

A CRITICAL ANALYSIS OF THE ROLE OF LAW IN SHAKESPEARE'S *THE MERCHANT OF VENICE*

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Introduction

Emerging in the 1970s and gaining enough traction to be termed a movement by the mid-1980s, the study of law and literature has important implications for the practice of law.¹ Indeed, an ongoing debate ensues about the extent to which the legal discipline is really just “monolithic and hegemonic” as opposed to the discipline of literature which is seen as having a “vague, naive, and undertheorised notion of justice.”² However, this does not prevent the study of law and literature as an interdisciplinary endeavour from having positive impacts on the legal discipline.

The law and literature movement aspires to create an amalgamation of the two fields with the goal that shortcomings of the law are ameliorated to an extent by literary theory. Some theorists, such as Jane B. Baron assert that “lawyers should look to literature as a rich source of certain forms of knowledge that the law is either missing entirely or could use a whole lot more of.”³ She argues that literature reveals knowledge of human nature in its nuanced complexity, “it concerns modes of reasoning that are emotional, intuitive, and concrete rather than detached, logical, and abstract; and, most importantly, it concerns the making of truly moral judgments.”⁴ She further notes that feminists and proponents of the law and lit movement have recognized the law as unable to capture the subtleties of intimate human connections.⁵ If such

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¹ Julie Stone Peters. “Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion” (2005) 120(2) *PMLA* 442.

² *Ibid.*, 442.

³ Jane B. Baron, “The Rhetoric of Law and Literature: A Skeptical View”, (2004-2005) 26 *Cardozo L Rev* 2273, at 2282.

⁴ *Ibid.*

⁵ Jane B. Baron, “Language Matters”, (2000-2001) 34 *J Marshall L Rev* 163, at 163.

is the case, then the knowledge available from literature presents itself as a softening agent that is considerate of the non-zero sum nature of people's interactions in the context of the legal system.

At the same time, Baron critiques the law and literature movement for its fractured nature, arguing that it has undermined itself from within as the strands of the movement, humanist, hermeneutic and narrative, are quite disparate.⁶ She advances that the success of the movement would be better assured if the strands were harmonized. If her above assertions are correct, then a harmonized law and literature movement may be more adept in filing the gaps in the law. In other words, a harmonization of the movement can lead to legal system that is more attuned to the nuanced nature of human connections and also possibly lead to lawyers who are better able to serve clients due to their understanding of the nuances and complexities at play. A text that comes particularly close to such harmonization of the strands in a compelling and cohesive manner appears in the form of William Shakespeare's *The Merchant of Venice*.

Written in late sixteenth century England, *The Merchant of Venice* is a seminal work of Elizabethan literature. At the heart of the play is the bond between a Jewish moneylender, Shylock, and a Christian merchant, Antonio, upon whose credit his friend Bassanio acquires the loan. The enforcement of the bond would allow Shylock to take a pound of the merchant's flesh if he defaults on the loan repayment. When the merchant is unable to meet these demands, Shylock demands the value of his bond. Antonio is taken to trial where judges are unable to free Antonio from his arrangement by codified law. Even though the Duke of Venice urges Shylock to refrain from taking the pound of flesh, the latter refuses to relent. At this juncture of the play, Portia, Bassanio's love and a wealthy woman, arrives at court in the garb of a male lawyer. She proceeds to halt Shylock's knife from carving out Antonio's flesh when she reminds Shylock that he may exact only on his bond for a pound of flesh, and no more, not even a drop of blood.

When it becomes clear that Shylock cannot physically receive his bond, he seeks to collect the repayment of his loan as offered by Antonio's friend in six thousand ducats. Portia prevents this repayment by reminding him that he has already refused that sum and it is no longer available. In addition, she lays charges on Shylock of plotting Antonio's murder, respite from which he can

⁶ Jane B Baron "Law, Literature, and the Problems of Interdisciplinarity" (1999) 108 *Yale LJ* 1059.

gain only by conferring half of his property to the state treasury and the other half to Antonio. Antonio also requests that Shylock convert to Christianity, and this is carried out as a sentence by the Duke's decree. At the trial's end, Shylock leaves the court a defeated man.⁷

There runs a sub-plot in the play, also relating to promise in the context of Portia's relationship with Bassanio. When he leaves her to attend Antonio's trial she entrusts him with a ring for safe-keeping. She makes him promise not to part with it, and if he does, that it should signal his breaking of her trust. Bassanio, while he tries to keep the ring, ends up giving it up to Portia who is testing him while in the guise of the lawyer. When he returns later to her, she demands the ring as proof of his devotion. It appears that she might repudiate her relationship with Bassanio on account of this breach of trust. Eventually, though, Portia relents and resumes her relationship with Bassanio as his newly wedded wife, the breach of his promise forgotten in the throes of their reunion.⁸

An important theme of hate and discrimination courses throughout the play. It is necessary to establish that the predominantly Christian Venetian society, loathes its Jewish residents. Incidents of hatred are perpetrated against Jews routinely. For example, Shylock is spat upon by Antonio at the very opening of the play. The Jews in the play are also sequestered in a ghetto that is locked at night, indicating their otherness and isolation from the dominant community.

In the following paper, the author will analyse *The Merchant of Venice* as fitting into the humanist and narrative strands of the law and literature movement. The humanist strand of the law and literature movement stresses the importance of literature to the exercise of humanizing the law. Baron notes that humanism involves a perpetuation of the following statement:

Literature trains people in the reflection, consciousness, choice, and responsibility that make up the ability to engage in moral decision-making. It does so by presenting artificial, but concrete, universes in which premises may be worked out in conditions conducive to empathy but ambiguous enough to allow for the formation of moral judgment.⁹

⁷ William Shakespeare, *The Merchant of Venice* (USA: Barron's Educational Series, Inc., 1984).

⁸ *Merchant*, note 7.

⁹ Baron, note 6, at 1064.

Baron terms this the “moral uplift” theme of the law-and- literature movement.¹⁰ The narrative strand on the other hand is less concerned with literary works than with the stories that emerge from the legal system, such as “stories told within law by clients, by lawyers, by judges, and by doctrine itself.”¹¹ As Baron describes, “Narrative law-and-lits are interested in those stories not for moral uplift or interpretive insight but rather for evaluating the stories’ persuasive impact, their evidentiary value, and their epistemological implications.”¹² Thus, through the lens of discerning ways in which text would be a relevant read for lawyers (and other members of the legal profession), this paper will explore how the play fulfills:

- (a) the humanist function through the characters of Shylock and Portia. This analysis reveals the law's patriarchal structure and bias against the non-dominant group. The paper will argue that reading the play makes one aware of such structural inequalities that can consequently better equip a lawyer to deal with such issues; and
- (b) how the narrative function is fulfilled through analysis of Shylock's lines at the trial, Portia’s mercy speech, and the subsequent implications of each. It is also apparent in the rhetoric of ‘flesh and blood’ which is a recurring phrase throughout the play, especially in the trial scene.

This paper submits that such a critical reading of *The Merchant of Venice* is beneficial for the legal community as a whole. The intricacies of literature provide readers with a holistic understanding of law as a social force beyond the construct of rules and punishments. However, the reader should read the play with a metaphorical grain of salt. It is submitted that the biases and structural inequalities communicated throughout the play can be juxtaposed in relation to the way in which the outcome of the play is championed as a deliverance of justice. The author does not subscribe to the view, perhaps controversially, that justice is served for the innocent merchant by the advent of a formidable female lawyer, rather that the play vilifies a minority group and perpetuates discrimination in the name of the law, a view that is clarified when one reads the play from this particular critical perspective.

¹⁰ Baron, note 6, at 1064.

¹¹ Baron, note 6, at 1064.

¹² Baron, note 6, at 1064.

I. Analysis of the Humanist Function

In this play, the dominant class does not rule by virtue of wealth, but rather by virtue of their faith, their moral superiority. The Jewish community in Shakespeare's Venice, many of whom are wealthy in comparison to their Christian neighbours, are treated as less equal, and they are isolated as a result. Effectively, this particular reading of the play demonstrates how the law is often complicit in discrimination, even sanctioning it, the reason being that it is controlled and seeks to benefit the dominant class.

A. *Shylock's Oppression*

Of the many instances where the law sanctions discrimination towards Jewish people in the play, the first appears in Act 1. Shylock expresses that he hates Antonio for economic reasons and that he driving down his usury rates. He says in regards to Antonio:

I hate him for he is a Christian,
But more for that in low simplicity
He lends out money gratis and brings down
The rate of usance here with us in Venice.
If I can catch him once upon the hip,
I will feed fat the ancient grudge I bear him.
He hates our sacred nation, and he rails,
Even there where merchants most do congregate,
On me, my bargains and my well-won thrift,
Which he calls interest. Cursed be my tribe,
If I forgive him!¹³

Evidently, Antonio is openly defaming Shylock, an act that might arguably be reprimanded by law. However, there is no mention of the protection of the law for Shylock, even as his livelihood is jeopardized by the acts of Antonio. While the story is set in Venice, Shakespeare was writing in late sixteenth to early seventeenth century England. The extent of Shakespeare's understanding of law is unclear, but at the time, there existed an offence of defamation in Anglo-

¹³ *Merchant*, note 7, at [1.3.35-45].

Saxon law with cases brought before Royal Courts until 1641.¹⁴ Thus, it is possible to make the argument that there was legal protection accorded to the reputation of a person from its defamation by another. However, in this case such protection was unavailable due to Shylock being a Jewish person who inherently faced discrimination from the state. In fact, Jews who lived in Venice in the sixteenth century faced state enforced oppression. For instance, they were made to live singularly within ghettos that were locked at night, clearly delineating their subservient status in comparison to Christians who had no want of physical mobility. As Susan Oldrieve discusses, "Jews [were] the property of their rulers."¹⁵ Under the assumption that Shakespeare was adhering to English law as he wrote the play, and "placed his story in Venice as part of his poetic license."¹⁶ She refers to the mid-twelfth century *Laws of Edward the Confessor* which state the following:

All Jews, wherever in the realm they are, must be under the King's liege protection and guardianship, nor can any of them put himself under the protection of any powerful person without the King's license, because the Jews themselves and all their chattels are the King's. If therefore anyone detain them or their money, the King may claim them, if he so desire and if he is able, as his own.¹⁷

In this regard, Jews were likened to chattels or objects upon which the King and state could assert ownership. In much the same vein, Shylock's status under the law as subservient is evident in the type of treatment he receives from the Christians; it includes being spat upon and defamed with no legal recourse. The above quote also indicates the lack of freedom that a Jew was afforded under the laws, especially with regard to choice of leadership. By disallowing a Jew to put himself under the protection of a powerful person without the King's license, the law indicates that a Jew had little freedom of social mobility in addition to their already restricted physical mobility. Additionally, while it may be categorized as a foreshadowing of the plot, the line "I will feed fat the

¹⁴ RC Donnelly, "History of Defamation," (1949) *Wisconsin Law Review* 99.

¹⁵ Susan Oldrieve, "Marginalized Voices in 'The Merchant of Venice'" (1993) 5 *Cardozo Stud L. & Literature* 87, at 87.

¹⁶ Oldrieve, note 15, at 87-88.

¹⁷ Oldrieve, note 15, at 87-88.

ancient grudge” reveals that Shylock's vengeance does not really stem from Antonio's defamation and but rather from the very deep persecution faced by Jews in Europe as a whole.¹⁸

Next, Shylock's seminal “Hath not a Jew” speech works to reveal how the law and society have oppressed the Jewish population in Venice. Shylock's speech plays an important role in the humanist strand of theory for this reason. Consider these lines:

I am a Jew. Hath
not a Jew eyes? hath not a Jew hands, organs,
dimensions, senses, affections, passions? fed with
the same food, hurt with the same weapons, subject
to the same diseases, 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. 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.¹⁹

Shylock's speech can be classified as transpositional discourse, a concept which N. Bruce Duthu applies to his analysis of Native American writings from the nineteenth century. Duthu states that “the force of transpositional discourse is ethical, because it calls attention to underlying principles of similarity which provide the context for certain kinds of behavior.”²⁰ Shylock's lines demonstrate Duthu's concept of “mirroring where each entity (person, group, or political unit) might occupy the space of its opposite.”²¹ Essentially, Shylock

¹⁸ *Merchant*, note 7, at [1.3.35-45].

¹⁹ *Merchant*, note 7, at [3.1.45-60].

²⁰ N. Bruce Duthu, “Incorporative Discourse in Federal Indian Law: Negotiating Tribal Sovereignty Through the Lens of Native American Literature” (2000) 13 *Harv Hum Rts J* 141, at 149.

²¹ Duthu, note 20, at 149.

begins by listing physical attributes that are common to both religions before listing comparisons of a more sentient nature. Ultimately, he arrives at the conclusion that a Jew is no different from a Christian and in being wronged he should seek revenge as the latter would.

The implication here is that Jews have suffered at the hands of the Christian population. As discussed above, Shylock's revenge is not just for a default on loan repayment, but an attempt of retribution against his oppressors. What this reveals in terms of the humanist account is that even a perpetrator may be acting out of indignation of justice rather than pure malice or vengeance. In this way, a critical reading of the text unveils the dual nature of both Shylock and Antonio. As Shylock is at once a victim of the Venetian justice system and one who tried to enforce it, Antonio who is portrayed as the victim held at Shylock's knifepoint, is a member of the powerful and superior Christian patriarchy. By highlighting the ways in which both characters have a dual nature, the play juxtaposes the status of the Christian patriarchy to the minority Jews, the former being seen as just even when they are in breach of the law and the latter being seen as unjust when they are acting to uphold the law. Consequently, the play works to shed light on the aspect that Jews as a religious minority had always been persecuted and are the true victims regardless of which party yields the knife.

B. The Oppression of Women

Much like the Jewish population, women face both discrimination and oppression in *The Merchant of Venice*. The tone is set quite early when Gratiano exclaims “silence is only a virtue in dried ox tongues and old maids.”²² Meant in jest, presumably from Bassanio's light reaction, this line reflects the prejudice towards women, especially those who might be considered outspoken. It immediately establishes the subservient status of women, and unworthy of having opinions. Alternatively, the specification of “old maid” reflects societal notions that an unmarried and older woman might be a dangerous entity, ones that should be silenced rather than heard. This may indicate a clever foreshadowing of Portia's character, who is both outspoken and unmarried, although not necessarily old.

²² *Merchant*, note 7, at [1.1.114].

When Bassanio describes Portia to Antonio, he hints that the rich heiress may be his salvation from debt.²³ Arguably, Bassanio also describes her fair hair and beauty, but ultimately she is a lottery ticket for him and this is clear from his discussion about debt in the preceding lines. This reflects the notion in Elizabethan society where a woman did not have any control of her wealth, and upon marriage it would become the property of her husband.²⁴ In this way, the status of women is not far from property, and of being inferior, as that of a Jew was held to be. Furthermore, upon her marriage to Bassanio, Portia explicitly says that she and her possessions all belong to Bassanio now.²⁵ She seemingly declares this out of love and gratitude but the underlying point appears to be that a woman's happiness lies in being owned by a man. This is both ironic and tragic because it is Portia's efforts that have saved Antonio when Bassanio's actions, taking the loan from Shylock, is at the root of the entire debacle. Rather than lay claim to her expertise at the bar, Portia purports to give up all her possessions to her husband instead. However, one must consider Portia's position by virtue of her sex. When Portia gives Bassanio the ring, the giving of the ring is "a representation of Portia's acceptance of Elizabethan marriage which was characterized by women's subjection, their loss of legal rights, and their status as goods or chattel."²⁶ Alternatively, this declaration could indicate a more mutual sort of arrangement whereby she is asserting some control over Bassanio, as he will assert over her property. Nevertheless, Portia pays a high price for this by giving her husband all that she owns.

Portia refers to the will of her dead father that does not permit her to choose her own husband.²⁷ The will is testament to the ways in which men asserted control over women. As Oldrieve points out, "Portia is her father's property: even from the grave he has the legal and moral right to decide the most intimate concerns of her life."²⁸ The fact that she then has to honour his will is evidence of the way in which the law discriminated against women by allowing such documents to have legal force. Also, in the context of estates

²³ *Merchant*, note 7, at [1.1.165-175].

²⁴ This was achieved by a policy of coverture, whereby the wealth of a married woman was considered to be the wealth of her husband upon marriage. Joan C Williams. "Married Women and Property." (1994) 1(2) *Virginia Journal of Social Policy & the Law* 383.

²⁵ *Merchant*, note 7, at [3.2.150-175].

²⁶ Oldrieve, note 15, at 91.

²⁷ *Merchant*, note 7, at [1.2.20-21].

²⁸ Oldrieve, note 15, at 88.

law, a will has to have been formulated by the testator in a conscionable state. However, the play hints that Portia's father devised his oppressive will at his deathbed. Regardless, the patriarchal Venetian society values a man's will more than the freedom of choice of his only living daughter. Moreover, Portia also is seeking to honour his will, an example of the internalization of oppression. Foucault's theory of the Panopticon describes a prison structure where a circular arrangement of prison cells is overlooked by a single guard tower placed at a certain vantage point.²⁹ The prisoners are all able to see the guard tower but not the guards that are inside, but they are aware that they may be under surveillance. With this notion of constant surveillance in mind, the prisoners alter their behavior and act in ways to police themselves.³⁰ In theory, the notion of a constant surveillance causes the prisoner to internalise the surveillance, somewhat similar to the way in which Portia seeks to honour her father's will because it is her duty as a good Christian to do so, and because she has internalised the surveillance of an omniscient Christian god in her own mind. Ultimately, whether Portia can be seen as choosing to honour the will because because she can see no other option, or because she feels compelled by the narrative of good Christian duty, depends on the reading of the play. A critical reading might lead one to conclude that Portia, an unmarried young woman, wishes to honour the will because she knows that without a husband or other patriarch in her life her position in society is rather precarious. This unnecessary constraint of female autonomy is at the heart of the humanist reading of the play.

Patricia L. Bryan writes that the law is male-oriented and controlled by men, and while her focus was not Shakespearean, her conclusion can be readily applied to *The Merchant of Venice*.³¹ Even as Portia is a pivotal character in the narrative, she may only be so in male garb. Had Portia walked in as herself to represent Antonio, it is likely that the audience would have balked at Shakespeare's plot or written it off as comic relief. Still, it is important to note that in spite of the oppression, just as the Jew poses resistance to the deplorable treatment he is accorded, Portia too tries to resist the hold of the patriarchy upon

³⁰ Michel Foucault, "Discipline and Punish, Panopticism" in Alan Sheridan ed., *Discipline & Punish: The Birth of the Prison*, (New York: Vintage Books, 1977).

³¹ Patricia L. Bryan, "Stories in Fiction and in Fact: Susan Glaspell's A Jury of Her Peers and the 1901 Murder Trial of Margaret Hossack" (1997) 49 *Stan L Rev* 1293.

her life. For instance, Portia tells Nerissa to put a wine glass on a wrong casket to deter one of the suitors from the correct one as she knows he is an alcoholic.³² This is important in demonstrating how Portia subverts her father's will to an extent to direct her future at least to exclude some suitors. Thus, Portia struggles against the dominant Christian patriarchy in her own way. At the same time, it is not enough to say that the struggles of women are akin to those that the Jews face vis-à-vis the dominant group. As Oldrieve, points out "Portia could choose to ignore her father's will and dispose of herself according to her own wishes. Shylock's situation seems much less flexible. He must convert or die."³³ What this reveals that even in the sort of oppression that is faced by women in the play, they have certain advantages over the Jewish man. In effect, the dominant class is discriminatory even in its discrimination towards non dominant groups, it appears to be xenophobic first and sexist second.

It is also necessary note the divergent struggles of Jewish women. The oppression of minority Jewish women, is portrayed through the character of Jessica. In the aftermath of her elopement, Shylock wishes his daughter dead and laments the loss of his wealth.³⁴ There is an interesting nuance to be noted here. While the oppression of religious minorities is a theme that runs through the play, the oppression of minority women at the hands of minority men cannot be dismissed. On the contrary, there is reason to suggest that Shylock does not really lament the loss of wealth but that of his only child to his oppressors. There are different but intertwined notions of oppression operating here. Shylock is perceived as an oppressor by the Christians in the play because of his conduct towards Jessica, and in some ways, this is considered as grounds for the Christian patriarchy to find him deplorable. At the same time, the Christian patriarchy oppresses women of the dominant class and also discriminates against Jews. Thus, there is a complex network of oppression at work here and simply being critical of one group such as the Jewish man, does not preclude criticism of other groups.

C. Portia's Mercy Speech

As a mode of humanist exercise, Portia's mercy speech demonstrates that legal reasoning needs to be more than abstract reason and instead must account for

³² *Merchant*, note 7, at [1.2.80].

³³ Oldrieve, note 15, at 88.

³⁴ *Merchant*, note 7, at [3.1.70].

other values that humans hold to be important. Portia likens the addition of mercy to justice to natural and ‘Godly’ power, in effect elevating mercy to the highest power and position in Christian Venice. She also states that no person could achieve salvation if only justice prevailed; instead she calls for justice to be “seasoned with mercy” and urges that Shylock free Antonio from paying the diabolical bond.³⁵ However, Shylock refuses to acquiesce and is therefore projected as the unmerciful character; his already deplorable reputation is worsened when he openly demands on the bond's repayment.

Furthermore, the law enforces Antonio's request that Shylock convert his faith when there are actually no grounds for its enforcement. This has a number of implications for the role of law and religion as it is portrayed in the play. First, this implies that Shylock's Jewishness is the evil behind his villainous character, and to remedy the evil he must accept Christianity. Also, Posner notes here that the bond draws upon the myth that Jews were thought to drink the blood of Christians on Passover, thus further vilifying Shylock on account

³⁵ *Merchant*, note 7, at [4.1.185-190].

Portia: 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 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. 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. I have spoke thus much
To mitigate the justice of thy plea;
Which if thou follow, this strict court of Venice
Must needs give sentence 'gainst the merchant there.

of his faith.³⁶ Second, the forced conversion of Shylock reveals the manipulation of the law by the dominant group to oppress the minority. Since Portia had been acting thus far to affect actions that were purely legal, one wonders why it is not consulted before such a decision is declared in Shylock's case. Oldrieve presents some interesting insight on the forced conversion when she states that:

Shylock's conversion reflects an allegorical representation of harmony; that because Shakespeare knew no Jewish people, he thought of the conversion of a Jew primarily in theological and abstract terms-³⁷

This is an important point to consider when analyzing the law's imposition of Christianity upon Shylock because the concept of conversion may have been a stylistic choice for Shakespeare rather than one with significant ramifications for the meaning of the law for oppressed minorities at the time. At the same time, the author would argue that it is not enough to declare the conversion a theoretical musing of the playwright because as Oldrieve herself writes:

Religious conversion in Renaissance Europe was inextricable from political and social conformity and practical daily living, both for Christians and for Jews. If a person wanted to be socially accepted, politically safe, and economically stable, conformity to the politically correct religion of the day was imperative.³⁸

Being a Jew, Shylock was immediately cast as an outsider, and his forced conversion reflects the view that Christianity was considered the superior religion, one which had the backing of the law as well. Moreover, it is important to note the role of precedent that Portia had earlier referred to when she argued that Shylock had a right to exact his bond because to rule otherwise would set the precedent that not all bonds would be enforced by the law. It is interesting to note then, the type of precedent that the eventual ruling in the case creates. Will all future defaulters of loans have a remedy against the lender if the latter wants a remedy that is seemingly unmerciful? Or will the punishment for seeking the enforcement of a bond be forced religious conversion? These are questions that are not addressed in the play; they nevertheless lurk in the aftermath of the trial

³⁶ Posner, *supra* note 12, at 106.

³⁷ Oldrieve, note 15, at 95.

³⁸ *Ibid.*, at 96.

and hint that the oppression and discrimination of the Jews has not ended with Shylock's clemency given the loss of his wealth, his faith, his reputation, as well as his sociality among peers and money lenders.

D. The Manipulation of the Law Affects an Unequal Status Quo

The humanist function of law and literature is also fulfilled through the revelation in the play of the way in which the law is manipulated by certain groups to affect an unequal status quo. Undoubtedly, the upper and dominant class in Shakespeare's Venetian society has a very volatile relationship with the law: they are at once at its mercy and its manipulators. For instance, the day before Antonio's trial, he converses with Solanio about the law. When Solanio suggests that the Duke will not require Antonio to pay Shylock's bond, Antonio says:

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 his state;
Since that the trade and profit of the city
Consisteth of all nations.³⁹

In essence, Antonio notes that the Duke cannot pardon his bond because that would imply that all of the other bonds and interests that borrowers have pledged to moneylenders in Venice and outside of it are not secured by the backing of the law. The justice of the state that would be so impeached as Antonio declares, would be the resulting economic insecurity and uncertainty of Venetian society. As Christopher A. Colmo notes, "Venice is, if not a city of strangers, then at any rate one in which the tone is set by dealings between strangers."⁴⁰ What this reveals is that the notion of impartial justice or the law giving effect to a contract to enforce some sort of moral obligation can likely be ruled out in this context. In the alternative, this line also reveals how the law

³⁹ *Merchant*, note 7, at [3.3.30-35].

⁴⁰ Christopher A. Colmo, "Law and Love in Shakespeare's *The Merchant of Venice*" (2001) 26 *Okla City U L Rev* 307, at 309.

can be used as a tool of oppression rather than a facilitator of justice. Joseph Raz's sharp knife analogy is particularly relevant here as it recognizes the ability of the law to cause both moral and immoral ends.⁴¹ It is clear that Shylock's bond is heinous and would lead to the death of Antonio-the immoral end, and yet the law insists on its repayment-the moral end. What this brings to fore is the idea of the rule of law as having some inherent value. Considering how Shylock is able to bring a case to the Venetian court in spite of his being a hated minority, it is apparent that the rule of law facilitates certain fairness values. Moreover, as John Finnis discusses, "The object of justice, as indeed the object of all community judgments of the practical reason, is the common good which means the flourishing of all the members of the community."⁴² In this way, the rule of law promulgates a vision of justice that is meant to benefit all of society, even the hated minority man such as Shylock himself. This necessarily creates a dilemma because while the rule of law seeks to mete out justice, the law itself having been shaped and influenced by a dominant class strains to cater to that class, and finds injustice to have occurred when a member of such class meets an unfavourable end as Antonio was going to meet prior to Portia's arrival and rescue.

Bassanio, too, attempts to manipulate law at Antonio's trial when he speaks the following lines:

And I beseech you,
Wrest once the law to your authority:
To do a great right, do a little wrong-⁴³

These lines see Bassanio asking for the law to be just by breaking the law itself. However, Portia acting as the lawyer answers:

41 According to Raz's analogy, "A sharp knife can achieve various ends, some moral and some immoral. For example, a sharp knife could be used to free someone from bondage. However, it could also just as easily be used to hurt someone. The knife itself then, although having value in that it can cut objects, is neither moral nor immoral. Similarly, the rule of law is neither moral nor immoral. Yet, it has value. Devrin Froese, "Professor Raz, the Rule of Law, and the Tobacco Act", (2006) 19 *Can J L & Jurisprudence* 161, at 176.

⁴² Bruce Renton, "Finnis on Natural Law", (1981) 11 *Kingston L Rev* 30, at 68.

⁴³ *Merchant*, note 7, at [4.1.210].

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.⁴⁴

Portia echoes Antonio's earlier statement where he laments that “the Duke cannot change the course of law” and asserts that the law cannot change for him.⁴⁵ Evidently, Shakespeare draws out the nuanced characteristic of law as almost a double edged sword that the characters each try to manipulate for their own ends.

At the climax of the play, Portia wins Antonio’s case. While this may be hailed as a clever feat by Portia, if the law is what is at issue here, arguably the court should have enforced the payment of the bond. It is gruesome and seems unjust; however, barring the parole evidence rule, it would appear that the parties had intended that blood might be spilled if the flesh was to be extracted. A judge only has to consider the reasonable expectations of each party to rule that Shylock never intended to take only a pound of flesh, and that Antonio was aware that his blood might be spilt, or that he may die. Ultimately, when Portia finds the loophole, it appears that the justice is being upheld in the play through the law but the law is only used to perpetuate the status quo of Venice.

E. Lessons for the Lawyer

The crux of the humanist strand of the law and literature movement is aptly summarized by Baron as follows:

Literature is needed to humanise lawyers...I will call this the “moral uplift” theme of the law-and literature movement. It has several components: First, lawyers need to know more about human nature-especially about people different from themselves-than they can learn on their own, and literature can be a source of this knowledge. Second, lawyers tend to rely excessively on ab-

⁴⁴ *Merchant*, note 7, at [4.1.215].

⁴⁵ *Merchant*, note 7, at [3.3.30-35].

stract reason over forms of understanding that are emotional, intuitive, and concrete, and literature can help correct this imbalance. Third, lawyers require training in making moral judgments, and literature can be a part of the necessary moral education.⁴⁶

One of the problematic aspects of this characterization of literature under the humanist strand is the implication that without literature, lawyers will not be humanised. With due respect to the humanist position, the author of this paper would argue otherwise. Instead, this paper takes a more modified approach to literature as a significant and useful tool that can help in the moral education of a lawyer or judge. Therefore, the author does not purport to claim that reading *The Merchant of Venice* humanises the otherwise inhuman lawyer, only that reading can work to reveal certain truths about the law that can guide lawyers to carry out their roles in the facilitation of justice. Without relying on any arguments for moral superiority of a lawyer who has read the play, it is possible to trace the adverse results of a law that is shaped by a dominant class with restrictive ideology. For example, the Christian patriarchy in the play sees nothing unlawful happening when Shylock is forced to convert his religion to Christianity in exchange for his life when in fact this is a form of deep oppression. Another example is the law of coverture that converted a woman's property into that of her husband's upon marriage. Such acts reflect the law's unjust outcomes and it is such outcomes that a critical reading of the play would highlight for a lawyer, arguably prompting them to look beyond the surface of the law and discern its less just ends.

In the context of the play, the tension between the dominant group and minorities is evident in Shylock's struggle for justice. For a lawyer, this reveals the complex nature of the law and how it is given to both bias and manipulation by different groups. *The Merchant of Venice* contradicts the age-old adage that the law is *not* blind and, as a literary work, the play highlights the dangers of classifying the law as such. In essence, if the law is projected as an abstract and objective concept, it fails to account for the struggles and stories of those who are oppressed by the dominant group by way of the law. One of these struggles is Anti-Semitism, a theme that runs throughout the play and not only reflected in the conduct of other characters towards Shylock. As Georgina Crawford submits, "anti-Jewish association is forged throughout the course of

⁴⁶ Baron, note 3, at 1061.

the play by semantic means” and by repeatedly referring to Shylock as “the Jew,” Shakespeare creates a caricature of the Jew and this reinforces his otherness from the rest of Venetian society.⁴⁷ This reflects the overall condemnation of Jews as a despised group, therefore affecting an education about human nature for a lawyer.

Apart from illuminating the cause for minority rights, another lesson that a critical reading of *The Merchant of Venice* is as follows: the law is not actually humanized through the operation of mercy in institutions of the law. Scholars such as Crawford assert that the law is humanised at Antonio's trial: the textual connotations provide evidence of a skewed approach to championing the jurisdiction of equity over the inhuman and formalistic laws previously upheld.⁴⁸ Others such as Joseph Kohler have hailed the speech of Portia “as the triumph of true law over the caricature of law”.⁴⁹ However, these views fail to account for the entire play as a literary text, and instead focus on the specific lines to support their respective assertions. For, if the play is to be read or watched in its entirety, one arrives at a drastically different conclusion. In effect, Portia's speech implores the seasoning of the law with more than abstract legal reasoning, but, it is submitted, Portia leads Shylock into a trap and Shylock's refusal to show Antonio any mercy only seems to legitimise later sanctions against him. Portia presses for the sanctions even as it cannot be disputed that the whole course of the criminal proceeding is, according to any standard, “illegal, unjust and immoral.”⁵⁰ As Clayton Koelb writes, “the result is that Portia offers Antonio justice, while Shylock is to receive only the law. And the audience accepts that solution as part of a larger sort of justice, poetic justice.”⁵¹ Therefore, in the aftermath of his refusal, he is further painted as an unmerciful villain when in reality Shylock has continuously been wronged by the Christians in the play.

⁴⁷ Georgina Crawford, “Shylock's Bond in Shakespeare's *The Merchant of Venice*” (2005) *UCL Jurisprudence Rev* 240, at 251.

⁴⁸ Crawford, note 32, at 243.

⁴⁹ Th. Niemeyer, “The Judgment against Shylock in the *Merchant of Venice*” (1915) *Michigan Law Review*, 14, at 20.

⁵⁰ *Ibid*, at 27.

⁵¹ Clayton Koelb, “The Bonds of Flesh and Blood: Having it both ways in *The Merchant of Venice*” (1993) *5 Cardozo Stud L & Literature* at 111.

Moreover, Crawford suggests that the dispute resolution which occurs in the play has a deeper sociological meaning in that it illuminates “Rawls' concept, that one important aspect of justice is its ability to furnish society with a set of agreed values,” arguing that the use of mercy leads to a “reconciliation of the disparate values held by the two main protagonists,” values that include the overtones of religion no doubt.⁵² In other words, mercy and an allusion to the superiority of natural law as given by religion lead to the conclusion of pardoning Antonio's bond, and acquittal of Shylock from the alleged conspiracy to murder Antonio. However, this conclusion highlights a difficulty in the set of values chosen to promote justice when there is a privileging of Christianity over Judaism in the outcome of Antonio's trial. Crawford suggests that mercy reconciles the different values of law and justice, focusing on a more equitable outcome that unites the sparring religions, but her argument falls short when one considers that Antonio has lost nothing, and instead gained at the detriment of Shylock; surely such an arrangement cannot be considered equitable or merciful.

The play does not champion equality. Thus, what a lawyer could learn from a critical reading of the play is that the law is not necessarily the saviour for those who face injustices but that it may in fact be a facilitator of those injustices. This could be an important moral education for lawyers which urges them to always evaluate their actions in light of the structural institutions they are serving, if they are to be complicit in the facilitation of justice.

II. The Narrative Function

This section argues that the legal narrative as presented through Shylock's soliloquy and Portia's dialogue with Bassanio at the end of the play reflects important values and reveal the true experiences of the characters. As discussed earlier, the narrative strand of law and literature theory is concerned with the stories that come out of trials, case reports, witness testimony, etc. and proponents of the narrative law and literature faction argue that such stories are important owing to their “persuasive impact, their evidentiary value, and their epistemological implications.”⁵³

The author's argument slightly alters this approach to include narratives that arise out of the trial of Antonio, which is itself found within a literary text.

⁵² Crawford, note 47.

⁵³ Baron, note 6, at 1064.

While this is not the conventional source of narrative that this strand of law and literature theory refers to, it will be evident, nonetheless that the analysis is relevant to Shylock's soliloquy and Portia's court at Belmont in Act V. In effect, the following section will analyse the narratives that emerge in the play, to assert that they reveal important notions of justice and fairness when read critically.

A. *Shylock's speech*

Through Shylock's lines during the trial, he reveals the lived experience of Jews at the time. He exclaims, "What judgments shall I dread, doing no wrong?" when the Duke implores "How shalt thou hope for mercy, rendering none?"⁵⁴ Portia at this point has not entered the trial scene and thus far Shylock has been accused of doing no wrongs, so it is surprising that the Duke implies that Shylock should be merciful so that he may receive mercy himself. It is possible that the Duke is referring to mercy from God, but that does not negate the fact that Shylock has been thus far persecuted on account of being a Jew. Shylock's quick retort reflects the notion that Jews were aware of the discrimination and the inherent injustice of it, and Shylock in his case sought to rebel against that injustice.

Whereas Shylock's "Hath not a Jew" speech was an exercise in transpositional discourse, his exchange with the Duke and Portia at Antonio's trial reflects a subjugated discourse. As Duthu defined it, subjugated discourse "calls attention to differences, especially those of power, prestige, and purpose. Whereas transpositional discourse is fundamentally horizontal, subjugated discourse is inevitably vertical, but the placement of entities on the vertical axis is unstable."⁵⁵ While this, too, was written in the context of Native American writings, it is nonetheless applicable to *The Merchant of Venice*. The Duke's admonitions to Shylock to be merciful and Portia's later condemnation of Shylock to poverty and loss of his Jewish faith reveal the inherent differences of experience between the powerful Christians and the Jews in Venice.⁵⁶

⁵⁴ *Merchant*, note 7, at [4.1.89-90].

⁵⁵ Duthu, note 20, at 149.

⁵⁶ Also, Shylock refers to the Christian's ownership of slaves to point the finger at the Christian patriarchy which holds itself to be just and merciful. Shylock essentially calls out the Venetians on their ownership of slaves, and the injustices that they commit which are shielded by the law in terms of "property ownership". When in turn he asserts property ownership over Antonio's pound of flesh, the narrative of hatred and revenge tell us much about the suffering of the Jew at the hands

B. Flesh and blood rhetoric

Of the various tropes and literary techniques, this paper focuses on one of the strongest symbols used in the play to make the point that the narrative strand is satisfied by this text. Essentially, the flesh and blood symbolism reinforces the portrayal of the Jew as unjust and evil. As Koelb discusses, the phrase “flesh and blood” is recurring in *The Merchant of Venice* and are almost always found together in speech.⁵⁷ In the play, the phrase ‘flesh and blood’ is more often used to denote ties of kinship than it is to refer to the bond between Shylock and Antonio. Thus, Shylock's insistence on taking a pound of Antonio's flesh connotes a sinister motive that is against ties of kinship and family, one that might even rip apart the social fabric. At the trial, when Portia tells Shylock that he cannot take even a drop of Antonio's blood, she is reinforcing the inseparability of the two. However, as Koelb suggests, “the flesh specified in the bond necessarily entails logically, as it includes physically, the blood of which it is formed” an argument that Shylock's lawyer would have made had been represented by such counsel.⁵⁸ Shylock, however, is self-represented and anticipates that justice will be his ally in the enforcement of the bond, an outcome that eventually does not occur.

Moreover, the inability of Shylock to enforce his bond due to the inseparability of flesh and blood is a reaffirmation of the power of the dominant class, and his forced conversion as earlier discussed is a further seal that suggests that Venetian society is not to be torn apart by the likes of Jews. Of course, what this really portrays is heightened anti-Semitism and extreme xenophobic sentiments towards those who were considered outsiders.⁵⁹

of the hypocritical Christian patriarchy. Shylock's exchanges with those present at the court reveal a deep frustration of the Jewish minority against the dominant society and its norms.

⁵⁷ Koelb, note 51, at 108.

⁵⁸ Koelb, note 51, at 110.

⁵⁹ In contrast, the notion of colonialism is ever-present in the background of the play in the context of the merchants.⁵⁹ Much like Antonio comes to Shylock and has no qualms about borrowing money from a Jew, in the same way foreign bodies are not considered dangerous if they do not pose a challenge to the status quo. Because Shylock makes an attempt to revert the pattern of oppression towards Jews, he is classified as villainous not only to Antonio but to the overall society of Venice.

C. Portia's Role

Finally, Portia's role in *The Merchant of Venice* has oft been hailed as an early feminist feat. However, from the very point that Portia dons the garb of a male lawyer, she acts within the framework of the male, patriarchal legal system.⁶⁰ In effect, Portia's adoption of the male guise is reflective of the notion of liberal feminism where a woman's ability to participate in the men's world will mark her success. Presumably, Portia is educated, and her ability to travel to Antonio's trial reveals that she has access to monetary resources. This is in contrast to other female characters in the play such as Jessica who have to flee from the patriarchy as they are unable to manipulate it for their own ends as Portia does.

Here it is useful to consider the parallel ring plot as a marker of women's resistance to the patriarchy. When Portia returns to Belmont after the trial, she essentially holds a "court" of her own. As discussed, the instability of the hierarchical ordering as formulated in the concept of subjugated discourse entails that the oppressed can in some cases gain the more powerful position. This is evident in Portia's court- in a way, she prosecutes Bassanio for failing to keep his promise of keeping the ring. By this point she has become aware of her own status in Venetian society and in her relationship with Bassanio but she refuses to accept this. The ring that she had made him promise never to part with was given away by Bassanio with little resistance and this reveals to Portia that Bassanio and the patriarchy will marginalise her in spite of the intelligence she has proven she is capable of. She does not accept Bassanio in his role as her husband and owner and instead refuses to promise sexual fidelity and asserts her control over her own estate without any mention of belonging to Bassanio. Oldrieve suggests that this is the point where Portia has won, and the world of men is forced to reckon with the power and importance of women.⁶¹ Colmo, too, suggests that Portia's true victory is her resistance against the "tyranny of fathers" and that she achieves this through manipulating her own father's will to help Bassanio choose the correct casket, and also when she raises questions about her own fidelity to Bassanio, thereby questioning his very legacy by way of children.⁶² However, this argument is still problematic as Portia accepts Bas-

⁶⁰ While her mercy speech may be seen as respite from her techniques of "male" lawyering, as I have argued earlier in the paper, this speech was more a trap for Shylock than a case for mercy.

⁶¹ Oldrieve, note 15, at 100.

⁶² Colmo, note 40, at 314.

sanio at the imaginary trial. Essentially, Portia takes a stand against the patriarchy but eventually backs down, and whether she does this out of love or awareness of structural inequalities is circumspect.

An analysis of the law using literary interpretation methods reveals that the law is engaging in the creation of certain rhetoric that privileges one group over another. By reading the play and considering the references to ‘flesh and blood’ one is able to discern how the rhetoric created an environment where the prospect of separating the two was essentially construed as a threat to the society of Venice and the Christian patriarchy. Through the literary interpretation which pays special attention to the way in which the phrase is utilized, the lawyer becomes aware of how the law can work to alienate some while perpetuating the dominance of others. Arguably, the play works to illuminate the manipulation of the law at the hands of the powerful, a theme that surfaces at Antonio's trial. This notion is reinforced with the fact that the play was used as Anti-Semitic propaganda and is indicative of how literature can influence the law directly, thereby alerting a lawyer to the dangers of certain texts and certain interpretations of those texts.

Ultimately, the narrative revealed by Shylock at trial and the imaginary court that Portia holds at Belmont reveal significant trends in the way the law affects the lives of minorities. While Shylock points out the various injustices that the dominant group perpetrates, Portia holds her own court to reveal the injustices that plague women.

Conclusion

The text is remarkable in the manner of which it reveals deep-rooted injustices in the exercise of the law, highlighting the difficulties in living under a dominant moral code. The play presents itself as an essential read for the ways in which it reveals the injustices of the law. The author rejects the reading of the play as a triumph of feminism, given the eventual submission of Portia.

As Robert Weisberg articulates, “it is obviously desirable that law should be informed by the voice of the concrete, the particular, the empathetic, the passionate.”⁶³ *The Merchant of Venice* effectively brings the voice of empathy and passion to the law's otherwise concrete and particular voices in sixteenth century Europe. Through the characters of Shylock and Portia, the account of

⁶³ Colmo, note 40, at 1079.

their oppression, and their simultaneous resistance to oppression, Shakespeare crafted a piece which implores the critical reader to scratch the proverbial surface of law to unearth its contradictions and nuances.

Evidently, the proposed critical reading of the text ties in both humanist and narrative stands of law and literature theory to reveal the disparate impact of the law on different socioeconomic groups, which translates into an important lesson for lawyers. Lawyers and others in the legal profession arguably walk away from the play with, at the least, an awareness of the structural injustices of the legal system if not sympathy for Shylock and a lingering feeling that justice did not prevail.