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George Anastaplo

Loyola University Chicago, School of Law, ganasta@luc.edu

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Justice, the Liberal Arts, and Some Basic Training for Lawyers†

George Anastaplo*

INTRODUCTION

*When thou didst not, savage,
Know thine own meaning, but wouldst gabble like
A thing most brutish, I endowed thy purposes
With words that made them known.*

—Prospero to Caliban¹

A solid grounding in the liberal arts could once be presupposed for anyone seriously undertaking a legal education, that training appropriate for the ministers of justice that lawyers properly aspire to be.²

Reminders of what could once be taken for granted are provided in the three parts of this article. Each of these parts draws upon talks given by me at the Loyola University Chicago School of Law in 2003 and 2004.

In Part A, there is a discussion of poetry and geometry as two forms of reasoning.³ The arts and mathematics are brought together, for example, in the dialogues of Plato.⁴

† Per author request, this article deviates from LAW JOURNAL style in several respects, including, but not limited to, citation to specific editions and the use of parentheticals. The article as printed reflects the express wishes of the author.—Eds.

* George Anastaplo is Professor of Law, Loyola University Chicago; Lecturer in the Liberal Arts, The University of Chicago; and Professor Emeritus of Political Science and of Philosophy, Dominican University.

1. WILLIAM SHAKESPEARE, *THE TEMPEST*, act 1, sc. 2, ll. 358–61; *see infra* note 26. Was it partly a matter of chance that Caliban could encounter Prospero and hence progress as much as he did? *See infra* note 49; *see also infra* note 25.

2. William Blackstone assumes, in his *Commentaries*, that legal education is an essential part of a liberal education for the English gentleman. *See* George Anastaplo, *Nature and Convention in Blackstone's Commentaries: The Beginning of an Inquiry*, 22 *LEGAL STUD. F.* 161 (1998). *See also infra* note 41.

3. Part A is based upon remarks made on September 18, 2003, to the opening session of a Great Books Seminar at Loyola University Chicago School of Law.

4. A comprehensive account of the “ideal” educational system in a properly-devised political order may be seen in PLATO, *THE REPUBLIC*. *See also infra* note 13.

In Part B, we can see how the conjectures of Ptolemaic astronomy illustrate what lawyers do with the development of theories from the available facts.⁵ This discussion had been preceded by an examination of the Ptolemaic system.

In Part C there is a preliminary survey of a Shakespeare play, working from the speeches of a principal character.⁶ The discussions that followed ranged over the entire play. I have, on other occasions, discussed legal education, as well as the liberal arts, more extensively than I do here. I also discuss elsewhere the Law and Literature matters that seem to be of growing interest in the academy.⁷

A. POETRY AND GEOMETRY AS TWO FORMS OF REASONING

I.

The lawyer, if he is to be competent enough to be truly just, needs to be able to learn and hence to know *what is so* in any set of circumstances by which he is confronted. The lawyer also needs to know what can be *shown* to be so, which may be less than he is personally confident that he knows.

That is, others may not be as perceptive as he is. Besides, there are rules of evidence, established privileges, and other limitations upon both truth-seeking and truth-telling.

The lawyer needs to know as well how to persuade others of what he does happen to know. Among the things he should know are what to look for as well as where (and how) it is likely to be found.⁸

II.

Much of what the lawyer knows depends upon how well he can read. It is purposeful reading that opens the way to most of the information (or evidence) available to him on any particular occasion.

5. Part B, is based upon remarks made on November 23, 2004, to a session of a Jurisprudence course at Loyola University Chicago School of Law. See *infra* notes 18, 20, and 49 on Ptolemy. See also 16 GREAT BOOKS OF THE WESTERN WORLD (Robert Maynard Hutchins ed. 1952).

6. Part C is based upon remarks made on August 31, 2004, to the opening session of a Great Books Seminar at Loyola University Chicago School of Law.

7. See, e.g., George Anastaplo, *Law, Education, and Legal Education: Explorations*, 37 BRANDEIS L.J. 585 (1998); George Anastaplo, *Legal Education, Economics, and Law School Governance: Explorations*, 40 S.D. L. REV. 102 (2001); George Anastaplo, "McCarthyism," *The Cold War, and Their Aftermath*, 43 S.D. L. REV. 103 (1998); George Anastaplo, "Racism," *Political Correctness, and Constitutional Law*, 42 S.D. L. REV. 108 (1997). See also the Anastaplo entries in LEO STRAUSS, A BIBLIOGRAPHIC LEGACY (John A. Murley ed., 2005).

8. Illustrations of endeavors to learn what can be known may be found in GEORGE ANASTAPLO, ON TRIAL: FROM ADAM & EVE TO O.J. SIMPSON (2004).

After all, much of the lawyer's work is with recorded testimony, documents, statutes, judicial opinions, and the like. Most of what is to be learned about any particular "situation" is likely to be in writing already.⁹

Enough has to be known about varying "situations" to permit one to sense both what may be available and the significance of what does *not* turn up. Useful here is not only experience with how things are done in a particular kind of "situation," but also an awareness of what can be expected from human nature in a variety of circumstances.¹⁰

III.

An inquiry into these matters can well include an examination of the experience of the greatest lawyer ever to have practiced in this State.¹¹ He was, partly because of his acute awareness of his modest origins, always open to self-improvement.

Critical to his effort here was his constant study of language, of the best way he could express the thoughts he developed, as may be seen in how his argument matured as he worked his way through a celebrated series of debates here in Illinois in 1858. It may be seen in the movement from the third-rate poetry he wrote as a young man to the confident familiarity he developed with the language and hence with the thought both of the Bible and of Shakespeare.

Also critical to our lawyer's self-improvement was the effort he devoted, during his one term in Congress, to the study of geometry. The effects of such study can be detected in the rigor evident in arguments developing and thereafter supporting his political positions.¹²

IV.

A proper study of geometry can help one grasp what it means not

9. "Situation" is a term that suggests the artificiality of the account worked with. Particularly instructive is a definition of the term (going back to at least 1779) in the Oxford English Dictionary: "A particular conjunction of circumstances (especially one of a striking or exciting nature) under which the characters are presented in the course of a novel or play." OXFORD ENGLISH DICTIONARY 118 (1961). It is reported that people in Israel today call their constant conflict "the *matzav*: the 'situation.'" Bernard Avishal, *Saving Israel from Itself: A Secular Future For The Jewish State*, HARPER'S, Jan. 2005, at 33. See *supra* note 1 and *infra* note 49.

10. See, on the guidance provided by nature, GEORGE ANASTAPLO, BUT NOT PHILOSOPHY: SEVEN INTRODUCTIONS TO NON-WESTERN THOUGHT 303 (2002); see also *infra* note 41.

11. Perhaps the most remarkable "legal" document drafted by this lawyer, Abraham Lincoln, is the Emancipation Proclamation of 1862–1863. See GEORGE ANASTAPLO, ABRAHAM LINCOLN: A CONSTITUTIONAL BIOGRAPHY 197 (1999).

12. On both the early and the mature poetry of Illinois's greatest lawyer see *id.* at 135, 229, 243.

only to *know* something but also to be able to demonstrate (to share with others) what one has learned. An awareness may be developed as well of what cannot, in the circumstance, be effectively said.

A proper study of poetry can help one to grasp what it means both to notice the obvious and to recognize that one has in fact noticed it. There can be here a deepening of what we call “self-consciousness.”

Thus, both geometry and poetry can help one sense the limitations of others, especially as one becomes sensitive to the nature of things as well as to the varying talents of one’s associates. One can hope as well to come to know oneself better, including, of course, one’s inevitable limitations.¹³

V.

The complexity of the nature of things can be suggested upon noticing how poetic (or artistic) elements are drawn upon in the development and presentation of a geometrical demonstration. The artistic element may be seen as well in what is undertaken to be examined and in the figures used by the geometer.

The beautiful is relied upon in the maturation of the best demonstration of “what is.” Scientists—not only mathematicians—may prefer one formulation to others as being the most “elegant,” revealing thereby their own, perhaps instinctive, coupling of the true with the beautiful, something which they sense to be good.¹⁴

This reinforces the obvious insistence of the geometer that it is possible to discover the truth about things. Even more important, one may be shown that there *are* things to be learned, things which the inquiring mind that they are indeed worth the effort both to discern and to secure what is available for inquiry.

VI.

The intriguing complexity of the nature of things is further suggested upon noticing the extent to which “mathematical” elements may be drawn upon in the development and presentation of an artistic expression. For instance, numbers can very much matter in the meter of lines of poetry, in the establishment of rhyme patterns, in the ordering of lines, and in other ways. The order, or architecture, sensed in a poem

13. On geometry and efforts to understand the shaping of the human soul, see PLATO, MENO (for which Lawrence Berns and I have provided a translation and commentary issued in 2004 by the Focus Publishing Co.); *see also supra* note 4.

14. On the Good, the True, and the Beautiful, see GEORGE ANASTAPLO, THE ARTIST AS THINKER: FROM SHAKESPEARE TO JOYCE 275–78 (1983).

can testify to, or can emphasize, the truth of what is said.¹⁵

Perhaps a poem is most apt to have its initial effect if it is not at once evident how well constructed it indeed is. Inspiration may dictate not only what is perceived by the poet but also how his craftsmanship may be most effectively concealed for an enduring effect.

VII.

Is an artist's reliance upon inspiration limited by the numbering implicit in poetry? Is not poetry, then, far more disciplined than it may usually seem, however more effective it is likely to be when that which is said does seem spontaneous and effortless?

Are the artistic elements drawn on by the mathematician not likely to be emphasized by him, lest the presentation be considered not rigorous enough? Yet may not the beauty of a mode of demonstration somehow appeal to us?

We may depend upon beauty itself—even in the way an argument is shaped—as an assurance of goodness. It is the goodness that is exhibited in both poetry and geometry that art, the minister of beauty, undertakes to identify, refine, and ratify.

VIII.

Do geometry and poetry draw upon and minister to different parts of the soul? Are both parts needed for full understanding, and hence for an enduring happiness as well?

Philosophy tends to see itself allied more to the mathematical than to the artistic. But we can recall that the greatest philosopher of whom we have a record was a first-rate dramatist in the way he presented in his dialogues the Play of Ideas, whatever reservations he may have expressed from time to time about the effects of art in a well-ordered community.

Thus, we can wonder whether there is a perspective, or high ground, from which both poetry and geometry may be seen and on which the two of them may be reconciled? Is it from that perspective that one can see how each contributes to the conclusion that the good is one, and that goodness finds expression both in the Truth of Geometry and in the Beauty of Poetry?

15. See GEORGE ANASTAPLO, *THE CONSTITUTIONALIST: NOTES ON THE FIRST AMENDMENT* 806–08 (1971) (reprinted, with an additional preface, by Lexington Books in 2004).

IX.

We can return now to the regimen of lawyers, those servants of the community dedicated to presenting the truth in a manner that is both persuasive and salutary. The lawyer's effectiveness, especially in dealing with litigable disputes, depends upon training both in truth-seeking and in "looking good."

The looks of things are also essential to the working of poetry, and the practicing lawyer (during his commute?) could well study one poem a day taken from a good anthology. The search for truth is essential to the working of geometry—and the lawyer could study well one of Euclid's propositions each week.

One should be encouraged here by a contemplation of our greatest lawyer's career. One should be encouraged as well by the enthusiasm (whatever its limitations) of a poet who proclaimed that "Euclid alone has looked on beauty bare,"¹⁶ a proclamation which exhibits the beauty that the poet, along with the geometer, can somehow uncover.

B. ON FACTS, THEORIES, AND PTOLEMAIC ASTRONOMY

I.

What, in the lawyer's preparation of a brief or of a closing argument, is to be done with the record that has been made? What is the testimony or other information that has to be worked with or around? What can be learned about this "process" from the history of astronomy?

There was collected, across centuries and in various parts of the world, an immense body of useful information about the movements of heavenly bodies, however primitive the equipment used may now seem to us. Data assembled for one purpose—especially because of astrological interests—could be put long after to what we consider more scientific interests.

Information is usually gathered with some overall understanding of things in mind. That is, a "theory" may be implicit in the information collected, or in the way it happens to be collected and arranged.

II.

An account of things—collecting and making use of information—typically starts with solid (or, at least, plausible) assumptions.

The lawyer, for example, builds upon an opinion about the justice of

16. Edna St. Vincent Millay, *Euclid Alone Has Looked on Beauty Bare* (1920), in NORTON ANTHOLOGY OF POETRY 1273 (Margaret Ferguson et al. eds. 4th ed. 1996).

his client's cause. Or, he may have an opinion about what is likely to have happened in the "situation" under consideration.

The astronomer, on the other hand, once built upon an opinion about the solidity and steadiness of the Earth. In addition, he could hold the not-unreasonable opinion that the movements of heavenly bodies were, in their evident perfection, circular.

Of course, we do need to be cautioned about what we take for granted in the accounts of things that we devise. But, it should be recognized, not all of our starting points, or assumptions, can be tested. Indeed, all reasoning depends ultimately upon unexaminable premises that are somehow or other accepted by us.

Still, if what is accepted in this way should somehow be flawed, problems can emerge as these premises are built upon. This can be a kind of retroactive testing of assumptions.

III.

The facts (or observations or evidence) may not always be exactly what are needed on a particular occasion. Sometimes there may even be a problem because the facts have been collected with a discarded theory in mind.

The lawyer comes to recognize (upon viewing the record supplied to him, say, for an appeal) that something critical was not asked of a witness, just as the astronomer may recognize that a particular observation was not recorded. That is, there are likely to be unfortunate gaps in the information to be worked with.

Or, the available information may suggest alternative, if not even contradictory, explanations. It is not unusual that the facts have to be adjusted somewhat to permit a plausible account to be developed. This may even require setting aside facts that do not "fit in," facts that can find no useful place because of the categories one is using.

Another way of putting this is to recognize that there is, every day, a lot of information available to us that we have no use for in conducting our affairs or in preparing our accounts of things. Sometimes we can even suspect insanity in how obviously irrelevant facts are made use of. That is, all theories are not created equal.¹⁷

17. On the pitfalls confronting both theorists and experimentalists, see Helmut Fritzsche, *Of Things That Are Not*, in *LAW AND PHILOSOPHY: THE PRACTICE OF THEORY 3* (John A. Murley, Robert L. Stone, and William T. Braithwaite, eds., 1992).

IV.

We can be alerted to a problem when we see how elaborate a theoretical contrivance has to be in order to accommodate the available facts. This could be seen in how the Ptolemaic Earth-centered celestial system, in order to account for planetary movements, had to develop epicycles upon epicycles.¹⁸

Epicycles did become useful for those describing (not necessarily accounting for) the available astronomical data. But even though the epicyclical accounts of planetary motions were “only” a mathematical device for organizing the data, their growing complexity (as more data were accumulated) could become troubling.

Thus, the more elaborate the account of the planetary system became, the more impressive the talents of the astronomer could appear. But such contrivances could begin to suffer with respect to their persuasiveness. Some astronomers, it seems, could not help asking whether this *was* the way the planets “really” moved, or whether the way used to organize the data was the most convenient way to portray geometrically the available data.

Our ultimate reliance on unexaminable premises depends upon *intuition*. To what extent, or in what ways, may intuition be nurtured by experience and thought or by a reliable revelation? May a matured intuition help one choose usefully among alternative accounts of things?¹⁹

V.

Consider the accommodations that the Ptolemaic school did have to make. The need to place epicycles upon epicycles must have made some astronomers wonder whether something was fundamentally mistaken in their premises.²⁰

Another accommodation the Ptolemaic school made was to move the center of their circular planetary orbits away from the center of the orbit. This proved to be a remarkable step in the effort to account for

18. Claudius Ptolemy's dates are 100–178 A.D. See *infra* note 20 on epicycles; see also *infra* note 49.

19. Particularly illuminating here is the way that Galileo Galilei (1564–1642) dealt with the data he collected during his experiments trying to determine whether light is transmitted instantaneously. That is, he did not allow “the facts” to mislead him. See GEORGE ANASTAPLO, INTRODUCTION TO JACQUES MARITAIN AND THE MANY WAYS OF KNOWING 6–8 (Douglas A. Ollivant ed. 2002).

20. For illustrations of the uses of planetary epicycles, see FRANK N. BASH, ASTRONOMY 356 (1977); ROBERT R. NEWTON, THE CRIME OF CLAUDIUS PTOLEMY 55 (1977); JAMES M. LETTIS, BETWEEN COPERNICUS AND GALILEO 56 (1994).

the heavenly observations they had to work with. This was in response to challenges posed by the information they had when it was used as they had been using it.

There *was*, we now believe, something important in this shift away from the center. Another important change had yet to be made, the move from the circle to the ellipse as the path of the planetary bodies.

Even more critical, of course, was the move that would treat the Earth itself as a planetary body in orbit around the Sun.

VI.

The move to an ellipse came with Kepler, with each planet found by him to be centered upon one of the foci of its elliptical path around the Sun.²¹ This also meant, for him, that the speed of a planet so varies that it can “sweep” equal areas during equal times.²²

Some say that Kepler, if not Copernicus before him, made the decisive move that permitted the emergence of modern science. Others would nominate instead the work that Galileo did with falling bodies.

It seems that it was left to Newton to bring these (and other) developments together in a system of universal gravitation.²³ In the course of this development, it became irrelevant whether the Earth feels steady underfoot to human beings.

VII.

After all, we do sometimes have the experience of not being able to determine whether *we* are moving or the people in the train on the adjoining track. More of a problem, for an account that has the Earth in a planetary orbit around the Sun, was the lack of any observable parallax.

That is, if the Earth is in a great orbit, and if the “fixed” stars are scattered throughout the universe (and not all in one sphere), then shifts in the positions of the stars relative to each other should become apparent as the Earth itself moves in its annual orbit. But, we are told, it was not until well into the nineteenth century before the sought-for

21. Johannes Kepler's dates are 1571–1630. His most illustrious predecessor, in the heliocentric tradition, was Nicolaus Copernicus (1473–1543).

22. For an artistic use of Kepler's “sweeps,” see ANASTAPLO, *supra* note 14, at Frontispiece, 305–308.

23. Isaac Newton's dates are 1642–1727. On Newton today, see SUBRAHMANYAN CHANDRASEKHAR, *NEWTON'S PRINCIPIA FOR THE COMMON READER* (1995); George Anastaplo, Book Review, *GREAT IDEAS TODAY* 448 (1997).

parallax could be detected, as telescopes were improved.²⁴

That is, it was not imagined how far away the fixed stars really are. I suspect that the lack of observable parallax must have alerted some heliocentric partisans to the possibility that the “fixed” stars were at a far greater distance from the Earth than had ever been imagined. Did all this alert some of them as well not only to the immense scope of space but also to the immense scope of time?

This can lead in turn to a theory which provides a more plausible account than any ever before taken seriously of the facts that have been accumulated for centuries. Once that account is accepted, it can contribute thereafter to the generation of many more facts that steadily reinforce the new “theory of the case.”²⁵

24. On the phenomenon of parallax, see ROCKY KOLB, *BLIND WATCHERS OF THE SKY* (1996). Thus we are told:

In Copernicus’s model, or any other model in which Earth moves, an additional ingredient allows a direct determination of the distance to the stars. The movement of Earth should lead to apparent annual motion of the stars, known as the annual stellar *parallax*, or just parallax for short.

Parallax is the *apparent* change in the position of an object caused by a change of the viewing position of the observer.

Id. at 154. It is reported that the “first determinations of stellar parallax were made in the period 1836–1838.” *Id.* at 158. On parallax, see also N.M. SWERDLOW & O. NEUGEBAUER, *MATHEMATICAL ASTRONOMY IN COPERNICUS’S DE REVOLUTIONIBUS 707* (1984); see as well *infra* note 49.

25. Consider the form such accounting can take among scientists:

Modern physics has opened to us the amazing quantum world . . . Wonders of the quantum world are beyond imagination. But using its mathematical arsenal theoretical physics succeeds to describe behavior of quanta so accurately that results of experiments exactly coincide with theoretical predictions. This capability to correctly represent phenomena which escape even mental visualization was, in the opinion of the world-known physicist L.D. Landau, the greatest triumph of theoretical physics of [the] twentieth century.

L.G. ASLAMAZOV & A.A. VARLAMOV, *THE WONDERS OF PHYSICS* 233 (2001). A more old-fashioned approach to these matters can take this form:

What seems to be missing in the current scientific enterprise is a systematic inquiry into its presuppositions and purposes. That is, the limits of modern science do not seem to be properly recognized. Bertrand Russell has been quoted as saying, “Physics is mathematical not because we know so much about the physical world, but because we know so little: it is only its mathematical properties that we can discover.” But the significance of this observation is not generally appreciated—as one learns upon trying to persuade competent physicists to join one in presenting a course devoted to a careful reading of Aristotle’s *Physics*.

Is there any reason to doubt that physicists will, if they continue as they have in the twentieth century, achieve, again and again, “decisive breakthroughs” in dividing subatomic “particles”? But what future, or genuine understanding, is there in *that*? I believe it would be fruitful for physicists—that is, for a few of the more imaginative among them—to consider seriously to the nature of what we can call the “ultron.” What must this ultimate particle be like (if, indeed, it is a particle and not an idea or a

One can be reminded here of the lawyer who happens to secure a new trial in the course of litigation, a new trial which permits him to accumulate additional facts which support a theory that he had come to suspect and develop only on appeal.

C. FIRST AND LAST THINGS FOR THE ANGELO OF *MEASURE FOR MEASURE*

I.

Critical to the skills of a lawyer is the ability to read documents with care. This includes the ability to recognize the varying degrees of care required for various kinds of documents.

Much the same can be said about the handling of literature, which can provide good practice in reading. Literature can also provide lessons about the things that should matter most to us as human beings.

II.

Consider the guidance and practice that we may gather from Shakespeare's *Measure for Measure*.²⁶ We can, on this occasion, concern ourselves with only part of the plot, and even that in a simplified form.

The ruler of Vienna, disturbed by the moral laxity to which his city has become accustomed, pretends to go away on a state visit, leaving his deputy, Angelo, in charge.²⁷ It is expected that Angelo, a man of a severe reputation, will undertake to provide the city a far stricter enforcement of the laws than the lenient Duke had been able to insist upon.²⁸

Angelo does what is expected of him, subject of course to the supervision of the Duke who (unknown to the city) watches from the sidelines in the guise of a visiting Friar.²⁹ Among the measures resorted

principle)? For it is not an "ultron" implied by the endeavors of our physicists, by their recourse to more and more ingenious (and expensive) equipment and experiments? Or are we to assume an infinite regress (sometimes called progress) and no standing place or starting point? Or, to put this question still another way, what is it that permits the universe to be and to be (if it is) intelligible? To ask such questions is to raise fundamental questions about what Leo Strauss called "the modern project."

ANASTAPLO, *supra* note 14, at 252–53; *see supra* note 9; *see also supra* note 1; *infra* note 49.

26. *Measure for Measure* is sometimes known as a "problem comedy" or a "problem play." *See* David Bevington, ed., *THE COMPLETE WORKS OF SHAKESPEARE* 404 (1997). The Bevington collection is drawn on for the *MEASURE FOR MEASURE* text and citations as well as for the *TEMPEST* quotation in the epigraph. *See supra* note 1.

27. SHAKESPEARE, *MEASURE FOR MEASURE*, act I, sc. i, ll. 43–48.

28. *Id.* at act I, sc. iii, ll. 19–54

29. *Id.*

to by Angelo is his sentencing to death Claudio, a man of a good family who had not waited on his marriage to his intended wife before he entered into sexual relations with her. Claudio's sister, Isabella, who is about to enter a nunnery, goes to Angelo to plead for her brother.³⁰ The passion of her plea arouses Angelo, who offers to spare her brother if she submits to him. Of course, she is indignant.³¹ But the supervising Duke, upon learning of this, intervenes, arranging for another woman (Mariana), once betrothed to Angelo but who was jilted by him, to be substituted for Isabella in the dark during the requested assignation.³²

Angelo, after being ministered to in this fashion, nevertheless orders the execution of Claudio, fearful of what the brother would someday do to Angelo as he comes to resent what his sister had had to do to save him.³³ That execution, too, is headed off by the disguised Duke, although Angelo, Isabella, and others believe it was carried out.³⁴

Thereafter, the "Friar" (that is the Duke), has Isabella accuse Angelo before the "returned" Duke, alleging a monstrous abuse of office. Angelo denies all, explaining that Isabella simply resents her brother's just execution.³⁵ The Duke then stage-manages the "exposure" of the Friar (as Duke) and the appearance of a still-living Claudio, among others.³⁶

By this time, it is obvious that Angelo had acted badly.³⁷ He had already been obliged to marry Mariana before he was to be executed.³⁸ But he is spared when it becomes evident that he had not been able to do the terrible things (to Isabella and to Claudio) that he had tried to do.³⁹

III.

It can be instructive to chart, even if only in a preliminary manner, the reasoning behind Angelo's conduct.

Angelo makes some fourscore (that is, eighty-three) speeches in this play. I collect, for our immediate study, the opening, the central, and the closing speeches by Angelo—that is, speech numbers one, forty-one

30. *Id.* at act II, sc. iii, ll. 28.

31. *See, e.g., id.* at act II, sc. iv, ll. 142, 150.

32. *Id.* at act III, sc. ii, ll. 210–69.

33. *Id.* at act IV, sc. iv, ll. 28–32.

34. *Id.* at act IV, sc. ii, ll. 154–209.

35. *Id.* at act V, sc. i, ll. 21–38.

36. *See also id.* at act V, sc. i, ll. 288–374, 500.

37. *Id.* at act V, sc. i, ll. 374–82.

38. *Id.* at act V, sc. i, ll. 382–87.

39. *Id.* at act V, sc. i, ll. 501–09.

through forty-three, and eighty-three.⁴⁰ We need not assume that Shakespeare was conscious of the arrangement that I will now describe. But we can suspect that the grasp (conscious or unconscious) he had of this character is reflected in what is apparent to us upon examination of these significantly-placed speeches.

IV.

Angelo's opening speech is that of a man who considers himself, and may well believe himself to be, totally submissive to his ruler. He very much wants to act, or at least to appear to act, in conformity with the Duke's will.

Does this stance suggest his limitations? Is it his ruler's will, and his desire to appear subservient to that will, which had theretofore controlled him, not any deeply-rooted awareness of what is truly good?

Is this consistent, ultimately, with a willingness to do whatever he believes that he can get away with? Cannot we see here the limitations of any understanding of the law that depends, at its core, upon sanctions imposed from without?⁴¹

V.

Angelo's central speeches (numbers forty-one through forty-three) display the stages of his captivation by the beauty and passion of Isabella.

In the first of the three central speeches, he is surprised to discover how deeply he has been aroused by her—and he wants her to return to renew her plea for her vulnerable brother. Then, in the next speech (his central speech in the play), he in effect repudiates what he has been considered to stand for, recognizing as he does so that the devilish rather than the angelic dominates his appetites and methods, corrupting in the process whatever dedication he had once had to justice. Does he ever consider what there had been, in the way he had been fashioned, which left him vulnerable upon encountering an unexpected (and seemingly helpless) beauty of body and soul?

Thereupon, in the third of his central speeches, Angelo is determined, in effect, to assault Isabella. Much is made here of blood. His last

40. For the texts of these five speeches, see the Addendum to this Article.

41. It is not generally recognized that it is this limited understanding of the law that is relied upon in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938). See George Anastaplo, *The Natural Right Component Of American Law*, 23 LEGAL STUD. F. 535 (1999); George Anastaplo, *Constitutionalism, The Rule of Rules: Explorations*, 39 BRANDEIS L.J. 17, 178 (2000); see also *supra* notes 2, 10.

words at this point, as Isabella returns to hear what will be his shocking proposition are, "How now, fair maid?"

VI.

By the time of Angelo's last speech, in the last scene of the play, he is exposed and demolished. Once again we see in the closing speech that total submissiveness to authority we noticed in his opening speech.

He says that he longs for the death that he says he deserves, not recognizing (of course) how far off the mark he had been even in the evils he had tried to do. Thus he has not "succeeded" either in getting Isabella or in killing Claudio. (Had he been equally ineffectual throughout his career, in whatever good he had tried to do?) However devastated he now is, he is not capable of inflicting upon himself the punishment he says he deserves.

That is, suicide is *not* an option for him. The Roman solution is not available, and not only because these are Christian times. In the final analysis, then, Angelo looks to others to do with and for him what may be needed.

Angelo's opening and closing speeches reveal a man who very much depends upon public authority as a substitute for that self-direction which he cannot be trusted with. It should not be forgotten that when Angelo finally undertakes to have Claudio executed, it is not because of anything Claudio had done but, as we have seen, because he feared what Claudio may someday do because of what Angelo believes he had done to Claudio's sister.

VII.

We are also encouraged not to forget that sexual gratification often depends upon illusion. After all, Angelo did not distinguish, in the dark, between Mariana and Isabella. This had evidently been an encounter during which the woman said nothing, however much she might say for years thereafter to the husband who once thus mistook her for someone else.

Are we meant to learn from the experience of Angelo that what we, as human beings, find most gratifying *can* very much depend upon chance? Are we encouraged thereby to prefer other goals, goals that are not as subject to illusions and accidents?

VIII.

The difficulties confronting an Angelo who tries to chart a course that is not dependent on others are suggested by the way that the Duke is in

turn drawn to Isabella. Indeed, he wants to marry her, once everything else is more or less straightened out.⁴²

Is the Duke uncomfortably similar to Angelo in his response to Isabella's beauty? We are not given her answer to his unexpected marriage proposal—but we cannot help but suspect that there is something irregular (if not even disturbing) in his matrimonial initiative here, especially since he proceeds partly on the basis of privileged information (which he had gathered in his guise as a visiting friar).

The propriety of what the Duke proposes can be questioned, especially after he had allowed Isabella to believe that her brother had been executed despite the apparent “deal” she had struck with Angelo. The consummation of that “deal” had required that Isabella herself engage in a series of deceptions “orchestrated” by the Duke.

This is not to deny that the Duke, in his erotic inclinations, is clearly superior to Angelo. But it begs the question whether he, too, is in need of some correction. And we may be encouraged by all this to recall, and to reflect upon, our own personal shortcomings, especially those that are justified by the often-compelling assumption that of course we are “special.”

IX.

It is far from clear in this play what the long-term consequences are in Vienna of the Duke's experiment. It had started as an effort to tighten up the general enforcement of the laws in his city. It ended with its most dramatic “achievement” being the exposure of the limitations of the very man who had been regarded as most rigorous in the enforcement of the long-neglected laws.

Perhaps the power and influence of the Duke are enhanced, especially since he can come to be generally recognized as pervasive (if not even as divine) in his overall supervision of thoughts and deeds. Certainly Angelo is intimidated upon learning how much in control the Duke had been throughout his supposed absence. Whether the respect earned here by the Duke is enduring can be wondered, especially when people have had time to reflect upon what precisely he had accomplished and how he had done it. It might even be wondered whether the Duke's longstanding negligence as a ruler had contributed to the corruption of Angelo.

An abiding issue here is with respect to the proper relation between law and morality. Does the law necessarily draw upon or assume

42. See SHAKESPEARE, *MEASURE FOR MEASURE*, act V, sc. i, ll. 503–04 & 545–46.

enduring moral standards—and does the law tend to reinforce the moral standards that it draws upon, even when it does not attempt to legislate morality directly?

Be all this as it may, one particularly effective form of the “legislation” of morality is that which is seen in art. The Duke himself is more effective as the concealed producer of the drama staged during his supposed absence than he had been theretofore as the recognized ruler of his city.

We can be reminded by all this of the observation, by an eminent artist, that the poets are the unacknowledged legislators of the world. Among the “laws” promulgated by poets is that which provides us both instruction and practice in how to read with care those things that require and reward such attention.

ADDENDUM*Five Angelo Speeches in William Shakespeare's Measure for Measure*⁴³SPEECH NO. ONE⁴⁴

Always obedient to Your Grace's will,
I come to know your pleasure.

SPEECH NO. FORTY-ONE⁴⁵

From thee, even from thy virtue!
What's this, what's this? Is this her fault or mine?
The tempter or the tempted, who sins most, ha?
Not she, nor doth she tempt; but it is I
That, lying by the violet in the sun,
Do, as the carrion does, not as the flower,
Corrupt with virtuous season. Can it be
That modesty may more betray our sense
Than woman's lightness? Having waste ground enough,
Shall we desire to raze the sanctuary
And pitch our evils there? O, fie, fie, fie!
What dost thou, or what art thou, Angelo?
Dost thou desire her foully for those things
That make her good? O, let her brother live!
Thieves for their robbery have authority
When judges steal themselves. What, do I love her,
That I desire to hear her speak again
And feast upon her eyes? What is't I dream on?
O cunning enemy that, to catch a saint,
With saints dost bait thy hook! Most dangerous
Is that temptation that doth goad us on
To sin in loving virtue. Never could the strumpet,
With all her double vigor – art and nature –
Once stir my temper, but this virtuous maid
Subdues me quite. Ever till now,
When men were fond, I smiled and wondered how.

43. These five speeches are taken from Bevington, ed., *THE COMPLETE WORKS OF SHAKESPEARE*, *supra* note 26.

44. *Id.* at act I, sc. i, ll. 26–27.

45. *Id.* at act II, sc. ii, ll. 169–94.

SPEECH NO. FORTY-TWO⁴⁶

When I would pray and think, I think and pray
 To several subjects. Heaven hath my empty words,
 Whilst my invention, hearing not my tongue,
 Anchors on Isabel; Heaven in my mouth,
 As if I did but only chew His name,
 And in my heart strong and swelling evil
 Of my conception. The state[craft], whereon I studied,
 Is like a good thing, being often read,
 Grown sere and tedious. Yea, my gravity,
 Wherein—let no man hear me—I take pride,
 Could I with boot change for an idle plume,
 Which the air beats for vain. O place, O form,
 How often dost thou with thy case, thy habit,
 Wrench awe from fools and tie the wiser souls
 To thy false seeming! Blood, thou art blood.
 Let's write "good angel" on the devil's horn,
 'Tis not the devil's crest.

SPEECH NO. FORTY-THREE⁴⁷

Teach her the way. [*Exit Servant.*] O heavens!
 Why does my blood thus muster to my heart,
 Making both it unable for itself
 And dispossessing all my other parts
 Of necessary fitness?
 So play the foolish throngs with one that swoons,
 Come all to help him, and so stop the air
 By which he should revive; and even so
 The general subject to a well-wished king
 Quit their own part and in obsequious fondness
 Crowd to his presence, where their untaught love
 Must needs appear offense.

46. *Id.* at act II, sc. iv, ll. 1–17.

47. *Id.* at act II, sc. iv, ll. 19–30.

SPEECH NO. EIGHTY-THREE⁴⁸

I am sorry that such sorrow I procure,
 And so deep sticks it in my penitent heart
 That I crave death more willingly than mercy.
 'Tis my deserving, and I do entreat it.⁴⁹

48. *Id.* at act V, sc. i, ll. 485–88.

49. Does Claudio truly mean this? The Duke observes a “quickenings in [Angelo’s] eye” when “perceives he’s safe.” *Id.* at act V, sc. i, 505–06. Perhaps we see, once more, that Angelo never knows himself.

We can be reminded of the workings of chance in what it is that we happen to learn about many things, including ourselves:

It is sobering to note that of the one hundred billion or so stars in our galaxy, only about a thousand are close enough to measure a parallax. It’s not impossible to imagine that we could live in a part of a galaxy with *no* stars close enough to measure a parallax. In that case we would never have been able to determine the distance to the few nearby stars necessary to make the first small step in the third dimensions, and those little twinkling points of light in the sky would forever remain a mystery.

Kolb, *supra* note 24, at 159. Consider as well, as a caution with respect to the theories we devise and have to rely upon, this observation:

Galileo and Kepler knew that the arrangements of Ptolemy, Copernicus, and Tycho [Brahe] (1546–1601) were actually mathematically identical. It is not impossible that deep inside Tycho realized this also. If one is simply interested in a cosmological model to predict the occurrence of eclipses or to cast horoscopes, the Ptolemaic model is as good as any Any astronomer who wants to predict when a solar eclipse will occur will do the calculation in a “reference frame” in which Earth is at rest and the Sun travels around the zodiac.

Id. at 35. After all, we do routinely speak of *the Sun* “rising” and “setting.” See *supra* note 1; see also *supra* note 25.