THE (COMIC) TRAGEDY OF FORMALISM
IN SHAKESPEARE’S THE MERCHANT OF VENICE

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ABSTRACT

William Shakespeare’s The Merchant of Venice addresses various legal issues and themes, with perhaps none being so pronounced as the struggle between formal positivism and natural law. Ostensibly, The Merchant of Venice dramatizes the dangers of rigid adherence to formalism and the triumph of natural law through Portia’s legal defeat of Shylock. On a more profound level, Shakespeare’s portrayal of the Venetian trial scene raises grave concerns about the essential nature and manner of that defeat. While Portia is originally positioned as a sympathetic proponent of natural law, she is soon revealed as one of its grossest violators. Thus, the play ultimately functions as a cautionary exposé on the hypocrisy of power, the abuse of fair process, and the grim reality that the law may be exploited to malicious and unnatural ends.

This paper begins by addressing the philosophical foundations of natural law, and the profound influence that natural law bore on English Renaissance writers. This is necessary to frame the next section of the paper, which explores the tension between natural law and positive law in The Merchant of Venice. Here it is argued that Shakespeare’s portrayal of natural law in the Act IV trial scene operates as a dramatic reflection of the English legal system and its inherent failings. The paper also contends that The Merchant of Venice dramatizes the emerging conflict between equity and common law in Shakespeare’s England. The final section highlights various abuses of natural justice within the play as further violations of

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natural law.

Ultimately, The Merchant of Venice calls upon the audience to “judge the judge.” By exposing grave deficiencies in the English legal system (as expressed through the fictional Venetian system), the play obliges the audience to make a critical moral judgment on the proper administration of justice. As this paper submits, the audience must reach a moral and rational conclusion in accordance with natural law.

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These themes will be explored by way of a brief historical and philosophical account of natural law. It was regarded as universal law because it ordained that certain rules of conduct are “so just that they are binding on all of mankind.”

Natural law could thus be contrasted with human laws, which are apt to frequent variation and arbitrariness in substance and procedure. Thus, according to the classical philosophers, a man acted in conformity with the law of nature.

The classical model of natural law

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6 George W. Keeton, Shakespeare’s Legal and Political Background (London: Sir Isaac Pitman & Sons Ltd., 19767 (Adam – the publication date I have is 1967 – perhaps the author has a different edition?)) at 67-68.
7 White, supra note 4 at 1.
8 White, supra note 4 at 1.
9 White, supra note 4 at 1. ibid.
10 Keeton, supra note 5 at 68.
11 The two limbs of Natural Natural Law are audi alteram pertem (the right to be heard) and nemo judex in parte sua (no person may judge his or her own cause). The second tenet of Natural Natural Law, nemo judex, has particular significance to The Merchant of Venice and will be discussed in this paper.
Natural Law was revived by Medieval and Renaissance Christian theorists, reaching a high watermark with St. Thomas Aquinas in the thirteenth century. Aquinas stated that if a human law is at variance in any particular with Natural Law, while classical and early medieval Natural Law additionally, they insisted that both reason and conscience are G-d-given faculties.

Aquinas identified four types of law in his famous work, *Summa Theologica*: Eternal, Natural, Human, and Divine.

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12 Thomas Aquinas, *Summa Theologia* (New York: Benziger Bros., 1947), at 95, 2 (in Treatise on Law, First Part of the Second Part). Aquinas built upon St. Augustine’s theory that there is no law unless it is just.


14 As a note to the reader, Judaism prohibits an individual to write out the full name of the Divine—as such, “G-d” will be used as a substitute.

15 White, *supra* note 4 at 2-3. White states that this advancement in natural law was prompted, in part, by a fear that a reliance on the universal faculty of reason would eliminate the need for G-d.

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THE PRIMARY TENET OF NATURAL LAW
These include the preservation of life and equality among individuals.\textsuperscript{23}

\textsuperscript{19} Divine Law, or the will of G-d revealed through the Old and New Testaments, is not relevant to this discussion.
\textsuperscript{20} Keeton, \textit{supra} note 5 at 72.
\textsuperscript{21} Aquinas, \textit{supra} note 10 at 91, 2.
\textsuperscript{22} Aquinas, \textit{supra} note 10 at 94, 2. \textit{Ibid} at 94, 2.
\textsuperscript{23} White, \textit{supra} note 4 at 4.
\textsuperscript{24} White, \textit{supra} note 4 at 4.
\textsuperscript{25} Keeton, \textit{supra} note 5 at 72.
\textsuperscript{26} White, \textit{supra} note 4 at 8.
\textsuperscript{27} Which will be discussed below.
While penalty clauses were enforceable by the common law of contract, they could still be defeated by the courts of Chancery. The chancellors of equity declared that such iniquitous contracts were void as contrary to natural law. Several theorists assert that this struggle had a profound influence on Shakespeare’s trial in *The Merchant of Venice*.

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28 There are two primary locations in *The Merchant of Venice*: Venice, which is the satiric centre of mercantilism, and Portia’s Belmont, the centre of the romantic subplot.
29 Keeton, supra note 5 at 140
30 Keeton, supra note 5 at 140 1 and 136 and 140.
31 White, supra note 4 at 159. Described by White as “England’s court of Natural Law.”
32 White, supra note 4 at 159. Described by White as “England’s court of Natural Law.”
33 Keeton, supra note 5 at 140 1 and 136 and 140.
34 White, supra note 4 at 159. ADAM – should this come at the beginning? I can’t remember what we said about this.
35 Windolph, supra note 1 at 55.
36 Windolph, supra note 1 at 53-54. A professional rivalry between these two individuals emerged into a personal hatred. Ellesmere, the Lord Chancellor, would allow losing litigants to recommence their proceedings in Chancery and often issued injunctions against victorious common law litigants, preventing them from enforcing the court’s judgment. Lord Chief Justice Coke’s common law courts countered by holding people in contempt if they refused to comply with the court’s judgment.
37 Windolph, Andrews, and Kornstein all submit that Shakespeare dramatizes, on one level or another, this equity/common law conflict. White, on the other hand, states that Shakespeare’s courtroom makes no references to equitable or common law procedure. White accepts the equity argument to a point, but only to the extent that the trial represents the larger struggle between Natural and Positive Law. Justice Posner likewise submits in *Law and Literature: A Misunderstood Relation* (Cambridge: Harvard University Press, 1988) at 97 that “[n]o equitable principles actually inform the law of Venice as it is presented in the play.” While Justice Posner makes some astute observations, I believe his argument is subverted by the fact that the Venetian court upholds the English common law of contract, and that an equitable remedy is awarded to Antonio at the conclusion of the trial.
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LYON CALLS THE TRIAL SCENE “ONE OF THE MOST ASTONISHING MOMENTS IN OUR DRAMATIC HISTORY.”


THE TRIAL COMMENCES IN WHAT IS DESCRIBED AS “A COURT OF JUSTICE” BEFORE THE VENETIAN DUKE.

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37 While White and Posner submit that equity does not figure very prominently in The Merchant of Venice per se, I only accept this argument, if at all, to the extent that equity is dramatized within the larger Natural Law Natural Law rubric (as White does). However, as will be addressed below, equity figures palpably in terms of the remedy awarded to Antonio, and arguably as an agent of Natural Law Natural Law in trumping Shylock’s common law bond.

38 John Lyon, Twayne’s New Critical Introductions to Shakespeare: The Merchant of Venice (Boston: Twayne Publishers, 1988) at 98.


SHYLOCK, CONTEMPTUOUSLY REFERRED TO BY THE COURT AS “JEW,” SEeks “THE DUE AND FORFEIT OF [HIS] BOND” FROM ANTONIO.\textsuperscript{42} WHILE THE COURT IMPLORES SHYLOCK TO GIVE “A GENTLE ANSWER,” SHYLOCK ENTERTAINS NOTHING OF THE SORT, IN SPITE OF THE FACT THAT BASSANIO OFFERS HIM TWICE (AND LATER THREE TIMES) THE AMOUNT OWED.\textsuperscript{44} SHYLOCK, DRIVEN BY REVENGE AND A BITTER HATRED TOWARDS ANTONIO,\textsuperscript{46} DEMANDS THE POUND OF FLESH THAT HE IS RIGHTLY OWED UNDER VENETIAN LAW. HE STEADFASTLY CLINGS TO THE LAW—HE “CRAVE[S] THE LAW”\textsuperscript{48}—AND REPRESENTS A

\textsuperscript{42} Shakespeare, supra note 2 at IV. i ln. 37.
\textsuperscript{43} Shakespeare, supra note 2 at IV. i ln. 37.
\textsuperscript{44} Shakespeare, supra note 2 at IV. i ln. 34. Bassanio is able to repay the debt, albeit late, due to his newfound relationship with Portia.
\textsuperscript{45} Shakespeare, supra note 2 \textit{Ibid.} at IV. i ln. 34. Bassanio is able to repay the debt, albeit late, due to his newfound relationship with Portia.
\textsuperscript{46} Shylock’s reasons for hating Antonio may be viewed as threefold. First, Antonio lends money interest-free which costs Shylock significant business. Second, he abuses Shylock because he is a Jew, spurning, kicking, and spitting at him when he passes him in the street (Antonio is hardly a sympathetic character in this regard). Third, Shylock despises Christians for their mistreatment of him, their “stealing” of his daughter Jessica (who absconded with her love Lorenzo and converted to Christianity), and the theft of his jewels by those same two individuals. In addition to his obsession with positivism, which will be explored immediately, Shylock’s seeking of revenge further polarizes the Jew from principles of Natural Law by offending Christian morality and forgiveness. However, as I will also demonstrate, the Christians prove no better in this respect.
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DEPRAVED ADHERENCE TO POSITIVISM:

48 Shakespeare, supra note 2 at IV.i ln. 204.
49 Shakespeare, Ssupra note 2 at IV.i ln. 204.
50 Shakespeare, supra note 2 Ibid. at IV.i ln. 99-103.
THROUGHOUT THE SCENE, SHYLOCK DEMANDS NOTHING BUT THE LAW, AND REPEATEDLY “STANDS FOR JUDGMENT.”

HOWEVER, AS IT IS CERTAIN THAT THE CUTTING OF THE POUND OF FLESH WILL CAUSE ANTONIO’S DEATH, THE ENGLISH LEGAL PRACTICE OF ENFORCING PENALTY CLAUSES STANDS IN STARK OPPOSITION TO NATURAL LAW. SHE BECOMES AN ADVOCATE OF NATURAL LAW.
HUMANITY (OR LACK THEREOF), PORTIA SUCCUMBS TO HIS EXACTING DEMANDS—SHE STATES:

: [T]“There is no power in Venice / Can alter a decree established [ 

DESPITE THIS CONCESSION, PORTIA CUNNINGLY PROVES THAT IT IS INDEED POSSIBLE TO “DENY THE COURSE OF LAW.” 61

SHE PORTIA ACCORDINGLY, SHYLOCK WILL STAND IN VIOLATION OF VENETIAN LAW UNDER PENALTY OF DEATH AND FORFEITURE OF HIS ESTATE. REALIZING HE CANNOT EXACT HIS BOND WITHOUT STANDING IN BREACH OF IT, SHYLOCK REMITS AND ASKS FOR HIS PRINCIPAL IN DEFEAT.

IT IS ENACTED IN THE LAWS OF VENICE,

IF IT BE PROVED AGAINST AN ALIEN

THAT BY DIRECT OR INDIRECT ATTEMPTS

60 Shakespeare, supra note 2 at IV.i ibid. at ln. 216-17 and 297-98.
61 Shakespeare, supra note 2 at III.iv ln. 26.
63 Shakespeare, supra note 2 at IV.i ln. 305-06.
64 Shakespeare, supra note 2 at IV.i ibid. at ln. 309.
65 Shakespeare, supra note 2 at IV.i ibid. at ln. 313.
66 Yet this criticism may be slightly tempered by the fact that Portia, like Shylock, merely enforces the law as it stood.
67 Shakespeare, supra note 2 at IV.i ln. 344-45.
While Portia justly defeats Shylock’s bond which secures its authority in a base, “unnatural” law of contract, she then relies on an equally corrupt alien statute to punish him in the face of natural law.

Shakespeare, supra note 2 at IV.i Ibid. at ln. 346-54.

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69 Although this violation may have not been readily apparent to Shakespeare’s fictionalized characters, nor to his audience, as the persecution of minorities was likely justified as “natural.”
70 Who has, on several instances, revealed herself to be of questionable character. Kornstein even goes to the extreme of calling her “a world-class equal opportunity hate-monger.” Daniel J. Kornstein, “Fie Upon Your Law!” (1993) 5 Cardozo Stud. L. & Lit. 335 at 4545 (JSTOR).
71 Keeton, supra note 5 at 145.
72 Keeton, Supra note 5 at 145.
73 Supra note 29 at 97. In fact, Shylock’s marginalized status as a Jewish “alien” may provide a reasonable explanation as to his strict interpretation of the Venetian law. As Justice Posner states, “for such a victim of discrimination, it is entirely logical and reasonable to trust in the apparent severity of a rigid but certain interpretation of law rather than in the discretion of a system that has already shown its bias… But he who lives by the letter of the law may perish by it, too.”
While Portia could have yielded the instant she defeated Shylock’s bond, she goes on to punish him. Portia thus stands in violation of Natural Law.

Having invoked the Alien Statute, Portia uses the law to appropriate Shylock’s estate and subject his life to the mercy of the Duke.

74 Supra note 298 at 97. In fact, Shylock’s marginalized status as a Jewish “alien” may provide a reasonable explanation as to his strict interpretation of the Venetian law. As Justice Posner states, “for such a victim of discrimination, it is entirely logical and reasonable to trust in the apparent severity of a rigid but certain interpretation of law rather than in the discretion of a system that has already shown its bias… But he who lives by the letter of the law may perish by it, too.” Supra note 28 at 97 – Again, before or after – as well, author name??.
75 Kornstein, Supra note 554 at 45.
76 Several theorists, such as Zuckert and Berthal, have maintained that Portia represents New Testament mercy while Shylock stands for Old Testament “justice” (i.e. an eye for an eye; revenge). However, when one considers the undeniably punitive aspect of Portia’s judgment, this renders the biblical assessment untenable. Renowned Shakespearean scholar Harold Bloom likewise dismisses this notion in Shakespeare and the Invention of the Human (New York: Riverhead Books, 1998). While it is unclear why Portia persecutes Shylock in the manner that she does (anti-Semitic indicators aside), it appears that she returns the very vengeance the Jew sought against Antonio. This stands in opposition to the laws of Christian morality, which informed the Renaissance conception of Natural Law.
She orders Shylock to the ground, like a dog, to beg for the Duke’s clemency. The Duke, who proves to be the only semi-compassionate one of the lot, spares Shylock’s life and the portion of his estate that would otherwise go to Venice. Antonio, on the other hand, is not so kind. When asked by Portia “[w]hat mercy can you render him[...]?”, he spitefully requests that Shylock be converted to Christianity and that he hold the other half of the Shylock’s estate “in use” for the Jew’s reviled daughter and her Christian husband.\(^78\)

As the characters constantly refer to her)which the characters constantly refer to her as). This dilemma is not easily resolved. It is imperative that the audience

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\(^77\) Shakespeare, supra note 2 at IV.i ln. 376.

\(^78\) Presumably, Antonio requests Shylock’s conversion not only to punish the Jew, but also to redeem his Jewish soul. However, as the Christians in the play do not come off any better than the evil Shylock, this may realistically be viewed as a lateral move at best.

\(^79\) Shakespeare, Supra note 2 at IV.i ln. 376.

\(^80\) Presumably, Antonio requests Shylock’s conversion not only to punish the Jew, but also to redeem his Jewish soul. However, as the Christians in the play do not come off any better than the evil Shylock, this may realistically be viewed as a lateral move at best.

\(^81\) Expert legal advisor to the Duke. Both Zioolkowski, supra note 31 and White, supra note 4, make this observation.

\(^82\) White, supra note 4 at 5.

\(^83\) Windolph, supra note 1 at 46.