

# "The quality of mercy": Law, equity and ideology in *The Merchant of Venice*

Cohen, Stephen A . *Mosaic : a Journal for the Interdisciplinary Study of Literature* ; Winnipeg  
Vol. 27, Iss. 4, (Dec 1994): 35-54.

[ProQuest document link](#)

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## ABSTRACT (ABSTRACT)

The debate between common law and equity in the trial scene of Shakespeare's "The Merchant of Venice" is critiqued. The scene reflects the competition between England's ruling and rising classes for capitalist spoils.

## FULL TEXT

The interdisciplinary study of literature has received considerable impetus over the last two decades from the rise of New Historicism. Particularly in Renaissance studies, the work of Stephen Greenblatt, Louis Adrian Montrose and others has illuminated the relation of such diverse matters as exorcism, colonialism, architectural design and primogeniture to the cultural work performed by literary texts. One subject largely neglected by the New Historicists, however, is the law. This neglect may in part be attributable to the prominence of the law in older, positivist historical readings of Renaissance literature, and in turn to the New Historicists' desire both to distance themselves from this reflectionist model and to investigate unexplored areas of Renaissance culture. In any case, by conjoining the considerable work done by Renaissance legal scholars with New Historicism's characteristic questions—what are the sociopolitical functions of the cultural phenomenon in question, and how are those functions employed or adapted through the literary text—we may shed considerable light on both the law and the literature of the Renaissance.

Not surprisingly, given its explicitly economic central conflict and its intricately detailed legal climax, *The Merchant of Venice* has had considerable appeal for interdisciplinary critics. As O. Hood Phillips's investigations have shown, for over a century legal scholars and historians have studied the trial scene's relation to contemporary jurisprudence, debating its verisimilitude and its position in the period's jurisdictional and philosophical disputes, especially the conflict between the common law and equity (91-118). More recently, historical critics like Walter Cohen, Leonard Tennenhouse and Thomas Moisan have explored the play's relation to Renaissance social and economic history and ideology, and particularly its role in the period's transition from the cultural and financial structures of late feudalism to those of early capitalism. These two lines of inquiry have, however, remained almost entirely separate: legal readings of the trial scene tend to treat its legal significance in both cultural and textual isolation, failing to link it to the social and economic issues prominent in both text and cultural context; and socioeconomic readings of the play as a whole give little or no attention to the role of the trial's legal background in that framework.

A contemporary audience, however, would have made no such separation. The late 16th and early 17th centuries in England were notable both for unprecedented economic and social change and for a marked increase in legal activity; the connection between the two developments was sufficiently clear at the time that Francis Bacon could note almost as a commonplace that "times of peace, for the most part drawing with them abundance of wealth, and fineness of cunning, doe draw also in further consequence multitudes of suits, and controversies... [which] do

more instantly sollicite for the amendment of lawes, to restraine and repress them" ("Epistle Dedicatorie." n.p.).

Nor were such associations beyond the bounds of the theater. In the case of *The Merchant of Venice*, the susceptibility of the play's legal content to sociopolitical interpretation is attested to by no less a legal and political authority than Lord Chancellor Ellesmere, who in a 1615 judicial dispute over the power of King James to legislate economic policy without the concurrence of Parliament advised his fellow judges "to maintain the power and prerogative of the King; and in cases in which there is no authority and precedent, to leave it to the King to order it according to his wisdom and the good of his subjects, for otherwise the King would be no more than the Duke of Venice" (qtd. in Andrews 41). The significance of the reference—to the Duke's legal inability to act on his sympathy for Antonio—would not have been lost on James and his court, for whom *The Merchant of Venice* was performed twice in 1605 (Knight 108n8).

For its contemporary audience, then, the trial scene's legal conflict was firmly connected to the economic and political issues in which the period was increasingly embroiled. By bringing together the historical particularity of the play's legal critics and the ideological sensitivity of its newer historical readers, I hope to recapture the significance of this connection; and in shedding new light on the meaning of the trial scene's common law-versus-equity debate I will attempt to illuminate the role that *The Merchant of Venice* played in the culture of which it was a part.

The case that Shylock makes for the enforcement of his bond rests on three claims: 1) the self-evidence of the law's application to the case at hand; 2) the supremacy of that law over any other power, personal or governmental; and 3) the importance of that supremacy to the foundations of the state itself. "I [have] sworn/To have the due and forfeit of my bond," he tells the Duke as the trial opens; "If you deny it, let the danger light/Upon your charter and your city's freedom!" (4.1.36-39).<sup>1</sup> These three claims were the foundation of the case presented by the champions of the common law in their jurisdictional and philosophical conflict with the courts of equity. In supporting the inviolability of the common law's authority they argued that the order and security of the nation rested upon the adjudication of its increasingly complex web of rights and obligations by—as Sir Edward Coke phrased it—"the golden and straight mete-wand of the law, and not the incertain and crooked cord of discretion" (qtd. in Ives 125).

While acknowledging the technical legality of Shylock's suit—"Of a strange nature is the suit you follow,/Yet in such rule that the Venetian law/Cannot impugn you as you do proceed" (177-79)—Portia counters his claims by decrying the cruelty of the bond and the severity of the law that enforces it and insisting on the need for mercy "to mitigate the justice of thy plea" (203). The necessity of such mitigation was the basis of the argument presented by the advocates of equity's appellate superiority to the common law, in order, in the words of Lord Keeper John Williams, "to mix & temper mercie and equitie with the black and rigorous L[ette]re of the Law" (qtd. in Thomas 526). Consequently, Portia's victory has been read by legal critics like Mark Edwin Andrews, Maxine McKay and W. Nicholas Knight as Shakespeare's endorsement of the ethical importance of equity to mitigate the impartial but at times overly-strict justice of the common law.

As Lord Chancellor Ellesmere recognized, however, behind the ideological trappings of blind-but-strict law and corrective equity, the issue at stake in the trial plot is political power—specifically, the power of the Crown to further its social and economic agenda in the face of the legal challenge presented by the common law. As the complex, large-scale financial operations of early capitalism began to emerge in the middle years of the 16th century, its practitioners became acutely aware of the value of a comprehensive and predictable legal system that offered protection from arbitrary interference. As Max Weber notes:

The modern capitalist concern...requires for its survival a system of justice and an administration whose workings can be rationally calculated, at least in principle, according to fixed general laws....It is as little able to tolerate the dispensing of justice according to the judge's sense of fair play in individual cases or any other irrational means of principles of administering the law...as it is able to endure a patriarchal administration that obeys the dictates of its own caprice, or sense of mercy.... (qtd. in Whigham 107-08n14)

The common law, particularly after it began to recognize and incorporate the jurisprudence of the increasingly important international mercantile legal system (Hill 238), was clearly the law that best offered this protection, given its fundamental concern with *meum et tuum* property rights: "The person, goods and possessions of a man (as you know) are the things which the Common lawes of England doe protect," wrote Edward Hake in the late years of Elizabeth's reign (69).

The Crown's difficulty with this conception of the common law was that the very same principles which facilitated the new economic activity could also be—and increasingly were—employed to protect the profits of that activity from royal exploitation. The value to the nation of this new commerce and industry provided the Crown with a strong disincentive to violate or abrogate the common law; yet with the steadily growing financial pressure on the royal treasury in the late 16th century, the maintenance of state power came increasingly to require the diversion of the profits of English capitalism into the government's coffers. The means by which the Elizabethan state attempted this diversion—ad hoc financial and commercial regulation, extra-parliamentary taxation and forced loans that were never repaid—brought it into direct conflict with the necessary predictability and inviolability of the common law, and those profiting from the new economy were quick to invoke those principles in their own interest. Even Hake, who was by no means a wholehearted ally of the new capitalists (his revised *Epieikeia* was presented to King James), held that "concerning the subject's goods, neither subsidies, taxes, contributions nor loans are by the lawe to take hold thereof or to be imposed upon any Englishe subject without his free consent"; thus "any seizures to be made of an Englishe subject's goods to the King's use without iust and lawfull tittle" were not to be considered (83-84).

Coupled with the ideological prestige of the common law's status as England's unique and indigenous legal heritage (insightfully described by J. G. A. Pocock), the Crown's reliance on the new economy made a royal attack on the common law in general both undesirable and impracticable. Instead, the Crown for the most part restricted its response to the particular instances in which the common law was used to oppose the Crown's will: thus while common-law tacticians cast their legal resistance to the state's unpopular financial devices as the defense of property rights against royal tyranny, the Crown countered by depicting that resistance as the economically self-interested misuse of the law contrary to the unity, order and security of the state. Equity, as the theoretical remedy for injustice produced by the misuse of the law, was consequently an essential component of the Crown's legal arsenal. While other legal weapons like the royally-dominated ecclesiastical courts, Star Chamber and the considerable direct prerogative power of the ruler himself would provide the Crown with greater practical power in the increasingly contentious years leading up to the Civil War, equity's established jurisprudential credentials allowed it to become one of the Crown's earliest and most powerful ideological tools in its efforts to stave off the political implications of capitalism's use of the common law.

Seen in this light, the broader social conflict behind the common-law/equity dispute is not the primarily economic battle between capitalism and feudalism, but the primarily political battle between two socioeconomic factions for the spoils of the nascent capitalist economy. These two factions were defined less by social status (aristocracy versus gentry or nascent bourgeoisie) than by a combination of economic interest and ideological affiliation. On one side were the merchants, financiers, landed gentry and even aristocrats who profited directly from the new economy and who perceived their interests—financial and otherwise—to be at least on occasion different from the

Crown's (Stone, Causes 114-15). This group may be designated the "rising class," provided that we understand "rising" primarily in the economic rather than social sense and "class" as a taxonomy based on neither birth nor wealth but on economic activity.

Their opponents were the large landowners--Crown and older aristocracy--that for reasons both economic and social had been unable to adapt their financial practice to the new economy and who were consequently forced into an increasingly parasitical relationship to that economy--the Crown in the ways discussed above and the aristocracy as royal clients competing for monopolies and state offices (Tawney 9-13; Stone, Crisis 199-207). Despite the growing challenge posed by the rising class, this second group may still be referred to as the period's ruling class, for since Henry VII and Henry VIII subjugated the great noble families to the Crown, this royal-aristocratic bloc had wielded a high-hegemonic political and social power which in the late 16th century continued to hold most of the nation under its official or ideological sway.

Thus, while the immediate stakes in the conflict between the two groups were financial, the ultimate prize was much greater: the ability of the independent rising class to use the common law to thwart the sociopolitical will of the ruling class. Not simply a clash of legal principles or jurisdictions, the contest between common law and equity was one of the first and most important sites of the conflict between the rising and ruling classes that would climax (but not conclude) with the Civil War. As one of the earliest articulations--literary or otherwise--of this ideological struggle, the victory of Portia in the trial scene of *The Merchant of Venice* is not a simple reflection of a jurisprudential dispute or an all-but-complete economic shift but rather a highly partisan intervention in a growing cultural crisis.

As in the contemporary legal dispute, the trial's battle lines are drawn not between capitalism (Venice) and feudalism (Belmont), but between the socially and politically independent rising class (Shylock the Jew) and the ruling class and its ideological allies (the Christian aristocrats and Antonio). Even before the trial scene itself, the play makes clear that its target is neither capitalism nor common law per se. In response to Solanio's certainty that the Duke will void Shylock's bond, Antonio pointedly establishes not only the close connection between common law and nascent capitalism but also the importance of both to the economic survival of the state:

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.  
(3.3.26-31)

During the trial, the legality of the contract itself, exemplar of both capitalist economics and common law, is never challenged: Antonio "confesses" the bond (181-82) and Portia declares, "Why, this bond is forfeit" (230)--that is, forfeited by Antonio upon his nonpayment. Instead, Shylock is vilified for the particular use to which he puts the law of contract: the enforcement of the bond's horrific stipulations at the expense of the Christian "royal merchant" Antonio.

The trial scene opens with a reassertion of its central sociopolitical division. Referring to Antonio by name, the Duke says: "I am sorry for thee" (3); the merchant responds by acknowledging the pains the Duke and the other "magnificoes" have already taken on his behalf (7-9; see also 3.2.279-83). Shylock, in contrast, is first referred to simply as "the Jew" (14), an epithet used throughout the trial to underline his social alienation. Despite (or more precisely because of) its prominence in the play's definition of his character, Shylock's religion is not to be taken at face value, but rather as an exemplary illustration of the play's mediation of Elizabethan sociopolitical reality for presentation on the stage. Without dismissing the importance of the considerable literature debating *The Merchant of Venice's* anti-Semitism, I would argue that it is difficult to see Shylock primarily as a representative of

Judaism. Shylock's Jewishness throughout the play is less theological than cultural: he is not identified by (and reviled for) his failure to accept Christ or the New Testament, but by his "Jewish gaberdine," his unwillingness to dine with his Christian business associates and especially his usury—in short, his social, economic and ideological alienation from Venice's dominant sociopolitical group.

Rather than a transparent religious designation, Judaism (certainly a flexible signifier in an England virtually devoid of professed Jews) functions in the play as a derogatory marker for a group extant but not fully delineated in the cultural consciousness of the late 16th century, a group characterized by its economic self-interest and its willingness to further that interest by opposing itself to the dominant social ideology: the rising class. If the play partakes in contemporary anti-Semitic stereotypes (greed, social separatism), it does so not in the service of their own furtherance, but in order to transfer those negative associations from the religious to the socio-economic sphere.

The Duke's first speech to Shylock (17-34) employs this transference in linking the trial's economic foundations to its larger social significance. Lacking the prerogative power to pardon Antonio—a power that belonged to the ruler only in criminal cases—the Duke resorts to the considerable extra-legal social power wielded by the ruling class. Antonio's financial straits, he says, should elicit pity and mercy not only from Christian hearts, but "from stubborn Turks, and Tartars never train'd/To offices of tender courtesy" (32-33). The Duke offers Shylock the following choice: either to remain more alien than even the Turks and Tartars in pursuing his suit, or to enter—as has Antonio—the hegemonic penumbra of the aristocracy by changing his pagan "malice" for Christian "courtesy" and economic cooperation. The full weight of the social pressure that the ruling class could bring to bear upon a recalcitrant individual is focused in the speech's final line (particularly in light of the recurring pun on gentle/gentile): "We all expect a gentle answer, Jew!"

In the not-too-distant Tudor past such a threat might well have proven the trump card that the Duke intends it to be. By the 1590s, however, the inviolability of the common law was providing the rising class with an increasingly effective shield with which to resist the Crown's efforts to assert its will over the law. Shylock's response to the Duke links the common law's economic domain, its class affiliation and its ideological status as foundation of the state:

by our holy Sabaoth have I sworn  
To have the due and forfeit of my bond. If you deny it, let the danger light  
Upon your charter and your city's freedom! (36-39)

Throughout the trial scene, Shylock invokes the shield of the common law in the face of Christian attempts to coerce or cajole him by emphasizing his social exclusion or offering him inclusion at the price of his bond. "Till thou canst rail the seal from off my bond," he admonishes Gratiano, "Thou but offend'st thy lungs to speak so loud./...I stand here for law" (139-42).

The lack of formal social submissiveness and regard for hierarchical distinctions implicit in both the substance and the tone of Shylock's response to his aristocratic opponents suggests the ultimate consequence of his common-law defense: the weakening of the sociopolitical hegemony that preserved royalist-aristocratic privilege. In keeping with the play's ideological agenda, this use of the law is presented as a threat to the safety and stability of a Venetian society whose social and juridical similarities to late 16th-century England would not be overlooked by a contemporary audience. This threat is clearest in Shylock's famous "Hath not a Jew eyes" speech (3.1.53-73).

Read in context—as a response to Salerio's suggestion that Shylock has nothing to gain by enforcing the bond—the speech is not the appeal to universal brotherhood it is often taken to be. Antonio's hostility towards Shylock is

rooted in the latter's social alterity—"You call me misbeliever, cut-throat dog,/And spet upon my Jewish gaberdine" (1.3.111-12)—and it is this distinction between Jew and Christian that the speech rhetorically effaces. The result of this effacement, however, is not a pledge of mutual forbearance but a promise of retaliatory violence: "And if you wrong us, shall we not revenge? If we are like you in the rest, we will resemble you in that" (3.1.66-68). For Shylock, the bond's utility is not economic—"A pound of man's flesh," he tells Antonio and Bassanio, "Is not so estimable, profitable neither,/As flesh of muttens, beefs, or goats" (1.3.165-67)—but sociopolitical, through its power as an instrument of the common law to nullify the class privilege that protects Antonio from Shylock's vengeance. This association between the common law and violent social disruption is a crucial element of the play's ideological work.

The ruling class's response to Shylock's threat is presented by Portia. She begins by acknowledging both the validity of the bond (177-79) and the ideological power of the common law's promised consistency that underpins Shylock's confident intransigence. In reply to Bassanio's appeal to the Duke to "Wrest once the law to your authority" (215) she insists:

It must not be, 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. (218-22)

Consequently, her solution to Shylock's legal challenge—"Then must the Jew be merciful" (182)—at first seems identical to the Duke's. The mercy Portia seeks, however, is not the Duke's unconditional Christian mercy. While the Duke demands that Shylock forgive Antonio not only the interest owed but "a moi'ty of the principal" as well (26), Portia seeks not the abandonment of the bond but its payment, with justifiable interest, in place of the legal but abhorrent penalty Shylock demands. "Be merciful," she tells Shylock, "Take thrice thy money, bid me tear the bond" (233-34). It was precisely this type of mercy—that which does not mitigate justice for the sake of pity but mitigates (common) law for the sake of true justice—that the courts of equity claimed to dispense. Knight notes the distinction: "The 'mercy' of the High Court of Chancery's equitable decisions by the Lord Chancellor is not to be confused with...simple clemency or empathetic pity...for William West says: 'there is a difference between Equitie and Clemency: for Equitie is alwaies most firmly knit to the evil of the Law which way soever it bends, whether to clemency, or to severity'" ("Equity" 95-96). Many in the play's contemporary audience would have recognized Portia's suggested compromise—the payment of appropriate interest rather than the contractually stipulated forfeiture—as a solution typical of the equity courts of the day (Keeton 137).

Like Shylock's use of common law, Portia's invocation of equity has social as well as legal significance. According to the theory of equity which emerged during Elizabeth's reign, while equitable mercy assured the justness of the law, equity's own justness was in turn guaranteed by its origin in the royal conscience (Thorne viii). The monarch's conscience itself was validated by his role as the earthly conduit for divine justice, which by virtue of its source was necessarily superior to, and thus the ultimate venue of appeal from, the merely human common law. William Lambarde, in his *Archeion*, writes:

And considering that the Prince of this Realme is the immediate minister of Iustice under God, and is sworn at his Coronation, to deliver to his subjects *aequam & rectam Iustitiam*; I cannot see how it may otherwise be, but that besides his Court of meere Law, he must either reserve to himselfe, or referre to others a certaine soveraigne and preheminent Power, by which he may both supply the want, and correct the rigour of that Positive or written Law....if onely streight Law should bee administred, the helpe of GOD which speaketh in that Oracle of Equitie, should be denied unto men that neede it. (42-44)

Accordingly, the court of Chancery was considered the "court of the King's conscience," its Chancellor deputized by

the monarch to implement the justice of the royal will, correcting when necessary the injustices perpetrated by the common law by overruling the decisions of its courts. Contrary to the levelling effect of the common law that placed even the sovereign under the law, this construction of legal authority offered a hierarchical ideology which situated the monarch at the terrestrial pinnacle of the legal system.

Portia's response to Shylock's use of the common law is thus the jurisprudential reassertion of the fundamental value and necessity of social hierarchy, replacing his vision of inter-class violence with one of royally-regulated harmony. It is in this light that we must understand Portia's famous "quality of mercy" speech:

The quality of mercy is not strain'd,  
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.  
'Tis mightiest in the mightiest, it 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 way,  
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.  
(184-97)

Mercy, in short, descends from heaven into the heart of the monarch, allowing him to fulfill his role as the terrestrial conduit of God's justice, with which he "seasons" flawed human justice. In addition to justifying ideologically the supremacy of royal equity, however, Portia's speech also makes clear its practical implications. Her juxtaposition of the monarch's divine equitable authority with his "temporal power" sets up the speech's concluding union of Christian piety and realpolitik intimidation: "We do pray for mercy,/And that same prayer doth teach us all to render/The deeds of mercy" (200-02). The power that equity gives to the Crown by reinstating royal will as the ultimate legal authority assures that one can no more hope to prosper without the king's mercy than without God's, and that one who hopes for such mercy should be prepared to make concessions of his own. Some seven years after the play's composition, King James would make this same point less subtly in his July 1604 rebuke to a recalcitrant Parliament: "Justice I will give to all, and favour to such as deserve it...in cases of equity, if I should show favour, except there be obedience, I were no wise man" (qtd. in Kenyon 60).

While Portia replaces the social coercion of the Duke's Christian mercy with an equitable mercy which responds to Shylock's legal defense in kind, the ramifications of both threats are the same for him. To accept Portia's equitable resolution is to surrender his equal legal standing and accede to the existence of a higher legal and social authority. Not surprisingly, then, Shylock spurns Portia's veiled threat, preferring to rely on the power of his position under the common law to indemnify him from the need for royal mercy: "By my soul I swear/There is no power in the tongue of man/To alter me: I stay here on my bond" (240-42). What follows is one of the most dramatic--and ideologically potent--scenes in Shakespearean comedy, in which judgment is pronounced not once but twice, juxtaposing for the audience the results of the competing legal philosophies presented in the first half of the scene.

Portia's deliberations proceed first in accordance with the common law. When she declares the bond forfeit, Shylock esteems her for her knowledge of the law, suggesting the common law's justification of its judges' authority not by their own discretion but by their preeminent ability to administer consistently a time-tested body of law: "It doth appear you are a worthy judge;/You know the law, your exposition/Hath been most sound" (236-38). As the impartiality of the common law requires, Portia's ruling is pointedly faithful to the law of contract, despite her personal desire to offer mercy:

Por: ...lay bare your bosom.

Shy: Ay, his breast, So says the bond, doth it not, noble judge? "Nearest his heart," those are the very words.

Por: It is so. Are there balance here to weigh The flesh?

Shy: I have them ready.

Por: Have by some surgeon, Shylock, on your charge, To stop his wounds, lest he do bleed to death.

Shy: Is it so nominated in the bond?

Por: It is not so express'd, but what of that? 'Twere good you do so much for charity.

Shy: I cannot find it, 'tis not in the bond. (252-62)

Alongside this emphasis on the strict legality of the procedure, however, is the no less insistent emphasis on the materiality of its outcome: the mutilation and almost certain death of Antonio. Present throughout the trial scene, this linking of common-law principle to its horrific results is unmistakable as the scene reaches its climax. As Shylock approaches Antonio with whetted knife, Portia again reminds us that what we see is the result of the court's obligation to proceed according to the law: "The law allows it, and the court awards it" (303). The result is a vivid and ideologically charged illustration of the irrelevance of the common law's human consequences to its inflexible requirements.

The clear injustice of this strictly legal proceeding is, of course, precisely what the flexible, case-specific judgments of the courts of equity claimed to remedy. Before Shylock can strike, Portia halts him—"Tarry a little, there is something else" (305)—and the trial shifts from the procedures of a common-law court to those of equity. Portia's famous "quibble"—Shylock may have his pound of flesh according to the bond, but on the condition that "if thou dost shed/One drop of Christian blood, thy lands and goods/Are by the laws of Venice confiscate/Unto the state of Venice" (309-12)—is a stratagem typical of the equity courts. While the common law traditionally held that if the law granted an individual a right (including the right to take possession of property) it also granted him the means to exercise that right (Andrews 77nA), the courts of equity would often thwart a common-law award by placing such stringent restrictions and protections on the property to be seized as frequently to make the path of least resistance that taken by Shylock, the "voluntary" non-collection of the award (Andrews 66; Keeton 145). The relief and amazement, both on stage and off, at Portia's dramatic aversion of the travesty of justice almost perpetrated by the common law underscores the contrasting results of the two legal systems.

The audience's pleasure in Portia's victory is heightened by the irony of her use of Shylock's insistence on strict interpretation against him: "For as thou urgest justice, be assur'd/Thou shalt have justice more than thou desir'st" (315-16). In doing so, however, Portia has vexed legal scholars by belying the equitable principle most often associated with the trial scene, the mitigation of the strict letter of the law through recourse to its gentler spirit. The reason for this seeming contradiction lies in the political significance of Portia's legal device. While the mitigation of the letter of the law by its spirit or intent was indeed a central tenet of traditional equitable jurisprudence, in Shakespeare's time it was chiefly associated not with royally-controlled equity but with the judges of the common-law courts. Throughout the 16th century, as the limitations placed upon the common law by its codification into written rules became apparent, its judges began to revivify a procedure utilized by their predecessors in the 13th and 14th centuries: the interpretation of a law based on its intent rather than its precise wording (Thomas 515-16). Such an approach was entirely congruent with common-law ideology, basing the authority of the common-law judges to interpret rather than simply apply the law on their unmatched knowledge of

its history and principles.

The practice of common-law equity was, of course, opposed by the equity courts, whose authority was based on the inadequacy of the common law to the requirements of justice and the necessity of an alternate source of justice—royal conscience—to remedy that inadequacy. To correct the letter of the law with its spirit was merely to affirm the ultimate wisdom of the common law. For this reason the principle of intent is emphatically not the basis of Portia's equitable decision. Portia herself discounts intent as a means of correcting the defects of the letter of the law when she pointedly acknowledges that the spirit as well as the letter of the law supports Shylock's claim: "the intent and purpose of the law/Hath full relation to the penalty,/Which here appeareth due upon the bond" (247-49). As the play takes pains to indicate, the intent of the law of contract is to protect the sanctity of contracts from external interference in order to ensure the rights of those who do business in Venice, regardless of the specific contents of those contracts.

The principle that Portia applies in reaching her verdict is not the mitigation of the letter of the law by its spirit, but the equally venerable equitable doctrine which holds that equity may mitigate the unjust results of the law's necessary generality by taking into account the aspects of a specific case of which the law takes no notice. This conception of equity is traceable to Aristotle's *Ethics*, in which he argues that "all law is universal but about some things it is not possible to make a universal statement which shall be correct....this is the nature of the equitable, a correction of law where it is defective owing to its universality" (133; bk. 5, ch. 10). Elizabethan advocates of the courts of equity argued that the common law, in its quest for comprehensiveness and consistency, must operate on a general level and thus could never be made to take account of the "collaterall circumstances" of individual cases (Hake 123). As a result, equity was both necessary and necessarily superior to the common law, overruling the latter when the application of its general rules to a specific case produced evident injustice.

It was this theory of equity that was at the heart of the Crown's claims to legal authority: for even if superior knowledge of both the letter and the spirit of the common law must be conceded to the common-law judges, the individualized requirements of justice were the province of conscience: "the examination of the case by circumstances...doth necessarily appertayne to the high courte of Chauncery...by an Equity that is drawne from the only conscience of the Lord Chauncellor" (Hake 123). The stipulations in Portia's ruling concerning the spilling of blood and the removal of an exact weight of flesh underline the gruesome specifics excluded from the common law's generality even as they correct the injustice produced by that exclusion. Neither the letter nor the spirit of the law make allowances for contracts like Shylock's; it is left to Portia and equity to mitigate the effects of the law's generality by considering the circumstances of the case at hand, overruling the requirements of the law in order to satisfy those of justice.

The sociopolitical consequences of equity's victory over the common law are immediately and decisively registered in the treatment of Shylock by a legal system once again under the control of the ruling class. During the first half of the interpretational contest, Portia in her role as common-law judge sets aside the scene's emphasis on Shylock's cultural difference, addressing him not as "Jew" but by name. The shift to equity, however, returns social difference and discrimination to the law, indicated by Portia's invocation of the statute specifically criminalizing the shedding of "Christian blood." For the remainder of the trial Shylock goes unnamed, referred to only as "Jew" not merely by his avowed Christian enemies but also by Portia, the representative of justice. This connection between equity and social differentiation casts the freeing of Antonio as a reassertion of the distinctions between classes that Shylock's use of the law attempted to erase.

As Shylock tries to leave the court—"Why then the devil give him good of it!/I'll stay no longer question"—he learns that "The law hath yet another hold on [him]" (345-47). Because Portia's equitable reading of the bond has

disallowed the shedding of Christian blood as a contractually protected act, Shylock is guilty of attempted murder and thus subject under the criminal law to the forfeiture of life and property. The social basis of Shylock's predicament is suggested by the statute to which he falls prey, the law "against an alien,/That by direct or indirect attempts/[Seeks] the life of any citizen" (349-51).

Such a law is present in none of the sources of the pound-of-flesh plot; moreover, in late 16th-century England all felonies, including attempted murder, were punishable by death and loss of property no matter who the perpetrator (Auden 228; Keeton 146). There is thus no dramatic or historical justification for

law specifically targeting aliens except to emphasize the link between Shylock's social status and his fate forged by the power of the law to discriminate between—and against—social groups or classes: having resolutely maintained his status as cultural outsider, he now finds himself trapped by it. The pleasure we take in Shylock's resultant comeuppance reinforces the play's implicit rebuttal to the common law's central justification, the economic necessity of a law predictable and impartial even to the "strangers" whose "commodity" is so important to the nation. Punishing Shylock's abuse of the common law with a statute that explicitly discriminates against such "strangers" answers the economic arguments of the rising class by implying that despite its potentially deleterious effect on commerce a certain amount of regulation is necessary for the security and moral order of the state.

The reestablishment of the legal authority of the ruling class is complete when the statute places discretionary judicial power directly in the hands of the monarch: "the offender's life lies in the mercy/Of the Duke only" (355-56). Stripped of the common law's protection, Shylock is subject to Portia's earlier threat: his failure to grant mercy to Antonio puts him at the mercy of the Duke. That this mercy is not Portia's equitable mercy but instead the clemency which was the Crown's prerogative in criminal cases (as indicated by the Duke's use of the word "pardon" [369]) merely confirms the sociopolitical complicity of the two juristic principles.

Their legal power over him established, Shylock's antagonists immediately use it to nullify his socioeconomic threat: the loss of half of his wealth now to Antonio and the other half upon his death to Lorenzo places his economic power in the hands of the aristocracy and its allies, and his forced conversion symbolically completes his absorption by the dominant Christian-aristocratic culture. Notably, despite his earlier denunciation of Shylock's usury, Antonio makes no provision at this point to prevent its continuance; it would seem that the eventual appropriation of any profit made therein by the ruling class does much to mitigate usury's sinfulness. The Christians' true target is not Shylock's economic practice but the social and political ends to which it is employed.

Finally, the trial concludes with a further demonstration of the coercive power granted the Crown by the supremacy of equity that Portia intimates in the "quality of mercy" speech, as the Duke requires Shylock's acquiescence to Antonio's terms, "or else I do recant/The pardon that I late pronounced here" (391-92). Legally at the mercy of his enemies, Shylock can only accede to Portia's ironic query, "Art thou contented, Jew?" (393). Thoroughly humbled, he leaves the court not with the unregenerate curse of his attempted exit prior to the invocation of the law against aliens but with the entreaties of a broken man: "I pray you give me leave to go from hence,/I am not well" (395-96). The trial's last word, however, is given to Gratiano: "In christ'ning shalt thou have two godfathers:/Had I been judge, thou shouldst have had ten more,/To bring thee to the gallows, not to the font" (398-400). This taunting valediction, while reemphasizing the "mercy" granted Shylock in sparing his life, at the same time underlines the contingency of that mercy, suggesting how easily his fate could have been that which Gratiano prefers. That it was not is due less to the principles of equity than to the dramatic and ideological appropriateness of a punishment befitting Shylock's social and economic crime.

Seen from the dual perspective of legal and political history, the threat posed by Shylock to the Venetian social order is fundamentally the same threat that Lord Chancellor Ellesmere recognized nearly twenty years later in what was by then one in a growing number of legal challenges to the Crown's sociopolitical hegemony. Shylock's use of the common law represented to a contemporary audience a question not simply of jurisprudential principle, nor even of economic practice, but ultimately of "the power and prerogative of the King." And despite the efficacy of his defeat at Portia's hands in defining and resolving the conflict for the theater-going public in the interests of royal authority, the ideological battle fought in *Shylock v. Antonio* would prove to be but an early skirmish in the war between the rising and the ruling classes that was to dominate the next century of English politics.

#### NOTE

1/ All quotations from *The Merchant of Venice* are from *The Riverside Shakespeare*, ed. G. Blakemore Evans. References to the trial scene (Act 4, scene 1) will be cited by line number only.

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## DETAILS

<b>People:</b>	Shakespeare, William (1564-1616) Shakespeare, William
<b>Publication title:</b>	Mosaic : a Journal for the Interdisciplinary Study of Literature
<b>Volume:</b>	27
<b>Issue:</b>	4

<b>Pages:</b>	35-54
<b>Publication year:</b>	1994
<b>Publisher:</b>	MOSAIC
<b>Place of publication:</b>	Winnipeg
<b>Country of publication:</b>	Canada, Winnipeg
<b>Publication subject:</b>	Literature
<b>Source type:</b>	Scholarly Journals
<b>Language of publication:</b>	English
<b>ISSN:</b>	00271276
<b>Document type:</b>	Journal Article
<b>Document feature:</b>	References
<b>Accession number:</b>	02187204
<b>ProQuest document ID:</b>	205369413
<b>Document URL:</b>	http://0- search.proquest.com.pugwash.lib.warwick.ac.uk/docview/205369413?accountid=14 888
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