

The Merchant of Venice

In order to present himself as a more attractive suitor to the wealthy heiress Portia, Bassiano, who has no money, decides to borrow from Shylock, a Jewish moneylender. To obtain the loan, however, Bassiano must ask his friend Antonio, a well-to-do merchant, to act as a guarantor of repayment. Since Bassiano has no means with which to repay the loan, he is in fact asking Antonio for a gift. Shylock has long hated Antonio for offering interest-free loans to Venetians and thus hurting Shylock's moneylending business. Adding insult to injury, Antonio has also berated Shylock in public, cursing and spitting on him. So rather than seeking a high rate of interest, Shylock instead demands that Antonio pay the guarantee with a pound of his flesh in the event he lacks the money to do so when the loan becomes due. Antonio readily agrees to these terms. When the date arrives for the loan to be repaid, however, Antonio's merchant ships are reported lost at sea and, now penniless, he cannot come up with the cash to cover his guarantee. Accordingly, the central question in *The Merchant of Venice* is posed in terms of contract law - - whether Shylock can obtain specific performance of the guarantor's bond that he and Antonio freely agreed to:

An equal pound of your [Antonio's] fair flesh, to be cut off and taken in what part of your body pleaseth me.

The trial in which this question is decided takes up the entirety of Act IV and provides the central dramatic action of the play. The legal procedures depicted are largely those of contemporary Elizabethan England and, although commentators have questioned whether such a gruesome guarantee could ever have been enforced in English courts, in the play both Antonio and Shylock fully expect the bond to be enforced.

The trial is presided over by Portia, disguised as a legal scholar, and dramatizes the clash between law and equity, a legal battle that was taking place in England during Shakespeare's lifetime. Shylock's position at trial relies on the law being interpreted literally and he argues that unless the contract is strictly enforced according to its terms Venice's reputation as a trading center governed by the rule of law will be severely harmed.

Portia, despite her ostensible role as judge, appears almost as an advocate when she seeks to invoke equity to avoid the bloody consequences of strictly applying the law. She tells Shylock he should be merciful and, when he questions why, she responds:

The quality of mercy is not strained.
It droppeth as the gentle rain from heaven
Upon the place beneath. It is twice blessed:
It blesseth him that gives and him that takes.

Shylock will have none of it and insists that the law be applied to the letter, stating vehemently "I stand here for law. I crave the law." Portia then quickly changes tack

and when Bassiano, arguing against Shylock, beseeches her to be equitable, “to wrest once the law to your authority: to do a great right, do a little wrong . . .” she rebuffs him, insisting that she must strictly follow the letter of the law. Shylock is delighted and praises her - - “oh wise young judge, how I do honor thee” - - little realizing she has sprung a trap. She calls for the bond to be read and notes that it calls for a pound of flesh, but makes no mention of blood. Consequently she rules that if blood is shed or even an iota more than a pound of flesh is taken, Shylock will be executed for murder and all his goods confiscated.

Shylock, recoiling from this perilous turn of events, says he will settle for the return of the loan amount. But Portia replies that by the terms of the bond he is entitled only to a pound of flesh. (Which, of course, would now be suicidal for him to take.) She then adds the coup de grâce, invoking the criminal law of Venice which provides that any alien who directly or indirectly threatens the life of a Venetian will be executed (subject only to the clemency of the Grand Duke) and all his goods confiscated - - one half to go to the party whose life was threatened and one half to the state.

The Duke decides to spare Shylock’s life and Antonio agrees that Shylock can retain one half of his possessions, provided that he becomes a Christian and that upon his death all his wealth goes to his daughter Jessica (whom he had disinherited when she eloped with a Christian and converted to Christianity.)

Shylock agrees to these terms and leaves the stage a thoroughly defeated man.

Analysis and Possible Discussion Points

Aristotle in his *Nichomachean Ethics* proposed that equity should be applied where the written law has gaps due either to legislators’ oversight or to the general nature of the legislation which makes its application inappropriate in a particular situation. To this conception of equity, Thomas Aquinas in his *Summa Theologica* added the notion of Christian mercy. Equity, as reinterpreted by Aquinas, found a home in England in the Court of Chancery, where the Chancellors until the time of the Reformation were all Catholic ecclesiastics

Since its inception, the Court of Chancery was constantly in conflict with the Courts of Common Law and while the common law, strictly applied, sometimes resulted in unfair outcomes, it had the virtue of being regular and predictable. Equity, on the other hand, was often criticized as a “roguish thing” that had no measure more constant than the “chancellor’s foot”.

Venice in Shakespeare’s day was an immensely important commercial center that served as a link between Western Europe and the Ottoman Empire as well as those regions, including India and China, which lay farther east. Since Venice traded with so many merchants from foreign lands, it was critical for its commercial success to be

recognized as a place where foreigners could rely on the fair and impartial application of law. As Antonio concedes at his trial:

The duke cannot deny the course of law;
For the commodity that strangers have
With us in Venice, if it be denied,
Will much impeach the justice of the state,
Since that the trade and profit of the city
Consisteth of all nations.

In the context of the play, Shylock's reliance on the letter of Venetian law and rejection of equity makes good sense - - who knows what justice an alien would receive if his case were measured by so subjective a standard as the "chancellor's foot". It is ironic, therefore, that Shylock is undone, not by equitable considerations, but by a strict, hyper-literal application of the law.

Was Shylock foolish in relying on a strict reading of the law?

Does equity provide the pursuit of justice with too subjective a standard?

In the US, in reaction to the increasing use of illegal drugs, state laws began requiring long prison terms for the possession of even small amounts of proscribed substances and, on the federal level, mandatory minimum sentences became the norm.

Was limiting the sentencing choices of judges, effectively requiring a strict reading of the law, a positive development?

To rectify disparities in the sentencing of defendants convicted of identical crimes, the federal sentencing guidelines were promulgated, severely limiting the discretion of the sentencing judge.

Should the principle of making defendants "do the same time for the same crime" trump "letting the punishment fit the crime"?

A strict interpretation of the law not only defeats Shylock's demand for specific performance of his contract with Antonio, but also makes Shylock guilty of plotting the death of a Venetian citizen, a crime punishable by death and the forfeiture of all the plotter's possessions. Rather than enforcing these penalties to the limit, however, the Duke spares Shylock's life and Antonio agrees that Shylock can retain one half of his possessions, provided that he becomes a Christian and that upon his death all his wealth goes to his daughter Jessica.

Is this an equitable resolution of the conflict?

In England, the battle between the common law courts and the Court of Chancery raged during Shakespeare's lifetime and was only ended in 1616, the year of his death, with the decision of King James I that in cases of irreconcilable differences of opinion, the Court of Chancery would prevail.

Does *The Merchant of Venice*, disclose Shakespeare's point of view on the conflict between law and equity?

Antonio is the person referenced in the title of the play: he's the merchant of Venice.

Is he the hero of the play?

Or is Shylock?

Or Portia?

The heart of the play is the trial of Shylock and his subsequent downfall.

Shylock is rarely referred to by his name, but instead is "the Jew" who is abused, verbally and otherwise, by most of the other principals of the play:

"You call me misbeliever, cutthroat dog and spit upon my Jewish gabardine."

"You void your rheum upon my beard and foot me as you spurn a stranger cur over your threshold."

"The Jew my master is a kind of devil . . . Certainly the Jew is the very devil incarnation . . ." "The devil . . . comes in the likeness of a Jew . . ."

"The villain Jew . . ." "The dog Jew . . ." "The most impenetrable cur . . ."
"[W]hat's harder [than] his Jewish heart."

"Be thou damned execrable dog . . . For thy desires are wolfish, bloody, starved, and ravenous."

In 1290, King Edward I issued an edict expelling the Jewish population from England and Jews were not officially allowed back until 1657 when Oliver Cromwell permitted their return. Accordingly, during Shakespeare's life, there were virtually no Jews in England. A notable exception was Rodrigo López, physician to Queen Elizabeth I, who had been raised a Protestant. In 1594, at the end of a successful career, he was accused of conspiring with Spain to poison Queen Elizabeth and, upon conviction was, hanged, drawn and quartered. It is probable that Shakespeare was writing *The Merchant of Venice* during this time.

Despite their negligible presence in England, the character of the Jew frequently appeared on the English stage, invariably costumed in an orange wig, bulbous nose, and sinister cape - - laughable yet villainous.

Since it is more likely than not that Shakespeare never met a Jew, is he merely drawing upon an established comic stereotype in creating Shylock?

Is he reflecting the condemnation of Rodrigo López?

Is the play flat out anti-Semitic?

Or in portraying Shylock with universal human feelings:

I am a Jew. Hath not a Jew eyes? Hath not a Jew hands,
organs, dimensions, senses, affections, passions; fed with the same
food, hurt with the same weapons, subject to the same diseases,
heal'd by the same means, warm'd and cool'd by the same winter
and summer, as a Christian is? If you prick us, do we not bleed? If
you tickle us, do we not laugh? If you poison us, do we not die?
And if you wrong us, do we not revenge? If we are like you in the
rest, we will resemble you in that

is Shakespeare creating a character with whom the audience can sympathize?

Whether Shylock is regarded as villain or victim, the play's other characters are hardly admirable. Portia is by turns a liar, an imposter, and a cruel game-player. Bassiano is little more than a layabout and leach who sedulously exploits his friendship with Antonio for monetary gain. And, although he is the play's title character, Antonio is a passive presence, who seems to be indifferent to most things, including his impending judicial murder at Shylock's hands.

Shylock went to court to obtain in a straightforward civil suit what every other character in the play concedes is due him. When he left the court a short time later, he had not only lost the civil suit but had been convicted in a criminal case, faced a possible death sentence, been compelled to forfeit half his fortune, bequeath the other half against his will, and convert to Christianity.

What is Shakespeare's message?

Would the play have strengthened the confidence of an Elizabethan audience in the English legal system?

The late 1500's were a period of tremendous change and turmoil in English society. The economy was in the midst of transition: the medieval system of payment in kind and barter where a person's status at birth largely determined the course of his or her life was changing to a money economy where a small farmer could now be impoverished without recourse to the traditional charity of his lord and a successful merchant could amass a great fortune and begin to challenge the nobility. The increased importance of trade and commerce was reflected in the growth and enhanced status of the urban merchant class as well as the recent legalization of usury (charging interest on a loan). It also saw an increasing influx of foreign traders, merchants, and financiers, whose resentment by the urban lower classes led to anti-alien riots in London in 1588, 1593, and 1595. In addition, the religious reformation, which had begun decades before and had turned the country's worldview upside down was still in full flood.

Does the play reflect the turmoil in Elizabethan society?

One critic has proposed that *The Merchant of Venice* depicts a state of anomie where norms have disappeared, behavior has become unpredictable, and the law itself has become questionable. Do you agree?