

APPLICATION OF THE LAW AND POWER ABUSE IN SHAKESPEARE'S MEASURE FOR MEASURE

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ABSTRACT

The present work analyzes power and abuse of authority in Shakespeare's *Measure for Measure*. It is shown how power is abused, and a comparison between the rulers – the duke and Angelo – analyzes their attitudes, showing in which sense both have failed, according to Aristotle's *Nicomachean Ethics* and some of Machiavelli's considerations in *The Prince*. There are some thoughts about the application of a law in disuse, its validity and implications in view of moral principles, equity, fairness and justice. The play establishes a parallel between equity and justice in the application of the law, criticizing its application without leaving considerations about mercy or human weaknesses. The idea that no one can follow the law strictly, not even those who apply it, is forwarded. Some sort of faults can be forgiven or at least have a mitigated penalty because of their nature of misdemeanor or because the law that defined them as misconduct is no longer consistent with the reality of the society that created it. Tempering the application of the law with moderate measures and considering equity and justness is showed as the answer to how to determine the measure of applying the law and its penalties.

Keywords: *Measure for Measure*, law, power Abuse, equity, justice.

1 SHAKESPEARE AND THE LAW

Reading Shakespeare is always an extraordinary experience, but it is also a challenge. His plays address different aspects of the human condition, such as love, hatred, envy, treason, revenge, as well as social and political questions such as corruption, morality, crime, and law, among many others. Themes related to the law are present in several of his plays. *Hamlet*, *Julius Caesar*, *King Lear*, *The Merchant of*

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Venice and *Measure for Measure* come readily to mind. *The Merchant of Venice* and *Measure for Measure* feature more prominently as legal plays.

The juxtaposition of law and literature is old, but as a research field, it is relatively new. According to Richard A. Posner in *Law and Literature* (2009), the AALS *Directory of Law Teachers* only included law and literature as a research field in 2004–2005, when it was no longer possible to ignore the increasing number of publications in the area that started appearing as early as 1985. Shakespeare wrote several plays that illustrate this exchange between law and literature. He develops complex plots, in which the action and thoughts of the characters are motivated by deep and strong reasons. Usually the exchange between law and literature becomes evident in scenes based on trials and court procedures, with both sides of an issue presented and a superior “judge” to make a decision. The motives presented are intricate, making it hard to classify a character and his motives as good or bad. Although these motives can be classified as illegal, often they redeem the character. What happens in *Measure for Measure* is no exception.

In *Measure for Measure*, Duke Vincentio decides to leave Vienna for a while and appoints Angelo to replace him, but he remains nearby disguised as a friar to observe Angelo’s conduct and the citizens’ reaction. His rigorous substitute decides to arrest Claudio for impregnating his fiancée Julietta, and the sentence is death. Claudio’s sister, Isabella, begs Angelo for mercy. He hears the appeal but remains inflexible. However, delighted by her moral principles, her oratory and intelligence, he makes her an offer: Claudio will be freed if she spends a night with him. Isabella promptly refuses and takes the outrageous idea to her brother in jail. The duke learns about what happened and decides to interfere to solve the situation. He creates a plan in which Isabella apparently agrees with Angelo’s offer. Mariana, Angelo’s former fiancée, takes Isabella’s place and on the next day, Angelo defaults on his promise and orders that Claudio be beheaded. Once more, the duke intervenes in disguise and a head other than Claudio’s is sent to Angelo. In the end the duke returns, Angelo is forced to confess his misconduct and the duke makes justice as he pleases and solves all the issues.

2 A SHIFT IN POWER AND POLITICS

Measure for Measure was first performed in 1604, at the beginning of the reign of King James I (1603-25). To some authors, such as Leonard Tennenhouse (1994), the maintenance of authority and power during the period demanded different strategies, which could be seen in King James's politics, considered archaic in comparison with the practices his predecessor, Queen Elizabeth, adopted: "[L]iterature had to employ radically discontinuous political strategies for idealizing political authority" (TENNENHOUSE, 1994, p. 110).

One of the themes of the play is the abuse of power by the authority inserted in a moral and ethical duel between the application of justice using the law according to its literal content and the reasonableness of the application, at some moments strictly applied, and at other moments ignored because of its disuse. The "houses of resort" (I, ii) and lechery were disseminated in the city; Duke Vincentio contributed to that by not enforcing the law. To solve the issue, the duke delegates his power to Angelo, and Angelo decides to revive the law that punishes lechery with death, condemning Claudio, since his fiancée is pregnant outside wedlock. At first, Angelo shows himself as a rigorous enforcer of the law. However, when Isabella tries to appeal to Angelo's mercy, he offers her an immoral way of saving her brother:

That you, his sister
Finding yourself desired of such a person,
Whose credit with the judge, or own great place,
Could fetch your brother from the manacles
Of the all-building law; and that there were
No earthly mean to save him, but that either
You must lay down the treasures of your body
To this supposed, or else to let him suffer;
What would you do? (II, iv)

Isabella should buy her brother's forgiveness with a sexual favor. Such situation exposes Angelo's true face. Then, there is a break in the rigor previously demonstrated with the purpose of satisfying his personal wishes, clearly abusing the power given him.

In order to obtain a personal favor, Angelo does not hesitate to practice an act that he punished so severely before. He reveals a corrupt side, abusing his power and authority by demanding a favor in exchange of saving Claudio's life (theoretically at least). Posner (2009) points out that there are two kinds of corruption commonly explored in literature: the personal and the political. According to him, Angelo's belongs to the first kind, since he corrupted himself following a feeling, and not with political intentions.

Angelo's motivation in applying the law so harshly is questioned sometimes during the play. Claudio questions if whether with his actions Angelo is revealing his tyrannical nature or if it is his position as an authority that makes him do so, to achieve fame (I, ii). Isabella argues to Angelo that "it is excellent/ To have a giant's strength; but it is tyrannous/ To use it like a giant" (II, ii), and Angelo cannot answer her.

The consequences of Angelo's proposal to Isabella guide the plot. To reestablish order and to correct Angelo's misconduct, the duke must act at once although in disguise. In the end, the duke uses his absolutist prerogative to make justice. He forgives Claudio, shows mercy to Angelo, and condemns Lucio to marry a woman he claims to have impregnated. In the first and second cases, the duke makes justice wisely by using his own judgment and not by following any law. In the last case, the duke acts motivated by his will, but in a rancorous way, revealing, "Slandering a prince deserves it" (V, i), because Lucio vilifies the image of the duke.

3 BETWEEN ARISTOTLE AND MACHIAVELLI

In the play, the duke and Angelo adopt different postures when ruling and applying the law. The duke, despite being troubled with the vice that takes the city, neglects the application of the law for many years and fears to reapply it because he is concerned with his image before the citizens of Vienna. Angelo is considered a strict person that knows much about the city laws. When he is invested with power in the duke's absence, he becomes too rigorous by applying the law and condemning Claudio to death for having sexual intercourse before

marriage, as the pregnancy of his fiancée Julietta reveals. Heinzelman (2006) rightly points out that: “Just as the duke is too lenient, so Angelo is too harsh, although he does not go beyond what the law allows.” (HEINZELMAN, 2006, 14:13) Even though Angelo’s attitude can be seen as extreme and exaggerated, he does not commit any illegality by applying the death penalty to Claudio, because he just follows the legal provision. These two different postures can be fruitfully examined under the teachings of two great philosophers: Aristotle and Machiavelli.

Aristotle is seen by scholars as one of the founders of Western philosophy. His contributions to the fields of ethics and study of virtues is crucial to understanding the idea of the changeability of human nature, in a sense that ethics is made of values that are molded by habit and custom, with politics and the law as extensions of ethics. It determines a mean that is, according to him, the ideal posture that must be adopted in every human action, especially for those who occupied a position of power and government.

Machiavelli’s works have had a tremendous influence since their first publication. Shakespeare was not immune to the Italian’s ideas. The approach to political subjects made after observation, experience, and studies about the subject produced a manual for rulers named *The Prince*. Concerning theoretical politics, Machiavelli’s work is a landmark in political theory. Before him, the study of State Theory was limited to philosophical speculation based on ethical and moral values of the time, while Machiavelli based his studies in observation of power and political realities, analyzing facts and only after that developing his theory.

Among the elements common to both *Measure for Measure* and *The Prince*, one can mention the attitudes of the duke in different moments. Alexander Martins Vianna (2007) highlights that the duke’s disguise as a friar, in order to move around the city with the purpose of knowing the opinions of the citizens about himself, is related to the statement made by Machiavelli in the inscription of his book:

Just as those who draw landscapes place themselves below in the plain to contemplate the nature of the mountains and of lofty places, and in order to contemplate the plains place themselves

upon high mountains, even so to understand the nature of the people it needs to be a prince, and to understand that if princes it needs to be of the people. (MACHIAVELLI, Introduction)

The duke's intentions regarding the announcement of leaving the city but instead remaining in disguise are presented in his conversation with Friar Thomas in act I, scene iii. It reveals that the duke intends to test Angelo's righteousness and to see "If power change purpose, what our seemers be." (I, iii).

The friar disguise allows the duke to observe Angelo's behavior toward Isabella and Claudio and to form a plan to solve the case, in a way that, far from tarnishing his image, would show him as wise and merciful. Contrary to the duke, Angelo adopts an opposite attitude when placed in a position of power. He brings back an existing law that had not been applied for many years and shows no mercy in its application. In addition, he abuses his power to accomplish a personal desire that is the practice of the same crime he condemns so harshly and hypocritically.

Angelo's indication to rule the city in the duke's absence is in line with what Machiavelli presents about the displeasure of Cesar Borgia with the government of the Romagna region:

When the duke occupied the Romagna he found it under the rule of weak masters, who rather plundered their subjects than ruled them, and gave them more cause for disunion than for union, so that the country was full of robbery, quarrels, and every kind of violence; and so, wishing to bring back peace and obedience to authority, he considered it necessary to give it a good governor. Thereupon he promoted Messer Ramiro d'Orco a swift and cruel man, to whom he gave the fullest power. This man in a short time restored peace and unity with the greatest success. Afterwards the duke considered that it was not advisable to confer such excessive authority, for he had no doubt but that he would become odious, so he set up a court of judgment in the country, under a most excellent president, wherein all cities had their advocates. And because he knew that the past severity had caused some hatred against himself, so, to clear himself in the minds of the people, and gain them entirely to himself, he desired to show that, if any cruelty had been practised, it had not originated with him, but in the natural sternness of the minister. Under this pretence he took Ramiro, and one morning caused him to be executed and left on the piazza at Cesena with the block and a bloody knife at his side. The barbarity of this spectacle caused the people to be at once satisfied and dismayed. (MACHIAVELLI, Chapter VII)

Angelo's punishment is much lighter than Ramiro d'Orco's, but when the duke returns to Vienna, Angelo is judged in public and subsequently pardoned. The comparison between the images of the two rulers puts them in opposite positions, since the duke shows that Angelo was overly severe; at the same time, he shows that he can reinstall peace and provide fair treatment to all citizens. Posner (2009) writes that the duke's concern about his image finds support in the teachings of Machiavelli, who argues that the prince must have his acts balanced with equity and prudence, being feared but not hated. Duke Vincentio expressly declares that he neglects the application of the law and he considers that if he punishes someone after its non-application for many years, it will make the citizens hate him. Therefore, he has Angelo apply the punishment in a way that the duke's good image is not tarnished. The inflexible way that Angelo enforces the law puts the duke under an extremely favorable light by comparison. When Duke Vincentio returns, he solves the case with justness, casting himself in the role of a wise ruler.

Aristotle's studies about moral and equity in the actions of a ruler can also be related with *Measure for Measure*. The duke shows with the decisions he makes at the end of the play that justice is best achieved with fairness. According to Aristotle, equity can be understood as the attempt of achieving a proportion between individual and collective rights with the proper use of reason and moderation, which should regulate all acts of human life. Equity assumes fairness and temperance in the application of the letter of the law, an idea to the concept of the mean that exists in the just, between the excess and the deficiency. (ARISTOTLE, p. 28)

Anderson Vichinkeski Teixeira (2012) writes that equity can balance the extremes, which are vices. Angelo and the duke represent those extremes, as the first exceeds in the rigor of the application of the law while the second neglects it. The mere application of the letter of the law is not the ideal way, because applying the law should not be a mechanical gesture but rather an action requiring reflection and analysis that results in moderation and prudence of governing.

4 MORAL, EQUITY AND JUSTICE

An extremely important concern in *Measure for Measure* is the application of the law and justice. Both in courts of any time or place and in fiction, there are examples of how the strict enforcement of the law does not always achieve justice. A classic example happens in another play by Shakespeare, *The Merchant of Venice*, in which Shylock, by demanding the literal fulfillment of the contract, driven by hatred, and deaf to the pleas of mercy, doesn't achieve his purpose – even though his right was guaranteed by a contract between him and Antonio – and condemns himself by the literalness of the contract.

In *Measure for Measure*, strict application of the law would punish Claudio to death, but justice would not be served. A law may have several sources and custom is a fundamental one, because it reflects the wishes, history, and culture of a society. Therefore, if a society considers that promiscuity must be punishable by death, a law guarantees such penalty. However, if after a while the same society understands that such punishment is exaggerated, or at least questionable, since moral standards can change, the law may be revised. Society evolves and assimilates values based on usage and current rules, and if the law does not follow such evolution, its application no longer reaches what is morally reprehensible, because each situation has its details and particularities, and motivation of an act is something to consider before condemning it – or not. In *Measure for Measure*, a law exists that has not been applied for years. Whether for the absence of punishment, or for the evolution of social mores, motivated by the non-application of the law, the citizens of Vienna do not agree with Claudio's death sentence, some because they do not condemn the practice of sexual intercourse before marriage, others because they appreciate Claudio as a person of character. These different opinions indicate that his attitude, despite breaching a law, is not seen unanimously as offending the moral. The strict application of the law does not give Claudio justice. The law must be flexible, adaptable to the case. A way of adapting the law to specific circumstances of the situation is through the principle of equity. Aristotle was one of the first philosophers to devote some thought to the law enforcement with equity. Anderson Vichinkeski Teixeira explains: "Aristóteles

atribuiu à equidade a tarefa de fazer preponderar o justo absoluto nos casos em que o justo legal se demonstrar iníquo e incapaz de permitir a realização da justiça política”² (TEIXEIRA, 2012, p. 90). Aristotle’s contribution to the notions of equity and justice was determinant to understand the application of the law tempered with principles and after analyzing the circumstances of each situation, with the law adapting to the case as the consequence. According to Aristotle, equity can complete what justice – the law – does not reach. (ARISTOTLE, p. 77-78).

5 THE CASE OF A LAW IN DISUSE

The issue of law enforcement arises when Claudio is arrested as Angelo’s first act replacing the duke in the government and the matter reappears several times in the play. Claudio’s fiancée got pregnant before marriage, and the pregnancy constitutes evidence of a capital offense. However, the law that defines such behavior as a crime has fallen into disuse, since the duke has not applied it for several years. This creates a problem: how to punish an individual for an act that others also practice in the same society for years and with impunity?

Two questions should guide the application of the law: whether the law is still valid even if not applied for “so long that nineteen zodiacs have gone round” (I, ii), that is, nineteen years. Second, if the law is valid, the penalty should not be disproportionate to the act committed, considering that some citizens know the law but the act is not punished. The duke reveals to Friar Thomas that lechery in the city took enormous proportions, and admits, “Sith ‘twas my fault to give people scope, / ‘twould be my tyranny to strike and gall them/ For what I bid them do: for we bid this be done, / When evil deeds have their permissive pass/ And not the punishment” (I, iii).

Henrique Smidt Simon shows in “O problema da aplicabilidade da lei em desuso na peça *Medida por medida*” (2003) the opinions of different characters – and consequently brings to the fore different representatives of the people in the

² “Aristotle attributed to equity the task of making the absolute just prevail in cases which the legal just shows itself incapable of allowing the achievement of the political justice.”

city – about the proper or improper enforcement of the law. Claudio, Escalus, Pompey, Isabella, and the Provost feel unease in face of the application of the law: Claudio declares that he sees Angelo's attitude as a way to achieve fame:

Or in his eminence that fills it up,
I stagger in:—but this new governor
Awakes me all the enrolled penalties
Which have, like unscour'd armour, hung by the wall
So long that nineteen zodiacs have gone round
And none of them been worn; and, for a name,
Now puts the drowsy and neglected act
Freshly on me: 'tis surely for a name. (I, ii)

Claudio's opinion about the reasons why Angelo decides to apply the law takes into account that he is replacing the duke in his absence, and that position makes him feel powerful, with the punishment being a way of demonstrating such power. Escalus understands that the penalty is disproportionate to the act committed and tries to defend Claudio for his noble character and because of the human propensity in general to commit faults. He also foreshadows the results of Angelo's attitude:

Ay, but yet
Let us be keen, and rather cut a little,
Than fall, and bruise to death. Alas, this gentleman
Whom I would save, had a most noble father!
Let but your honour know,
Whom I believe to be most strait in virtue,
That, in the working of your own affections,
Had time cohered with place or place with wishing,
Or that the resolute acting of your blood
Could have attain'd the effect of your own purpose,
Whether you had not sometime in your life
Err'd in this point which now you censure him,
And pull'd the law upon you. (II, i)

Escalus tries to appeal to Angelo's mercy, saying that everyone may be in Claudio's position and may commit a reprehensible act, even Angelo. However, according to Angelo, Julietta's pregnancy makes the crime visible, and that is why he cannot ignore the crime and must punish it. Angelo moves on arguing that if he, who judged Claudio, ever were found in a similar position, committing the same offense, the law must be equally applied to him, in the same measure of the judgment given

to Claudio. Pompey thinks that if everyone who committed the same act were punished with death, Vienna's population would be decimated. The Provost, too, agrees with that: "All sects, all ages smack of this vice; and he/ To die for't!" (II, ii), while Isabella believes in her brother's fault but thinks the penalty is disproportionate since it is committed with impunity by many others, "Good, good my lord, bethink you/ Who is it that hath died for this offence? / There's many have committed it" (II, ii). Isabella argues that the principle of equality should be respected in the case; she points out that other people have practiced the same crime and were not punished or judged and the law must be applied equally to all.

Although the law has not been enforced for many years, it is still valid, because it was not revoked. But we should take into account that one of the sources of a law is the custom of a people, and if a particular act is no longer punished and consequently becomes a custom, the law should be modified to follow society's trends and thereby fulfill its social role. In that case, modification should focus on the dosage of the penalty. Impunity has encouraged the practice of lechery according to the duke:

Now, as fond fathers
 Having bound up the threatening twigs of birch,
 Only to stick it in their children's sight
 For terror, not to use, in time the rod
 Becomes more mock'd than fear's; so our decrees,
 Dead to infliction, to themselves are dead;
 And liberty plucks justice by the nose;
 The baby beats the nurse, and quite athwart
 Goes all decorum. (I, iii)

An analysis of the context and of these two facts makes it possible to conclude that the death penalty is disproportionate to the act committed because Claudio and Julietta's offense to the law was unintentional, considering their promise of marriage and Claudio's noble character, since both believed in their promises and considered themselves a couple for all purposes. The absence of intention implies a fault, a transgression – because there is a law defining a crime – but not malice – the conscious practice of a crime. Besides, to be fair, punishment

should be applied to each citizen who commits lechery, and it is possible to conclude that such decision would affect a considerable share of the city's population, since the existence of the "houses of resort" (I,ii) in the city and the testimony of some characters like Lucio, who assumes the relation with prostitutes.

Although the play presents no formula of proper law enforcement but discusses other issues instead, the verdict given by the duke in the end of the play – the forgiveness of those involved by marriage – is appropriate. We see that the purpose of the measure for measure is fulfilled, for Claudio and Angelo end in the same way: alive and forgiven. The verdict is in line with the typical attitude of an absolute ruler, who, despite the law, has the power to apply it or not, depending on his wishes.

CONCLUSION

A juxtaposition of law and literature can be extremely rich because it allows a critical approach to themes that are ever present in human life. My study of Shakespeare's work from a legal perspective intended to suggest that the study of the law helps to interpret and to understand the literary work, as it shows the dramatic circumstances in the life of characters, the law being one of these circumstances since it regulates standards of social conduct. In addition, among other things literature contributes to the study of law by rescuing values and historical data that help understand facts related to the human condition, providing an improved application of the law. Literature opens up a more accessible way to legal institutions, as it can do without the jargon that characterizes them.

Judges and other legal professionals who say that literature is a source of study and comprehension of the law have in Shakespeare their biggest example. Shakespeare makes his plays timeless by, among other things, discussing themes and issues that fit the universal human sphere. *Measure for Measure*, for instance, shows the perennial tendency of people who find themselves in a position of authority to commit abuses to receive personal favors. Besides, those in authority may condemn others to death for the same act they intended to or did commit. Many topics can be approached in this brilliant play and from different viewpoints,

which attests to its being a classic. My attempt to present the abuse of power and the application of the law regarding principles such as moral, equity, and justice, just outlines the understanding of some scholars about the subject, and it sets up only a small possibility of study among many others.

Great masters such as Aristotle and Machiavelli teach valid lessons that can be applied to situations of fiction and real life. The comparison between the duke and Angelo enables one to see that the ideal conduct of a ruler lies in the middle ground, with the attitude moderated by principles over the literal application of the law. Although the law that punishes lechery with death (in the fictional world) is still valid, the penalty is disproportionate to the crime committed, as the duke concludes after the analysis of the situation. The measure for measure that Shakespeare wanted to reach follows the line of equity in the application of justice, exercising mercy through forgiveness. These ideas and concepts are timeless. The study of *Measure for Measure* leaves lessons that, although thought by Shakespeare centuries ago, performed before a king, are still valid nowadays, in a republic, and in relation to any post or position of power.

RESUMO

Este trabalho analisa o poder e o abuso de autoridade em *Medida por Medida* de Shakespeare. É evidenciado como ocorre o abuso de poder, e uma comparação entre os governantes – o duque e Ângelo – analisa suas atitudes, demonstrando de que maneira ambos falharam, de acordo com os ensinamentos de Aristóteles em *Ética a Nicômaco* e algumas considerações de Maquiavel em *O Príncipe*. Há ainda o estudo sobre a aplicação da lei em desuso, sua validade e implicações em vista de princípios morais, da equidade e da justiça. A peça estabelece um paralelo entre equidade e justiça na aplicação da lei, criticando a aplicação que não deixa espaço para a misericórdia e a fraqueza humana. O trabalho apresenta a ideia de que ninguém consegue seguir a lei de forma estrita, nem mesmo aqueles que a aplicam. Alguns tipos de faltas podem ser perdoadas ou ao menos ter sua penalidade reduzida em virtude de sua natureza de contravenção ou porque a lei que a define como crime não é mais consistente com a realidade da sociedade que a criou e definiu como tal. O equilíbrio na aplicação da lei com medidas moderadas, considerando a equidade e a justiça é apresentado como resposta para a determinação da medida de aplicação da lei e suas penalidades.

Palavras-chave: *Medida por Medida*, lei, abuso de poder, equidade, justiça.

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