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Exploring the Bawdy Court Ethos in *Measure for Measure*'s Design: Putting the Church Courts' Newly Stringent Laws Governing Sex and Betrothal on Trial

Shakespeare's treatment of marriage in his Elizabethan-era comedies remains largely accessible to twenty-first-century readers and audiences. But understanding *Measure for Measure*, an early Jacobean comedy, requires an intimate familiarity with early modern customs of betrothal and clandestine marriage, as well as the Jacobean ecclesiastical courts' jurisdiction over betrothed couples who flouted laws that required the church to solemnize their marriages.¹ When *Measure for Measure* was staged at court on December 26, 1604, English common law recognized a couple's right to form a valid marriage through nothing more than mutual consent. As B.J. Sokol and Mary Sokol point out, these marriages, known as spousals, granted men and women considerable autonomy and control over their marital destiny, however theoretical. But illogical as it may seem, the church courts, colloquially referred to as the "bawdy courts," had

¹ Ivo Kamps and Karen Raber conclude in *Measure for Measure: Texts and Contexts*: "If readers and playgoers have found it difficult to adopt *Measure for Measure* as a favorite, this may well be because the play is more palpably and problematically steeped in early modern history than most of Shakespeare's others" (7).

the authority to fine betrothed couples for entering into a clandestine marriage and failing to solemnize it in the church. In effect, a spousal in Shakespeare's England was often regarded as a valid, but illicit, marriage.

Measure for Measure raises questions about the validity of the respective marital states and sexual transgressions of three betrothed couples—Claudio and Juliet, Angelo and Mariana, and Lucio and Kate Keepdown. Today, I confine my discussion to moral questions surrounding the sexual behavior of Claudio and Juliet, a “betrothed” couple bound by a marital pre-contract considered valid under English common law. As Jonathan Bate has argued in *Soul of the Age*, the play's treatment of the sins of this couple resembles the bawdy courts' judgments upon actual couples charged with crimes associated with clandestine marriage in the sixteenth and seventeenth centuries. I propose that *Measure for Measure's* salacious courtroom ethos simulates the censure of the bawdy courts as regards the play's judgment upon Claudio and Juliet. In doing so, the play may have drawn attention to England's byzantine marriage laws, while also implicitly challenging the church courts' increasingly punitive judgments against sexual misconduct after the 1604 changes to canon law.

Anne Barton observes that whereas the 1604 canon law clamped down on married couples who obtained licenses without banns or parental consent, marriages under such circumstances remained valid, though perhaps morally reprehensible. She observes that *Measure for Measure* and *Cymbeline*, two Jacobean plays, are sensitive to stricter church laws on marriage solemnization and adultery, “display[ing] a changed and markedly less permissive attitude towards irregular sexual unions. . .” (26).

To explain *Measure for Measure's* apparent sensitivity toward stricter church laws on marriage solemnization, we may address Bate's hypothesis that Shakespeare's imagination, from

his early years in Stratford, may have been stirred by cases of sexual misconduct heard by the “bawdy courts.” Bate notes that “in a parish such as Stratford, the local consistory court would have been set up inside the church” and would have included “a raised seat for the judge (who was the vicar) and a large table for the notary and witnesses to sit around,” while “the accused stood facing the judge (“The Bawdy Court” 42-43). These low-level courts under the archdeacon’s jurisdiction heard lively cases involving sexual misdemeanors related to betrothals, fornication, and other misdeeds such as adultery, abortion, drunkenness, and defamation. These proceedings could take place either before the minister and local officials or be carried out publicly before Sunday morning services. From the standpoint of witnesses who found Sunday services long and dull, watching local men or women stand before the judge and “do penance for some sexual misdemeanor would have livened up proceedings and furnished good material for gossip” (Bate, “The Bawdy Court” 43).

By 1603, around the time that *Measure for Measure* was composed, and not long before the 1604 Canons were enacted, the courts were being criticized for being too lenient. With this contemporary political landscape in mind, we can look closely at how Shakespeare might have fashioned the play as a series of legal trial contexts involving a judge and an “accused.” Later, we can consider why he would have done so.

Measure for Measure's legal, quasi-legal, and punitive contexts include a ritual parading of the accused Claudio, a magistrate's court, a prison, and an outdoor public trial of five characters near Vienna's gate. Because the play includes no less than seven trial scenes and two formal "pleadings" for mercy, it has a palpable courtroom ethos that invites comparison with actual lively consistory court proceedings familiar to spectators. In particular, the play’s “public hearings” of the sexual transgressions committed by Claudio, Pompey, Angelo, the friar, and

Lucio are rich in legal and quasi-legal interrogation, and they lend themselves to a type of pitched debate that would have encouraged early modern audiences to ponder the facts and merits of the accusations against each accused individual and render a private verdict.^{2,3} Within this bawdy court ethos, the play invites its audiences to judge, or consider appropriate punishment for, the fictional case against Claudio for extra-marital sexual misconduct.

Recall that before Duke Vincentio goes incognito, he privately admits to a friar that the enforcement of "strict statutes" of behavior and decency had grown lax under his own rule, and something needed to be done about it (I.4.19). While fearing that he would grow unpopular if he were to change his style of rule, the Duke privately rationalizes that Angelo's "precise" or puritanical nature is better suited for a stricter enforcement of prevailing laws. Thus, when Angelo, the Duke's deputy, orders the closing of all Viennese brothels, drastic political change is imminent, as Mistress Overdone fearfully expresses to her pimp Pompey. The authoritarian rule of deputy Angelo's new regime, as regards sexual conduct, appears grave when Claudio is arrested for exercising "too much [sexual] liberty" (I.3.10) and impregnating Juliet, to whom he is betrothed. Claudio speculates that Duke Vincentio's deputy has taken it upon himself to enforce an old, neglected statute to establish and exercise his new authority. Here he says:

² In his Modern Library edition of the play, Bate states: "... possibly more than any other play in Shakespeare's canon, [*Measure for Measure*] leaves us with more questions and debate about characters, their motivation, and its resonance for our times, than most modern dramas" (*Measure for Measure* 128-129).

³ Shell recognizes the absence of straightforward moralizing in *Measure for Measure* and the play's tendency to elicit strong responses in audiences: "Though the term 'problem play' now looks so dated, one can add that there is undoubtedly a special relationship between tragicomedy and moralistic debate in Shakespeare's writing; and if debate operates best in environments where it is made difficult to take sides, then a play like *Measure for Measure*, with the evasive Duke, the hypocritical Angelo and the rigorist Isabella, calls every audience member to argue flexibly" (126).

----but this new governor
Awakes me all the enrolled penalties
Which have, like unscoured armour, hung by th' 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.3.49-55)

The very public nature of Claudio's arrest, which would have reminded playgoers of public consistory court proceedings, is signaled when Claudio protests to the Provost, "Fellow, why dost thou show me thus to th' world?" (I.3.1), and when he subsequently learns that the public parading of his arrest was ordered by Angelo.

Lucio's surprise over Claudio's imprisonment, and Claudio's pleas that Lucio seek out his sister Isabella for support, are expressions that tend to elicit modern audiences' sympathy for Claudio's plight. Indeed, we do not assume today that an unmarried couple's sexual conduct is the business of an entire community. But whereas Shakespeare's audiences may have shared our empathy for Claudio, they certainly *would* have considered premarital sex between a betrothed couple like Claudio and Juliet to be their business. In light of their regular exposure to bawdy court proceedings, early modern playgoers would have found the events of Act one to be provocative, if not controversial, for several reasons. First, they would have assumed that Claudio and his betrothed, Juliet, would have been bound by norms of sexual and marital conduct similar to their own, despite the play's exotic setting in Vienna. Second, although Claudio and Juliet had not been able to secure a dowry from Juliet's parents, the couple had

created a valid marriage, recognized by witnesses, through mutual consent.⁴ This betrothal, known as a "hand fasting," "spousal," or pre-contract, was considered legally binding and the first step toward cementing the marital bond. Third, Shakespeare's audiences understood that couples resembling the fictional Claudio and Juliet felt free to begin a sexual relationship after a pre-contract, but they *also* would have known that the church did not sanction the marriage until the reading of the banns and the church ceremony had taken place.

While it is certainly true that the bawdy courts considered sex between two unmarried people to be a misdemeanor that might bring a mere fine or stint of public penance, historian Peter Laslett notes that "such punishments were less likely to be imposed on couples who were courting" (156).⁵ In other words, Claudio's arrest for having sex with his fiancée might have seemed justified to some viewers, but only if the punishment were minor. Most assuredly, Shakespeare's audiences would have found Angelo's strict interpretation of a Viennese law prohibiting fornication to be extremely harsh, especially because Claudio faced the death penalty. Moreover, the civil jurisdiction of Claudio's case, instead of a church court jurisdiction, may have also seemed highly irregular to viewers. Had Claudio's case been brought before an actual English bawdy court, Claudio and Juliet may have been asked to do what the court asked

⁴ Shakespeare's contemporaries recognized a spousal by "words of present consent" (per verba de praesenti) and "words of future consent" (per verba de futuro). According to B.J. and Mary Sokol in *Shakespeare, Law, and Marriage*, a handfasting based on "words of present consent" immediately created a valid marriage. This pre-contract would be legally binding, whether or not the couple consummated the match. The pre-contract indicated by "words of future consent" seems to conform to the type of spousal established by Claudio and Juliet and Angelo and Mariana in the play. It is contingent upon other mutually agreed-upon factors such as consummation or the receipt of a dowry. According to the play's evidence, Claudio and Juliet were postponing the church ceremony until the dowry came through, which suggests they were betrothed by a promise with a contingency, or by "words of future consent." Likewise, Angelo and Mariana were betrothed under a similar pre-contract, so Shakespeare's community would not have necessarily faulted Angelo for severing his bond when Mariana's dowry was lost at sea.

⁵ Laslett does add, "But no one was at liberty to live a life of sexual freedom" (156).

Joan Martyn, of Owton, and Robert Blundell, of St. Ives, Huntingdonshire, to do on April 1530 in the local chapel. According to court records, as Ivo Kamps and Karen Raber remind us, the couple was ordered to "solemnize their matrimony before the 1st of August next, under pain of major excommunication" (220).

In their analysis of church court records from Paul Hair's book, *Before the Bawdy Court*, Kamps and Raber state: "The church courts were not allowed to hand down death sentences, and those who came before [them] were rarely imprisoned" (219). Hair explains that "throughout the centuries the staple moral offences were at the very heart of church court business," which left "offences of extreme violence" to the jurisdiction of the secular courts (22). Hair further notes, "Offences deserving severe punishment were left to the secular courts because the church courts commanded no severe punishments" (22). In addition, Kamps and Raber infer from Hair's study that although "one to three million moral/sexual offenses were brought before church courts," the incidences of premarital sex must have been much higher (219). In Hair's commentary accompanying transcripts of court records pertaining to "Betrothal and its Abuses," Hair explains: "The church eyed suspiciously, and no doubt with reason, those betrothed couples who, though not actually living together, 'kept company' without proceeding rapidly to solemnization" (241). Unlike Angelo's harsh threat of the death penalty sentence as punishment of Claudio's premarital sex, the bawdy court of Charlbury, Oxfordshire, dismissed the case of William White, who in 1584 was accused of "keeping together with Marie Gillett in one howse" (53). Presumably the case was dismissed because Gillett testified that White "is contracted to her before sufficient witness and meneth to marie her as sone as he is owte of service" (53). The Oxfordshire court appears to have accepted Gillett's testimony that she and White were properly

betrothed. The court also understood that White needed to fulfill the terms of his indentured servitude to prepare himself financially for his official church wedding.⁶

Whereas many audience members of *Measure for Measure* would have winced at Angelo's overly harsh punishment of Claudio, they would have understood why the deputy might have wanted to renew the enforcement of the duke's fornication law. Katharine Eisaman Maus argues that "in the early seventeenth century, when Shakespeare was writing *Measure for Measure*, an increasingly powerful group of Puritans, or 'precisians', argued that the church courts' punishments were far too mild (2041). She adds that "the Puritans believed that the church's threats of disgrace and excommunication failed to deter the most egregious offenders, who had no reputation to lose and were unlikely to fret at their exclusion from church" (2041).

The precisians' view of the church courts' lenience toward sexual misconduct signaled a dim view of any kind of fornication, which was in keeping with the Puritan belief in the sanctity of marriage. Indeed, in 1604, just before or around the time that the earliest playhouse audiences watched *Measure for Measure*, ecclesiastical authorities revised canon law to exclude "marriages that occurred without witnesses and without parental consent, which might describe Claudio's pre-contract with Juliet" (Kamps and Raber 183). Until 1604, "clandestine or secret marriages were accepted," Kamps and Raber remind us (183). It would make sense if the Puritans, or precisians, had angled for this legal revision to canon law, since a narrowing of the accepted conditions for a valid betrothal might discourage premarital sex or reduce its frequency, as couples realized that secret betrothals had been outlawed.

⁶ In her essay, "Shakespeare and the Marriage Contract," Germaine Greer notes that marriage among ordinary people was just as much a "matter of negotiation" as it was for royal couples. Many such ordinary couples of modest means could not marry without the "assistance of 'friends'" such as "parents of either party, or their employers and patrons, or simply gentlemen who could be trusted to arrive at fitting terms for a settlement . . ." (51).

In shaping his Act One scenario so as to indict one affianced couple's sex life in such an improbable fashion, Shakespeare could have been urging his audience to consider the implications of Angelo's enforcement of the letter of the duke's law. The play may have encouraged Jacobean spectators to ask whether the practice of premarital sex by betrothed couples was too frequent, or to consider whether the bawdy courts' punishments were too lenient. The play could have drawn playgoers' attention to how church courts were prosecuting sexual misconduct under King James following the enactment of the 1604 provision outlawing clandestine marriages. Even though Claudio never comes to harm because the duke ensures that his life is saved, the provocative nature of the case against him could have encouraged audiences to ponder his dilemma on the way home from the theatre. Moreover, the circumstances surrounding Claudio's arrest may have also seemed highly controversial, particularly if they resonated differently among self-avowed Catholics and Anglicans, compared to self-avowed Puritans.

By proposing a case and punishment as extreme and as provocative as Claudio's, *Measure for Measure* may have also invited viewers to ponder this question: If the Puritan critics of the bawdy courts had their way, might Shakespeare's contemporaries eventually see harsh judgments carried out beyond the exacting of penance or the mere threat of excommunication? At some point, would King James' government decide to change the regulation of sexual conduct from a church jurisdiction to a civil jurisdiction, which could make defendants vulnerable to harsher judgments against betrothed couples who had sex before solemnizing their marriages?

Because the existence of the 1604 canon law revision indicates that England had tightened the rules governing betrothals, I submit that Shakespeare may have engineered his play

to tap into playgoers' personal experiences of the bawdy courts to elicit a reaction to the new rules. Shakespeare also may have understood that the play's courtroom ethos could have resonated with spectators familiar with the Puritan outrage over the moral leniency of the bawdy courts. If Shakespeare purposefully fashioned his play's bawdy court ethos to draw public attention to the 1604 changes to canon law, this prospect may lend support to Donna Hamilton's view that *Measure for Measure* represented a pivotal aesthetic moment for the playwright. James I had assumed the throne in 1603; Shakespeare's acting company had been elevated to the position of the "King's Men"; and therefore, the playwright had begun "a process of situating himself in relation to a different monarch, . . . one whose policies on any number of matters . . . were gradually becoming known" (Hamilton 115).

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