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William T. Braithwaite

*Assoc. Prof. of Law, Loyola University of Chicago*

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Hence poetry is something more philosophic and of graver import than history, since its statements are of the nature of universals, whereas those of history are singulars.

Aristotle, *Poetics*, 1451b.

Suit the action to the word, the word to the action, with this special observance, that you o'erstep not the modesty of nature; for anything so overdone is from the purpose of playing, whose end, both at the first and now, was and is to hold, as 'twere, the mirror up to nature. . . .

Hamlet, *Hamlet*, 3.2.16-21.

## Poetry and the Criminal Law: The Idea of Punishment in Shakespeare's *Measure for Measure*

William T. Braithwaite\*

### INTRODUCTION

In *Measure for Measure*, a ruler concludes that his laxity in enforcing the laws is the cause of his city's disorder and licentiousness. He tries to bring his subjects to law-abidingness and moderation by appointing during his absence a deputy who will enforce the laws strictly. The deputy's severity leads, however—when he himself succumbs to the very fault he most condemns in others—to revelation of *his* immoderation and lawlessness. Instructed by the consequences of his own regime and the deputy's, the ruler resumes authority and fitly punishes all.

The play itself makes explicit that its thematic title<sup>1</sup> refers to the ruler's judgment of the deputy in Act V.<sup>2</sup> What idea of punish-

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\* Associate Professor of Law, Loyola University of Chicago. B.A., Virginia Military Institute, 1961; J.D., Washington and Lee University, 1964.

1. Of the 37 plays published in the Pelican Shakespeare, 23 have the names of specific persons as titles, and three more have titles which describe, though do not name, specific persons (*Two Gentlemen of Verona*, *The Merchant of Venice*, and *The Merry Wives of Windsor*). Only two of the 37 have explicitly thematic titles, *All's Well That Ends Well* and *Measure for Measure*. Does this fact suggest, in light of Aristotle's observation that poetry is more philosophical than history, *Poetics*, 1451b, that these two plays are on the artist's part more self-consciously philosophical (i.e., universal)? See also G. ANASTAPLO, *THE ARTIST AS THINKER: FROM SHAKESPEARE TO JOYCE* 411-19 n.145 (1983).

2. Indicating what would be a fit punishment for the deputy (Angelo), the Duke says:  
The very mercy of the law cries out  
Most audible, even from his proper tongue,

ment underlies this judgment and the play's title? How might this idea of punishment shed light upon the task faced by a judge about to sentence a person convicted of crime?<sup>3</sup> The aim of this essay is to begin to answer these questions.

## I.

The scene is Vienna; the time, the early seventeenth century.<sup>4</sup>

"An Angelo for Claudio, death for death!"

Haste still pays haste, and leisure answers leisure,

Like doth quit like, and Measure still for Measure.

(5.1.403-07). The text quoted and cited in this essay may be found in the Pelican edition of the play (R.C. Bald, ed.) (New York: Penguin Books Inc., 1970).

3. Of Shakespeare's 37 plays, two explicitly have justice and law as their principal subjects, *Measure for Measure* and *The Merchant of Venice*. In *The Merchant of Venice*, the action revolves around enforcement of a contract (private law), and the judgment is pronounced by a woman (Portia) disguised as a judge (i.e., as a man). In *Measure for Measure*, the action revolves around enforcement of a statute (public law), and the judgments are pronounced by a ruler who has contrived the occasion for them while disguised as a friar (i.e., as a religious authority). Taken together, the two plays thus hint at the relation between, on one hand, the just and the female, and on the other, the just and the divine. In a notable trial in Greek mythology (of Orestes, for killing his mother), the judge is female (Athena). See AESCHYLUS, *THE EUMENIDES* lines 1-33 and 734-40 (R. Lattimore trans. 1952). Both Portia (as judge), in *Merchant of Venice*, and Athena, in *The Eumenides*, though female, partake of the male—Portia as evidenced by her being disguised as a male judge, Athena as evidenced by her ancestry (her sole parent was her father, Zeus).

The idea of punishment implied in the title *Measure for Measure*, and expressed in the passage from which the title is drawn, see *supra* note 2, is also found in the Bible: "Judge not, that ye be not judged. For with what judgment ye judge, ye shall be judged: and with what measure ye mete, it shall be measured to you again." Matthew 7:1-2 (King James ed.). To the same effect, Luke 6:35-38. Cf. Matthew 5:38-39. The play can therefore be read as Christian in perspective and in consequence concerned with the relation between justice and the Christian ideas of forgiveness and mercy. See, e.g., Muir, *Measure for Measure* in *TWENTIETH CENTURY INTERPRETATIONS OF MEASURE FOR MEASURE* 17 (G. Geckle ed. 1970). See also Knight, *Measure for Measure and the Gospels* in *TWENTIETH CENTURY INTERPRETATIONS OF MEASURE FOR MEASURE* 27 (G. Geckle ed.). Such a reading raises interesting questions. Is the "justice" which needs to be leavened with mercy really justice at all, properly understood? In the play, that is the justice of "'An Angelo for Claudio, death for death' . . . / Measure still for Measure" (5.1.405, 407), the justice of the Old Testament (see Exodus 21:23-25, Leviticus 24:17-20, Deuteronomy 19:21) and of Hammurabi's Code. In fact, however, neither Angelo nor Claudio dies. Instead, both are given a lesson about morality (about, that is, how to think about death) and are obliged to marry (are offered, that is, the only earthly immortality available to human beings—children). Another line of questions is raised by asking what the meaning of the Biblical text can be. On the surface (and in view of its context, which is the Sermon on the Mount), its simplest meaning appears to be that since all of us are equally unworthy before God, it would be presumptuous, even impious, for one of us to judge another. But does not this limitation apply only to judgments on the soul, made in the hereafter? Are not human (i.e., political) judgments in *this* life both necessary and inevitable? If so, then who is fit to judge? Presumably he who knows what justice is, but who is that? See *infra* part III of this essay.

4. In some of Shakespeare's plays the time of the action is indicated by the setting or

The city has been under the reign of its present Duke a decade and a half.<sup>5</sup> The Duke is, in his own words, "a scholar, a statesman, and a soldier" (3.2.136-137). He is a man in early middle life, probably about forty years old, evidently never married. Consistently with his bookishness, but uncharacteristically for a man of politics, he likes solitude—"I have ever loved the life removed" (1.3.8)—and dislikes crowds:

I'll privily away; I love the people,  
But do not like to stage me to their eyes;  
Though it do well, I do not relish well  
Their loud applause and aves vehement. . . .  
(1.1.67-70).

The Duke's elder statesman, Escalus, sees him as "[o]ne that, above all other strifes, contended especially to know himself," a "gentleman of all temperance" (3.2.218-19, 223).

In one important particular, however, the Duke has erred to excess. He has been lax in enforcing the laws, and this laxity, he has concluded, is the cause of Vienna's present license and corruption:

We have strict statutes and most biting laws,  
The needful bits and curbs to headstrong jades;  
Which for this fourteen years we have let slip;  
Even like an o'ergrown lion in a cave,  
That goes not out to prey. Now, as fond fathers,  
Having bound up the threat'ning twigs of birch,  
Only to stick it in their children's sight  
For terror, not to use, in time the rod  
Becomes more mocked than feared; 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. (1.3.19-31)

The Duke has, consequently, fixed upon a plan aimed at leading his subjects to law-abidingness and moderation. He will leave the city for a while, appointing to rule in his place a deputy, Angelo, a

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subject, e.g., *Julius Caesar*, *Richard III*, *Timon of Athens*. In others, including *Measure for Measure*, the time of the action is not clearly indicated in the play itself and may therefore be taken to be Shakespeare's own time. *But see Titus Andronicus*.

5. The play's text is inconsistent on the duration of the Duke's reign before the beginning of the action. Claudio implies the Duke has reigned 19 years (1.2.163). The Duke himself says 14 years (1.3.21). This inconsistency is probably the result of a printer's error ("xiv" for "xix," or vice versa, in one of the two passages). The point does not appear to be significant.

man with just that capacity for severity the Duke judges the city needs. "I have on Angelo imposed the office, / Who may, in th' ambush of my name, strike home. . . ." (1.3.40-41). The Duke himself, meanwhile, will assume the guise of a friar and, his identity thus concealed, will return to the city to observe Angelo's rule and how the city fares under it.

Cold, self-righteous, and exacting, apparently somewhat younger than the Duke, Angelo seems well-suited for his task. In the Duke's view:

Lord Angelo is precise,  
Stands at a guard with envy; scarce confesses  
That his blood flows, or that his appetite  
Is more to bread than stone. (1.3.50-53).

Lucio, a young rake and close friend of the man Angelo condemns to death, paints the deputy in similar but more vivid colors:

Lord Angelo, a man whose blood  
Is very snow-broth; one who never feels  
The wanton stings and motions of the sense,  
But doth rebate and blunt his natural edge  
With profits of the mind, study and fast.  
(1.4.57-61).

The political consequence of Angelo's asceticism is his decision to revive and enforce strictly a law prohibiting fornication, which during the Duke's regime has lain "drowsy and neglected" (1.2.165). The text of the statute is not given in the play, only its import and the penalty for violating it, which is death.

Lucio, the rake, is a prominent violator of the statute. We first meet him in the company of two other men bantering in a public street. One of the subjects of their banter is the diseases consequent to their promiscuity. We later learn of Lucio that his conduct in this regard has led to an illegitimate child, now fifteen months old, whom he abandoned (3.2.185-90). Summoned before the Duke, Lucio falsely denied paternity to avoid marrying the child's mother (4.3.165-69).

As events turn out, however, it is not the promiscuous Lucio or his gentleman friends who first feel the severity of Angelo's regime. It is, instead, Lucio's friend Claudio, a young man evidently of good family who has gotten his betrothed, Juliet, with child. On his way to jail in the custody of the provost, Claudio describes to Lucio the circumstances of his offense:

Thus it stands with me: upon a true contract

I got possession of Julietta's bed.  
 You know the lady, she is fast my wife  
 Save that we do the denunciation lack  
 Of outward order. This we came not to,  
 Only for propagation of a dower  
 Remaining in the coffer of her friends,  
 From whom we thought it meet to hide our love  
 Till time had made them for us. But it chances  
 The stealth of our most mutual entertainment  
 With character too gross is writ on Juliet.  
 (1.2.140-50).

Claudio hopes for help from his sister, Isabella, who is about to enter her novitiate in the Order of St. Clare. Told by Lucio of Claudio's plight, Isabella pleads with Angelo to spare her brother's life. Unexpectedly stirred by Isabella's virtuous warmth, Angelo offers to do so in exchange for her chastity.

Isabella despairs at her dilemma: "To whom should I complain? Did I tell this, / Who would believe me?" (2.4.171-72). Her despair does not paralyze her will, however. She quickly decides which side of Angelo's bargain is the worse—"Then, Isabel, live chaste, and, brother, die: / More than our brother is our chastity" (2.4.184-85)—and sets off to prison to tell Claudio of Angelo's proposal and "fit his mind to death" (2.4.187).

She arrives at prison just at the conclusion of Claudio's visit from "Friar Lodowick," who is actually the Duke in disguise (5.1.125). The Friar has come to counsel Claudio (2.3.37-38) and has managed to move him from a condition of hopeful misery to one of resignation regarding his fate (3.1.5-43). On Isabella's entrance, the Friar takes leave of Claudio and withdraws to a concealed place where he can overhear their conversation.

Claudio's fear of death quickly undermines both his honor and his recently-acquired resignation. He first temporizes—"Sure it is no sin [fornication], / Or of the deadly seven it is the least" (3.1.111)—then capitulates entirely to fear: "Sweet sister, let me live" (3.1.133). Isabella, in outraged fury, leaves him:

O you beast,  
 O faithless coward, O dishonest wretch  
 Wilt thou be made a man out of my vice?  
 . . . .  
 Thy sin's not accidental, but a trade;  
 Mercy to thee would prove itself a bawd,  
 'Tis best thou diest quickly. (3.1.136-38, 149-51).

The Friar leaves his place of concealment, detains Isabella, and out of Claudio's hearing proposes to her a plan whereby she

may most uprighteously do a poor wronged lady a merited benefit, redeem your brother from the angry law, do no stain to your own gracious person, and much please the absent Duke, if peradventure he shall ever return to have hearing of this business. (3.1.196-201).

The "poor wronged lady" is Mariana, who five years before the action of the play begins (5.1.215) was betrothed to Angelo, "affianced by her oath, and the nuptial appointed" (3.1.210). Before the ceremony, however, Mariana lost both her dowry and her brother, Frederick, in the wreck at sea of Frederick's ship. Angelo thereupon broke off the engagement, "Left her in her tears, and dried not one of them with his comfort; swallowed his vows whole, pretending in her discoveries of dishonor" (3.1.220-22) and "that her reputation was disvalued" (5.1.219).

Friar Lodowick's plan turns upon a "bed-trick." Isabella is to return to Angelo, say that she accepts his bargain, and arrange an unlighted rendezvous, but a mute Mariana will keep the tryst in Isabella's place. Thus will Claudio be saved, Isabella's chastity preserved, and Angelo "perform an old contracting" (3.2.265), possibly leading to his marrying Mariana (3.1.244-46).

The plan miscarries, however. The tryst consummated, Angelo (believing his union to have been with Isabella), instead of pardoning Claudio, orders his prompt execution (4.2.111-23), having apprehended that Claudio alive "Might in the times to come have ta'en revenge, / By so receiving a dishonored life / With ransom of such shame" (4.4.28-30). To insure that his order is carried out, Angelo directs the provost to send him Claudio's head immediately after the execution.

Friar Lodowick is thus obliged to intercede with the provost. Invoking the authority of the Duke's office (4.2.183-86), he secures the unsuspecting provost's agreement not to execute Claudio and to send Angelo the head of Ragozine, a pirate who had that morning happened to die in the prison (4.3.66-73).

Soon afterwards, Angelo and Escalus go to the city gates, accompanied by lords and citizens, to meet the returning Duke. There Isabella appears, addresses the Duke, and by pre-arrangement with Friar Lodowick accuses Angelo:

He would not, but by gift of my chaste body,  
To his concupscible intemperate lust,

Release my brother; and after much debatement  
 My sisterly remorse confutes mine honor,  
 And I did yield to him; but the next morn betimes,  
 His purpose surfeiting, he sends a warrant  
 For my poor brother's head. (5.1.97-103).

Also by Friar Lodowick's pre-arrangement, his confederate, Friar Peter, now steps forward and contradicts Isabella's accusation of Angelo. To disprove what she has said, Friar Peter brings in Mariana, her face hooded. Mariana declines to show her face "Until my husband bid[s] me" (5.1.170), adding "I have known my husband, yet my husband / Knows not that he ever knew me" (5.1.186-87). Isabella's accusation is false, she continues, because Angelo was deceived; it was not Isabella but she herself who "had him in mine arms / With all th' effect of love" (5.1.196-97). Bidden to unmask by the perplexed Angelo, Mariana replies, "My husband bids me" (5.1.204), and does so.

Leaving Angelo to question Mariana, the Duke exits the stage. Moments later, he returns disguised as Friar Lodowick. His true identity is shortly revealed and he takes matters in charge, first ordering Angelo immediately to marry Mariana. The ceremony done, the Duke sentences him to death. Mariana pleads for Angelo's life, but the Duke is adamant: "He dies for Claudio's death" (5.1.439). She implores Isabella, "Sweet Isabel, take my part" (5.1.426), and Isabella, with eloquent magnanimity, addresses the Duke on bended knee:

Most bounteous sir,  
 Look, if it please you, on this man condemned  
 As if my brother lived. I partly think  
 A due sincerity governed his deeds  
 Till he did look on me. Since it is so,  
 Let him not die; my brother had but justice,  
 In that he did the thing for which he died.  
 For Angelo,  
 His act did not o'ertake his bad intent,  
 And must be buried but as an intent  
 That perished by the way. Thoughts are no subjects,  
 Intents but merely thoughts. (5.1.439-50).

At the Duke's direction, the provost now brings in Claudio. The Duke pardons both him and Angelo, directing that Claudio marry Juliet: "She, Claudio, that you wronged, look you restore" (5.1.-520).

For Lucio, the Duke is inclined toward a harsher punishment.



He first sentences him to be hanged, but Lucio asks that he be whipped instead. "Whipped first, sir, and hanged after," the Duke answers (5.1.502), adding that Lucio shall first marry the mother of his child (Kate Keepdown). Lucio beseeches the Duke: "Marrying a punk, my lord, is pressing to death, whipping, and hanging" (5.1.517-18). The Duke then remits the sentence of whipping and hanging and orders Lucio to prison to await his marriage.

The action ends with the Duke proposing marriage to Isabella. The text does not give her reply, however.

## II.

The play neither provides the text of the statute around which the action turns nor makes precisely clear whether death is the only penalty for violation. It is evident from the dialogue and the action, however, that what the statute prohibits is fornication<sup>6</sup> and that the reader or viewer is to understand the statute as permitting if not prescribing death as a penalty. Death is the punishment, or, more precisely, is one of the punishments, to which the three violators of the statute—Angelo, Claudio, and Lucio—are sentenced.

The statute has been part of Vienna's law for at least fourteen years, but the Duke has not enforced it (1.2.160-64). He himself understands this laxity in his past regime to be the cause of the city's present disorder and licentiousness (1.3.19-31; 5.1.314-20). The young Duke, the Duke who reigned before the beginning of the action of the play, was therefore a ruler who did not govern; he made either no judgments or bad judgments. The mature Duke, who judges the cases of Angelo, Claudio, and Lucio and who manipulates the action of the play, is a ruler willing to make judgments and able to make good ones, a ruler who can, and does, govern.

What is the nature of this change in the Duke? How does it come about? How will it affect the character of his regime in the future?

The Duke has the first major speech of the play. Its subject is Escalus, his elder statesman, and its theme is the theory and practice of government, or politics (1.1.6-17). In his opening lines, the Duke says that Escalus's knowledge and experience of political matters are superior to his own (1.1.3-7). This praise turns out to

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6. Isabella refers to Claudio as "Condemned upon the act of fornication" (5.1.70). Mariana refers to Isabella's charge against Angelo as an accusation of fornication (5.1.195). And Angelo refers to Juliet as "the fornicatress" (2.2.23).

be partly true and partly not true. The Vienna we see at the beginning of the play suffers from "too much liberty" (1.2.121). Its laws,

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. (1.3.28-31).

These are the Duke's words. It is he, not the older and more experienced Escalus, who both recognizes the disease of Vienna's body politic and prescribes its cure, a regimen of severity under Angelo.<sup>7</sup> The Duke's understanding of the *theory* of politics, knowing what is wrong with a state and what to do about it, seems in truth superior, not inferior, to that of Escalus. On the other hand, the Duke admits the cause of Vienna's condition to have been his own laxity in not enforcing the laws (1.3.19-27). That is, the Duke's own past *practice* of politics may very well have been inferior, not superior, to that of Escalus.<sup>8</sup>

What in the Duke's character and temperament accounts for his past failure to govern (or govern well)? Does he like Prospero in *The Tempest* spend his time reading and reflecting, rather than doing and judging?<sup>9</sup> Such a surmise is supported by the Duke's preference for privacy (1.3.8), his dislike of crowds (1.1.68-70), and his reference to himself as a "scholar" (3.2.136). This supposition would also help explain how he might have come to the theoretical knowledge of politics evident in his Act I speeches (1.1.3-21; 1.3.19-54). The alternative is to suppose he came to his theoretical understanding of politics principally from observing and reasoning about

7. Professor Harry V. Jaffa, in a penetrating analysis, *Chastity as a Political Principle: An Interpretation of Shakespeare's Measure for Measure*, in *SHAKESPEARE AS POLITICAL THINKER* 181-213 (J. Alvis & T. West eds. 1981) [hereinafter cited as Jaffa] points out the striking resemblance between the Duke's plan to cure Vienna's disorder and Cesare Borgia's plan, as reported in Machiavelli's *The Prince*, ch. 7, to bring "order and peace to turbulent Romagna," *id.* at 188-89. A useful, new translation of *The Prince*, with introduction and notes, is that by Leo Paul S. de Alvarez (Univ. of Dallas Press, 1980). On the related subject of the proper regimen to cure the disorders consequent to excessive indulgence of the appetites, see Maimonides, *On Medical Treatment for the Diseases of the Soul*, in *ETHICAL WRITINGS OF MAIMONIDES* 67-69 (R. Weiss & C. Butterworth eds. 1975),

8. Escalus' exercise of political authority in his own right seems reasonable and sober. See, e.g., his handling of Pompey, Froth, and Elbow at 2.1.41-259 and of Mistress Overdone at 3.2.178-93.

9. Professor Jaffa so suggests: "Vincentio [the Duke in *Measure*] loves the life removed (I.iii.7) and his study has been to know himself (III.ii.245), instead of practicing 'his judgment with the disposition of natures' (III.i.165). Similarly, Prospero, in Milan, was preoccupied with the liberal arts (I.ii.73), instead of spying out the plots of malefactors. . . ." Jaffa, *supra* note 7, at 181.

the consequences of his own practice of that art. Perhaps, though, the most probable explanation is that when he first became Duke (in his middle twenties) his theory was deficient and led to bad practice, but that he learned from practice to reconsider theory.<sup>10</sup>

However this may have been, the Duke appears at the beginning of the play as a ruler knowledgeable in the theory of politics, preparing, in consequence of his past bad practice of that art, to lay the foundation for the proper exercise of his power in the future. He appears, in a sense, as the founder of a city, or more precisely, as the aspiring re-founder of an existing but defective city.

This change from young Duke to mature Duke, to the ruler who will govern Vienna *after* Act V, is a change not in theoretical wisdom but in practical wisdom. During the action of the play, the Duke schools himself in prudence. He both learns and demonstrates sound judgment in practical affairs. He shows us the relation between reason and that kind of moral virtue which permits a ruler to govern well. This change is effected through the Duke's contriving occasions "to practice his judgment with the disposition of natures" (3.1.163-64).<sup>11</sup> His disguise as Friar Lodowick permits him to practice prudence "privately," rather than publicly.

How will the Duke's having learned prudence affect the character of his regime? We can expect, may we not, that it will lead to the convergence of theory and practice. In the future, he not only will know well, he also will judge and do well.

The evidence of the probable character of the Duke's future regime is his judgment of the three violators of the fornication statute, Angelo, Claudio, and Lucio.<sup>12</sup> Each of these three unmarried

10. See G. ANASTAPLO, *HUMAN BEING AND CITIZEN: ESSAYS ON FREEDOM, VIRTUE AND THE COMMON GOOD* (1975) [hereinafter cited as *HUMAN BEING AND CITIZEN*]

11. The principal occasions are the appointment of Angelo as deputy, the bed-trick with Mariana, and the staged accusations of Angelo by Isabella and Mariana in the last act (4.6.1-4; 5.1.20-102, 163-211). I first learned the significance of this phrase from Professor Jaffa's analysis, *supra* note 7, at 181, 210.

12. A lawyer's argument can be made that only Lucio is technically guilty of fornication, since of the three men, only he clearly was not either married or engaged to the woman. The cases of Claudio and Angelo, on the other hand, raise two nice questions of legal history. Angelo terminated his betrothal contract when Mariana lost her dowry (3.1.209-18; 5.1.214-18). Was failure of dowry legally recognized as a breach of contract justifying termination of the betrothal? Mariana implies that it was not (5.1.224-26), while Angelo implies that it was (5.1.214-18), though he admits he *was* (i.e., in the past) indeed "contracted to" Mariana (5.1.371-72). Thus the play leaves the answer to this question ambiguous. Presumably, however, it might be possible as a matter of legal history to give a more clear-cut answer. If Angelo were *not* still betrothed at the time of his tryst with Mariana, then his case is, in the eyes of the law, more like Lucio's; on the other hand, if he *was* still betrothed, his case is

young men has sexual relations with an unmarried woman. Each is permitted (or obliged) to believe for a time that in consequence he will die. None in fact die. The Duke pardons all three and obliges each to marry<sup>13</sup> the woman wronged.<sup>14</sup> How are these judgments to

more like Claudio's.

The text of the play suggests there may have been a legal difference between the Claudio-Juliet engagement, described by Claudio at 1.2.140 as "a true contract" (*sponsalia per verba de praesenti*, i.e., a present betrothal), and the Angelo-Mariana engagement, described by the Duke at 4.1.71 as "a pre-contract" (possibly meaning only a *sponsalia per verba de futuro*, a promise to marry in the future). But see 3.1.211, where the Duke calls Angelo's engagement "a contract" without any qualifying prefix.

Assuming, *arguendo*, Angelo had no legal grounds for terminating the contract, and was therefore still betrothed, the further question would arise whether as a matter of law betrothal permitted marital privileges before the nuptial ceremony. If so, sexual relations presumably would not constitute fornication. Regardless of Angelo's situation in this regard, Claudio's case raises this question in any event. It is not crucial for purposes of the present essay to resolve these two legal-historical questions. Scholars have investigated them, see, for example, Harding, *Elizabethan Betrothals and "Measure for Measure,"* XLIX J. ENG. AND GERMANIC PHIL. 139 (1950); Nagarajan, *Measure for Measure and Elizabethan Betrothals*, XIV SHAKESPEARE QUARTERLY 115 (1963); and Schanzer, *The Marriage Contracts in Measure for Measure*, XIII SHAKESPEARE SURVEY 81 (1960). But the perspective here adopted views the play as art rather than as law or history. See Alvis, *Shakespearean Poetry and Politics*, in SHAKESPEARE AS POLITICAL THINKER 3-26 (J. Alvis & T. West eds. 1981). Professor Alvis begins thus:

Shakespeare owes his pre-eminence among poets to the power that allows his art to charm spectators but equally to the comprehensiveness of his wisdom regarding human things, a wisdom which invites and sustains inquiries into its grounds. The essays here collected presuppose that the charm exists for the sake of wisdom.

*Id.* at 3. The present essay is grounded on the same presupposition. Citations to other studies (besides Alvis & West) of the political implications of Shakespeare's plays may be found in *id.* at 8 n.5.

13. *Measure for Measure* involves four marriages. Angelo is obliged during the action of the play to marry Mariana (offstage) (5.1.373-75, 396-97). As to Lucio, a public proclamation is to be made that any woman "wronged" by him should appear before the Duke, and he will compel Lucio to marry her (5.1.502-08); presumably the beneficiary of this proclamation will be Kate Keepdown, the mother of Lucio's child (3.2.185-90). Claudio is merely admonished by the Duke to marry Juliet (5.1.520), but in the circumstances it is clear the admonition has the authority of a sovereign command, and there is no reason to suppose that Claudio will not comply. The fourth marriage, that of the Duke and Isabella, is only prospective. All that occurs in the play is the Duke's proposal, which is made twice (5.1.488-89, 529-32); Isabella's answer is not given. But Nature and reason seem so to harmonize in fitting the Duke and Isabella for one another that directors commonly end the play with the two of them exiting the stage arm in arm, visually confirming the prospect of a prompt union, and commentators, too, take the marriage for granted. See, e.g., Jaffa, *supra* note 7, at 213: "Isabella, in the defense of her chastity, will have been turned away permanently from the Order of St. Clare. She will now prove the foundation, as well as the instrument, of the Duke's policy." The four marriages involved in the play provide that many perspectives for considering its teaching on the connection between *eros*, the family, and the community, and on the idea of punishment implicit in those connections. See generally Jaffa, *supra* note 7. See also *infra* note 21 and accompanying text.

be understood? How does the Duke himself understand the nature and aims of the punishment he effects?

As Angelo and Mariana return from their offstage enforced marriage, the Duke says to Isabella:

But as he adjudged your brother,  
Being criminal, in double violation  
Of sacred chastity, and of promise-breach,  
Thereon dependent, for your brother's life,  
The very mercy of the law cries out  
Most audible, even from his proper tongue,  
"An Angelo for Claudio, death for death!"  
Haste still pays haste, and leisure answers leisure,  
Like doth quit like, and Measure still for Measure. (5.1.399-407).

He then sentences Angelo to death. This speech and the ensuing sentence make clear that the title of the play refers explicitly to the Duke's judgment, or punishment, of Angelo. But since that punishment is in some respects the same as his punishment of Claudio and Lucio, it follows that the quoted passage refers implicitly to their punishments as well and, by extension, to the Duke's punishments of other characters.<sup>14</sup>

The measure of something is its extent, capacity, or dimensions, but also its quality, character, or nature. When Coriolanus (in Shakespeare's play of that name) says Menenius "Lov'd me above the measure of a father" (5.3.10), he is speaking not of the size but of the nature of fathers. A football scout sent to "take the mea-

14. The Duke refers to Juliet as the woman Claudio "wronged" (5.1.520), while Angelo refers to her as the "fornicatress" (2.2.23). Angelo's characterization puts Juliet legally *in pari delicto* with Claudio. The Duke's characterization puts her in the position of victim. She herself says the act was "mutually" committed (2.3.27), implying concurrence with Angelo's characterization, but she also says, agreeing with the Duke as Friar Lodowick (i.e., the Duke speaking for the Church rather than for civil political authority) that her blame (speaking as sinner rather than as law-breaker) is greater than Claudio's (2.3.28). Yet if she is victim, then she presumably suffers more in consequence of their "mutual" wrong than Claudio does. *If* she suffers more, and *if* her blame is greater, does she suffer more *because* her blame is greater? *Cf.* Genesis 3:16. But consider also Matthew 5:31-32. If the woman, rather than the man, is the victim of fornication (or at least more of a victim), does this fact explain why women are not, in the play, subjected to the death penalty for the offense and are not, in reality, subjected to any *legal* sanctions for such offenses? *See infra* note 26.

15. A comprehensive account of the idea of punishment in the play (which this essay does not aim at) would have to consider what happens not only to the women but also to the various minor characters, both those who are judged and punished by Angelo and Escalus (rather than by the Duke) and those whom the Duke himself punishes (or causes or permits to be punished), including Angelo, Claudio, Lucio, the murderer Barnardine (see 5.1.475-81), and the provost (5.1.456-57).

sure" of an opposing team is at least as interested in how well they play as in their physical characteristics. "Measure" supposes a standard by which to judge a father's love or the players' skill. Likewise, when we say colloquially that "the punishment should fit the crime," we mean that according to some standard there ought to be a proportion between the character or nature of the wrong and the character or nature of the punishment.

The crime of Angelo, Claudio, and Lucio is fornication, or sexual relations between an unmarried woman and an unmarried man. One of the word's root meanings is brothel (Latin *fornicis*), which implies promiscuous, or indiscriminate, relations. In circumstances where people are not either restrained by conventions (such as marriage) or permitted by technology (modern medicines and means of birth control) to believe themselves escaped from nature,<sup>16</sup> indiscriminate relations are in principle "naturally" punished by disease or by unwanted children.

The play refers to both these "natural" punishments. Lucio first comes to view in the company of two "gentlemen" bantering about the diseases they have contracted at Mistress Overdone's brothel (1.2.43-54). Lucio himself characterizes such patronage as "sport" (3.2.112), evidencing the same attitude of irresponsibility seen in his desertion of the child he sired by Kate Keepdown and in his

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16. This essay is not the place to inquire into the presuppositions of the popular understanding of "freedom" and the belief, founded on that understanding, that we are more "free," and therefore *ipso facto* better off, for having made available to ourselves the technology by which to cure the physical symptoms of sexually-transmitted diseases and largely avoid "unwanted" pregnancies. It must suffice here to raise the questions whether that understanding and that belief are so conclusive (or even so widespread) as their partisans desire to believe. Nature may assert herself when affronted, whether we will it or not, so at least, the poets say. See, e.g., T. Hardy, *JUDE THE OBSCURE*, Bk. III, ch. X, at 153 (1965). Should we understand venereal disease as an effort by Nature to regulate sexual promiscuity? If so, then modern medical technology seems to have, as one consequence, the effect of obscuring Nature's intentions from us. Since one such disease is reported to increase the risk of cervical cancer and may severely or fatally infect the woman's offspring, Guinan, *The Course of Untreated Recurrent Genital Herpes Simplex Infection in 29 Women*, 304 N. ENGL. J. MED. 759 (1981), should women regard modern "artificial" methods of birth control (which facilitate, even if they do not encourage, promiscuity, and hence increase the risk of disease) as an unmixed blessing? On the presuppositions and consequences of the modern project to subjugate Nature to human desires, see Berns, *Francis Bacon and the Conquest of Nature*, 7 INTERPRETATION 1 (1978). See also, on the meaning of Nature, Klein, *On the Nature of Nature*, 3 INDEPENDENT J. OF PHIL. 101-09 (1979). On the relation between medical technology (birth control, genetic planning, etc.), love, and the family, see *Discussion: A Conversation with Harry V. Jaffa at Rosary College*, 1 CLAREMONT REVIEW OF BOOKS 5, 8-9 (1981), and Kass, *Making Babies—The New Biology and the "Old" Morality*, 26 THE PUBLIC INTEREST 18 (1972).

perjury to avoid the obligations of marriage and support (3.2.185-90; 4.3.165-69). Claudio's offense comes to light because of Juliet's pregnancy: "But it chanches / The stealth of our most mutual entertainment / With character too gross is writ on Juliet" (1.2.148-50). The Duke as Friar Lodowick refers to the possibility that the bed-trick may lead to Mariana's having a child and to Angelo's obligation to marry her: "If the encounter acknowledge itself hereafter, it may compel him to her recompense" (3.1.244-46).

The three violators of the statute thus are all pointed to, explicitly or implicitly, as actual or potential sufferers of the "natural" punishments of disease and unwanted children. The play may therefore suggest that all who commit fornication are in principle liable to these punishments and in fact exposed to them. Such a reading is corroborated by the portrayal of the three violators as recognizable male types respecting their conduct in matters of the erotic:

The ascetic, Angelo, reminds us of the relation between lust and unnatural self-denial. His self-confident condescension toward what he has been able to see of man's erotic nature—"Ever till now,/When men were fond, I smiled and wondered how" (2.2.186-87)—has kept him from acquiring either the knowledge or the experience with which to govern the desire now so deeply and unexpectedly stirred in him by Isabella's genuine virtue;

The young man of good intentions and weak character, Claudio, is impelled by the ardor of youthful romantic love. He salves his conscience in advance by a probably sincere promise of marriage which he nevertheless has failed to act upon by the ninth month of his betrothed's pregnancy; and

The libertine, Lucio, has so debased his mind by wanton licentiousness that with respect to women he can distinguish only between vestals and prostitutes (cf. 1.4.30-37 and 5.1.517-18).

How did these men come to be the way they are? Unless we can answer this question, or at least instructively inquire into it, we cannot know, or even judge, whether it is possible for them to become otherwise. That is, we cannot know whether there is any reasonable prospect that their punishments will make them better. But if punishment never makes the wrongdoer better, then punishment may have no moral justification except as retribution, a pain inflicted for past wrong,<sup>17</sup> rather than a pain inflicted for future

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17. See AESCHYLUS, *THE EUMENIDES* (R. Lattimore trans. 1953): "There are times when fear is good. / It must keep its watchful place / at the heart's controls. There is / advantage /

good.<sup>18</sup> The moral reproach implied in the fact of punishment makes no sense except as aiming to convey to the wrongdoer that he (or others) ought in the future to behave differently.<sup>19</sup> The problem of punishment, its ends or justification, appears upon examination to be only another form, or aspect, of the very old question, how does a good man come to be?<sup>20</sup>

What connection, if any, is there between the character of Angelo, Claudio, and Lucio, especially as it relates to matters of the erotic, and the character of Vienna and its regime before Act I, i.e., the regime of the young Duke? The conspicuous characteristic of Vienna, we recall, is that one law regulating private erotic behavior has not been enforced for at least fourteen years—the years when Angelo, Claudio, and Lucio were coming of age. In consequence of this laxity, Vienna is a city of disorder and license, of “too much liberty” in Claudio’s words (1.2.121). In respect of the erotic part of their nature, the men of Vienna are ascetic but lustful (Angelo), ardent and weak (Claudio), or wantonly licentious (Lucio), and the women are unnaturally restrained (Isabella), innocent, naive, and

in the wisdom won from pain.” (*Id.*, lines 517-21).

18. The future good may be to instruct or restrain the wrongdoer, or others, or to protect the public safety, or a combination of these ends. See, e.g., Hamlet (to his mother): “I must be cruel only to be kind . . .,” *Hamlet* (3.4.179).

19. Compare the definitions of punishment given in H. HART, PUNISHMENT AND RESPONSIBILITY: ESSAYS IN THE PHILOSOPHY OF LAW 4-5 (1968) and A. ROSS, ON GUILT, RESPONSIBILITY AND PUNISHMENT 36-39 (1975).

20. To ask how men become bad is to ask by necessary implication how they become good. This question is not new:

Can you, Socrates, tell me, is virtue something teachable? Or, if not teachable, is it something to be acquired by training? Or, if it cannot be acquired by training or by learning, does it accrue to men at birth or in some other way?

Plato, *Meno* 70a.

The question is *Meno*’s and opens the dialogue. The translation is Jacob Klein’s, from his *A Commentary on Plato’s Meno* (Chapel Hill: University of North Carolina Press, 1965), p. 38, except that pursuant to a suggestion by someone more familiar than I with Klein’s work I have for the Greek *arete* substituted the more commonly used English translation “virtue” for Klein’s “human excellence.” See also G. Anastaplo, *In Search of the Soulless “Self,”* in HUMAN BEING AND CITIZEN 87-96, *supra* note 10:

The perennial questions that have [in our time] been improperly dealt with—that is, either ignored or disposed of prematurely or inadvertently—can be conveniently reduced for our immediate purposes to three:

- (1) What is a good man?
- (2) How does a good man come to be?
- (3) What kind of man is likely to develop as a result of our present opinions and approach?

Similar, and related, questions may be asked about the good community and about the best possible community.

*Id.* at 89.



vulnerable (Juliet), or abused in consequence of their social and economic position (Kate Keepdown).

Despite their differences, however, these men and women share a common defect. Their defect is excess, or disproportion. Angelo is excessively cold (1.3.50-54). Isabella seeks excessive restraint (1.4.1-5). Lucio is excessively self-indulgent (cf. 3.2.95-113). Claudio is excessively afraid of death (3.1.113-32). Mariana is excessively sentimental (would a sensible woman carry a torch for five years for the man who sought to marry her for her money, then spurned her with false accusations of unchastity when she lost it?). The excesses of these characters are all somehow related to their lacking a sense of proportion about the proper, or "natural," place of the erotic in one's life. Indeed, this defect in understanding was also the Duke's failing. As a young and inexperienced ruler, he was excessively indulgent regarding enforcement of the statute prohibiting fornication. Reflection (that is, reason) and experience teach him that the best regime is neither his of laxity nor Angelo's of severity, but a moderate course between these extremes, a course which takes its bearings from an intelligible view of the proper place of the erotic in the life of the good city.

Angelo, Claudio, and Lucio are each presented as needing instruction in how properly to understand and govern the erotic part of their nature. Angelo's defect, for example, is that he underestimates the power of Eros: "Ever till now, / When men were fond, I smiled and wondered how" (2.2.186-87). He has therefore been obliged to hold his natural appetite in check behind a mask of asceticism: "one who never feels / The wanton stings and motions of the sense, / But doth rebate and blunt his natural edge / With profits of the mind, study and fast" (1.4.58-61). As long as he permits himself to see women only as either "strumpets" (2.2.183) or, as in Mariana's case, opportunities for economic gain, his asceticism protects him from temptation, that is, keeps him ignorant of the power of the erotic. Confronted, however, with Isabella's virtuous warmth and passion on behalf of Claudio, he is unexpectedly and deeply stirred: "What, do I love her, / That I desire to hear her speak again, / And feast upon her eyes?" (2.2.177-79). But lacking the knowledge or experience which would permit a finer discriminating, he views women only as either vestals or prostitutes. To Angelo, woman's destiny is either "modesty" (chastity) or "lightness" (promiscuity)(cf. 2.2.168-70 and 2.4.134-38). The sudden realization of the power of his long, and unnaturally, restrained desire leads him, not surprisingly, to respond to Isabella

with unfettered lust: "I have begun, / And now I give my sensual race the rein" (2.4.159-60).

Lucio, too, views women as either vestals or prostitutes (cf. 1.4.31-37). While Angelo's defect is unnatural restraint of erotic desire, Lucio's is unnatural indulgence. But both defects contribute to (and also are caused by?) the same distorted view of women. Both Angelo and Lucio are therefore oblivious to, or at least markedly obtuse toward, the possibility of women as mothers. Angelo does not even conceive of proposing marriage to Isabella; Lucio regards marriage to the mother of his child to be as attractive a prospect as "pressing to death, whipping, and hanging" (5.1.517-18).

Neither Angelo nor Lucio understands the relation between *eros* and the family, to say nothing of the relation between the family and the community. Claudio, by comparison, subjects his desire at least to the convention of betrothal, thus evidencing acceptance, though not necessarily understanding, of the community's claim on the family, established through betrothal and marriage.

The connections between *eros*, the family, and the community, as intimated in *Measure for Measure*, have been thoughtfully explored in Professor Jaffa's interpretation of the play,<sup>21</sup> hence need not be examined at length; it is enough here to sketch out those connections through the following observations. Family implies children. Children imply biological kinship. Certainty of identity ("legitimacy") in this kinship is essential to the family as such. Certainty of kinship cannot be guaranteed without maternal chastity. But fornication threatens maternal chastity, and hence in principle, threatens the family. And since the family is essential to the community as such,<sup>22</sup> fornication threatens the community

21. See *supra* note 7. The ensuing observations in the text in part draw upon, but are not intended to represent or summarize, Professor Jaffa's analysis. See also *supra* note 16 and *infra* note 22.

22. What is a community? Is the essence of community shared traditions (or what may ultimately be much the same thing, shared myths)? See SOPHOCLES, *Antigone*, in THE COMPLETE GREEK TRAGEDIES II: SOPHOCLES (E. Wyckoff trans. 1954), lines 450-57:

For me it was not Zeus who made that order.  
 Nor did that Justice who lives with the gods below  
 mark out such laws to hold among mankind.  
 Nor did I think your orders were so strong  
 that you, a mortal man, could over-run  
 the gods' unwritten and unfailing laws.  
 Not now, nor yesterday's, they always live,  
 and no one knows their origin in time.

But see ANASTAPLO, *supra* note 10, at 84-86. Do not our beliefs about the most important human things—good and evil, birth, love, death—inevitably have a past and future? Is it

also.

Without modern drugs and birth control the consequences of fornication are even more disease and unwanted children than we are accustomed to. But these "natural" punishments are insufficient to deter some men—Angelo, Claudio, and Lucio, for example. For these kinds of men, the community is obliged to fix other punishments. The punishments the community fixes are conventional, as distinguished from "natural." In *Measure for Measure*, the most severe conventional punishment for fornication in Vienna is death. Is this punishment fit, a "Measure still for Measure" (5.1.407)?

One view of death as a punishment for fornication is given by Pompey, Mistress Overdone's procurer. He has been arrested on account of his occupation and brought before Escalus:

Escalus. How would you live, Pompey?

By being a bawd? What do you think of the trade, Pompey? Is it a lawful trade?

Pompey. If the law would allow it, sir.

Escalus. But the law will not allow it, Pompey; nor it shall not be allowed in Vienna.

Pompey. Does your worship mean to geld and splay all the youth of the city?

Escalus. No, Pompey.

Pompey. Truly, sir, in my opinion, they will to't then. (2.1.211-21).

Lucio, in conversation with "Friar Lodowick" (the Duke), expresses the same sentiments in speaking of the severity of Angelo's regime:

Duke. He [Angelo] does well in't [the office of deputy].

Lucio. A little more lenity to lechery would do no harm in him. Something too crabbed that way, friar.

Duke. It is too general a vice, and severity must cure it.

Lucio. Yes, in good sooth, the vice is of a great kindred; it is well allied, but it is impossible to extirp it quite, friar, till eating and drinking be put down. (3.2.91-97).

In our inquiry to determine the teaching of the play we have to ask whether Pompey's and Lucio's understanding of the erotic, as

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possible to think instructively about the meaning of these things in our own lives without thinking also of their meaning for the lives of those who have lived before us (our parents and ancestors) and those who will live after us (our children and grandchildren)? Can a "community" without families (e.g., a homosexual "community") have any useful past or any future worthy of hope, effort, and sacrifice?

expressed in their conversations, is likely to be correct. Pompey, who is in some ways quite honest, candidly reveals the self-interestedness of his views. When Escalus threatens him with a whipping if he is arrested again, Pompey replies, "I thank your worship for your good counsel," then adds in an aside, "but I shall follow it as the flesh and fortune shall better determine" (2.1.238-40).

Lucio's understanding of the erotic is not without some utility. It is he who, apparently because of his experience of the animal passions (and hence because of his understanding, however defective, of the erotic), knows how to advise Isabella to speak to Angelo (2.2.26-148). Lucio senses the connection between persuasion and the passions, between rhetoric and that part of us which is not moved solely by reason.<sup>23</sup> From observing Lucio's intuition as to what kind of appeal will most move Angelo, we learn that Lucio has the ability to recognize in other men a defect in the governing of appetite (excessive restraint) which makes them as vulnerable as he himself is on account of his own kindred defect (excessive indulgence); on the other hand, we do not learn what causes these defects or how to avoid or cure them. From observing Angelo's susceptibility to Isabella's warm and passionate speech on behalf of her brother, we learn how disproportionately influential the erotic can be in the life of one whose understanding of it is defective. But we do not learn, at least not directly, what the place of the erotic is in a well-ordered life.

In the well-ordered life, as in the well-ordered state, "nothing in excess." By this standard ("Measure"), Pompey and Lucio, as well as Angelo and Claudio, are incompetent to teach us whether death is a fit punishment for fornication, because their conduct does not evidence understanding of how, to say nothing of why, to avoid excess in matters of the erotic. The Duke, by contrast, not only is pointed to as an exemplar of moderation, "a gentleman of all temperance," Escalus calls him (3.2.223), but also has the capacity to learn, does in fact learn, from reason and experience, and shows in his judgments (in Act V) that he has learned, that the regime of the well-ordered state is characterized by neither laxity nor severity but by moderation. The mature Duke, the Duke of Act V, is pre-eminently moderate. Thus it is his understanding of the erotic which the play holds up for our examination and instruction.

What is that understanding? To begin with, does the fact of his

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23. See generally Weaver, *The Phaedrus and the Nature of Rhetoric*, in *THE ETHICS OF RHETORIC* (1953).

pardoning Angelo, Claudio, and Lucio indicate he understands death to be an unfit punishment for fornication? If so, why does he not rescind or revoke the statute? Since he permits it to remain in force, must we not infer that at least in some cases he judges death to be a fit punishment? It is no answer to say that he leaves the statute in force for its *in terrorem* effect, because that effect depends upon a general belief that the punishment of death is an actual possibility, and this belief is undermined by a policy of always pardoning offenders.

We have earlier noted that Nature's punishment for fornication, in the absence of medical technology, is disease. That the men of Vienna knew disease to be a possible consequence of promiscuity is evident from the conversation of Lucio and his friends (1.2.1-56), one of whom greets the approach of Mistress Overdone, the bawd, by saying, "I have purchased as many diseases under her roof as come to—" (1.2.43-44). To say that fornication, or promiscuity, leads to disease, however, is to say that it may lead to death, or more precisely, to premature death. Does Nature, then, in effect "punish" promiscuity with death or the threat or possibility of death? If so, then it is not so astonishing as might otherwise appear to modern eyes, whose view of nature is obscured, especially (though certainly not solely) by medical technology, that fornication should be a capital crime. If it *can* be a capital crime "by nature" (albeit gradually), might it not justly also be made a capital crime by convention, by community agreement, manifested through legislation?

Through legislation the community says to its citizens, regarding indiscriminate relations between men and women: for our survival and for your own good, if you misbehave we will by law do to you now what Nature will for the same misconduct do to you later. Thus politics and law assist Nature, by bringing her sanctions more immediately to view, to the end that men who are incapable of seeing those same sanctions clearly when they are farther away (e.g., Lucio) may be led toward proper restraint. Leading his subjects toward proper restraint is exactly the task the Duke sets for himself (see 1.3.19-43, 5.1.311-20).

Furthermore, if fornication in principle threatens the family and hence also the community, is it not from this perspective that the Duke is obliged to view the offense, since he is the ruler of a community and prospective head of Vienna's first family (to which his subjects and *their* families will look as exemplar)? So viewed, fornication could appear to him to be as serious even as treason. Both

offenses erode fundamental institutions—the family and citizenship—without which no true political community can exist. On the principle of “Measure still for Measure,” offenses are to be punished in proportion to how seriously they threaten harm.<sup>24</sup> Fornication and treason threaten the “ultimate” harm, the end of the community, hence may justly be assigned the “ultimate” punishment. Death is the ultimate punishment in the eyes of most men because it is what most men fear most. For those men whose susceptibility to bodily desires is excessive in proportion to the defectiveness of their understanding (and to their limited capacity to govern those desires), only the fear of death is powerful enough to counteract the power of *eros*, the most powerful impulse to death’s opposite.<sup>25</sup>

If the Duke could for these reasons regard death to be a fit punishment for fornication, then why does he not adjudge it in the three cases before him? Is it because he sees in each of the offenders some prospect of their becoming better men than they have been? The things which happen to Angelo, Claudio, and Lucio in consequence of their misconduct do seem to be very much what each appears to need in order to have any prospect of becoming better. The things which happen to them seem, as well, somehow related not only to what is common to them but also to what is peculiar to each.

What is common to them is the similarity of their offenses in the

24. See C. BECCARIA-BONESANA, *Of the Proportion Between Crimes and Punishments*, in AN ESSAY ON CRIMES AND PUNISHMENTS 28 (E. D. Ingraham, trans. 1953): “Therefore the means made use of by the legislature to prevent crimes should be more powerful, in proportion as they are destructive of the public safety and happiness, and as the inducements to commit them are stronger.”

25. See *supra* note 24. When we speak of life and death in this way we mean the life and death of the body. That life which is impelled by the erotic, understood as the impulse to generation, is the biological, the physical, the corporeal. But is the life of the body, as distinguished from the life of that part of us (once known as the soul) which is not physical or corporeal, the highest human thing? What the highest human thing *is*, is an old and hard question. *Whatever* it may be, few if any of us, given a choice would if we thought about it wish to live in a community where no one aspired to anything higher than bare physical survival. Yet to attach disproportionate importance to the erotic and other bodily desires, and to the material comforts which minister to those desires (and which exceed what the body needs to remain healthy), encourages a lowering of aspirations to just that level. Cf. Robert Browning, “Andrea Del Sarto,” lines 97-98. It encourages, in consequence, an unhealthy fear of death. These observations suggest that those whose greatest pleasures come from the body and from material things may also fear death most, since, for them, death will end their greatest pleasures. If this be so, then what pleasures ought we to seek which might foster the proper attitude toward death? Consider, regarding the proper attitude toward death, Friar Lodowick’s counsel to Claudio in prison (3.1.5-53).

eyes of the law. In consequence of fornication, each suffers pain (including fear of death) for past wrong; each is instructed, by the Duke's judgments, precepts, and example (his proposal to marry Isabella), toward future good; and each is restrained, by marriage, in the event pain and instruction should prove insufficient to deter future misconduct and to the end that those unable to be virtuous may at least be continent.

Angelo scorned *eros*; he learns its power and its proper place. He valued his reputation for righteousness more than his character and so permitted himself, in breaking his engagement to Mariana when she lost her dowry, "pretending in her discoveries of dishonor" (3.1.221-22), to put his own ambitions and desire for gain above honor and loyalty. He suffers public disgrace and is given by Mariana's fidelity a lesson in loyalty. As ruler, he used political power for private ends; his political future, if not ruined, is brought into serious question.

Claudio, unlike Angelo, loved the woman he wronged and intended to marry her. And unlike Lucio, he was not promiscuous; he limited himself to the one woman with whom he had some socially recognizable claim to have relations, thus evidencing at once both what he had been taught—that *eros* properly belongs to the family—and the insufficiency of his learning. His misconduct, not mortal in itself, was impelled by the sincere ardor of youth and was therefore pardonable, but nonetheless culpable enough to merit the censure of the Duke's paternal reproof, "She, Claudio, that you wronged, look you restore" (5.1.520).

This appeal to Claudio's sense of honor reminds him (or should, if he is thoughtful) not only of the reasons why the public aspects of marriage should precede its private aspects, but also of the relation between the public and private aspects of honor (both of which help support marriage). The private aspect of honor is self-respect; the public aspect is the respect of others. By failing to act voluntarily and promptly, or honorably, upon his promise to marry Juliet, he brings into public dishonor that person whose honor he should have safeguarded most, thus not only forfeiting a measure of both self-respect and public respect, but also bringing reproach upon his own and Juliet's family. By acting now (at the end of Act V) upon his promise to marry (promises relate to the private aspect of honor), that is, by performing his contract (contracts relate to the public aspect of honor), he may restore the private and public honor of himself, Juliet, and both their families.

Honor, however, will not move Lucio. Honor supposes capacity

to recognize what deserves respect, that is, it supposes some ability to reason or at least a properly directed sense of shame. Lucio's reason, long indentured to his appetite, is devitalized by infantile self-indulgence and thus unreliable for self-government, which requires self-restraint. And while he is properly ashamed to marry a "punk" (5.1.517), he is not ashamed of siring and abandoning an illegitimate child and committing perjury to cover up these misdeeds. For Lucio, only external restraints will do. Thus he will go first to jail and then to an enforced marriage, in which latter restraint Kate Keepdown's self-interest in preserving her unanticipated economic security and respectability may possibly be powerful enough to hold even the irrepressible Lucio in check. Lucio's son will have a father, and the son, if the next fourteen years of the Duke's reign prove as moderate and auspicious as the last fourteen were lax and disorderly, may have some chance of escaping the unhealthy influences which afflicted the father.

We should note, finally, what happens to Mariana, Juliet, and Kate. The most striking difference between what happens to these women and what happens to the men is that the men, through the Duke's manipulations, are put temporarily in immediate fear of death while the women are not.<sup>26</sup> In addition, while all three couples are obliged to marry, the play implies clearly that none of the men welcome the marriages as much as the women do or are likely to.<sup>27</sup>

Is the women's greater receptiveness to marriage related to the fact or prospect of a child resulting from any illicit union?<sup>28</sup> The

26. This difference between the consequences (in the play) of fornication for men compared to women may point to both the difference between the erotic natures of men and women and also to the relation between *eros*, fear of death, and the human desire for immortality. It is *eros* which impels the generating of children, and for human beings, as distinguished from gods, children are the only (earthly) immortality available. Cf. Shakespeare, Sonnets 1-4, 6. Should we, then, fear death less once we have children? Why, in the play, are the men put temporarily in fear of death while the women are not? See *supra* note 14. If it is because death is what most men fear most, what do most women fear most? See *supra* note 16 and text accompanying note 30 *infra*.

27. The Duke orders Angelo to marry, and judges, not unreasonably, that Lucio's availability for marriage is best insured by keeping him in jail until Kate can be located. Even Claudio, arguably the least morally culpable of the three—he at least was willing (or at one time believed himself willing) to marry Juliet, and for love—is laggard in acting on his betrothal promise until the Duke's authoritative prompting. None of the women, by contrast, shows any disinclination for marriage.

28. Lucio and Kate's child was born before the action of the play (3.2.185-90), Claudio and Juliet's apparently during the action (2.2.15-16), and the Duke refers explicitly to the prospect of a child resulting from the union of Angelo and Mariana (3.1.244-46).



consequences, from the woman's point of view, of fornication and a consequent illegitimate child are indicated in the dialogue of Juliet and Isabella. In conversation with the Duke as Friar Lodowick, Juliet testifies her love for Claudio, accepts her responsibility for their sexual union, acknowledges that her blame is greater,<sup>29</sup> repents her wrongdoing, and "take[s] the shame with joy" (2.3.21-36). Her joy is for carrying and bearing the child of the man she loves, the man she hoped would father her children. Her shame is, at least in part, for the conditions of illegitimacy and fatherlessness into which her child might have been born. Isabella sees those conditions clearly when she says, referring to Angelo's proposition, "I had rather my brother die by the law than my son should be unlawfully born" (3.1.187-89).

Thus the "natural" punishments for fornication for women appear in principle to be, besides disease,<sup>30</sup> the shame of bringing forth a child whose very beginning of life is shadowed with illegitimacy and fatherlessness. Is this shame "natural" in the sense that it reflects the woman's justifiable self-condemnation at having fallen short of providing for her offspring those conditions of life essential (though not alone sufficient) for their becoming the best their individual natures would otherwise have permitted? That is, has she not failed to give her children the best that nature offered (*two* parents, or a family)? If she has committed a "crime against nature," is the proper punishment for that crime ("Measure still for Measure") the shame and pain of irremediably injuring her own children, those whom by nature she ought most to protect?

### III.

The problem of punishment raises at least these four questions: What is punishment? Who may punish? Who may be punished? What kind of punishment? In *Measure for Measure* punishment appears to be this: painful reproach intended to instruct or restrain. The kind and measure of pain, reproach, and instruction or restraint needed in a particular case depends upon the circumstances: the nature of the offense and the offender; the impulses, natural and circumstantial, to the offense; the nature of the injury done to the offender himself, to others directly wronged, and to the community; the need for recompense; and perhaps the prospects for reforming (re-shaping) the offender and redressing the injury.

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29. See *supra* note 14.

30. See *supra* note 16.

But in all cases, what the circumstances call for can be judged only in light of the aims of punishment. When the problem of punishment is subsumed under the problem of how a good human being comes to be, the aim is either instructing the wrongdoer and others to become better or restraining them from becoming worse, thereby protecting the community.

As ends, instruction and restraint suppose a deficiency of knowledge and will in the pupils. Ignorance and weakness are exactly the defects of Angelo, Claudio, and Lucio. None of them, in respect of the erotic, knows what is good for him, or if he knows, is able to act upon it, although each presumably acts on the basis of what he *believes* to be good for him. Perhaps the fundamental defect is ignorance, which may be either a defect of nature or a defect of education. If the wrongdoer is of limited understanding by nature, then the most that punishment can reasonably aim at is restraining him from future misconduct. But if the wrongdoer's ignorance results from improper education, then punishment may aim not only at restraining his conduct, but also at reforming his understanding.

Those who may be punished, therefore, are those who misbehave, not knowing what is good for them or, knowing, cannot do what is good for them. Those who may punish are those who both know what is good for themselves and for others, and behave as if they know. Instruction supposes knowledge in the teacher. The teacher in the play is the Duke, who is also lawgiver and judge; it was he who decreed the statute, and it is he who enforces it. Evidently he intends the laws to teach as well as himself.

But if one aim of punishment is instruction, what is the aim of that instruction? The play suggests the answer is found in another element of punishment, reproach. Reproach implies disapproval. But disapproval implies a standard, a "Measure," by which to judge. The Duke's standard is the good city. Vienna's body politic is sick, and the Duke's avowed aim is to restore it to health, to found (or re-establish) a good city.

The good city cannot exist without good families. But good families presuppose the family as such, and the family as such presupposes kinship, which, as we have seen, the Duke can reasonably conclude is mortally threatened by promiscuity. In the good city, therefore, fornication is prohibited in order that *eros* may be domesticated, thereby preserving the family and, consequently, the city itself.

So much for instruction and reproach. Why pain, as an element

of punishment? The play seems to suggest that some men, including Angelo, Claudio, and Lucio, as well as Mistress Overdone's patrons (4.3.1-18), are so constituted by nature or circumstances that they cannot learn (or learn to do) what is good for them in any other way. The play also seems to suggest, however, that the best learning, the learning which may take place in Vienna after Act V, is not by pain but, for those who by nature are capable of learning in other ways, by precept, imitation, and practice.

The Duke's words and conduct point to the precepts according to which he aims to govern in the future. His prospective marriage to Isabella will provide an example of virtuous family life for his subjects to imitate. And those who (like Claudio's child) have the good fortune not only to be born into a good family, but also to grow up in a good city, a Vienna restored to moderation, will have many more occasions than did their unhappy fathers to practice moderation under the watchful eye of caring (that is, not indulgent) parents, who through pain came to know better than they themselves were able to do.