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Legal Fairness in *The Merchant of Venice*

In Shakespeare’s *The Merchant of Venice*—one of his comedic plays—the ending seems to demonstrate the fairness of the legal system in its part in preserving a man’s life and proclaims the justice in the outcome of the court’s decision. But the fairness of the story’s ending, because it was achieved by way of questionable legal ethics, comes into question. *The Merchant of Venice* demonstrates the unimportance of fairness in the story’s legal system and the conflict between two kinds of legal interpretation, one of which could have given the story a drastically different ending.

The story of *The Merchant of Venice* follows the plotlines of two characters: Bassanio and Portia. Both plotlines involve contracts, which serve as the catalysts for the main conflicts in the story. Bassanio is responsible for the creation of a loan contract between Antonio, a merchant, and Shylock, a Jewish moneylender. Portia’s father died, leaving behind a Last Will and Testament that binds Portia into a marriage that will be determined by a test that he created.

The play opens with two scenes that frame the main conflicts of the story. Antonio, a Venetian merchant, has vessels at sea which promise to earn him a significant profit—should they make it to shore. Bassanio, a close friend and implied love of Antonio, comes to him with a problem and request; Bassanio wishes to court a lady—Portia of Belmont, who was “richly left” (17, l. 168) after her father’s death—but lacks the wealth necessary to compare to her other suitors. Generous Antonio, whose riches are still on ships at sea, agrees to go with Bassanio to sign a loan at interest in Antonio’s name.

Portia, who, despite his death, is bound to her father’s last wish: she must marry whoever passes a test he created. She is neither able to choose her suitors nor control the test, and she despairs over her inability to choose her future husband. Three boxes were set up for the test, accompanied by riddles intended to lead undesirable men to choose the wrong box and the right man to the box that contains Portia. Should the suitors choose the wrong box, they are obligated give up their pursuit of Portia. This scene is the first indication of how seriously contracts are followed in the story’s society and legal system. Portia could break her orders demanded by the will—she could lead the man she wanted to the correct box (and vice versa)—but she held to her legal and moral obligation to obey her father’s words:

PORTIA. O, me, the word “choose”! I

may neither choose who I would nor refuse who I

dislike. So is the will of a living daughter curbed by

the will of a dead father. (21, l. 22-25)

The will took no consideration of Portia’s wishes, though it affected her life deeply. The law upholds this document; her wishes are not taken into consideration in the law, either. She is held at her dead father’s wishes whether she thinks it fair or not.

This will is valid by law and held up to high standards, the wishes and opinions of the affected parties unacknowledged once it comes into existence. The law did not account for fairness—the will’s demands were fulfilled despite the personal cost paid by Portia and her failed suitors. The law demanded that the will be executed, and all other considerations were inconsequential.

When Antonio agrees to sign a loan with Shylock, a Jewish “usurer,” to secure the funds necessary for Bassanio’s courtship, he unknowingly initializes a chain of events that would lead to the climax of the story. When Antonio and Bassanio arrive to ask Shylock for a loan, some of Shylock’s experience with Antonio is revealed.

**SHYLOCK.** You call me misbeliever, cutthroat dog,

And spet upon my Jewish gaberdine,

And all for use of that which is mine own. (35, l. 121-23)

This context of Antonio’s treatment of Shylock is crucial for understanding Shylock’s behavior in the rest of the story and is part of the reason why he eventually takes the legal stance that he does. In Venetian law, usury, the practice of lending money at high rates of interest, is illegal—with the exception of the Jewish population, who were not forbidden from doing so by the Bible, as Christians were. The prejudice against such practices, however, still stood.

As a mockery, perhaps, of Antonio’s past accusations of him being a usurer, Shylock decides that he would not charge interest on the loan in the event of a forfeiture. Instead, he asks for a pound of Antonio’s flesh.

SHYLOCK. …let the forfeit

Be nominated for an equal pound

Of your fair flesh, to be cut off and taken

In what part of your body pleaseth me. (37, l. 160-63)

Despite Bassanio’s objection, Antonio agrees to sign on to the contract, saying, “I’ll seal to such a bond, / and say there is much kindness in the Jew” (37, l. 164-65). Antonio believes that there is no danger of defaulting on the loan, and in proclaiming that “there is much kindness in the Jew,” makes it clear that he believes that Shylock would not hold him to the demand even if he defaulted on the loan. Antonio gratefully signs on to the loan and Bassanio soon leaves for Belmont, where he seeks to take Portia’s test of courtship. As this contract is signed, by all accounts, this is fair. Both Shylock and Antonio knew and agreed to the terms of the loan, and although Antonio didn’t believe that the forfeit terms would ever become relevant, this contract (including the possibilities of harsh consequences) is considered fair by both parties involved. At this moment, neither party was taking the words of the contract very seriously, but not for long.

The turning point for Shylock’s motivation in the story is when his daughter, Jessica, runs away (with much of her father’s wealth) to marry Bassanio’s Christian friend, Lorenzo. Shylock, who is devastated by the loss of both his daughter and the money that she took, **sees** this slight against him as the act of a group of Christians against a Jew; he settles on the motive that drives his actions for the rest of the story. He says as much:

SHYLOCK. If a Jew wrong a Christian,

What is his humility? Revenge. If a Christian wrong

A Jew, what should be his sufferance be by Christian

Example? Why, Revenge! (99, l. 67-70)

Shylock soon hears of Antonio’s financial ruin, which causes Antonio to default on the loan, and Shylock has his target.

With the arrival of Bassanio, armed with his borrowed wealth, Portia’s conflict is resolved—the outcome in her favor. Before Bassanio and Portia can be married, however, Bassanio gets word that Antonio’s ships, which he depended on to pay off Shylock’s loan, have been lost. Portia immediately tells Bassanio and his friends to return to Venice and tells him that she would stay Belmont to wait for their return. Unbeknownst to Bassanio, however, Portia quickly thinks up a scheme to help Bassanio and Antonio.

Shylock takes Antonio to court and demands his forfeit. The contract, which is valid and legally binding, orders Antonio to allow Shylock to cut off a pound of his flesh, and Shylock demands this, using the words of the law and the loan for his argument. Although the Duke, who is to decide the outcome of the case, begs him to practice mercy, Shylock is adamant that the bond is enacted in its fullest extent, and that they dare not prevent him:

SHYLOCK. The pound of flesh which I demand of him

is dearly bought; [‘tis] mine and I will have it.

If you deny me, fie upon your law:

There is no force in the decrees of Venice. (147, l. 100-103)

Although the Duke (and every other character included in the scene besides Shylock and Antonio) views the bond as cruel and unfair, the law has no easy outlet to prevent the enforcement of the forfeit. The act of signing of the bond was fair, such that both parties freely agreed, and the court now has no power against the power Venetian law gives the moneylender, no matter what the other party may think.

Entering the courtroom after returning from Belmont, Bassanio immediately offers to pay off the loan amount in full. When Shylock refuses, he doubles his offer. Unfazed, Shylock is adamant in receiving what is owed to him by law. From one perspective, he is right. Shylock and Antonio agreed to a bond that had clear consequences, and though the forfeit demanded seems harsh, the fairness of such doesn’t matter in regard to Venetian law. The nature of Shylock’s argument comes into focus when Portia enters the courtroom.

Disguised as a “doctor of laws” (153) named Balthazar, Portia introduces herself and becomes the legal advisor who would be instrumental in the Duke’s decision. She quickly advises Shylock to have mercy on Antonio, asking him to forgive Antonio’s forfeiture and take the money that Bassanio offered, instead.

PORTIA [as Baltazar]. Why, this bond is forfeit,

And lawfully by this the Jew may claim

A pound of flesh, to be by him cut off

Nearest to the merchant’s heart.—Be merciful;

Take thrice thy money; bid me tear the bond. (157, l. 239-43)

Shylock refuses, referring to the lawfulness of his demand; Portia agrees to this argument and changes tactics. She instead demands that Antonio to “lay bare [his] bosom” (159, l. 262) and prepare himself for the removal of his flesh. She then asks Shylock if he has a surgeon ready to “stop his wounds, lest he do bleed to death” (159, l. 270). Shylock replies, after he and Portia acknowledge that it is not required by the bond, “I cannot find it. ‘Tis not in the bond” (159, l. 274).

Shylock’s argument might seem faithful to Justice Antonin Scalia’s Textualist argument. Shylock and Portia both agree that the words of the bond demand what Shylock is arguing. Scalia was a proponent of using the literal language of the law to help decide regarding law in court cases. He had a specific method of interpretation of law, in which the wording of the statute in question was vital: “What I look for in the Constitution is precisely what I look for in a statute: the original meaning of the text, not what the original draftsmen intended” (20-21). With his interpretation of law, it wouldn’t matter that neither Shylock nor Antonio thought that the forfeiture would ever become relevant. Antonio believed that Shylock was being “kind” because he believed so, and Shylock even stated that he would have no reason to take the flesh from Antonio because it wasn’t even as “profitable… / As flesh of muttons, beefs, or goats” (39, l. 178-79). The circumstances of Shylock’s intent had changed, but the words of the bond had not. Scalia’s interpretation would not bring their previous intent into question to avoid changing the words to what a judge thinks they “ought to mean” (Scalia 21). This is the reason that the Duke simply cannot break the bond himself. Doing so would create a dangerous precedent for similar situations in the future, which Portia points out.

Portia also uses the literal language of the bond and of the law, but she interprets the language in an entirely different way and is able to use Shylock’s own strategy against him.

PORTIA. This bond doth give thee here no jot of blood.

The words expressly are “a pound of flesh.”

Take then thy bond, take thou thy pound of flesh,

But in the cutting of it, if thou dost shed

One drop of Christian blood, thy lands and goods

Are by the laws of Venice confiscate… (163, l. 319-324)

A bit later on, Portia goes on to add that if Shylock “taks’t more / Or less than a just pound” (165, l. 339-40), of flesh, all his goods are “confiscate”. She uses both the words of Venetian law and of the contract against Shylock, a method he had attempted to use. But how could such interpretations of the same exact words have such different outcomes? Derrida’s theory of the instability of language can be used to shed some light.

Derrida said that words do not have innate meaning: “they are generated by difference; they have no substance apart from the networks of differences…that generate them as effects” (278). “A pound of flesh,” for example, only means what it does because it does *not* mean a pound and an ounce, or an ounce less than a pound. Shylock attempted to make these words mean an *approximate* pound, but Portia used the instability of that language to mean what she wanted it to be, and she succeeded in scaring Shylock off from even attempting to meet her standard. She interpreted this language to fit her wishes, as she had been asking Shylock to do when she asked for a surgeon to treat Antonio’s perspective wounds. Shylock “could not find” this in the bond and was unwilling to allow any additional meaning to the written words, and so refused to have a surgeon at all. This is the method that Portia used to not only get Antonio out of his precarious position but to punish Shylock for his attempt at revenge.

Despite the motivation behind Shylock’s argument, his position was not quite unfair. Antonio and Shylock signed this bond together, both under the same impressions of the language used—Antonio does not even try to fight the law in court once it became clear that Shylock was not willing to change his mind. Shylock was correct in saying that the law required Antonio to make this sacrifice. But Portia was also correct, using a slightly different interpretation, that the bond did not allow for anything more to be taken—not blood, and not any more than a pound. It might have been argued that more than just “a pound of flesh” was implied in the contract, but Portia simply had to use the literal implications of the words written to achieve her victory in court. She used existing law and existing language to reach her conclusion. With these considerations in mind, *both* parties were using arguments that were “fair” in the eyes of Venetian law. Portia simply used a more convincing argument. Fairness wasn’t even really in question; although one party was clearly in the wrong morally, both parties were in the right legally (apart from the law Portia used that said a Jew couldn’t shed Christian blood).

With these outcomes in the story in mind, I feel it’s important that law interpreters use somewhat of a mix of the two interpretations; Portia is the best example I could use; she used the literal language of the contract as well as the application of other laws to make her argument, and in doing so, was able to save a man from a cruel fate. In the application of a law, many considerations must be made, and while Shylock’s fate, in being made to convert to Christianity, calls into discussion some serious ethical issues, Portia’s interpretation led to the best possible conclusion of the story.

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