

The Trial Scene in Shakespeare's *The Merchant of Venice*: Dramatization of Law and Mercy as Reflected in the English Judicial System

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Abstract

In many of his plays, Shakespeare makes frequent use of the law and the legal terms. It has been observed by many legal scholars like Daniel Kornstein, William Rushton, Lord Campbell (chief justice) and many other critics that Shakespeare's application of the legal terms appears to be surprisingly accurate. Till today both the literary critics and the legal scholars are trying to solve the mystery of Shakespeare's familiarity with law, law courts, legal proceedings and legal maxims. The present article is a study of the Trial scene in *The Merchant of Venice*. Since a public prosecution is to be staged, Shakespeare does apply factual law to add flavor to the dramatic action. I have argued that the legal issues mounting from the merry bond reveal the law of contract, the rigidity of the common law, the equity law and the Divine law of Mercy or the moral law.

When Portia finds Antonio trapped by the rigid stand of the state law, she instantly exercises rules of equity law. However, she does not end her lawsuit here. Even though Shylock is the cause of all the legal mishaps, Portia tries to save him through applying moral law or the virtuous quality of Mercy. The trial scene ends with the triumph of equity and moral law in resolving the legal and human crisis caused by the rigidity and the inadequacy of the common law.

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Introduction

A glimpse of the English judicial system may help to understand the various applications of the law in the trial scene of *The Merchant of Venice*. The general law of England is divided into three parts, statute law, equity law and common law. According to Salmond, ‘the common law is the entire body of English law...’¹. The other two, that is, statute law is made by the legislature and the Court of the Chancery developed equity law. In the Court of Chancery, the decree is based upon equity and conscience, that is, upon the Lord Chancellor’s sense of natural justice. Salmond attributes three meanings to the term equity:

In the first place it connotes the embodiment of the principles of morality, honesty and righteousness. In the second sense it is synonymous with natural justice and thirdly in its narrower sense, it consists of set rules of equitable law as opposed to common law².

It was found during the 13th century in England that Common law had become very rigid and inadequate. There were three major defects in the common law, ‘absence of remedy, inadequacy of remedy and excessive formalism, which caused great injustice to litigants’³. It was, therefore, considered necessary to supplement the rigidity of the common law by rules governed by the conscience of the judge known as the Lord Chancellor. The result was that

a party who could not get any relief in the ordinary course, applied to the Lord Chancellor who would consider those applications and give relief in fit cases, particularly in those of frauds, errors and unjust judgments. In course of time, the Lord Chancellor advised the judges of the Court of Chancery to supplement the law by principles of equity justice and good conscience. Thus equitable principles, at that time came to be recognized as principles superior to the rules of common law⁴.

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Few Comments on the application of law in *The Merchant of Venice*:

Deniel Kornstien, a practicing lawyer said, 'The Merchant of Venice has spawned more commentary by lawyers than any other Shakespeare play'⁵. Mark Edwin Andrews argued that from the moment Portia says, 'Tarry a little' (Textual reference, 4.1.301) the principles, procedures and maxims of a court of Chancery begin to function⁶. William Rushton comments, 'whether William Shakespeare was or was not a member of the legal profession, sufficient has probably been stated to prove that he has acquired a general knowledge of the laws of England'⁷.

Shylock revealed as an unforgiving plaintiff in the trial scene:

The legal issues in the play result from Bassanio, a Venetian gentleman, needing funds to woo a rich heiress named Portia. Antonio, the rich merchant friend of Bassanio was unfortunately short of money at that time. To help Bassanio, Antonio turns to Shylock the Jewish usurer whom he despises most. Shylock agrees to lend the money on condition that Antonio must forfeit a pound of his flesh if he defaults on the loan. For dramatic action, Shakespeare turns Antonio into a defaulter. Shylock claims the pound of flesh as promised in the contract. Thus, both Shylock and Antonio end up in the court of the famous Trial scene in Act 4.

Both the Duke (acting as the judge in the Trial scene) and Portia (disguised as the young lawyer) request Shylock to show mercy to Antonio, the defaulter. However, both their attempts to dissuade Shylock turn out futile. Shylock is in no condition to miss this opportunity to have Antonio killed. He remarks,

you'll ask me why I rather choose to have
A weight of carrion flesh than to receive
Three thousand ducats. I'll not answer that –
But say it is my humour: Is it answered? (4.1.41-44)

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The question is, what does Shylock really mean by the word 'humour'? Critics like John Wilder say that 'humour' here means just a 'whim.' But it is clear that Shylock is probably more serious than ever in wanting to destroy the man whom he most despises. He himself confesses his determination of killing Antonio in Act I saying,

If I can catch him once upon the hip,
I will feed fat the ancient grudge I bear him.
.....Cursed be my tribe
If I forgive him! (1.3.38-44)

Why does Shylock bear such grudge against him? Antonio and his friends have publicly disrespected Shylock as a usurer. His long speech in Act I, scene 3 reveals how Antonio and his friends have insulted Shylock,

Signor Antonio, many a time and oft
In the Rialto you have rated me
About my money and usances.
Still have I borne with a patient shrug (1.3.98-1001)

Why did he bear the insult with patience? Perhaps he was waiting for this very day when even the law would go against Antonio. Now that Shylock has Antonio in his grip, he is in no position to trade Antonio's life for any amount of money. This is evident from the speech Jessica makes in Act 3,

When I was with him, I have heard him swear
To Tubal and to Chus, his countrymen,
That he would rather have Antonio's flesh
Than twenty times the value of the sum. (3.2.283-286)

It is possible to make up the loss of money, but there is doubt that he would get a second chance of eliminating Antonio through the help of the law itself. So it is not merely a whim that he would like to take a pound of flesh instead of money.

It is rather a carefully thought strategy schemed by Shylock to remove Antonio. Actually, his refusal to give a reasoned answer of why he chooses to take the flesh is his greatest humour. Johnson

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says, 'Shylock gratifies his own malignity by such answers as he knows it will aggravate the pain of the enquirer'⁸. Now, where does Shylock get such strength to disregard the judge? Well, the strict law itself has given him the power because Shylock knows that he has contrived the bond in such a way that not only Antonio but also the law is trapped by his scheme. As a result, whether he gives proper answer or not, the law can neither question him nor deny him the pound of flesh.

The Law of Contract:

The dramatic action of the play begins with the contract made between Antonio and Shylock. The law of contract while judging the validity of a contract first sees whether the contract is made with the full consent of the two parties involved in it. Then it judges whether the agreement is set out in a written document signed by both parties. The law of contract strictly insists that

the parties are to be confined within the four corners of the document in which they have chosen to enshrine their agreement. Neither of them may adduce evidence to show that his intention has been misstated in the document⁹.

Both Shylock and Antonio have met the requirements of the law of contract. Even Antonio admits that he has signed the bond consciously.

Portia You stand within his danger, do you not?

Antonio Ay, so he says.

Portia Do you confess the bond?

Antonio I do. (4.1.176-179)

However, the law of contract would at the very first sight declare the contract invalid because a bond, which leads to murder, can never be a legal contract. It is a written law that 'an agreement is illegal and void if its object, direct or indirect, is the commission of a crime or a tort'¹⁰. But as a playwright, Shakespeare's attention was more towards creating dramatic suspense than to follow the strict conditions of law. We cannot, however, deny that he has used some aspects of the law of contract and thus satisfied both the

lawyer and non-lawyer spectators. Moreover, through the bond episode, Shakespeare also shows that the courts of common law before the 13th century relied upon strict construction of law even at the expense of humanity. That is why, we find that the law of contract is strict in enforcing the contract made between Shylock and Antonio.

As Portia is fully aware of the law of the state she proclaims 'lawfully by this [contract] the Jew may claim/ A pound of flesh,' (4.1.228-229) Portia also knows that this rigid law can neither be altered and that is why she declares,

There is no power in Venice
Can alter a decree established.
Twill be recorded for a precedent,
And many an error by the same example
Will rush into the state: it cannot be. (4.1.214-218)

Reinterpretation of the bond and the power of Equity law:

The strictness of the law sometimes proved to be unfair towards humanity. That is why, during the 13th century, equitable law came into being to solve both human and legal crisis. Portia is well aware that the statutory law can sometimes be rigid, as seen in the case of the law of contract. She also knows that equitable law has the power to supplement the rigidity of the state law. However, she does not exercise the equitable law right away. She gives Shylock a chance to rectify himself. She tells Shylock, 'that in the course of justice none of us /should see salvation.' (4.1.195-195) This single statement of Portia is a warning to Shylock of how cruel and worse the state law can be if any one dares to fool around with it.

Next Portia makes an appeal to Shylock saying, 'We do pray for mercy.' (4.1.196) Shylock however, fails to understand that through this appeal Portia is trying to rescue him from the strict statute. Any sensible man can see right through that Shylock will be convicted of murder of a citizen if his demand in the contract is fulfilled. Unfortunately, Shylock thinks Portia's plea as the

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helpless voice of the law. He deliberately aggravates the pain of the judges and the lawyers by demanding, 'My deeds upon my head! I crave the law,/ The penalty and forfeit of my bond.'(4.I.202-203)

The quick-witted Portia will not let Shylock fulfill his long last desire of killing Antonio. She uses the rules of equitable law since the strict law of contract is proved to be injustice towards the defendant. There was a law during the 16th century in England, which said, '...chancellors were prepared to interfere...They could not ...defy the common law, but they could and did apply their peculiar remedy of specific performance'¹¹. Thus, with the power of the equitable law she upsets the bond and uses Shylock's greatest weapon –the law- against him. Portia intelligently reinterprets the bond made between Shylock and Antonio.

She bases her argument on condition not expressed in the bond, so that this interpretation can ensure justice for Antonio. She declares,

Tarry a little, there is something else.

This bond doth give thee here no jot of blood.

The words expressly are 'a pound of flesh' (4.1.301-303)

.....

Shed thou no blood, nor cut thou less nor more.

But just a pound of flesh. (4.1.321-322).

However, no court of justice could seriously entertain it for a moment because 'by every principle of interpretation, a bond that could justify the cutting of human flesh must also justify the shedding of blood, which is necessarily implied in such cutting. Portia's interpretation of the bond is merely a quibble of a bright girl playing the lawyer'¹².

A touch of reality to the dramatic effect:

E. F. J. Tucker in his *The letter of the law in The merchant of Venice* made the most persuasive refutation of the idea that Shakespeare is concerned with Chancery in Act 4. He criticized Portia's restriction of the forfeiture to a just pound without blood.

According to him, this argument is ‘..an equitable diminishment of the letter of the law according to the reason and intent of true justice’¹³. Whatever it might be, we shouldn’t forget that Shakespeare was not writing a law book showing real life trial scene. His main focus was to create dramatic effect. However, he had to evoke the imagination of the spectators. O. Hood Philips found in an unpublished thesis of D. Smith that, ‘Shakespeare’s gentle hearers had for the most part studied or were still studying at the Inns of Court, and many of the citizens in the theatre had like Shakespeare’s family for one reason or another been to the courts’¹⁴. For this, it was necessary to give a slight touch of reality to the romantic and exotic trial scene. Shakespeare applies some rules of equitable law in the trial scene. After all, it is said that, ‘equitable law (meaning the principles of natural justice) does give the judges or the lawyers the provision to temper the fixed rules of the construct law’¹⁵. That is precisely what Portia does to save Antonio. Since she finds the construct law inadequate and rigid, she supplements it by justice, equity and good conscience.

The Staple court as protectors of the Merchant Outsiders:

Many critics have criticized Portia for her playful nature. Portia was well aware about the loophole in the bond from the very onset. She knew that she could save Antonio at any time from the death bond. So why then does Portia keep everyone worried and waiting to see what would happen at last? Moreover, why does she play cat and mouse with Shylock? Sinead Cusack remarked, ‘she doesn’t go into the courtroom to save Antonio (that’s easy) but to save Shylock’¹⁶. But why should she want to save a Jewish usurer? Venice has long been a city of trade and commerce. The Staple Court set up in the Tudor times gave courage to Merchant strangers. It made equitable settlement of trade disputes. This information is found from Henry Saunder’s *Staple Courts in The Merchant of Venice*¹⁷. The Jews during the Elizabeth England had

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been treated as strangers. Thus, when Portia begins her speech with the words, 'The quality of Mercy is not strained' (4.1.180) she is actually trying to save Shylock. Her attempt to save Shylock transforms the court into the Staple Court. Portia would not let Venice lose its business reputation through this peculiar contract. As a lawyer of the Staple Court, she tries to settle the business lawsuit without causing any kind of harm to the two merchants (Shylock and Antonio). She knows that at the end it is Shylock who would have to face the rigid law. So she tries to prevent him from becoming Antonio's murderer.

Connection between the Divine quality of Mercy and the moral law:

Mercy is an attribute of God himself and therefore greater than power, majesty and law. Bloomfield remarks,

Portia's understanding of Mercy is based on the way Christians in Shakespeare's time understood the difference between the Old and the New Testaments. According to the writing of St. Paul in the New Testament, the Old Testament depicts God as requiring strict adherence to rules and exacting harsh punishment for those who stray. The New Testament, in contrast, emphasizes adherence to the spirit rather than the letter of the law, portraying a God who forgives rather than punishes. He offers salvation to those followers who forgive others¹⁸.

Now the question is whether there is any connection between the Divine quality of Mercy and the moral law of the world. The Divine quality of Mercy is the Divine law of the New Testament. This Divine law has become the moral law. About moral law Mahajan says,

It's principles are common to all the states because they have been laid down by God for the guidance of mankind. It is an unwritten law as it is not to be found in the form of a code. It is not written in the brazen tablets or pillars of stone but by the finger of nature in the hearts of men¹⁹.

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This law is an antidote to legal rigidity. It could weaken the authority of unjust and immoral laws. The influence of natural or moral law on English lawyers was great after 14th century.

Similarly, Portia is seen practicing such moral law to save both Antonio and Shylock from the statute. But in spite of opportunities after opportunities given to Shylock, he does not yield to the court. He retorts remarking boldly, 'I charge you by the law.../By my soul. I swear/There is no power in the tongue of man /To alter me. I stay on my bond.' (4.1.234-238) So her speech on the Divine quality of Mercy fails to move him from his determination of taking Antonio's flesh. It is only when he shows himself ruthless and intractable that Portia offers him more justice than he desires, 'For as thou urgest justice, be assured / Thou shalt have justice more than thou desirest' (4.1.311-312)

Staple Court empowered to be a criminal court:

Henry Saunder in his *Staple Courts in The Merchant of Venice* said, 'The Staple Court set up early in the Tudor time was empowered to try anyone accused of committing a felony in its precinct²⁰. This is precisely what Portia does when she finds Shylock guilty of an attack on Antonio's life in the courtroom. She is not ready to let loose a criminal who had just attempted to murder a citizen in the very courtroom.

Thus, she declares that the law has another hold on Shylock,

If it be proved against an alien
That by direct and indirect attempts
He seek the life of any citizen
The part against which he doth contrive
Shall seize one half of his goods, the other half
Comes to the privy coffer of the state (4.1.345-350)

George W. Keaton remarked that, 'there was also a similar law in England in Shakespeare's time, that is, anyone attempting to take

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the life of a citizen must forfeit both life and property²¹. Portia no longer shows the mercy for which she had beautifully advocated earlier. Instead of showing such mercy, she pushes Shylock at the corner, where she strips him of his bond, his estate and his dignity, forcing him to kneel and beg for mercy- 'Thou hast contrived against the very life / Of the defendant, and thou hast incurred/ The danger formerly by me rehearsed. /Down, therefore, and beg mercy of the Duke.'(4.1.356-359) But if the audiences recall the Duke's warning to Shylock, 'How shalt thou hope for mercy, rendering none?'(4.1.89), they can understand why mercy does not remain so sweet as before. Even Portia, time and again, warns Shylock against pursuing the law without regard for mercy.

But Shylock is blinded by rage and revenge. He cannot see the consequences that he might have to face. In spite of Shylock's mischief Portia leaves an option for the judge to rescue Shylock by uttering the lines, 'And the offender's life lies in the mercy/ Of the Duke only, against all other voice' (4.1.351-352) These two lines reflect the Chancery law where the matter is decided not by the written law but by the judge's good conscience.

Shylock's Punishment sentenced by the court:

Shylock could have received death penalty or life long sentence for murder attempt. But the judge has mercifully spared his life. Even Antonio seems to be merciful by deciding not to seize Shylock's goods as punishment for conspiring against him. But when Antonio utters the shocking (obviously for Shylock) words, 'that for this favour /He presently become a Christian;(4.1.382-383) the question that strikes the mind is whether it is merciful to return Shylock half of his goods only to force him to convert to Christianity. Moreover, how much convincing would the argument be if it were said that through conversion Shylock could now see salvation of his soul? Well, the Elizabethan Christians believed that baptism alone could put a Jew in the way of salvation.

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So Portia who finds Shylock to be a loser in every way feels that he should at least deserve some kind of sympathy from God, after death. Another reason for giving such order is that it might cease Shylock from practicing usury. How will conversion to Christianity stop Shylock's business of usury? It was the belief of the Christian Elizabethans that 'usury was contrary to the law of nature and the law of God. The guidance of the Gospels was clear: the command "Lend looking for nothing again" (Luke 6.35)²². So this conversion is assumed to be a tool to end Shylock's business. But how does Shylock feel to be unwillingly converted to Christianity? It would have been better for Shylock to die than to live the remaining life as a Christian, the very religion he most despises. At the end of the trial scene Shakespeare shows both the plaintiff and the defendant content with the judgment,

Antonio So please my lord the duke and all the courtI am content'
Portia Art thou content, Jew? What dost though say?
Shylock I am content. (4.1.376-378, 388-389)

Now, is Shylock really content by the judgment? When he leaves the courtroom, he is no longer the happy man that he used to be when he entered the courtroom. However, C. J. Sisson in his *A colony of Jews in Shakespeare's London* wrote, 'practicing Jews had been excluded for three centuries'²³. Under Henry VIII and Edward VI, small number of Spanish and Portuguese Conversos (Jewish converts to Christianity) were allowed social recognition. Gradually many Jews had been baptized to escape the violent anti-Semites outburst and be accepted in the society²⁴.

Concluding speech:

Though a majority of literary critics agree that *The Merchant of Venice* is thematically a rich play, for legal scholars however 'the criminal theme is the tension between law and mercy and how or whether justice really has unified that tension within itself'²⁵.

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Scholars pit against each other in attempting to decide whether it is Shylock who deserves sympathy or if indeed it is Portia who deserves praise for sparing Shylock's life. However, conclusion could not be reached, since both the arguments seem to be correct. Actually, *The Merchant of Venice* is not just a simple tale that pits justice against mercy characterizing a puzzle without offering a resolution, rather the play offers a concept of justice that embraces both law and mercy. What one learns at the end of the play is that, there is no conflict between law and mercy, rather mercy is a necessary condition to the fulfillment of law. Richard A. Posner in his *Law and Literature* said, 'Mercy is a particularly Christian virtue, one a Jew could never know. Ignore these elements and the play loses its integrity. Play it straight and it looks like an incitement to a hate crime'²⁶. Moreover, Shakespeare through this play seems to voice the issue of equity, fairness and mercy in legal construct. The play also provides an insightful look at how Shakespeare saw the larger issues of truth, justice, mercy, law and equity. This is what has given him and his writing a universal quality.

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Note and References:

*All textual references are from *The Merchant of Venice*, The New Cambridge Shakespeare, Cambridge University Press. The play is comprised of five Acts. Every Act has few numbers of scenes. The dialogues of the play quoted in the article are marked by few numbers. The first number is the number of the Act, the second number is the number of the scene and the last number/s are the number of the specific lines of the dialogues. For ex. (4.1.214-218) means Act 4, scene 1 and line numbers from 214 to 218.

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1. Mahajan, D.V. *Jurisprudence and Legal Theory*. 5th edition. Law Times Press, Lucknow.1996,p.77
2. Paranjape, V.N. *Studies in Jurisprudence and Legal Theory*. 3rd edition. Indian Press. Allahabad.2001, p.158
3. Ibid
4. Mahajan p.80
5. *The Robbins Collection*. Available at www.law.berkeley.edu/library/robbins/overviewcollection.html (accessed in 2007)
6. Mahood, M.M.(ed.), *The Merchant of Venice*. The New Cambridge Shakespeare. CambridgeUniversity Press.p.17
7. Alexander, M. A. *Shakespeare's Knowledge of Law:A Journey through the History of the Arguments*. Available at <www.shakespearefellowship.org/virtualclassroom/Law/law2.htm> (accessed in October 2001)
8. Mahood p.136
9. Furmston, P.M. *Law of Contract*. 12th edition. Butterworth Co. Publishers Ltd. 1991, p.123
10. Ibid, p.362
11. Ibid,p.218
12. Wilders, John.(ed.), *Shakespeare:The Merchant of Venice Casebook series*. Macmillan Press Ltd. p.40
13. Tucker, E.F.J. "The Letter of the Law in the Merchant of Venice" in "Shakespeare Survey, Volume 29: Shakespeare's Last Plays". Edtd. Kenneth Muir. Cambridge University Press, 1976.
14. Ibid p.16
15. Mahajan p.80
16. Cerasano, S.P.(ed.),*William Shakespeare's The Merchant of Venice*. Routledge Literary Sourcebook. New York and London: Routledge, 2004, p.121
17. Mahood p.17

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18. Bloomfield, Jem. *The Quality of Mercy: Portia's Oration in The Merchant of Venice*. Available at <Shakespeare comedies. suit101.com/article.cfm/the-quality-of-mercy> (accessed on 01 September 2007)
19. Mahajan, p.66
20. Mahood, p.17
21. Ibid p.18
22. Ibid p.20
23. Ibid p.19
24. *Internet Jewish History Sourcebook*. Available at <http://www.fordham.edu/halshall/jewish/Jewishsbok.html>.
25. Perell. M. Paul , *Law, Lawyers and Shakespeare's The Merchant of Venice*. Available at <www.lsuc.on.ca/media/third-paul-perel-pdf> (accessed in 2007)
26. The Robbins Collection