

“When Mercy Seasons Justice:”
Shakespearean Dialectics and Jewish Legal Theory

Presented to the S. Daniel Abraham Honors Program

in Partial Fulfillment of the

Requirements for the Completion of the Program

Stern College for Women

Yeshiva University

May 28, 2021

Sarit Avital Perl

Mentor: Professor Gina Grimaldi, English/Theatre

INTRODUCTION

Shakespeare's *The Merchant of Venice* has captivated dramatists, historians, economists, jurists, and theologians for over four hundred years. It blurs the lines between fiction and reality, comedy and tragedy, romance and revenge, bigotry and sympathy. The play's structure is rooted in dichotomy – two cities, two parties to a contract, two religious ideologies and thus two opposing perspectives on morality and justice. However, this setup is made to be broken; Shakespeare subverts these seemingly orderly conventions by writing characters who preach one thing and practice another, to the point where all delineations dissolve and both the audience and the characters are left asking fundamental questions about justice, mercy, and humanity. These questions are eloquently and comprehensively articulated by law professor Randy Lee:

How do we judge, and how does judgment relate to justice? Is justice getting what one deserves, getting what one wants, or even getting back at those who have wronged us? How do the just use power, and must power be tempered by mercy? Is mercy simply the failure to press an advantage? Is the quality of mercy a sign of weakness? Does mercy depend on love, forgiveness, redemption, excuses, or self-justification? Does mercy depend on justice, and do both mercy and justice depend on a willingness to confront truth?¹

The justice-mercy dichotomy is at the root of all the other juxtapositions in the play, and together they create an intricate plot that demonstrates just how pervasive this issue is in every aspect of human existence.

This essay will explore how Shakespeare navigates these questions, with specific emphasis on his assignment of positions on these questions to his Jewish and Christian

1. Randy Lee, "Who's Afraid of William Shakespeare: Confronting Our Concepts of Justice and Mercy in the Merchant of Venice," *University of Dayton Law Review* 32, no. 1 (Fall 2006): 4-5.

characters. How do the characters conform to their given archetypal perspectives, and when do they cross over to the other side? Why did Shakespeare assign justice to Judaism and mercy to Christianity, and was he correct to do so? Did he actually believe that Jewish and Christian values oppose each other in this way, or did he create this enmity for literary and dramatic effect? A clearer understanding of the play's message and the playwright's intentions can be reached through an examination of justice and mercy through the lens of Jewish thought and law. I will discuss how Jewish tradition relates to justice and mercy, both in general and as they are manifest in the plot of *Merchant*, before analyzing Shakespeare's treatment of the issues in the play. An accurate perception of Judaism's true position allows for a reevaluation of the characters and the origins of both the beliefs they project outwards and those that they act upon.

JUSTICE AND MERCY IN JUDAISM

As Portia reminds us, the justice-mercy dichotomy starts with God.² In the first chapter of Genesis, God is called by the name Elo-him when the Torah describes His creation of the universe and the laws of nature.³ The commentaries point out that this name is used to describe God when He is displaying the Attribute of Justice⁴; indeed, the word is used elsewhere in the Torah when referring to human judges⁵. However, when God brings forth a river to water the unsprouted plants and gives humanity intellect, a new name is introduced: Adonai. This name is linked with the Attribute of Mercy, which becomes relevant the moment God initiates a relationship with humankind. The Hebrew word for mercy, *rachamim*, is derived from the word

2. William Shakespeare, *The Merchant of Venice*, 4.1.201

3. *Genesis* 1:1-2:3

4. Rashi on *Genesis* 1:1:3, Tosafot on *Rosh Hashanah* 17b, et al.

5. E.g., *Exodus* 22:8

for a mother's womb, and connotes the unconditional love and forgiveness a parent has for their child. That same metaphor is used to describe our ongoing relationship with God, particularly in the liturgy of the High Holidays when we plead for forgiveness for our sins. We give Him a dual name: "Our Father, Our King,"⁶ recognizing that as our Sovereign He must judge us while hoping that as our Creator He will do so mercifully. On the one hand, God seems to manifest Himself in multiple personas with apparently opposing qualities. On the other hand, one of the most fundamental theological tenets of Judaism is that God is One; a phrase whose multiple meanings include the belief that "God is a unity, indivisible" and "God is One despite the many appearances He has had throughout history."⁷ God unifies opposites, synthesizes justice and mercy, and by creating humanity in His image gives us the capability and the duty to do the same.

The synthesis of justice and mercy is deeply rooted in the Jewish court system and is particularly evident in the rules of procedure for capital cases⁸. A human life, even that of a suspected murderer, is so precious that everything from the age of the judges to the responsibilities of the witnesses is oriented to minimize convictions:

[O]nly the Sanhedrin with proper semicha⁹ can judge these cases. Only the greatest people in Torah scholarship and other knowledge receives this

6. Jonathan Sacks, "Commentary on the Siddur," in *Sidur Koren = The Koren Siddur*, ed. Jonathan Sacks, First Hebrew/English (Jerusalem, Israel: Koren Publishers, 2009), 138-9.

7. *Ibid.*, 471.

8. For a comprehensive overview of rules of procedure and testimony in Jewish Law, see Maimonides' *Mishneh Torah*, "Laws of the Sanhedrin and the Penalties within their Jurisdiction" and "Laws of Testimony."

9. "Ordination;" in this case, specifically the induction into a line of unbroken oral transmission that can be traced back to Moses.

semicha. In addition to their knowledge they also need to have perfected their character and be very humble as well as G-d fearing people. ...and they are very merciful. ...very old people are not appointed judges because they have forgotten the stress of raising children. Also, people without children are not appointed because they lack mercy to some degree, and they will be too angry at those who have committed sins....

Furthermore, the witnesses are warned concerning the severity of the sin of false testimony as well as the seriousness of the sin of murder so that they are very afraid of mistakenly convicting or mistakenly declaring the suspected murderer innocent.¹⁰

“Beyond a reasonable doubt” is not good enough in the Sanhedrin; the court requires eyewitness testimony from at least two individuals that the accused not only committed the act, but that he was warned of the legal ramifications of that act, verbally acknowledged his understanding of the consequences, and immediately thereafter proceeded to commit the act anyway.¹¹

Circumstantial evidence, confessions, and testimony from potentially biased or irresponsible witnesses is inadmissible. The Torah recognizes that those who appear to testify may not always comprehend the true impact of their statements; in order to demonstrate that the defendant’s life is literally in their hands, any witness who comes forward must also double as the executioner if the accused is found guilty.¹²

The result of all these provisions is that the implementation of capital punishment was extremely rare. The Talmud states that one execution within a 7-year period is considered a “bloodthirsty” court, which is then challenged by authorities who maintain that even one

10. Moshe Feinstein, “Igrot Moshe, Choshen Mishpat Vol. 2, Chapter 68,” trans. Shmuel Perl, Sefaria, February 18, 2016, <https://www.sefaria.org/sheets/27350.11?lang=bi&with=all&lang2=en>.

11. Ibid.

12. Deuteronomy 17:7

execution in 70 years would be deemed, quite literally, overkill.¹³ Some rabbis sought to eliminate the death penalty entirely, even in a case where the evidence is crystal clear, by introducing the possibility that the victim was terminally ill; because the witnesses could not testify to the state of the victim's physical health, the defendant could not be convicted.¹⁴ In short, while a person may technically be liable in terms of "justice," the Jewish system necessitates mercy from all its participants in every step of the process.

The mandate for a society built on merciful justice is embedded in many interpersonal laws given in the Bible, but it is most apparent in this instruction in Deuteronomy: "*Tzedek, Tzedek tirdof, lema'an tichyeh v'yarashta et haaretz asher Adonai Elo-hekha notein lakh – Tzedek, Tzedek* you should pursue, that you may thrive and inherit the land that the LORD your God is giving you."¹⁵ The word *Tzedek* does not have a true equivalent in English; it has been translated as "justice, charity, righteousness, integrity, equity, fairness and innocence."¹⁶ Based on its usage in the Torah, it is best explained as "charitable merit," "the right and decent thing to do," or "justice tempered by compassion"¹⁷. Interestingly enough, its meaning is most evident in the Torah's ruling in a case of loan security that bears strong resemblance to Shylock and Antonio's predicament. In the case in *Merchant*, Shylock agrees to lend Antonio three thousand ducats without interest, on the condition that if he does not repay him on time,

13. Talmud, Makkot 7a

14. Ibid.

15. Deuteronomy 16:20

16. Jonathan Sacks, "Devarim (5773) - Tzedek: Justice and Compassion," Rabbi Sacks (The Office of Rabbi Sacks, August 20, 2018), <https://rabbisacks.org/devarim-tzedek-justice-and-compassion/>.

17. Ibid.

Shylock is entitled to “an equal pound / Of [Antonio’s] fair flesh, to be cut off and taken/ In what part of your body pleaseth me.”¹⁸ In the case described in the Torah, a poor person has given his only cloak or blanket to a lender as security against a loan. Legally, the lender has a right to keep the garment until the loan is repaid. However, the Torah requires the lender to return it to the owner overnight; although he technically has the legal right, he may not withhold it from the poor person who has nothing else to keep him warm for the simple reason that it is not the right thing to do. In a society governed by *tzedek*, the humane consideration of the poor person’s well-being supersedes the legal claim that the lender has on the garment.

Additionally, Shylock’s contract is unenforceable under Jewish law, and thus his attitude, if intended as a representation of the strict legalistic nature of Judaism, is not an accurate one. In an essay featured in his collection *L’Or Ha’Halacha*, Rabbi Shlomo Yosef Zevin assesses whether Shylock and Antonio’s contract would hold up under Jewish law. He states that no court would allow someone to “cut flesh from a living creature, whether from themselves or from their fellow.”¹⁹ There are several prohibitions against both self-harm and inflicting harm on others explicitly stated in the Torah.²⁰ He adds the caveat that in certain cases a contract that stipulated a forbidden act is still enforced and gives examples of such cases, but he then proceeds to demonstrate that this is not one of them. Rabbi Zevin explains that the prohibitions against self-harm constitute limitations on body autonomy. The body is God’s creation; we

18. *Merchant* 1.3.161-63

19. Rabbi Shlomo Yosef Zevin, “Mishpat Shylock,” #6 in *L’Or Ha’halacha*, quoted in Rabbi Philip Moskowitz, “Shylock’s Enduring Impact on Jewish Law and Thought: Marking the 400th Anniversary of Shakespeare’s Death” (lecture, Boca Raton Synagogue, Boca Raton, Florida, 2016).

20. See e.g., *Exodus* 21, *Leviticus* 19:16, 19:28.

“borrow” it to inhabit for a time, but we do not truly own it, and therefore may not harm it, destroy it, or gamble it. The contract is invalid not because it requires a forbidden act; it is invalid because the pound of flesh was never Antonio’s to offer as security, and he had no right to wager an asset that was not his own.²¹

Even if mutilation were not forbidden by the Torah, and even if the contract remained standing despite the question of ownership of the flesh, Shylock would still be denied the pound of flesh in a Jewish court. In Judaism, the value and sanctity of human life is paramount; a famous and oft-quoted statement of the Sages reminds us that “anyone who saves a life is as if he saved an entire world.”²² The truest testament to Judaism’s prioritization of life is the fact that if there is even a possibility that a life is in danger, one is required to violate almost every commandment in the Torah²³ in order to attempt to preserve it.²⁴

Thus, if Shakespeare is attempting to establish the idea of Jewish justice as diametrically opposed to Christian mercy, he does so in error:

He entirely fails to realize – how could he, given the prevailing culture – that “justice” and “mercy” are not opposites in Hebrew but are bonded together in a single word, tzedek or tzedakah. To add to the irony, the very language and imagery of Portia’s speech (“It droppeth as the gentle rain from heaven”) is taken from Deuteronomy:

May my teaching drop as the rain,
 my speech distill as the dew,
 like gentle rain upon the tender grass,
 and like showers upon the herb ...

21. Zevin, “Mishpat Shylock.”

22. Talmud, Sanhedrin 37a

23. (There are only three exceptions: idolatry, adultery and murder.)

24. Talmud, Yoma 82a

The Rock, his work is perfect,
for all his ways are justice.

A God of faithfulness and without iniquity,
Just [(Tzadik)] and upright is he. (Deut. 32:2-4)

The false contrast between Jew and Christian in *The Merchant of Venice* is eloquent testimony to the cruel misrepresentation of Judaism in Christian theology until recent times.

Shakespeare's Christian characters have appropriated Jewish ideology, claimed it as exclusively their own, and then point to its supposed absence in the picture they have painted of Judaism as justification for demonizing those who practice it.

JUSTICE AND MERCY IN *MERCHANT*

Shakespeare ties the justice-mercy dichotomy to numerous other dualities that exist in the world of the play, the most basic being the two cities in which the action takes place. Venice, a real city, is a place of commerce; its citizens speak in transactions, contracts, *quid pro quos*. Belmont, an imagined one, is a place of love, which draws its visitors with the fantastical promise of the chance to win the heart of an heiress. In Venice, you get exactly what you pay for; in Belmont, your fortune depends on your virtues and the benevolence of others. Belmont seems to value actions over mere words,²⁵ substance over form,²⁶ and integrity over reputation,²⁷ while Venice rewards the opposite.

However, the materialism and corruption that is blatant in Venice is still pervasive in Belmont, albeit more subtly: Portia dismisses the Prince of Morocco as a suitor because of the

25. See e.g., *Merchant* 5.1.

26. See e.g., *ibid.* 2.9.26-29, 3.2.135-36.

27. See e.g., *ibid.* 5.1.215-35.

color of his skin,²⁸ and though she speaks of love initially, when she agrees to marry Bassanio she does so in financial rather than romantic terms:

You see me, Lord Bassanio, where I stand,
 Such as I am. Though for myself alone
 I would not be ambitious in my wish
 To wish myself much better, yet for you
 I would be trebled twenty times myself,
 A thousand times more fair, ten thousand times
More rich, that only to **stand high in your account**
 I might in virtues, beauties, livings, friends,
 Exceed **account**. But the full sum of me
 Is sum of something, which, to term **in gross**,
 Is an unlessoned girl, unschooled, unpracticed;
 ...
 Commits itself to yours to be directed
 As from **her lord, her governor, her king**.
 Myself, and what is mine, to you and yours
Is now converted.²⁹

Their marriage now becomes a transfer of ownership, more a Venetian transaction than a Belmontian proclamation of love. It is also interesting to note that they are interrupted by news of a Venetian financial affair before they can consummate their marriage, and their relationship remains in that purely contractual state for the duration of the play.³⁰ At the very beginning of the play, Portia demonstrates a vague awareness that she and her companions may not always live up to Belmontian ideals. She laments to Nerissa, “If to do were as easy as to know what were good to do, chapels had been churches, and poor men’s cottages princes’ palaces.... I can easier teach twenty what were good to be done than to be one of the twenty to follow mine own teaching.”³¹ Portia receives Nerissa’s advice and wants to internalize it; she knows that

28. *Ibid.* 1.2.129-31

29. *Ibid.* 3.2.153-71 (emphasis added)

30. *Ibid.* 3.2

31. *Ibid.* 1.2.12-15

choosing a path of virtue makes a world of difference, but she recognizes that doing so requires sacrifice and strength of character. However, this statement seems to disappear from her consciousness for the rest of the play, and is most conspicuously absent in her treatment of Shylock at his trial, in which she preaches mercy but shows none; if she does remain aware of it, it is to excuse poor choices rather than inform good ones.

The device that most clearly begs the question of how to define justice and mercy is also the one that creates the link between Venice and Belmont: the test of the caskets. In his will, Portia's father has stipulated that she must marry the man who finds her portrait in one of three caskets:³² one made of gold, bearing the inscription "Who chooseth me shall gain what many men desire," one of silver stating "Who chooseth me shall get as much as he deserves," and one of lead with the words "Who chooseth me must give and hazard all he hath."³³ While in the plot they serve as a clever riddle, these statements represent three definitions of the notion of justice that influence the choices of the play's characters.

Shylock, who is constantly humiliated, belittled, and cheated by the Venetians, is comforted by the idea that his tormentors will get what they deserve, and he seizes the opportunity to dole it out to them when it arises. Shylock has few reservations about taking Antonio's life; the way he sees it, Antonio brought it upon himself and Shylock is simply an agent of justice, righting the wrong by paying it back in kind. Shylock's notion of retributive justice is not a Jewish one; in fact, Judaism specifically prohibits taking revenge.³⁴ The opposite

32. *Ibid.* 1.2

33. *Ibid.* 2.7.4-12

34. *Leviticus* 19:18: "You shall not take vengeance or bear a grudge against your countrymen. Love your fellow as yourself: I am the LORD."

is true; it is the philosophy of the system he observes in Christian Venice: “If a Christian wrong a Jew, what should his sufferance be **by Christian example**? Why, revenge!”³⁵ Shylock binds Antonio to a contract rather than simply committing a vigilante killing because if it is done within the system, it is justice, but outside the system it is vengeance. This is why Shylock is confident that he is “doing no wrong,”³⁶ and it is also why his pursuit of Antonio’s life ends the moment it is declared legally invalid.³⁷ Frustrated by the hypocrisy of a system that refuses to hold his tormentors accountable, he resigns himself to walking away with nothing when he is shocked by yet another cruel trick of the Christians. If he were a fellow Christian, the trial would have ended there; instead, for the simple reason that he is a Jew, he is further humiliated by being stripped of his possessions, his livelihood, and his religion and forced to beg for his life. This final indignity, condoned by and implemented through the law, ultimately robs Shylock of his belief in any kind of justice, and he exits the scene utterly broken, having failed to give Antonio what he deserves and having been given a sentence too harsh for what Shylock deserved.

In contrast, Portia seems to live her life both giving and receiving what she “desires.” She finds it unfair that she is bound by her father’s will to marry whoever chooses the right casket, but she manipulates the test so that she marries who she wants anyway. She sends several suitors away without taking the test,³⁸ plots to lure a drunken suitor toward the wrong

35. *Merchant* 3.1.68-70 (emphasis added)

36. *Ibid.* 4.1.90

37. *Ibid.* 4.1.329-30

38. *Ibid.* 1.2

casket with wine,³⁹ and points Bassanio to the correct choice by singing a song in which the first three lines rhyme with “lead” as he makes his decision.⁴⁰ While she certainly has the right to fulfill her own desires when it comes to finding a husband, she overreaches when her personal interest leads her to a biased ruling against Shylock the Jew and in favor of her fiancée and his best friend. Portia believes in mercy because she, for the most part, understands her own flaws, but she has very little patience for those who are less self-aware. She almost seems to take pleasure in turning people’s own beliefs against them; she sees herself as providing a moral wake-up call, which, in the case with Bassanio’s ring,⁴¹ is entirely warranted, but in Shylock’s case she takes it too far and what began as an ethics lesson quickly becomes a cruel humiliation.⁴² Her privilege blinds her to the possibility that not everyone can afford to be as cavalier with their possessions – and their hearts – as she is, and holding those people to the same standard she demands of herself is far from merciful.

Bassanio also moves through the play seeking what he desires, but he does so far more recklessly than Portia and his pursuits are far less noble. Bolstered by the materialistic society he calls home, by the time he is introduced he has already squandered his own wealth and significant portions of his friends’ without consequence.⁴³ He pursues his courtship with Portia not because he is looking for love, but because he sees their marriage as a means to clear his debts and maintain his lavish lifestyle without having to earn the money he spends.⁴⁴ His friends

39. *Ibid.*

40. *Ibid.* 3.2.65-67

41. *Ibid.* 5.1

42. *Ibid.* 4.1

43. *Ibid.* 1.1

44. *Ibid.*

bear the burden of his irresponsibility, he continues to make the same mistakes, enabled by the protection from consequences his religion and status afford him in Venetian society. Even in Belmont, he is not given the same ultimatum as the other suitors, for whom failure would necessitate that they “Never to speak to lady afterward/ In way of marriage.”⁴⁵ Because Portia takes a liking to him, he is again given a coveted opportunity at minimal risk and the potential for huge reward. Antonio’s death from the contract he made on Bassanio’s behalf would certainly have given Bassanio the shock he needed to realize the error of his reckless behavior, but Portia saves Antonio from the knife and Bassanio from his debt, and they both walk away unscathed. It is no wonder, then, that he is just as negligent with the promises he makes as he is with the money he spends, convinced into breaking his oath with Portia with very little persuasion.⁴⁶ Supplied with the freedom to “give and hazard all he hath” without fear of consequence, Bassanio is content to play the odds, because even if he doesn’t win, he knows he won’t lose. Rather than operating under a just system, which asks what people owe to each other, Bassanio prefers to gamble – no expectations, no disappointment, and, because his friends indulge him, no obligations.

The second facet of the casket trial, the materials, is also a critical piece of the message that Shakespeare, through the ghostlike character of Portia’s father, seeks to impart. The suitors are instructed to choose between caskets of gold, silver, and lead; the one that appears least valuable on the outside contains the most desirable object inside.⁴⁷ By arranging the test in this way, Portia’s father had hoped to protect her from men who hope to marry her for her wealth,

45. *Ibid.* 2.1.42-43

46. *Ibid.* 4.2

47. *Ibid.* 1.2

her beauty, her status, or any other motivation more superficial than pure love. Bassanio is successful because he is aware that “the world is still deceived by ornament;”⁴⁸ but Portia’s father did not anticipate someone like Bassanio, who recognizes this societal flaw without denouncing it. Bassanio does not seek to remedy his community’s misguided set of values – he revels in it, exploits it, even relies on it to get him out of trouble.⁴⁹ Though he was shrewd (and lucky) enough to choose lead, in reality he was seeking gold; likewise, while he selected the casket that instructed him to “give and hazard all he hath,” he did not truly do so, but rather sought what he “desired.”

The two qualities of the winning casket in addition to the way the test failed to protect Portia form a set of instructions for the proper pursuit of happiness on both individual and societal levels. When seeking justice, we must “choose not by the view;” all people, regardless of race, religion, class, wealth, or other distinctions must be equal under the law, so that gold has no advantage over lead. Furthermore, justice cannot be motivated or influenced by material concerns – it must be rooted in a commitment to humanity that runs beneath the surface. Similarly, any action motivated by what one desires or what one thinks he or the other party deserves is a display of power, more self-serving than merciful. In giving and receiving mercy, one must “give and hazard all he hath,” becoming truly vulnerable by relinquishing the upper hand in a true gesture of good faith. But what is most important is that the two must go together: to “give and hazard all” in pursuit of trivial matters breeds recklessness, jealousy, and greed, and to extend genuine good will to only a select few is small-minded and corrupt. Both method

48. *Ibid.* 3.2.76

49. *See e.g., ibid.* 1.1. (The reason for his courtship of Portia in the first place is so he can easily pay back his friends without having to work or curb his spending.)

and motivation must be pure, and justice and mercy must not exist at opposite ends of a spectrum, but rather as an inseparable pair.

The culmination of the tension between justice and mercy occurs in Act IV, Scene I with the trial of *Antonio v. Shylock*. From the outset, the presiding Duke calls for mercy from Shylock, because from a strictly legal standpoint Shylock is, in fact, entitled to the pound of flesh.⁵⁰ The court could invalidate the contract, but in doing so would risk setting a precedent that allows for future contracts to be called into question, introducing a risk that may jeopardize the city's business ventures.⁵¹ The cruel irony lies in the fact that the court prizes the city's commercial enterprises over the lives of its own citizens, yet expects – even demands – that Shylock let go of his legitimate claim, not only on the penalty but on the principal sum he is owed, in service of “the greater good.”⁵² Shylock recognizes their blatant hypocrisy, and it only makes him hungrier for “justice” in the form of Antonio's life.

Enter Portia, interpreted by many as the embodiment of Christian mercy and the foil to Jewish justice. Once she and Shylock share the stage, the clash between justice and mercy is fully realized, and their personifications battle it out in the Venetian courtroom. Portia makes her eloquent appeal:

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

50. *Ibid.* 4.1

51. *Ibid.*

52. *Ibid.*

'Tis mightiest in the mightiest; it becomes
 The thronèd monarch better than his crown.
 His scepter shows the force of temporal power,
 The attribute to awe and majesty
 Wherein doth sit the dread and fear of kings;
 But mercy is above this scepterèd sway.
 It is enthronèd in the hearts of kings;
 It is an attribute to God Himself;
 And earthly power doth then show likest God's
 When mercy seasons justice. Therefore, Jew,
 Though justice be thy plea, consider this:
 That in the course of justice none of us
 Should see salvation. We do pray for mercy,
 And that same prayer doth teach us all to render
 The deeds of mercy.⁵³

Portia tells Shylock that mercy has no limits; it is not a weakness, but a strength. She speaks of benevolent leaders, kind neighbors, a forgiving God; but when has Shylock ever encountered any of these? His government has discriminated against him, pigeonholed him into a profession that society demonizes, and turns a blind eye when he is mistreated. He hopes to be cordial if not close with his fellow Venetians but is spurned and mocked at every turn;⁵⁴ the one time such sentiment is reciprocated turns out to have been a betrayal.⁵⁵ Shylock has no need for a merciful God: he has long since accepted his own suffering,⁵⁶ he only longs for his oppressors to be

53. *Ibid.* 4.1.190-208

54. *Ibid.* 1.3

55. *Ibid.* 2.4-6. (Bassanio invites Shylock to dinner, luring him out of his home so Jessica can steal from him and elope with Lorenzo.)

56. *Ibid.* 1.3.109-10

given a taste. Portia may be “informed thoroughly of the cause,”⁵⁷ but she is sorely lacking in her understanding of the litigants, a critical mistake in a case as personal as this.

Once Portia sees that Shylock is not going to budge, she goes on the offensive, spinning a web that will ensnare him in his own syllogism. Shylock insists on the strict letter of the law, no more and no less than what is written in the bond.⁵⁸ By that same token, Portia responds, Shylock is entitled to a pound of Antonio’s flesh but not a drop of his blood.⁵⁹ The court is stunned; Shylock relents and agrees to take the money instead of the penalty rather than forfeit all his possessions. Portia denies, echoing his earlier insistence that he have nothing but the penalty. Again Shylock gives in, and asks only for the original amount he loaned to be repaid, and again Portia refuses, citing Shylock’s own logic: “For, as thou urgest justice, be assured/ Thou shalt have justice more than thou desir’st.”⁶⁰ Portia hopes to teach Shylock the cruelty of a legalistic society bereft of mercy in an effort to make him reconsider his own beliefs. What she does not realize, however, is that these are not truly Shylock’s beliefs; he has temporarily adopted them in order to do exactly the same thing to Antonio, and he is already all too familiar with such a system. By turning it back on him, she unwittingly becomes another of his Christian oppressors.

Had Portia been truly merciful, she would have let Shylock take the money and go. Instead, she forced him to make a decision without all the facts, and then held him to that decision when circumstances changed. Portia led Shylock to believe he had a choice: Take the

57. *Ibid.* 4.1.175

58. *Ibid.* 4.1.269-74

59. *Ibid.* 4.1.318-25

60. *Ibid.* 4.1.329-30

pound of flesh but forfeit his possessions, or give up his claim to Antonio's flesh and walk away. When given the option, Shylock chose the latter; perhaps because of the practical concerns, or perhaps because it gave him the opportunity to show mercy without showing weakness. But in the end, it doesn't matter; thanks to the bigoted laws of Venice, Shylock is saddled with the worst of both options. Shylock is about to walk away with nothing, but Portia calls him back – Venetian law gives her the power to humiliate him even further through the Alien Statute:

If it be proved against an alien
That by direct or indirect attempts
He seek the life of any citizen,
The party 'gainst the which he doth contrive
Shall seize one half his goods; the other half
Comes to the privy coffer of the state,
And the offender's life lies in the mercy
Of the Duke only, 'gainst all other voice.⁶¹

Despite sparing Antonio, he is still stripped of everything he owns for “attempting” to kill him, even though he sought to do so legally and never made it to the point of actually delivering a blow. No inquiry is made as to whether Shylock would have gone through with it if given the chance; the Duke himself states at the beginning of the trial that he believes Shylock is bluffing:

Shylock, the world thinks, and I think so too,
That thou but leadest this fashion of thy malice
To the last hour of act, and then, 'tis thought,
Thou 'lt show thy mercy and remorse more strange

61. *Ibid.* 4.1.364-71

Than is thy strange apparent cruelty;⁶²

He thinks Shylock is putting on an act to intimidate Antonio and that he will throw away his knife at the last second. But when Portia seeks to convict Shylock of attempted murder, the Duke is silent and allows her to do so without protest. Furthermore, any attempt that Shylock may have made was deemed legal at the time it was committed; Portia and the Duke impose punishment *ex post facto*, a legal injustice that modern citizens are protected from by the U.S. Constitution.

Portia wants to demonstrate to Shylock that Christianity is superior; she entraps him, strips him of everything he has, and calls it mercy because he is not dead – even though Shylock says he would prefer to be.⁶³ His life is left at the “mercy” of the Duke, who spares it – not out of kindness or even pity, but to demonstrate moral superiority and humiliate Shylock even further. Antonio is given a say in Shylock’s punishment as well;⁶⁴ he, too, rejects the opportunity to show mercy, but because he is a Christian and not a Jew, he is praised rather than condemned for it. Unlike Shylock, who opted to keep his fortune, Antonio – who at this point in the story is entirely penniless – gives up his share of Shylock’s possessions so that it can go to the only person Shylock hates more than him: Lorenzo, the man who stole his daughter.⁶⁵ As if that were not enough, he further demands that Shylock himself convert to Christianity, which the Duke supports by threatening to rescind his pardon and sentence Shylock to death if he

62. *Ibid.* 4.1.18-22

63. *Ibid.* 4.1.390

64. *Ibid.* 4.1.394

65. *Ibid.* 4.1.396-406

refuses. This, says Shakespeare, is the justice of Venice, corrupted by distorted priorities, and this is the mercy of Christians, perverted by prejudice and politics.

CONCLUSION

In *Merchant*, Shakespeare creates characters both Jewish and Christian who “cite Scripture for [their] purpose,”⁶⁶ and use religious tension as a front to whitewash less palatable behavior. While some of the tropes that have become famous examples of antisemitism are undoubtedly problematic, the play is not really about the subordination of Judaism to Christianity. By showing hypocrisy and corruption on both sides, Shakespeare shines a light on the way all people abuse each other: by perverting legal, marital, commercial, and religious interactions and hiding behind the legitimacy it affords them. Through both the trial of the caskets and the trial of *Antonio v. Shylock*, he provides a scathing critique of the justice-mercy dialectic as it is often viewed, as well as a clear image of how it should be seen. Through Shylock, Antonio, Portia, and the Duke’s behavior Shakespeare demonstrates that both justice and mercy, however one defines them, become disguises for legitimizing cruelty and abuse of power if not employed for the sake of human decency. Through the materials and inscriptions on the caskets, he shows that mercy and justice cannot be placed at opposite ends of a spectrum – they must coexist at every point. Through the Alien Statute, perhaps the true villain of the play, Shakespeare reminds all his audiences, religious or not, that both justice and mercy demand equality under the law:

“You shall have one standard for stranger and citizen alike: for I the LORD am your God.”⁶⁷

66. *Ibid.* 1.3.107

67. *Leviticus* 24:22

Bibliography

Tanakh: The Holy Scriptures. Jerusalem, Israel: Jewish Publication Society, 1985.

<https://www.sefaria.org/texts/Tanakh>.

Feinstein, Moshe. "Igrot Moshe, Choshen Mishpat Vol. 2, Chapter 68." Translated by Shmuel

Perl. Sefaria, February 18, 2016.

<https://www.sefaria.org/sheets/27350.11?lang=bi&with=all&lang2=en>.

Lee, Randy. "Who's Afraid of William Shakespeare: Confronting Our Concepts of Justice and Mercy in the Merchant of Venice." *University of Dayton Law Review* 32, no. 1 (2006): 1–28.

<https://search.ebscohost.com/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.udlr32.6&site=eds-live&scope=site>.

Sacks, Jonathan. "Devarim (5773) - Tzedek: Justice and Compassion." Rabbi Sacks. The Office of Rabbi Sacks, August 20, 2018. <https://rabbisacks.org/devarim-tzedek-justice-and-compassion/>.

Sacks, Jonathan. "Commentary on the Siddur." Essay. In *Sidur Koren = The Koren Siddur*, edited by Jonathan Sacks, First Hebrew/English ed. Jerusalem, Israel: Koren Publishers, 2009.

Shakespeare, William. *The Merchant of Venice*. Edited by Barbara Mowat, Paul Werstine, Michael Poston, and Rebecca Niles. Folger Shakespeare Library. Accessed on May 25,

2021. Washington: Folger Shakespeare Library.

<https://shakespeare.folger.edu/shakespeares-works/the-merchant-of-venice>.

Steinsaltz, Adin. *Koren Talmud Bavli, the Noé Edition. Talmud Bavli* (version William Davidson digital edition). Edited by Tzvi Hersh Weinreb and Joshua Schreier. Jerusalem, Israel: Koren Publishers, 2017. <https://www.sefaria.org/texts/Talmud>.

Zevin, Rabbi Shlomo Yosef. “Mishpat Shylock,” #6 in *L’Or Ha’halacha*. Quoted in Rabbi Philip Moskowitz, “Shylock’s Enduring Impact on Jewish Law and Thought: Marking the 400th Anniversary of Shakespeare’s Death.” Lecture at Boca Raton Synagogue, Boca Raton, Florida, 2016.