice was reinforced by Mary I and Philip II’s 1556 letter, which told heresy examiners to use the Bible oath on taciturn defendants: examiners should “compel to answer & swere vpon the holy Euangelistes … all and euery offendour and offendors, and al & euery suspect person and persone … witnesses … to declare the truth in all such thinges” (1644).

This is precisely what the examiners attempt to do to Young. She evades by declaring that she “vnderstand not what an oth is, & therfore I I w ill take no such thing vpon me me” (2309). Young’s argument, however, fails to dissuade her examiners. They helpfully offer to “teach her the booke oth” (2309). Young pleads ignorance once more: “Syr, I do not vnderstand it, and therfore I will not learne it” (2309). She might have been asked to swear the oath of truth (jusjurandum de veritate dicenda), in which case, she would have faced one of the most powerful weapons in an examiner’s arsenal. Recall that the legal prejudice against silence compelled defendants to reply to each question leveled at them. If they expressed themselves freely, as their examiners exhorted, whatever they said could be used against them. If they lied, they committed not only perjury, a serious legal offense, but sin. Matt. 12:36–37, for example, stated that “of every ydell worde

or says that in the blessed sacrament of the aultar there is not contayned the reel and substanciall presence of Christ”; article 16, “whether any do kepe any secret convinitcles, preaching, lectures, or readings, in matters of religion, contrary to the lawes”; article 25, “whether anye dooe kepe or hauve in theyr custode, anye erreonous or vnlawful books”; and article 30, “whether anye haue, or dooe depraua or contene the authorytye of Iurysdiction of the Popes holynes or the Sea of Rome.” The document is transcribed by Foxe, Book of Martyrs (1563), 1641–42.

36 Both examinations are recorded by Foxe, Book of Martyrs (1563).

37 This letter to the heresy commissioners is reprinted by Foxe, Book of Martyrs (1563).

38 Book-length studies on the early modern intellectual debate about lying and dissimulation include Perez Zagorin, Ways of Lying: Dissimulation, Persecution, and Conformity in Early Modern
that men shall have spoken: they shall geve acountes at the daye of iudgement”
and "For by thy wordes thou shalt be iustifyed: and by thy wordes thou shalt be
condemned." Also, according to religious commentators, one need not speak a
lie for God to hear it: the mere thought of it was enough. St. Augustine writes that
even if the “mouth of the body” ("os corporis") were shut, God would hear the lie
because it would have been expressed by the “mouth of the heart” ("os cordis").

Unwilling to be so imprisoned by language, Young resists the oath by craft-
ing a considerably more sophisticated counterargument based on her knowledge
of the book of Matthew. She claims, “christ saith, that who so euer is more then
yea yea, or nay nay, it commeth of euil” (2310). Had Young been the first person
to construct such an argument, she might now be remembered as being a signifi-
cant figure in the history of law and religion. But Young invents nothing new;
she follows a line of reasoning proposed by William Tyndale in his translation of
Matthew. To the passage that begins “But your communication shall be ye ye, nay
nay … if ought be above that, it proceedeth of evil,” Tyndale comments that if one
is asked by authorities to slander an innocent person, one should choose to “die
than to swear.” As an addendum, Tyndale states that oaths should not be used
by authorities to extract incriminating statements from the defendant: "Neither
ought a judge to compel a man to swear against himself." Tyndale’s gloss, in turn, echoes an earlier argument improvised by William
Thorpe, a Lollard, during his 1407 examination. Asked by the examiner to “lay
… [his] hande vpon the booke, touching the holy gospell of God an d take [his]
charge” (216), Thorpe argues that book-swearing violates the divine prohibi-
tion against swearing upon the bodies of “creatures.” To elucidate his argument,
Thorpe recounts a conversation (real or invented) overheard between a master of
divinity and a master of law:

The master of diuinitie said: It was not leful nother to geue nor to take
any suche charge vpon a booke, for every booke is nothing els but

---

txt. According to John Spurr, "A Profane History of Early Modern Oaths," Transactions of the Royal
Historical Society, 6th ser., 11 (2001): 43, only atheists lived without fear of the spiritual cost of break-
ing oaths.


41 William Tyndale, An exposition upon the v, vi, vii of Mathew… (Antwerp, 1533), sig. F6v.

42 Tyndale, An exposition, sig. F8r.

43 Thorpe’s Examinations, written in an autobiographical style, was first published in 1530 and
was quoted in full by Foxe, Book of Martyrs (1563), 195–224. See Maureen Jurkowski, “The Arrest of
William Thorpe in Shrewsbury and the Anti-Lollard Statute of 1406,” Historical Research 75 (August
diuerse creatures, of whiche it is made of. Therefore to sweare vpon a boke is to sweare by creatures, and this swearing is euere vnleful. (215)

Thorpe's reply highlights the material form of fifteenth-century books: leaves were made from linen or animal skin, the cover was the hide of animals, the quill was a feather, and the ink was made from iron gall or lampblack. Since such books were literally made from animal parts, or "creatures," they cannot be legitimate objects to swear by—or so he argues.

The examinations of Askew, Lambert, Young, and Thorpe form a small part of Foxe's book. In each case, the Protestant examinee constructs a defense against self-incrimination by citing well-known and germane passages from the Bible. The similarity among the defenses suggests that the structure of heresy defense had become conventionalized by the sixteenth century, and that this convention was transmitted from one generation of Protestants to the next by oral or textual means.

Inquisitors' manuals provide a complementary source for analyzing the rhetorical conventions of heresy defenses and for understanding the concomitant refinement of the art of interrogation and defense. In one such manual written in 1376, Nicolau Eymerich alerts his readers to ten common tactics employed by heretics used to distract, derail, and "elude" the inquisitors: equivocate (répondre équivoquement), respond with mental reservation (répondre par l’addition d’une condition), reverse the question (renverser la question), feign shock (feindre la surprise), answer a select part of the question, not the question itself (têgiverser les mots de la question), self-justification (une autojustification), pretend a sudden physical weakness (feindre une faiblesse corporelle soudaine), fake a sudden bout of dementia (simuler la stupidité ou la folie), put on airs of holiness which confuse the inquisitors (se donner des airs de sainteté … ils infectent quantité de gens et éludent ainsi le jugement de l’Inquisition).

To out trick these tricksters, Eymerich teaches inquisitors to begin the interrogation with a series of open-ended questions, for example, by asking the defendant to "guess why he had

44To amplify his argument, Thorpe invents a metaphor, based on the physical appearance of a book: "The gospel, that is the vertue of Gods worde, is not in the leuis of the boke, but it is in the roote of reason" and "Nether the gospel … is in the wryting aboue of the letters, but the gospell is in the markyng of the sentence of scriptures" (216). In other words, the divine "word" is not to be found in the physical pages ("the leuis of the boke") but in the "roote of reason."

45See Henry G. Russell, "Lollard Opposition to Oaths by Creatures," American Historical Review 51, no. 4 (1946): 668–84. Russell writes, "Most Lollards . . . refused to swear by creatures, that is to say by relics, by saints, and sometimes even by the Bible. But they were quite willing, in a necessary and legitimate cause, to swear by the Creator, by God Himself” (669).

been summoned to trial." Such questions lower the heretic’s defenses and may even result in an accidental confession. Although Eymerich lists these tactics for the benefit of his imagined audience, the inquisitors, he cannot prevent other readers, such as potential defendants, from exploiting his experience.

By the Tudor era, both examiners and examinees were equipped to engage each other in rhetorical duels. Their rhetorical brilliance is on full display in the *Book of Martyrs*. Besides the hundreds of examinations, Foxe’s book also contains royal letters, proclamations, and other legal documents. The hybrid form of Foxe’s book—its placement of legal and historical data—necessitates a reassessment of what is or is not “legal literature.” Histories of English law typically define legal literature as reports or casebooks written for and consumed by a professional legal class. Sir William Staunford’s *An exposition of the kinges prerogatiue* (1567), Sir Edmund Plowden’s *Les commentaries ou reports . . . de divers cases* (1571), and Sir Edward Coke’s *Reports* (1600–1615) and *Institutes* (1628–44) are frequently mentioned by scholars. This legal literature seeks neither to capture the embodied experience of law nor to engage common readers; it is addressed to an elite readership. Tonally, it is didactic and prescriptive; formally, it dwells on legal theory, legislation, and procedure. By contrast, Foxe places legislative documents alongside transcriptions of conversations between the examiners and the examinees, and such an arrangement provides insight into the impact of the law on the nation’s citizens, both high and low. What readers learned from the examinations could help them to appreciate the spirit as well as the letter of the law.

---