HISTORY AND HISTORIES

Andreea VERTEŞ-OLTEANU,
University of the West, Timişoara, Romania

Abstract

European integration, enlargement, acquis communautaire, legal harmonization, all these are highly debated topical issues. This paper invites you to take a journey through time, a journey mediated by the historical text, offering itself as a first hand witness.

We shall compare the Romanian and the British legal systems, as well as the way in which these two countries perceived the notions of power and government (with a focus on the monarch) – as seen through the eyes of literature – and analyse their resemblances and differences, 400 years before the drafting of the European Constitution (Richard III vs. Alexandru Lăpuşneanu – a case study).

The paper deals with the connections between Costache Negruzzi's *Alexandru Lăpuşneanu* and Shakespeare's *Richard III*. In my opinion, far more than any respectable historian, and despite the fact that professionals have doubted their historical accuracy, both Shakespeare and Negruzzi are responsible for whatever notions most of us possess on the medieval period and its political leaders – namely Richard III and Lăpuşneanu.

Shakespeare's history plays used to be – and possibly still are – commonly regarded as a reliable source of information on English medieval history. And so are the Romanian history novels, including Negruzzi's *Lăpuşneanu*. The first Duke of Marlborough was said to know no history but what he had learned from Shakespeare. And yet, according to Sir Philip Sidney's definition, the Bard was a poet rather than a historian.

The government in the Middle Ages was very different to what it has become these days. The King was very much a ruler, unlike the monarchs today who are largely figureheads. They were not above the law, but had to act in accordance with it. However, no law could be passed without their content. And yet, there was something not even the most powerful ruler could control: the opinion of posterity.

Literature has played quite a nasty trick on both Richard III and Alexandru Lăpuşneanu. The real Richard III only partially resembled the murderous, deformed lump and deceitful villain

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depicted by Shakespeare. His brother, Duke of Clarence, was a much more blatant schemer. Shakespeare, whose sources were the Tudor chronicles, hostile to Richard, portrayed him as a limping hunchback with a withered arm.

Neither Shakespeare nor Negruzzi can be accused of turning history upside down by changing the basic outlines of what their audiences were familiar with, and yet they do not feel tied to the details of historical events and figures but take numerous liberties. The same principle can be observed in those of Shakespeare's tragedies which are closely linked to history such as *King Lear*, the outline of which can be traced back to Geoffrey of Monmouth's *Historia* and Holinshed's *Chronicles*.

We must take into consideration the fact that Shakespeare was acutely sensitive to the political climate of his own time and that he was writing during censorious times. We must also keep in mind that he was a charter member of the Lord Chamberlain's men, whose ultimate patron was Queen Elizabeth, granddaughter of Henry VII. In 1579, one Hugh Singleton enraged Elizabeth I by printing a certain tract to such an extent that he was condemned to lose his right hand as a punishment and hindrance to further printing. There are two variants for the explanation of Richard's portrait: it was either that Shakespeare wanted to please the Queen, or he was really treading dangerously upon seditious grounds and his portrayal of Richard as a tyrant was in fact that of two of Elizabeth's principal ministers who were known for their political ruthlessness.

Even if the character depicted is Richard III, even Tudor historians, such as Polydore Vergil, acknowledged that in spite of Richard's infamy and evil deeds, the king began "to give the show and countenance of a good man, whereby he might be accounted… more liberal especially toward the poor… He began many works as well public as private… He founded a college at York…". Modern historians also note Richard's primary concern for legal remedies for all subjects, as well as his financing and patronage of charities and collegiate churches. But some temper the praise by adding that Richard used his only parliament as a "forum for reforming legislation which would give fullest publicity to his beneficent intentions as king."

Richard's long soliloquy touches on all the negative attributes previously cited in the chronicles – his hatred, destructiveness, ambition, and deceptiveness. His deformity and unnatural birth are graphically described: "I, that am curtailed of this fair proportion, / Cheated of feature by dissembling Nature, / Deformed, unfinished, sent before my time / Into this breathing world scarce half made up…" (I, i, 19-21). It was only after his death that his birth was declared unnatural by his enemies who tried to denigrate him, as, in the period, people associated an evil disposition with a deformed body.

But, if we take a look at Richard's earlier portraits (for example that belonging to the Society of Antiquaries), we may notice that they show no sign of deformity. Furthermore, the

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members of Richard III Society claim that the raised shoulder of the Windsor portrait, a later one, can be shown under X-ray to be a latter addition to a painting with a normal shoulder line.

Furthermore, this Society, in its desire to put to rest the resolution of one of England's greatest historical mysteries, and at the same time provide justice for a man wrongly accused, has requested that the bones in the Tower, that are alleged to be those of the sons of Edward IV (presumably killed by Richard), be subjected to modern scientific examination and the treatment of DNA analysis.

In his turn, Alexandru Lăpuşneanu was not the cruel leader portrayed by Negruzzi. In fact, historians do not accept the version that he killed those 47 noblemen during the feast which was presumably given in their honour and, moreover, they claim that his wife (who in the novel appears as sweet, beautiful, delicate and pious) was far harsher than Lăpuşneanu himself. Moreover, just like Shakespeare, Negruzzi makes some mistakes in quoting the *Chronicles*, namely he quotes Miron Costin, while it is well-known that the meeting between Alexandru Lăpuşneanu and the noblemen was depicted in Grigore Ureche's *Chronicle (Letopiseţ).*

These resemblances made me bring the two characters together. But my analysis will not focus only on them. Unfortunately, such central characterizations are quite often all that we retain from history plays. And that is not due to the fact that the authors might have neglected the presentation of surrounding circumstances. The problem lies in us and in our manner of grasping a historical text. The complexity of medieval texts suggests that the audience of the time was more accustomed to comprehending a large cast and an intricate plot than modern drama has trained us to be.

The works of William Shakespeare contain a remarkable quantity of law terms, whose significances are naturally unknown to the generality of readers and represent a pretext for a research paper such as this one.

There are some who appreciate the fact that Shakespeare must have had a sound legal training. And yet the correct use of nautical terms he has displayed in the *Tempest* does not make him a seaman. An argument in favor of those who claim that the Bard was somehow related to the profession of lawyer could be the following quote: "The minute you read something that you can't understand, you can almost be sure that it was drawn up by a lawyer".

However, for those who doubt Shakespeare's legal knowledge and argue that the principles and practice of the law of real property were more generally understood by unprofessional people in Shakespeare's time than at the present day, that circumstance will not satisfactorily account for all Shakespeare's legal knowledge, because his works contain passages displaying not merely a knowledge of the principles and practice of the law of real property, but also of the common law, and of the criminal law, and a thorough intimacy with the exact letter of the Statute Law.

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Shakespeare lived over 400 years ago, before criminological theory was formalized and long before criminology emerged as an academic discipline. Yet, arguably, his works are timeless and of relevance across geographical boundaries. Shakespeare introduced in his plays a wide variety of criminal and deviant characters. Some of the crimes committed in the plays represent illegal behavior acknowledged universally as mala in se; that is, wrong in themselves. These crimes include murder, robbery, rape, and theft. Some characters commit offenses that are mala prohibita -- acts that are made offenses by statute--which could carry criminal sanctions in some situations. The weight given to mala prohibita crimes differs from society to society, and also from time to time. Many of the offenses characterized as mala in se would also be considered deviant--morally wrong though perhaps not illegal.

So let us try to match our predecessors and for once leave behind the two main heroes and concentrate on something different. And when I say "something different", what I have in mind is the legal system – with a focus on crime, torture and punishment in Medieval England and Moldavia.

In today's Romania, such topics as European integration, enlargement, acquis communautaire, legal harmonization are highly debated issues. So the purpose of this paper is to analyse to what extent did the Romanian (namely Moldavian) legal system (with an emphasis on crime and punishment) matched the British one some 400 years before the drafting of the European Constitution.

The distinction between the serious offences and the petty crimes dates back to medieval times. In Moldavia, the serious offences were the ones directed against the hospodar (the title borne by the princes or governors of Moldavia and Walachia before those countries were united as Romania), and they were perceived as harmful to the state itself.

This was also the case for England, because, as William Harrison in his "Description of England" (originally published 1577-78, republished for the New Shakespeare Society 1877-1878) stated: "The greatest and most grievous punishment used in England for such as offend against the State is drawing from the prison to the place of execution upon an hurdle or sled, where they are hanged till they be half dead, and then taken down, and quartered alive; after that, their members and bowels are cut from their bodies, and thrown into a fire, provided near hand and within their own sight, even for the same purpose."

In Moldavia, the most serious of all offences was treason – known in the documents of the epoch as "hiclenie". This offence covered a large range of deeds, such as armed rebellion against the head of the state, the claim to the throne, the flight from the country without the hospodar's consent as a sign of rebellion against the latter's politics, the defalcation of the country's treasure house, money forgery, disobeying the ruler's orders ("osluh"), murder and perjury.

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Other offences were considered to be petty crimes, but, if they implied the interests of the hospodar, of one of the members of his family or of the important landlords, they could become grievous and therefore punished accordingly. Among these offences, the most frequent one was theft, which meant the dishonest appropriation of property belonging to another with the intention of permanently depriving the other. On the contrary, it was not considered as a crime the fact of appropriating the fruits of orchards or vineyards, to the extent to which they served to the momentary use of the offender. Yet, the punishment was much harsher, going as far as hanging, if the theft was a flagrant offence (the so-called "open" or "in broad daylight" theft). Burglary ("rapina", "jac", "jaf") was an aggravated form of theft, when the latter was committed with violence, by an armed band, on the highway or by breaking into the house.

English legislation also made this distinction between theft and burglary: "Thieves are those who have stolen nothing else but oxen, sheep, money, or such like, which be no open robberies, as by the highway side, or assailing of any man's house in the night, without putting him in fear of his life, or breaking up his walls or doors". The sentence was that the thief was burned in the left hand, upon the brawn of the thumb, with a hot iron, so that, "if they be apprehended again, that mark betrayeth them to have been arraigned of felony before, whereby they are sure at that time to have no mercy."

Burglary in Medieval Moldavia was punished by hanging at the spot of the crime. This custom is to be found in the English methods of punishment as well: "if he (the offender) be convicted of wilful murder, done either upon pretended malice or in any notable robbery, he is either hanged alive in chains *near the place where the fact was committed* (or else upon compassion taken, first strangled with a rope), and so continueth till his bones consume to nothing. When wilful manslaughter is perpetrated, beside hanging, the offender hath his right hand commonly stricken off *before or near unto the place where the act was done*, after which he is led forth to the place of execution, and there put to death according to the law."

Disrespecting the borders (trespassing) meant the changing of or the appropriation of the borders or of the signs used to delimit properties with the intent of stealing land. Arson constituted first of all an offence that brought about civil liability and the offender was bound to pay damages to the harmed party, the criminal element being reduced to the multiplication of the quantum of these damages.

From the category of petty crimes we could also mention the offences brought against physical or moral integrity, such as bodily harm, the "staining with blood", that is grievous bodily harm or the unlawful denunciation (defamation). The forgery of acts, street fights or insults were also minor offences. The offences against morals were treated differently: they were considered either as severe, namely incest or rape or as petty crimes: profligacy, bigamy, adultery. However,

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for these crimes, the punishment infringed to women was harsher than in the case of men, going as far as to the capital punishment. And since we have mentioned women and their "special" treatment, we might add here a weird punishment that is to be found in the history of England and which remained unknown to Romanian legislation and custom: the brank, also known as the bride's scold, used on women who gossiped or spoke too freely.

In Moldavia, the infringement of punishment was governed by two main principles: that of inequality and that of the agreement between the parties. As far as the former is concerned, what used to matter was not so much the offence itself, but the social position of the one who committed it; accordingly, the serfs used to receive corporal punishments while the noblemen used to receive material ones (except for the case in which the deed had been directed against the hospodar). We may witness the same variation of punishments in the case of England also. "And whensoever any of the nobility are convicted of high treason by their peers, that is to say, equals (for an inquest of yeomen passeth not upon them, but only of the lords of parliament), this manner of their death is converted into the loss of their heads only. In trial of cases concerning treason, felony, or any other grievous crime not confessed, the party accused doth yield, if he be a noble man, to be tried by an inquest and his peers; if a gentleman, by gentlemen; and an inferior, by God and by the country, to wit, the yeomanry, and, being condemned of felony, manslaughter, etc., he is hanged by the neck till he be dead, and then cut down and buried."

The other principle, that of the agreement between the parties, meant a settlement of the dispute by means of a concord between the victim and the author of the offence; in the beginning, this form of settlement was volunteer, later on it became legal and it could be used in any type of crime, varying from a simple theft to murder, with the result that those who were accused of murder could redeem their heads.

Among the punishments which were inflicted, some were specific to the Middle Ages and had an infamous character, such as the shaving of beards, the cutting of locks, mutilation, torture or the exposure in the town square of the offender, stripped to the skin. Apart from these, we might add the capital punishment (through beheading or hanging), prison and fine. And yet, the concept of incarcerating a person as punishment for a crime was a relatively novel idea. Most prisons were used as holding areas until trial and subsequent sentencing. Trials were skewed in favour of the prosecution, for example, defendants accused of a felony or treason were not allowed legal counsel. Justice was usually swift and often brutal.

This infamous character of punishments had the same powerful effect in Medieval England. When a person was being punished, it usually entailed an immense amount of embarrassment. Criminals weren't dealt with in private; they were displayed in the middle of the marketplace for all the townspeople to see. Villagers of the period could be considered twisted individuals because of

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the crowds of people that gathered for the public punishments and executions, sometimes even having to pay for a "front-row seat".

Almost all of these crimes and punishment are mentioned at some point or another as the dramatic text offers itself as a chronicle, or as an informative comment about real events.

As far as crimes are concerned, Negruzzi depicts the following: treason ("he [Alexandru Lăpuşneanu] wouldn't have lost his throne if he hadn't been betrayed by the noblemen", "You, Moţoc, you have sold Despot, just how you have sold me, and just like the way in which you will sell Tomşa"), flight from the country without the hospodar's consent as a sign of rebellion against the latter's politics ("the noblemen are determined to flee across the border"), theft ("he [the hospodar] would steal from the noblemen under different pretexts") and murder ("the noblemen, the ones who had been left alive…", "he [Lăpuşneanu] would have them killed at the slightest mistake... the guilty one's head would hang at the slightest complaint", "47 bodies were lying on the floor", "it's not so important that hundreds of peasants will die since there are so many noblemen who have already been killed").

Apart from the description of crimes, the novel abounds in punishments and tortures: "at the slightest mistake the guilty one's head would hang in front of his house, together with a notice of his crime, true or made-up, and it did not get to rot when another head would replace it", "he cut off his nose and forced him to become a monk", "he would have their heads cut off and he would have their bodies thrown out of the window".

Yet, both Lăpuşneanu and Richard suffer when viewed from a modern, democratic perspective. We have to consider them in the context of their times, which were "ruthless and violent". By doing so, we tend to remove them from that "lonely pinnacle of Villainy".

Despite their, let's say, "vague memory of history", it is important to remember that both Shakespeare's and Negruzzi's re-structuring of historical materials reflects their artistic creativeness as they juxtapose main plots and sub-plots through parallels and contrasts, design antagonists for their main protagonists and shape historical figures into familiar or recognizable stage types. Both of them succeeded in exploiting the dramatic potential of their material and ultimately used history, its events and figures, for the creation of effective theatre.

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