

LAW AND LITERATURE: LEGAL ASPECTS IN „HAMLET”

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Abstract: *The paper will highlight some legal issues in “Hamlet” which might determine law students want to go deeply into the field and make references to the nowadays English law and establish similarities and differences in civil law countries. There exists a group of legal problems in the Shakespearean play, which, although does not enjoy and/or draw our attention on the spot, nevertheless does vitally affect the development of the plot. Roughly speaking, there are three such legal matters which are interrelated, though each of them can be studied separately. The paper will focus, in particular, on: 1. the problem of succession to the Danish throne, 2. the Queen’s marriage to her husband’s brother, 3. the question of Gertrude’s complicity in her husband’s murder. The paper will emphasize the value of the literary text as a medium for jurisprudential debate, will signal the educative potential of law in literature, will help educate lawyers, law teachers and students in the use of language and comments.*

Key-words: *succession, complicity, murder*

1. PROLEGOMENON

There exists a number of legal matters in Hamlet which, although they do not leap at once to the eye, nevertheless vitally affect the development of the plot. Some of them can be spotted in the original Hamlet legend, as recounted by Saxo Grammaticus, while others seem to be the consequences of Shakespeare’s presentation of it. Before going deeply into them, it is important to mention that the period in which the events of the play are supposed to have occurred remains vague, however it is a period in which England is subjected to Christian Denmark. The references to the Danish Christianity are numerous but the paper will mention only one or two to illustrate it. For example, at the beginning of Act V, the First Gravedigger asks whether Ophelia is to be buried in Christian burial. The Ghost of Hamlet’s father declares that he was „cut off even in the blossoms of my sin,/ Unhousel’d (that is, not having received the sacrament), disappointed (spiritually unprepared), unanel’d” (that is, without having received extreme unction). One can also notice the terms in which the King prays (Act III, Scene 3) which are expressive of the the orthodox Christian doctrine, as is Hamlet’s soliloquy, beginning: „Now might I do it pat, now’a is a praying; / And now I’ll do’t – and so’a goes to heaven”.

Hamlet offers the circumstance that if he kills his uncle at prayer, Claudius will obtain salvation, as the excuse for not killing him at so opportune a moment.

2. THE PROBLEM OF SUCCESSION TO THE DANISH THRONE

There are three main legal problems in Hamlet on which the paper will focus: 1. the problem of succession to the Danish throne, 2. the Queen’s marriage to her husband’s brother, 3. the question of Gertrude’s complicity in her husband’s murder. In discussing the question of the succession in Hamlet, from first to last in the play, no one, not even Hamlet himself, considers that anything unusual has happened in the succession of Claudius to the elder Hamlet. Of course, Shakespeare took the fact of the succession from his source, which had been translated into English by Belleforest, but it would not have taxed Shakespeare’s inventive powers in any degree to add usurpation to the list of Claudius’s crimes. His succession and marriage of the King’s widow have been, on the contrary, generally acclaimed. Claudius tells his court: „...nor have we herein barr’d / Your better wisdoms, which have freely gone / With this affair along.” (Act I, Scene 2) Polonius never expresses a single doubt and at the outset of the play it is quite clear that Hamlet is concerned only over his mother’s hasty remarriage. Claudius himself says to him: „... think of us / As of a father; for let the world take note / You are the most immediate to our throne.” Even the Ghost, in recounting his wrongs, never suggests that Claudius has deprived his son of a throne that should be his, and Hamlet is so far from feeling any grievance on this account that all he wishes to do is to return to Wittenburg.

To those who have been familiar only with the principle of primogeniture, this appears strange, and Shakespeare, in his historical plays, was quick to stigmatize deviations from this principle in the descent of the crown as usurpation. For example, it is pointed out that John’s usurpation of Arthur’s rights is stressed in King John, although no contemporary regarded John as other than Richard’s lawful heir. Shakespeare’s ready acceptance of another kind of succession is therefore a noteworthy fact, indicating his desire to concentrate attention in the play upon Hamlet’s personal moral problem, and it would have detracted from this to suggest that Hamlet had a lawful right to destroy his uncle. Nevertheless, there exists an odd coincidence which may have some significance in relation to this problem. In 1608, the year in which the earliest known translation by Belleforest of Saxo Grammaticus was published, English judges were called upon to decide upon the famous Tanistry Case, (1608, Dav. Ir.29). This case involved the succession to land of Ireland, and it was energetically argued to the Irish Brehon law of succession, an estate descended not to the eldest in lineal descent but to the *senior et dignissimus* of the blood and clan of the last owner. In normal circumstances this would be the last owner’s next brother. Eventually the English judges rejected this well-established Irish rule of descent as a barbarous custom, and one of the main reasons advanced by the judges for their rejection of it was that in practice succession would go not to the senior and most worthy but to the most powerful. Sir Henry Maine has shown (Early History of Institutions, Lecture VII) that English judges at this date did not understand the significance of this Irish customary mode of descent. Shakespeare in Hamlet, accepted it without question. Shakespeare might have heard something of the Brehon laws from those who accompanied Essex to Ireland in 1598, and this is why Hamlet swears by St. Patrick. (Act I, Scene 5)

Even when the point has been made that there was no law of primogeniture in Denmark, we are left with the problem arising from the fact that Hamlet has been postponed by Claudius. It must be noticed that it is postponement only, as Claudius himself speaks of Hamlet as his successor. Furthermore exactly the same has happened in Norway, where the elder Fortinbras has been succeeded by his younger brother, and not by his son. These two examples, occurring in the same play, suggests that Shakespeare was sufficiently familiar with this custom to regard it as normal at this time in Scandinavia. Indeed he perhaps accepts it a little too readily. It could be argued that Hamlet has passed over on account of his youth and immaturity; but the latter reason is clearly inappropriate in the case of the younger Fortinbras, who commands armies and conducts victorious campaigns. The whole treatment of succession in Scandinavia at the time suggests a familiarity with this customary law which is highly interesting.

3. THE QUEEN'S MARRIAGE TO HER HUSBAND'S BROTHER

The second legal problem in Hamlet is that of the marriage of Claudius and Gertrude. At the present day, its significance passes unremarked, yet it was only in 1907 that marriage with a deceased wife's sister was accepted as valid (Deceased Wife's Sister's Marriage Act, 1907), and the legalization of a marriage with a deceased brother's widow did not occur until 1921 (Deceased Brother's Widow's Marriage Act, 1921), after much conflict of opinion and in face of strong opposition from the Church, frequently upon the grounds that it would facilitate adultery and even murder. It will be remembered that the existence of this strong canonical bar was responsible for the allegation, at the time of the proposed marriage between the future Henry VIII and Katherine, his brother's widow, that the marriage with Arthur had never been consummated. No one living in the opening years of the 17th century would be inclined to minimize the importance of this impediment to Gertrude's hasty second marriage. Once again, however, no one, except Hamlet, at the Danish Court seems to have regarded it as remarkable. The elder Hamlet, not unnaturally, regards it in a different light: „Let not the royal bed of Denmark be / A couch for luxury and damned incest”. (Act I, Scene 5) So also does the younger Hamlet, who speaks of „incestuous sheets”. One further point may be noticed. No one suggests that Claudius has asked for a papal dispensation, and indeed, as he has married Gertrude within a month, there has not been time. Once again, the irregularity of the marriage might have been a further ground for Hamlet's vendetta against his uncle, but Shakespeare's silence on this point would again seem to be the consequence of his resolve to focus attention solely upon Hamlet's inner tumult.

4. THE QUESTION OF GERTRUDE'S COMPLICITY IN HER HUSBAND'S MURDER

The third legal problem in Hamlet which merits elucidation is the event to which Gertrude was involved in the crimes of Claudius. Shakespeare has drawn Gertrude's character with very great skill. Until her first husband's death Gertrude's life has been remarkably free from problems. She has a valiant and popular husband and a gifted son. She is beautiful and she accepts admiration as her due, but she can shut her eyes to unpleasant facts, and in the moving scene in her apartment (Act III, Scene 4), in which she discovers how completely she has lost Hamlet's love and respect, she shows great distress, but little appreciation of the reasons for it, and rather than admit them and she concludes that Hamlet is mad. There is no hint of any affinity between

Gertrude and Lady Macbeth. Claudius is the sole contriver of the catastrophe and Gertrude weakly assents. She is shocked by Ophelia's death, but she instantly romanticizes it. Gertrude, in short, never rises to true tragic stature, in face of the misfortunes which follow swiftly upon her first husband's death. It is for this reason that we should be inclined to conclude, even where there is no other evidence, that Gertrude was not the accomplice of Claudius in the murder of the elder Hamlet. Claudius loves Gertrude deeply but he has no illusions about her character. Although both the elder and the younger Hamlet accept the fact that Gertrude truly loved her first husband, she has immediately reconciled herself to his death („all that live must die”); and she has assumed that it is her natural right to remain queen. Since everybody else, except Hamlet, appears to think the same, any doubts or suspicions which she may have had die a quick death. What is equally interesting is that all who are most closely in contact with her, and who know her best, go out of their way to absolve her from the suspicion of complicity in the elder Hamlet's murder. Her son condemns her for her hasty remarriage, but for nothing more (Act I, Scene 2), and the Ghost, in bidding Hamlet seek revenge for his murder, adds: „But, howsoever thou pursuest this act, / Taint not thy mind, nor let thy soul contrive / Against thy mother aught.” (Act I, Scene 5) To this Hamlet gives complete obedience. „I will speak daggers to her”, he declares later, „but use none” (Act III, Scene 2), and in all the torrents of his loathing for her marriage to his uncle, there is no suggestion that Gertrude had any prior knowledge of Claudius's crime. Indeed it is plain from this moving scene that Hamlet's allegations concerning Claudius are a profound shock to her. Characteristically, however, when Claudius asks her what has occurred during her meeting with Hamlet she says nothing at all about his accusations but confines herself to describing the murder of Polonius and to the general observations that Hamlet is mad. Thereafter, she moves through the play with the air of one who does not fully understand the significance of what is happening, and it is entirely in character that she should fail at the end to hear, or to comprehend, the command of Claudius not to drink from the poisoned cup and not only drink from it but to offer it also to Hamlet. Apart from the intensity of her relationship with Hamlet, Gertrude is depicted throughout as incapable of any genuine depth of feeling. In showing her at the same time as innocent of complicity in the murder of her first husband, Shakespeare was being as completely consistent as he was when he depicted the ruthless determination and tragic intensity of Lady Macbeth.

5. CONCLUSIONS

The paper has focused, in particular, on three legal matters. The first problem dealt with in this article is that of succession to the Danish throne. The students will be asked to study the problem of succession in the history of England and the instructor will give them reading directions and orientation. Then they will be asked to write a paragraph on the succession matter in Hamlet. The second legal problem dealt with is the Queen's marriage to her husband's brother. The students will be asked to read the law given by Moses in the Old Testament regarding the marriage of a widow with her brother(s)-in-law and compare the situation to that in Hamlet. The instructor who will help the students with the reading bibliography, the Old Testament and the play under discussion, will ask the students to comment on the Bible paragraph and the Shakespearean play, trying to point out the similarities and differences. The students will be asked to give their own opinions on Gertrude's character. They will be also asked to speak on her attitude towards (re)marriage. The last legal problem dealt with is the question of Gertrude's complicity in her husband's murder. The students will be asked to think over Gertrude's complicity or innocence regarding elder Hamlet's murder. The instructor will ask them to write a paragraph on elder Hamlet's murder with as many details as possible. They will find the information in the Ghost's description of the act of murder. One of the aims of analysing these three legal aspects in Hamlet is to emphasize the value of the literary text as a medium for jurisprudential debate, to signal the educative potential of law in literature, to help educate lawyers, law teachers and students in the use of language and comments, to make students want to read more.

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