

IDEA:  
Studies in English

Edited by

Evrin Dođan Adanur

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**P U B L I S H I N G**

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# THE NOTION OF JUSTICE IN *THE MERCHANT OF VENICE*

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Law, one of the two major components of the law-and-literature movement, is known to be a notion that aims at achieving social order where people are supposed to live in peace and with fewer conflicts of interests. To achieve this goal, law deals with many aspects of life. Therefore, to be more than mere technicians, young legal practitioners are encouraged to be aware of the different prospects of life. It is a precondition that in order to be “good” and “fair,” a lawyer should explore legal problems from different angles, and fictional literature provides a wide range of case studies through which the interdisciplinary scholars of law-and-literature, including lawyers, can explore the human condition.

Shakespeare’s *The Merchant of Venice* is a fertile ground for the scholars of law-and-literature with its concern for the notions of justice and law locating characters from different social standing, religions and ethnicity as parties of a questionable case. In this paper we are going to explore the traces of two approaches to law, and their relationship with the notion of justice in our quest for finding if justice has ever been meant to be maintained in the play.

According to the theory of natural law, there exists an absolute justice, and law cannot be a compilation of rules derived from the will of a certain powerful superior. There are “supreme” natural laws over positive legal rules; and these rules based on natural rights that are acquired by birth. Therefore law must be compatible with ethical sensibilities in relation to those natural rights, and is supposed to advance towards an “ideal law” (*de lege ferenda*). Only then is it possible that law can ever be just. In other words, the theory of natural law holds the notion of justice over the manmade, constructed law; hence, justice is the ultimate purpose of law.

On the other hand, legal positivism assumes that law is a collection of rules which were put in force by a state, king or whoever the ruling authority is. And the

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theory assumes that justice is possible to be maintained by the preset rules, in other words, laws. According to the legal positivism, law is defined by its connections to written legislations made by state that is furnished with the authority to regulate the conduct of society. If a certain rule or a decision is recognized by the legal system of a particular society, only then is it considered to be law. In *The Merchant of Venice*, the system of law, and its impartial and objective application, are supposed to maintain the order in Venice just as Shylock claims for at the beginning of the famous trial scene: “I stand here for law” (Shakespeare 67), and as he asks for the enforcement of the contract just as it is signed between the parties: “I’ll have my bond; speak not against my bond: I have sworn an oath that I will have my bond./ The duke shall grant me justice [...]” (Shakespeare 55).

We understand that law in the city of Venice that the play presents us with is structured around a body of rules which dictates that those rules are there for the benefit of both the state and its subjects, including the Duke himself as the chief magistrate. In Act III, Scene III, Antonio’s words clearly put the fact that “The duke cannot deny the course of law [...]” (Shakespeare 55-56). Since the laws are there to be enforced as they are, the enforcement of the agreement between Antonio and Shylock seems to be inevitable even it would be against ethical sensibilities and human conscience. As a response to Bassanio’s plea for an exceptional execution of laws suggesting to do “a little wrong” in order “to do a great right,” Portia, in disguise of a judge, admits that: “[...] there is no power in Venice / Can alter a decree established [...]” (Shakespeare 69). Portia, therefore, lawfully calls on the application of the contracts: “Why, this bond is forfeit; / And lawfully by this the Jew may claim / A pound of flesh, to be by him cut off / Nearest the merchant’s heart [...] / [...] For the intent and purpose of the law / Hath full relation to the penalty, / Which here appeareth due upon the bond (Shakespeare 70). All the Duke can do to alter the course of law is to try to persuade Shylock to show mercy and withdraw his case.

The concept of mercy, in its connection to universal ethical values is a constant reminder in the play suggesting that without it a fair judgment is impossible to make. According to the school of natural law, all written laws should be connected to the universal principles, and a law has to be fair and just in order to be called “law.” Because in the natural law theory, it is expected that the law should be informed with ethical sensibilities. Therefore, in the trial scene in *The Merchant of Venice*, the frequent references to the concepts of “mercy” and “pity” along with the Biblical references to the prophet Daniel—whose name is borrowed from a Hebrew word meaning “the Lord is my judge”—are meaningful because of their connections to the universal understanding of ethics. His lack of such values as described by the Duke seems to be Shylock’s tragic flaw that starts the events turning to his disadvantage. Duke says, “I am sorry for thee: thou art come to

answer/A stony adversary, an inhuman wretch/uncapable of /pity, void and empty /  
From any dram of mercy.” (Shakespeare 63).

In contrast to Shylock’s lack of mercy the play directs us to come to an understanding of whether mercy is an indispensable component of justice. Portia in opposing to Shylock’s insistence on the enforcement of the cruel contract, offers the notion of mercy along with all the religious connotations:

[Mercy] becomes  
The throned monarch better than his crown;  
His sceptre 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 sceptred sway;  
It is enthroned 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. (Shakespeare 68-69)

The duality between the approaches of legal positivism and natural law shows itself as the opposition constructed around the notions of “right” and “mercy” which are displayed as the symptoms of ethical sensibilities in the play. Shylock insists that his rights are provided via the contract and the legislations of the state. And, the fact that he doesn’t need to render a reasonable ground for his plea no matter if his rights are in conflict with Antonio’s natural right to live requires Shylock to show his mercy. However, Shylock’s rights are reserved by the order of law, and he defends his right to ask for the enforcement of the contract without providing any further reason for that in his speech:

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 answer'd?  
[...] So can I give no reason, nor I will not,  
More than a lodged hate and a certain loathing  
I bear Antonio, that I follow thus  
A losing suit against him. Are you answer'd? (Shakespeare 64)

However, with her plan at hand, as she knows that if not by mercy Antonio can only be saved through the enforcement of laws, Portia, in disguise of a judge, manipulates Shylock to be insistent on his wish for the application of the agreement as it is. Her affirmation on Shylock’s right to take a pound of flesh from Antonio’s body according to the written laws opens the gate to other laws of Venice forbidding the bloodshed of a Christian, and another severely punishing

those aliens, who, directly or indirectly, attempt to kill a citizen of Venice: in the case of these crimes, the state confiscates all his lands besides executing a death penalty.

Thus, the route of the trial changes. Upon the laws that Portia introduces to the Court, Shylock, whose only hope is his legal rights, understands that the justice he seeks for backfires. Therefore, Shylock starts to question the justness of laws: “Is that the law?” So, the reversal of fortune puts Shylock into a situation in which he desperately needs the mercy of the Duke and Antonio, his enemy, from whom he withholds that of his own. The play continues to examine the notion of justice by putting the notion of mercy in question this time. Because Antonio’s mercy of which source, as an ethical value, is suggested to be a divine presence, renders to be an unjust regulation. According to the Court’s decision, Shylock is forced to change his religion, to give half of his wealth away and, therefore, probably to lose his prestige and job. In other words Shylock is forced to shed his identity as a Jewish usurer to conform with the norms of a hegemonic Venetian society.

The end of the trial scene depicting the Venetian Court’s dehumanizing decisions, which are actually intended to be acts of mercy, enables us to redefine the infamous hatred that Shylock cherishes against the Christian merchants. Paulo Freire, in his *Pedagogy of the Oppressed*, says that such acts of dehumanization are “the result of an unjust order that engenders violence in the oppressors, which in turn dehumanizes the oppressed” (44) and “the oppressed, instead of striving for liberation, tend themselves to become oppressors, or ‘sub-oppressors’” (45). Shylock’s monologue on taking his revenge from Antonio for all the humiliation is a perfect example for what Freire’s pedagogy defines.

If a Jew wrong a Christian, what is his humility? Revenge. If a Christian wrong a Jew, what should his sufferance be by Christian example? Why, revenge. The villany you teach me, I will execute, and it shall go hard but I will better the instruction. (Shakespeare 42-43)

If we keep on following Freire’s argument, Portia’s gender, and the role she plays as a judge in disguise of a “man” gains importance. It is true that authoritative female figures are frequently employed in Shakespearean romantic comedies. However, her status in the men’s world is a question mark. Through the categorization of the settings in *The Merchant of Venice*, we are suggested that the public and private spaces that the male and female members of society can occupy are strictly defined. Stage directions forces us to catalogue Venice as the public setting where the action takes place either on a street or a public space, and where mainly the male characters are on stage. Except for one particular scene female characters of the play strictly belong to the private spaces that Belmont, the fictional realm provides. Depending on her consent to her father’s wish in deciding

to choose her own husband, we understand that Portia, the queen of this unattached, dream-like space, aligns her conduct of life with the criteria of dominance. Portia's masquerade in the trial scene taking place in Venice, therefore, seems to be the adoption of the judgmental criteria of the oppressor. Even if she is, as a female member of the society, an oppressed as it is hinted through the aforementioned setting distinctions, she is satisfied with the justice she maintains in the end without considering that it is biased.

To expand our discussion towards why we think that the justice achieved in the end is biased, we need to bring forth the notion of equality now. In *The Merchant of Venice*, laws applied to the Court case between Shylock and Antonio are discriminative in terms of their treatments of one's nationality and religion. And, a solution to maintain justice in the sense we understand today is out of reach in the legal positivist system of law in a world as exhibited in the play. Therefore, the fact that the notion of mercy is brought to the stage along with its connotations to ethical sensibilities recalling the natural law theory. However "mercy" is not enough by itself to maintain justice as long as the members of a society are conditioned that a hierarchical social system should dispense our share of rights. Because, then, mercy becomes a privilege for those who are already considered to be eligible for the rights that the dominant allow.

No doubt that the discriminatory Venetian laws applied to the case are, therefore, unequal in the way that they are against human dignity, human rights to live and to freedom of religion besides the principle of *bona fides* (good faith). Therefore, the laws that *The Merchant of Venice* introduces, as they are called in the natural law terminology, legal but not legitimate if we accept that all people are equal, and "should be treated alike" as Aristotle has formulated. The historical data prove that Shakespeare wrote the play in a Europe when the Jews were not thought to be the equals of Christians. Thus, the famous tirade of Shylock—which is one of the many evidences of the fact that the play at hand is not a comedy at all—might easily be considered as a device to raise the consciousness of the audience of the time:

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, healed by the same means,  
warmed and cooled 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, shall we not  
revenge? If we are like you in the rest, we will  
resemble you in that. (Shakespeare 42-43)

At the end of the play, we are left convinced that when equality is absent, it is impossible to obtain an unbiased judgment since in such conditions the aimed justice can do nothing but align itself with either one party or the other in controversy. That is why, first the content of laws is to be non-discriminative as the St. Augustine's quote goes: "An unjust law does not seem to be a law at all," then, the person in charge is to map all the circumstances, and judge the benefits of all the sides involved. Since the extreme application of laws, may cause greatest injustice as Cicero has formulated "*Summum ius, summa iniuria.*"

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