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CROSS-CULTURAL COMMERCE IN SHAKESPEARE'S *THE MERCHANT OF VENICE*

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INTRODUCTION

In the traditional English fairy tale *Whittington and His Cat*, an impoverished young man's investment in an overseas venture earns him a fortune.[1] Dick Whittington's investment is his only possession, an ordinary house cat for which he pays a penny. In a land on the Barbary Coast overrun with rats, Dick's pet proves to be worth more in gold than goods of obvious value. To free his palace of rodents, a wealthy Moor gladly trades half of his immense wealth for Dick's cat.[2] Abruptly ascending from rags to riches, Dick goes on to become "thrice Lord Mayor of London."

Viewed as a tale of private international commerce, *Whittington and His Cat* paints an optimistic portrait of cross-cultural economic exchange.[3] The tale portrays foreign countries as treasure-troves of unmet

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1. *Whittington and His Cat*, *in* ENGLISH FAIRY TALES (Joseph Jacob ed., Penguin Books, 1970). The exact date of the story is unknown. In Joseph Jacob's version, Dick Whittington is a child during the reign of Edward III (1312-77) and is knighted by Henry V (1387-1422). *See* WILLIAM SEYMOUR, SOVEREIGN LEGACY: AN HISTORICAL GUIDE TO THE BRITISH MONARCHY 325, 327 (1980) (organized index of the British monarchs).

2. *See* DICK WHITTINGTON AND HIS CAT (Grosset and Dunlap eds., 1941) (advancing alternative details for the story of Dick Whittington; here, a lavishly wealthy "King" in "the land of the Blackamoors" gives the merchant ten bags of gold for Dick's cat in exchange for the merchant's cargo).

3. We are grateful to Peter Bryne for initially suggesting the characterization of *Whittington and His Cat* as optimistic.

demand. The allocation of resources is so unequal that what is worthless surplus in one nation may be a scarce and valuable commodity in another. Accordingly, a clever trader can turn a large profit from a small investment and help a neighbor in the process. In the real world, during the era of colonialism, English commerce with Africans was exploitative and hegemonic.[4] In the fairy-tale world of Dick Whittington, foreigners are mutually congenial, traders possess moral conscience, and many inexpensive exchanges are *Pareto superior*.[5]

Another well-known English tale—William Shakespeare's *The Merchant of Venice*—also serves as a story of private international commerce.[6] The play relates the story of Antonio, a Venetian merchant whose friend Bassanio asks for a loan to fund an expedition to woo Portia of Belmont. Antonio's money is invested in overseas shipping ventures. He borrows money for Bassanio from Shylock, a Jew, on the extraordinary condition that Antonio will give Shylock a pound of flesh if he defaults. When Bassanio arrives in Belmont, he discovers that Portia's deceased father has devised a test for her suitors. Portia may marry only the man who chooses from among a group of gold, silver, and lead caskets the one that contains her portrait. Bassanio correctly chooses the lead casket and is set to wed, until he learns that Antonio has unexpectedly defaulted on Shylock's loan.

Shylock attempts to enforce the "pound of flesh" penalty in the Venetian Duke's court. Disguised as a legal scholar, Portia appears before the court, winning both Antonio's release and a ruinous punishment for Shylock. Still in disguise, Portia successfully demands from Bassanio a

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4. *See* W.E. SIMNETT, THE BRITISH COLONIAL EMPIRE 69 (1942) (describing flourishing English trade on the West Coast of Africa beginning in the sixteenth century); JAMES A. WILLIAMSON, A SHORT HISTORY OF BRITISH EXPANSION: THE OLD COLONIAL EMPIRE 98 (1947) (discussing English refusal to allow Portugal to monopolize trade with the natives of West Africa); *Cf.* RONALD ROBINSON, ET AL., AFRICA AND THE VICTORIANS: THE CLIMAX OF IMPERIALISM IN THE DARK CONTINENT 3-5 (1961) (noting that after colonization, the Victorians assumed that "exertions of power and colonial rule" might be required to provide "opportunity and protection" and that the English used political influence to extend and secure free exchange; while commerce and anglicanization served to spread political influence and weld alliance).

5. RICHARD A. POSNER, THE ECONOMICS OF JUSTICE 54 (1983) (explaining that *Pareto superior* economic moves are those that make at least one person better off and no one worse off).

6. WILLIAM SHAKESPEARE, THE MERCHANT OF VENICE, *in* THE COMPLETE OXFORD SHAKESPEARE (Stanley Wells and Gary Taylor, eds. Clarendon Press 1986) (circa 1595) [hereinafter MERCHANT].

reward for her legal triumph over Shylock: the ring she gave him that he promised always to keep. Portia later confesses her trick, returns the ring, and prepares for marriage. Two marriages, in addition to Portia's to Bassanio, partake of the commercial, cultural, and legal themes of the play. Shylock's daughter Jessica elopes with Lorenzo, taking with her much of her father's wealth; Portia's waiting-woman, Nerissa, marries Bassanio's comrade, Graziano. At the center of this marketplace of trades, acquisitions, and mergers is the cross-cultural relationship between the Christian merchant and the Jewish moneylender. Although *Merchant* concludes with raunchy bedroom wit and reversals, these comedic devices fail to alleviate the gloomy implications of Shylock's degradation.

The Merchant of Venice is a case study in the pitfalls of cross-cultural exchange. As such, Shakespeare's play is pertinent to current reflections on the effects of cultural differences and cultural antagonisms on commerce. Unlike *Whittington and His Cat*, this story is far from optimistic: here citizens and "aliens" are mutually contemptuous, traders often lack conscience, and many attractive trades are fraught with unforeseen peril. Indeed, *Merchant* is deeply pessimistic about the personal satisfaction one can derive from international and other cross-cultural commerce. The play is equally pessimistic about the possibility of justice for an "alien" who must rely on the legal institutions of a foreign nation to resolve private trade disputes with that nation's citizens.

Lawyers have read *Merchant* as a tale about unconscionable contracts or contracts with high-cost liquidated damage or penalty clauses.[7] Legal feminists have read the play as illustrative of the interplay of formalist justice and mercy.[8] Law-related themes are more widely dispersed in

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7. *See* Richard A. Posner, *Law and Literature: A Relation Reargued*, 72 VA. L. REV. 1351, 1357 (1986) (explaining that "at one level the play is about the enforcement of a contract that contains a penalty clause, which the defendant avoids with a technicality."). *But see* John Denvir, *William Shakespeare and the Jurisprudence of Comedy*, 39 STAN. L. REV. 825 (1987) (illustrating that *Merchant* clarifies emotive quality and hegemonic function of law).

8. *See* Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Woman's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39, 42 n.23 (1985) (suggesting that Portia exemplifies a typically female approach to dispute resolution, pleading "for mercy when others ask only for justice"). *But see* Carrie Menkel-Meadow, *Portia Redux: Another Look at Gender, Feminism and Legal Ethics*, __ VA. J. SOC. POL'Y & L. __ (1994) (arguing that Portia's behavior is more likely male in character: "Has mercy triumphed over justice? No, Portia has played a clever lawyer's game and shown that she can be as clever and manipulative of language and the law as any of her brethren.").

the play than these particular approaches would suggest, broadly engaging matters of contract law, procedural due process, the law of alienage, legal discrimination, and international economic justice. To reach this broader spectrum of themes, Parts I and II of this article consider the general commercial effects of the cultural antagonisms that aggravate pervasive epistemological barriers to interpersonal understanding. Part III focuses on racism, anti-Semitism, and the impact of insiders' law on outsiders seeking justice. Part IV ends by observing that in the play, as in life, theatricality functions as a procedural vehicle for xenophobic law.

I. CONTRACTING WITH THE ENEMY

A. THE DEAL

Shylock has something to lend and Antonio would like to borrow it. They meet, negotiate, and strike a deal. Both businessmen believe they are better off for their curious bargain. Both act for something other than purely monetary gain. Antonio loves his friend, Bassanio, and wants to help him. Shylock hates Antonio and wants to humiliate him.

Shylock deigns to "buy . . . sell . . . and talk" with the Christian Antonio but will not "smell pork:" he will not eat or pray with him.[9] Shylock hates Antonio because "he is a Christian."[10] Shylock reports that Antonio has called him a "misbeliever, cut-throat, dog" and spat on him in the marketplace.[11] Still, in order to get 3,000 ducats to help Bassanio marry Portia, Antonio asks Shylock for a loan. Antonio asks him to loan the money as "an enemy" rather than as a friend.[12] Shylock agrees to lend the money but on terms that include the harshest of penalties. Should Antonio fail to pay the amount owed at the appointed time, the penalty will be "an equal pound" of flesh "to be cut off and taken / in what part of your body pleaseth . . . ."[13] The preposterous deal, phrased by Shylock as "a merry sport,"[14] seems worth the risk to Antonio. He cannot imagine that his diversified portfolio of several ships transporting goods to different parts of the world will fail to reap ample profits in time to meet his debt to Shylock. Accustomed to lending

9. MERCHANT, *supra* note 6, act 1, sc. 3, at lines 33-35.
10. *Id.* at line 40.
11. *Id.* at lines 110-11.
12. *Id.* at lines 130-34.
13. *Id.* at lines 148-50.
14. *Id.* at line 144.

without interest to his beloved friend Bassanio, Antonio now mistakes Shylock's offer for "Christian" kindness.[15]

The contract between Shylock and Antonio benefits Antonio in two aspects: it is both wealth promoting and interest promoting. The contract is advantageous in the narrow economic sense of promoting Antonio's wealth; he gets an extraordinary interest-free loan. The agreement is advantageous to Antonio in the further sense of promoting his non-economic interests. Antonio wants Bassanio in life and trust. In return for helping his winsome friend, Antonio receives Bassanio's love or, at least, his attention.[16]

For Shylock, the contract with Antonio initially appears to be interest promoting though not wealth promoting. The deal promotes Shylock's interest in an opportunity to deeply humiliate an enemy. The contract does not promote Shylock's monetary interests. At the time he closes the deal, no one can predict Antonio's default. But anyone can see that the transaction entails at least a modest opportunity cost for Shylock.[17] He loses money by foregoing the opportunity to lend to another with interest the principal loaned to Antonio.

B. DEALING WITH DOGS

Making a contract promotes Antonio's and Shylock's monetary or non-monetary interests, but neither man finds the bargaining process entirely satisfying. The Christian feels soiled by dealing with a Jew, and the Jew feels stained by bargaining with a Christian. The cultural antagonism between contracting parties in the play is striking but not unfamiliar in the world of domestic and international commerce.

In general, economically advantageous, reasonably entered contracts may fail to satisfy fully one or both of the parties. For example, *A* may contract with *B* for *A*'s services believing that *B* will do an adequate but not outstanding job, as *A*'s standards of performance exceed *B*'s. In

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15. *Id.* at line 177.

16. *See* BENJAMIN NELSON, THE IDEA OF USURY: FROM TRIBAL BROTHERHOOD TO UNIVERSAL OTHERHOOD 142-151 (1969) [hereinafter NELSON] (examining the conflict between friendship and capitalism and exploring the cultural implications of Shakespeare's repeated emphasis on Antonio's willingness to sacrifice his life to secure contract for his "lover," Bassanio).

17. *See* ROBIN PAUL MALLOY, LAW AND ECONOMICS: A COMPARATIVE APPROACH TO THEORY AND PRACTICE 17-18 (1990) (explaining that economists use the term "opportunity costs" to refer to losses—inevitable under conditions of scarcity—that flow from making choices to pursue some options rather than others).

general, standards of performance that exceed those of other players in the marketplace can make one's business arrangements less than fully satisfying. To take another example, *X* may contract with the disreputable *Y*, convinced that she secured the best deal around, but be dissatisfied at having to barter with a person of low community standing.[18] Here, *X*'s conventional moral standards exceed *Y*'s and account for *X*'s failure to be fully satisfied with her exchange.

Cultural differences can also lead to economic exchanges that fail to satisfy fully. Hypotheticals are not needed to illustrate the point that in cases involving antagonistic cultural groups, economically adequate contracts can produce personally unsatisfactory results. During Reconstruction and the "Jim Crow" era in the American South, many of the cross-racial commercial transactions that composed the economic life of segregated states like Georgia, Alabama, and Mississippi were unsatisfactory.[19] Whites were often insecure in their beliefs about the competence and integrity of blacks; blacks often resented white racism and paternalism. Though mutually suspicious—even hostile toward one another—blacks and whites engaged in countless commercial transactions daily. Blacks were dependent upon the goods and services only whites would provide; whites were dependent upon the goods, services, and purchasing power of subordinate blacks.[20]

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18. *See* RESTATEMENT (SECOND) OF CONTRACTS § 323 cmt. a; *accord* UNIFORM COMMERCIAL CODE § 2-210(16) (supporting the assertion that modern contract law seems to presuppose indifference to the social and moral qualities of market actors, and that the principles of contract law governing assignment and delegation presuppose such indifference, inasmuch as "the assent of the obligor is not ordinarily required to make an assignment to a third-party effective"); *Id.* § 323, cmt. b, illus. 1 (upholding the notion that in some instances, however, courts have deemed ineffective obligors' assignments to third-parties as not having the "personal trust and confidence" of obligees).

19. *See* MARY FRANCES BERRY & JOHN W. BLASSINGAME, LONG MEMORY: THE BLACK EXPERIENCE IN AMERICA 195, 203 (New York, Oxford University Press, 1982) (highlighting African-Americans' unsuccessful participation in a capitalist economy, in large part due to peonage after the Civil War, barriers to employment in industry, and stymied attempts to establish black businesses: "Whites readily yielded the heaviest, dirtiest and lowest-paid unskilled jobs to Blacks"). *See generally* C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW (1974) (recounting the social and economic conflicts between blacks and whites in the South after emancipation).

20. *See* Thomas J. Gilliam, *The Montgomery Bus Boycott of 1955-56, in* THE WALKING CITY: THE MONTGOMERY BUS BOYCOTT, 1955-1956, 191, 198 (David J. Garrow ed., 1989) (reiterating the efficiency of the Montgomery bus boycott and noting that black patronage represented 70% of the revenue of Montgomery City Lines, Inc.). For 382 days, beginning on December 5, 1955, 90% of City Lines'

As some philosophers explain, the core normative ideal of "contract" presupposes mutual freedom, moral autonomy, and interest advancement.[21] *Merchant* illustrates the additional point that contract does not presuppose relations marked by mutual satisfaction or respect. In fact, as social contract theory from Hobbes to John Rawls suggests, the institution of contract may have value as practice and metaphor precisely because it is a model of cooperation that is consistent with personal enmity.[22] Parties can contract believing that one party is morally inferior to the other or even that the parties belong to different species.[23]

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black riders boycotted. *Id.* at 197, 211. They refused to ride until they were promised courteous service, the employment of black drivers, and less humiliating on-board segregation practices. *Id.* at 238, 243. The boycott caused the bus company severe financial damage requiring radical service cutbacks, a 50% fare increase, and donations from white patrons for the company to survive the protest. *Id.* at 254.

21. *See, e.g.*, CHARLES FRIED, CONTRACT AS PROMISE: A THEORY OF CONTRACTUAL OBLIGATION 1 (1981) (describing the normative ideal of contract as "the promise principle, the moral basis of contract law, . . . by which persons may impose on themselves obligations where none existed before"). Fried defines the promise principle "as an expression of the principle of liberty—the will binding itself, to use Kantian language—and the award of expectation damages followed as a natural concomitant of the promise principle." *Id.* at 19. According to Fried, autonomy is "the moral force behind contract as promise," that is, "the parties are bound to their contract because they have chosen to be." *Id.* at 57. Fried thus argues that "the obligation to keep a promise is grounded in respect for individual autonomy and in trust." *Id.* at 16. He concludes that "the life of contract is indeed promise . . . ." *Id.* at 37-38.

But see P. S. ATIYAH, PROMISES, MORALS AND LAW 30-31 (1981) (endorsing the utilitarian view that "anything which encourages or facilitates human cooperation is, other things being equal, of great utility" but arguing that "lack of trust" among humans limits the possibilities). *See generally* P. S. ATIYAH, THE RISE AND FALL OF FREEDOM OF CONTRACT (1979) (theorizing that the traditional attitude towards promise-based obligations without reliance or benefit is misconceived: "[T]he past century, and more particularly, the past thirty years, have seen a decline of contract from the high point which it had reached by 1870."). *Id.* at 716; *see also* GRANT GILMORE, THE DEATH OF CONTRACT (1974) (arguing that contractual obligations no longer bind parties).

22. THOMAS HOBBES, LEVIATHAN 1651 (Michael Oakeshott ed., 1962) [hereinafter HOBBES]; JOHN RAWLS, POLITICAL LIBERALISM (1993).

23. *See* MARC SHELL, MONEY LANGUAGE AND THOUGHT: LITERARY AND PHILOSOPHICAL ECONOMIES FROM THE MEDIEVAL TO THE MODERN ERA 47-83 (1982) (exploring themes of difference tied to perceptions of species, familial, religious, regional and racial difference as aspects of generation or production in *Merchant*).

Contract does not require friendship,[24] but it does require a degree of trust that the market is well-regulated or that the institutions of contract enforcement are appropriately strong. Contracting parties must believe in the existence of formal or informal institutions of enforcement that have the power to compel performance or compensation. Where the institutions are courts of law, contracting parties must trust that those who breach will cooperate with the forum and that the judges and lawyers who control the forum will perform in an appropriately neutral manner. Shylock's trust in the Duke's forum ultimately proves to have been misplaced. His trust in Antonio is not entirely in error since Antonio seems to believe Shylock is entitled to strict justice: Antonio appears to accept liability under the contract. He cooperates with Shylock's suit to the point of passive resignation, stunning his friends in the courtroom. Shylock's trust of Antonio arguably entails a thin version of respect. Yet the more full-bodied version of respect, the kind that undergirds friendship and love, is not only unessential to contract but is also absent in the relationship between Shylock and Antonio.

Shylock and Antonio are like many people in the real world. Harboring contempt and xenophobia, they cross the boundaries of their own cultures and moralities for commerce. Americans do business with the people of Japan, whose culture and race they often seem to disparage.[25] African-Americans do business with Korean-Americans, whom they often view as an exploitative and privileged minority.[26] In short, both

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24. *See* NELSON *supra* note 16, at 145 (highlighting the "malevolent enmity" between Antonio and Shylock).

25. *Cf.* THE U.S.-JAPANESE ECONOMIC RELATIONSHIP: CAN IT BE IMPROVED? (Kichiro Hayashi ed., 1989) (presenting a comparative study by Japanese and American authors identifying sources of and practical solutions to latent economic conflict between Japanese and American economic systems and policies).

26. *See* Seth Mydans, *The Riot's Ashes/A Special Report; Separateness Grows in a Scarred Los Angeles*, N.Y. TIMES, Nov. 15, 1992, at A1 (discussing the fact that the significant presence of Korean-American businesses in predominantly black neighborhoods—in South Central Los Angeles, Korean-Americans own 70% of the markets and liquor stores—is a source of tension among some members of the two communities); Thomas S. Mulligan, *Understanding the Riots—Six Months Later; Money and Power/Making It in the Inner City*, L.A. TIMES, Nov. 18, 1992, at JJ1 (Special Section) (reporting that Korean-American merchants clearly depend upon black patronage and are not necessarily driven away from economic opportunity in black neighborhoods by racial violence but, rather, merely factor the risks of violence into their business strategies); Efrain Hernandez, Jr., *A Quiet Shift from L.A. Mode; Hub Korean Community Reacts with Concern*, BOSTON GLOBE, May 11, 1992, at 13 (reporting that one Korean-American shop owner in Boston responded to the 1992 Los Angeles riots

international and domestic commerce commonly entail antagonistic contact with people and firms of other cultural, racial, and religious groups. These differences, as human history reflects, are often infected with a kind of emotionally charged disrespect that makes willingness to deal at all a little puzzling. But the puzzle is easily solved when one remembers the motivational power of need and greed. In the context of the market, reasonable people set aside the dislikes and disapprovals that argue for isolationism. Individuals trade as economic necessity or the passion for wealth demand.

C. HOME ECONOMICS

The pattern of cultural antagonists forced to contract with one another is broadly enacted in *Merchant*. Antonio contracts with a single cultural foreigner, Shylock. Portia's father, however, contracts for the marriage of his daughter with the world at large—promising her to whomever can satisfy his test—and thereby turns his daughter into an object of international commerce.[27] Antonio, in turn, is an international businessman with cargo ships in commerce all over the world, thereby making him a subject of international commerce. Like the spices and silks on Antonio's ships, Portia evolves into an object of international commerce. Men travel from all over the world to compete for her hand and her

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with little sympathy for black hostility); George White, *The New Tribalism; Defending Human Rights in an Age of Ethnic Conflict; The Marketplace; Anger Flares on Both Sides of Counter; Friction Between Los Angeles' Korean-American Merchants and Their African-American Customers Points to a Global Phenomenon*, N.Y. TIMES, June 8, 1993, at 7 (reporting that the conflict between African-Americans and Korean-Americans in urban areas like Los Angeles, New York, and Boston are indicative of the conflict around the world between the poor and the merchant class in those poverty-stricken communities).

27. ROBERT M. UNGER, THE CRITICAL LEGAL STUDIES MOVEMENT 63-67 (1983) (interpreting *Merchant* as recalling the myth perpetuated by what the author terms "classical contract theory" and that, "there is a field of experience outside the serious world of work in which communal relations flourish that justifies the devolution of practical life to the harshest self-interest"). On Unger's reading, Belmont is a non-serious world of the private exchanges of rings and marriage plans, while Venice is a cut-throat realm of private contracts. Pointing to the inevitable interdependence of the nominally separate spheres of commerce and household, Venice and Belmont, Unger writes that "[t]he charm of Belmont is to provide its inhabitants with a community in which contracts remain for the most part superfluous." *Id.*

By contrast to Unger, the authors emphasize that "the harshest self-interest" is a factor both in the business and legal world and in the home; analogous contractual principles control transactions in both realms.

fortune on the curious terms set by her father. The world economy is implicated in the drama, but so too is the home economy.[28]

As the Christian and Jew freely bargain, Portia sits at home lamenting that "the lott'ry of my destiny / Bars me the right of voluntary choosing."[29] Antonio has a lethal duty to Shylock, by his very own choosing. Portia views her duty to her father as one of status rather than choice or contract.[30] She is a daughter and for that reason must do her father's bidding, however worrisome it is to know she will marry the man who chooses the correct casket. Thus she cries to Nerissa, "O me, the word 'choose'! I may neither choose who I would nor refuse who I dislike; so is the will of a living daughter curbed by the will of a dead father."[31] Her antagonism toward her suitors, the other parties to the bargain, is absolute: in her first appearance on stage she belittles six suitors of six different nationalities. She nonetheless vows: "If I live to be as old as Sibylla, I will die as chaste as Diana unless I be obtained by the manner of my father's will."[32]

Although she is a woman, Portia does not lack power. She is wealthy and controls a flock of household servants. She manipulates the outcome of the casket test and then manipulates Bassanio. Her legal trickery in the second half of the play virtually negates her victim status in the first. Portia, who is arguably the play's wittiest detester of "Moors," "Negroes," and "Jews," gets the wealthy, manipulative Shylock and gets

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28. *Cf.* MARC SHELL, THE ECONOMY OF LITERATURE 89-91 (1978) (observing that the etymology of economics, *oikonomia*, stems from the classical Greek understanding that the household, a sphere of male domination over children, wife, and servants, was the central economic unit of the *polis*). In *Merchant*, the authors see this male domination of the household economy simultaneously enacted and eroded. As Portia's father attempts to control her marriage even after his death, so Shylock attempts to control his daughter, Jessica, when he leaves her at home with strict instructions to keep the doors barred and admit no one. Both daughters elude the control of their fathers by choosing their husbands and both end the play controlling their father's wealth.

29. MERHANT, *supra* note 6, act 2, sc. 1, at lines 15-16.

30. *But see* HOBBES, *supra* note 22, at 153 (rejecting the status-based conception that children owe duties of obedience to those who "begat" them). Hobbes embraces a contractarian conception that children owe obedience as the reasonable payment rational, self-interested parents demand for care. Hobbes would explain Portia's duty of obedience to her father as a product of their implicit contract. *Id.* So construed, the home and the business-realm are realms of private contract, reinforced by commercial law and family law.

31. MERCHANT, *supra* note 6, act 1, sc. 2, at lines 22-26.

32. *Id.* at lines 103-105.

him good. Thus, one cannot paint a solid contrast between Portia as lacking freedom and Antonio, Bassanio, and Shylock as having their full share of liberty.

The "dead fathers" of European civilization partly dictate the destiny of these men, much as Portia's dead father dictates her destiny. Restrictions of faith steer Shylock into his despised practice of usury.[33] Conventions of marriage and male responsibility lead Bassanio into his predicament of economic want—his own financial needs require that he seek a wife with money.[34] These men are products of cultural contexts that contour their choices. From this perspective, they are scarcely more free than Portia, who suffers gender-based incapacities. Like Portia, the male characters evidence awareness of the imperatives that drive their actions. Similarly, they suffer a grudging acceptance of the need to do business under pre-existing terms of trade with people they dislike. The market coerces, and it frequently coerces parties in economically superior bargaining positions. In a market rife with cultural antagonism, the ideology[35] of a marketplace that assumes indifference to such antagonisms makes transaction itself possible.

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33. *See generally*, NELSON, *supra* note 16 (detailing the religious origins of usury, a practice traditionally allowed by Jewish law but generally prohibited by Christian doctrine). Nelson cites the following as commandments for usury practices: *Deuteronomy* 23:19, "Thou shalt not lend upon usury to thy brother . . . ." and *Deuteronomy* 23:20, "Unto a stranger thou mayest lend upon usury; but unto thy brother thou shalt not lend upon usury . . . ."

34. *See* LAWRENCE STONE, THE FAMILY, SEX AND MARRIAGE IN ENGLAND, 1500-1800, at 43-44 (1977) (explaining how matrimonial objectives of upperclass English families during Shakespeare's period were the preservation of inherited property and the acquisition of additional property or the creation of useful political alliances). Practically, these goals created an expectation that to marry an upperclass daughter required "the provision of large cash portions" by the suitor. In many cases, these goals effectively barred such children from being married at all. *Id. See generally* JOHN R. GILLIS, FOR BETTER, FOR WORSE, BRITISH MARRIAGES, 1600 TO THE PRESENT 86 (1985) (charting evolution of class policies thwarting marriage by the poor); CHILTON LATHAM POWELL, ENGLISH DOMESTIC RELATIONS 1487-1653: A STUDY OF MATRIMONY AND FAMILY LIFE IN THEORY AND PRACTICE REVEALED BY THE LITERATURE, LAW, AND HISTORY OF THE PERIOD (1972) (presenting the history of family from 1487-1653 in England as revealed by literature, law, and history of that period).

35. *See* LOUIS ALTHUSSER, *Ideology and Ideological State Apparatus, in* LENIN AND PHILOSOPHY AND OTHER ESSAYS 153 (1971) (stating that "[i]deology represents the imaginary relationship of individuals to their real conditions of existence").

II. THE EPISTEMOLOGICAL DIVIDE

The Merchant of Venice highlights epistemological breaches that divide all people, suggesting that differences among cultures—and even among individuals within cultures—are not easily overcome.[36] Of course, in some limited, functional respects, the characters in the play know and understand one another perfectly well. Antonio and Shylock are businessmen who know one another's reputation for compliance with commercial convention. They presumably also know that parties to negotiation and contract deal in the face of incomplete information. Trade is advantage-seeking and advantage-taking in contexts that assume a degree of secrecy as to motives and resources. Against a background of these assumptions, Antonio and Shylock achieve a meeting of minds sufficient for the execution of a legally formal bond. Later, when his ships are lost at sea, Antonio readily agrees with Shylock that he is bound to give up a pound of flesh.[37]

Nevertheless, a cloud of unknowing[38] hovers above all relationships in the play, beginning with the opening scene. There, Salerio and Solanio, attempting to understand their friend Antonio's melancholy,

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36. *Cf.* Gayatri Chakravorty Spivak, *Can the Subaltern Speak?, in* MARXISM AND THE INTERPRETATION OF CULTURE 271 (Cary Nelson & Lawrence Grossberg eds., 1988) (describing a concept of epistemological breaches). Spivak analyzes the "epistemic violence" by which a dominant cultural group constructs a cultural other and notes the absolute irretrievability of the voice of that subaltern Other. *Id.*; SELECTED SUBALTERN STUDIES (Ranajit Guha & Gayatri Chakravorty Spivak eds., 1988).

37. *See, e.g.*, R.F. Hill, *"The Merchant of Venice" and the Pattern of Romantic Comedy, in* THE MERCHANT OF VENICE: CRITICAL ESSAYS 139 (Thomas Wheeler ed., 1991) [hereinafter CRITICAL ESSAYS] (noting that some critics have suggested that Antonio's willing submission is a suicidal impulse arising from the loss of his beloved Bassanio to Portia). Such a reading only re-emphasizes the gap between Shylock's (and the market's) limited understanding of Antonio's motivations and his real motivations.

38. Anonymous, THE CLOUD OF UNKNOWING AND OTHER WORKS (Clifton Wolters trans., Penguin Books 1978). *Cloud of Unknowing* is a 14th century mystical "book of contemplation" probably written by an English priest. The book emphasizes an epistemological divide between God and humankind: "a 'cloud of unknowing between you and your God.' God is incomprehensible to the human intellect and the five senses, though not to love. With God's grace alone can one love, and love enough to know God. With God's grace alone can one know 'fully about all other matters.'" *Id.* at 62-67. As the mystic might conclude, where principles of contract rather than love and grace govern social life, true knowledge of others is lost in the dark cloud of unknowing.

attribute it to concern with his trading ventures or with love. Antonio claims that his melancholy does not originate from these sources, and no one, perhaps not even Antonio himself, can identify its derivation. The difficulty in knowing others recurs persistently in the drama. It extends to characters related by blood and love: Launcelot's blind father does not know him; Bassanio and Graziano do not know their disguised betrotheds when they appear in court; Shylock does not know his daughter sufficiently well to predict her flight, theft, and miscegenation; Jessica worries about knowing the masked Lorenzo.

A gap is shown to exist among all the characters, but never more so than between Christian society and Shylock. The commercial relationship between Christian society, represented by Antonio, and Shylock is not sufficient for cultural reconciliation or understanding. Antonio remains in the dark as to Shylock's real motives for their contract. Likewise, Shylock does not appear to understand Antonio's love for Bassanio and willingness to die. Shylock's remarkable "hath not a Jew eyes" speech is the most overt attempt to bridge this gap, an attempt by Shylock to transform himself from an object of opprobrium into a knowable human equal.[39] The attempt is futile, at least within the play. For the play's audiences, perhaps the speech functions to temper anti-Semitism.

Cultural antagonism fed by mutual ignorance is the groundwork of the "pound of flesh" bond. When Salerio is incredulous that Shylock could have any purpose for collecting a pound of flesh, Shylock says it will at least serve "to bait fish" and "feed [his] revenge," a motivation that Salerio cannot understand.[40] When, before the court, Shylock is asked why he prefers the pound of flesh to being repaid with interest, he answers:

> You'll ask me why I rather choose to have
> A weight of carrion flesh than to receive
> Three thousand ducats. I'll not answer that,
> But say it is my humour. Is it answered?

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39. MERCHANT, *supra* note 6, at act 3, sc. 1, at lines 54-68.

> 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.

Id.

40. MERCHANT, *supra* note 6, at act 3, sc. 1, at lines 47-50.

What if my house be troubled with a rat,
And I be pleased to give ten thousand ducats
To have it banned?[41]

Like the rich Moor in *Whittington and His Cat* who will give half his fortune for the means to exterminate rats, Shylock is willing to forfeit money for the means to exterminate his "rat," Antonio.[42] Shylock's preference is incomprehensible to the Christians. The Christian characters share the perspectives of their own privileged cultural groups. They do not know what it is like to be a despised Jewish businessman. They cannot conceive of Antonio as "a rat" and thus cannot imagine that Shylock's true motives for the loan are hatred and vengeance prompted by Christian cruelty.[43] The Christians may share and understand Shylock's market values,[44] but they neither share nor understand the social pathologies that anti-Semitism, like racism, can breed in its victims.

With the apparent inevitability of epistemological breaches in mind, it becomes clearer that the function of ideology in a free and equal marketplace serves as a prerequisite to any exchange whatsoever. If subjects attempting to bargain did not accept the possibility of knowing one another, the result would be paralysis; fundamental diversity would be

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41. MERCHANT, *supra* note 6, at act 4, sc. 1, at lines 39-45.

42. SEYMOUR, *supra* note 1. Shakespeare's words seem to imply familiarity with *Whittington*, a story that probably predates the play by at least two hundred years.

43. *See* Robin West, *Law, Literature, and the Celebration of Authority*, 83 NW. U. L. REV. 977, 998 (1989) (commenting that critics have tended to neglect this irrational aspect).

> [Richard] Posner acknowledges and even insists upon the irrationality of both of the contractors' inner lives. Antonio is driven by vaguely suicidal as well as altruistic urges, and Shylock's irrational soul is marred by sadism and a thirst for vengeance. Still, Posner fails to condemn the contract *itself*—the external manifestation of the characters' internal lives—as irrational. Rather, Posner argues, the "spirit of the Bond," when charitably read, is that it is a wealth-maximizing attempt to insure the repayment of a loan. Thus the contract is rational . . . .
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> *Id.*

44. John M. Murry, *Shakespeare's Method: The Merchant of Venice*, *in* CRITICAL ESSAYS, *supra* note 37, at 37, 46.

> Shylock demands the pound of flesh as his due under the law and brooks no naysaying when he remarks on the Christians' keeping of slaves. Shall I not do as I will with my own? It is the morality of a whole society, to which Antonio and his friends belong no less than Shylock, which Shylock challenges here, and by anticipation blunts the edge of Portia's great plea for mercy.
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> *Id.*

an impediment to shared understanding and to the meeting of the minds necessary to contract. The ideology of knowing and its implementation in the marketplace is strictly functional. It enables Bassanio to assume that Portia's desire for him approximates his desire for her; it enables Antonio to assume that Shylock's motivation for the loan approximates his; it enables Shylock to assume that his daughter's commitment to him approximates his commitment to her. The myth of adequate understanding allows people to act together, allows the market to function. In its dramatic breakdown in *Merchant*, the audience is reminded that it is a myth.

III. ANTI-SEMITISM, RACISM, AND THE FORUM OF INJUSTICE

This is a "problem play," so called because its darker elements of anti-Semitism and punishment impinge upon the traditionally uplifting "love leading to marriage" ending of comedies.[45] The apparent anti-Semitism of the play, as many critics have noted,[46] is mitigated by its unflattering portrayal of Christians. The play categorically degrades Jews, but it also condemns Christians. The Christians are self-interested hypocrites. Antonio psychologically batters Shylock, and the "mercy" to which Portia appeals at the beginning of the trial is rendered suspect by the brutal condemnation of Shylock at its end. Some further clues support the proposition that the play is not itself purely anti-Semitic in spite of its portrayal of anti-Semitism. Shylock's "Hath not a Jew eyes" speech humanizes him;[47] his ironic aside on the "Christian husbands" in court, when Bassanio and Graziano offer the lives of their wives if they could win safety for Antonio, is sustained by Portia and Nerissa's annoyance at the same proposition.[48] Modern productions have made Shylock a sort of tragic hero even though Antonio is the title character. What appears to be merely anti-Semitism on a cursory inspection reveals itself, on closer examination, to present a broader indictment.

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45. *See* John Denvir, *William Shakespeare and the Jurisprudence of Comedy*, 39 STAN. L. REV. 825, 826 nn.5 & 7 (1987) (citing Northrop Frye's perspective that "comedy charts the movement from repression to liberation" and Susan Langer's assertion that "[c]omedy . . . deals with the need for social regeneration.).

46. *E.g.*, A. D. Moody, *The Letter of the Law*, *in* CRITICAL ESSAYS *supra* note 37, at 79; Thomas Cartelli, *Shakespeare's Merchant, Marlowe's Jew: The Problem of Cultural Difference*, 20 SHAKESPEARE STUD. 255 (1987).

47. MERCHANT, *supra* note 6, at act 3, sc. 1, at lines 54-68.

48. MERCHANT, *supra* note 6, at act 4, sc. 1, at lines 279-292.

The racism in the play is harder to account for, but it also appears less obviously. Portia responds to the Prince of Morocco's failure in the casket test, "let all of his [dark] complexion choose me so."[49] She belittles all of the suitors, though, and is herself certainly not without fault. Less crucial than whether the play is or is not anti-Semitic and racist is how such attitudes are practically enacted in the play, in law, and in commerce.

Racism and anti-Semitism turn facially impartial laws and bargains toward pejorative ends. The treatment of the suitors in the casket scenes reveals quite clearly the effects of implicit prejudice on what is perceived and portrayed as an objective situation—a fair test. The contract that Portia's father makes with potential suitors is theoretically impartial: anyone who selects the proper casket wins Portia as a wife.[50] Bassanio and the Princes of Morocco and Aragon supposedly have an equal chance of marrying Portia. Each of the three suitors behaves as if it were true. Each deliberates, logically and soundly, but draws different conclusions. That each of the three suitors comes from a different land and chooses a different casket is more than a plot device: it shows subjectivity intruding upon objectivity.

Contemporary realist and critical perspectives on the law emphasize the role of personal and political preferences in adjudication. *Merchant* shares this emphasis by pointing to Portia's personal preference for Bassanio as the actual source of his victory over other suitors. Portia claims she will abide by the terms of her father's will. At the same time, her dislike for all the suitors except for Bassanio is clear. Portia certainly gives no aid to Morocco or Aragon—they do pursue the contract by its letter—but some critics have suggested that Portia provides physical or musical clues to Bassanio.[51] Can her favor toward one suitor skew otherwise objective proceedings? Shakespeare does not answer this question directly, but the application of the law in the courtroom scene of Act IV indicates an affirmative answer.

The Duke and the Court are bent upon saving their fellow Christian Antonio from his bond. As Act IV opens, they have sent a messenger to

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49. MERCHANT, *supra* note 6, at act 2, sc. 7, line 79.

50. The "contract" is really an offer where substantial performance constitutes acceptance.

51. *See* Alice N. Benston, *Portia, the Law, and the Tripartite Structure of the Merchant of Venice*, *in* CRITICAL ESSAYS *supra* note 37, at 163 (noting that the song performed while Bassanio ruminates on his casket selection contains several lines that end in words rhyming with the word "lead"); Denvir, *supra* note 45, at 829 (same).

Padua in search of Bellario, a legal scholar, to find a means to effectuate Antonio's escape. The Duke threatens to dismiss the court if Bellario does not arrive. The Duke himself, the judge in the proceeding, pleads on Antonio's behalf. Even though he reports that he means to uphold the letter of the law, the Duke goes to every possible end to avoid upholding the law, much as Portia wishes to escape the letter of her father's provisions although ultimately acceding to or pretending to accede to them. Nevertheless, when Portia turns the table on Shylock, the court and the Duke are quick to condemn Shylock and to enact punishment without any delay for trial or arguing of the evidence.[52]

From the beginning, equal justice before the law is a charade.[53] The Duke desires Antonio's redemption at almost any cost. When Portia arrives she asks, "Which is the merchant here, and which the Jew?"[54] Yet it must be clear to her who is who, as Shylock wields a knife and Antonio is positioned with his friend, her betrothed Bassanio. Shylock is doomed from the beginning because the entire court is arrayed against him; his Jewishness and manifest "guilt" deny him the same process granted Antonio.

As chief officer of the court, the Duke is shiftless and unreliable. After Portia has saved Antonio and put Shylock in peril of his life, the Duke first grants Shylock his life—"That thou shalt see the difference of our spirit, / I pardon thee thy life before thou ask it"[55]—and then, when Antonio suggests Shylock should convert to Christianity, threatens to revoke the pardon unless Shylock agrees. The Duke spares Shylock's life but at Antonio's bidding compels Shylock to become a Christian and to devise property to his out-marrying daughter, a daughter who has

52. *See* RICHARD A. POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION 94 (1988) (noting a host of procedural irregularities, particularly that of a civil case transformed into a criminal one). *But see* Henry Saunders, *Staples Court in The Merchant of Venice*, 31 NOTES AND QUERIES 190-91 (1984) (explaining that the Duke's court followed procedures typical of English Renaissance "staples" courts that combined both civil and criminal, and legal and equitable claims).

53. *See* Eric L. Muller, *The Virtue of Mercy in Criminal Sentencing*, 24 SETON HALL L. REV. 288, 310 (1993) (questioning "[D]o we really think that true mercy toward a Jew is possible when it is being dispensed by and on behalf of an angry, anti-Semitic mob?").

54. MERCHANT, *supra* note 6, at act 4, sc. 1, at line 171.

55. MERCHANT, *supra* note 6, at act 4, sc. 1, at lines 365-366.

married a Christian and stolen his money.[56] Justice (in the name of the Duke) is hardly so fickle toward the Venetian citizens.

Ironically, the "justice" of the court enacts the ideology of the marketplace. Shylock, whose pursuit of the pound of flesh reveals both his cultural difference and the unacknowledged contradiction of the marketplace, is forced to become a Christian to restore the appropriate balance. Justice in the drama requires that aliens who would engage in commerce in Venice eschew cultural differences that cause them to attempt to "better" the dominant group. With the court's judgment on Shylock, the subordination of the interdependent alien is complete. It is plain enough from this story who stands to gain and lose the most when failed international commercial transactions are ultimately resolved in court.

Thus, both in the casket test and in the court scene, the letter of the law is upheld, but the rigor with which it is upheld makes a significant difference in the outcome. If the court permitted Shylock to array half the forces in his defense that Antonio has, or if the court were inclined to grant him truly equal justice, a different conclusion would result. Together the scenes reveal that even where mutually dependent cultures, as in a mercantile trading society like Renaissance Venice or London, must work together in equal expectation of having the laws enforced impartially, the impartiality is merely veneer. The play thus leaves the audience with a vision of a tripartite structure: first, an absolute epistemological breach that should make commerce and interaction impossible; second, an ideological overlay of market and social equality and understanding that enables transaction; and third, manipulation of that veneer equality to the bigoted ends of the dominant peoples.

IV. THE THEATER OF JUSTICE

The highlighted cultural antagonism, epistemological breaches, and racism and anti-Semitism of the play make for the conflicts and reversals of good theater. But the theatrical structure in which they are embedded also raises questions about the structure of justice.[57] What really

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56. *See* Denvir, *supra* note 45, at 832 ("One might conclude that the only real distinction between the violence of Shylock and Antonio is that Shylock's is raw and open while Antonio's is deeply embedded in and shielded by the legal and social culture.").

57. *See* Milner S. Ball, *The Play's the Thing: An Unscientific Reflection on Courts Under the Rubric of Theater*, 28 STAN. L. REV. 81, 85 (1975) (suggesting that critical comparisons between courts and theater are nothing new, often taking a derogatory connotation in the "show trial"). The comparison need not be so negative: "The

functions in the place of the law in this play about the law? Theater, or, in more acceptable terms to the modern theorist, game-playing.

Theatricality or related game-playing is the means for circumventing the letter of the law, for exercising subjective will in a marketplace that specifically denies difference. Each of Portia's suitors must choose among the caskets in the presence of his entourage—his moment of decision has the added pressure of public humiliation. Apparently this threat alone is sufficient to keep many suitors away; as Nerissa explains, several suitors choose to return home if Portia cannot be won except by the casket test.[58] Portia turns the "business" of her marriage into theater, setting the time and manner of the casket tests and, as her musical clues to Bassanio suggest, their ultimate outcomes.

Portia is a brilliant director and actor. Her timing is flawless. With perfect timing, she draws out each of her "plays," demonstrating an ability to manipulate a crowd and get her desired outcome. Portia draws out Antonio's trial and her confrontation with Bassanio about her ring even though she has the power to end both proceedings with a word. She carries Shylock along in his plans against Antonio until he reveals in open court his desire for Antonio's life; when she trumps him, the drama of the moment effectively silences him. Throughout the play, Shylock has spoken persuasively, but at the end he can only say, "Is that the law?"[59] Similarly, Portia lets Bassanio think himself a cuckold when she tells him that she had to sleep with the lawyer to whom Bassanio had given her ring in order to get it back; she embarrasses him before Lorenzo, Jessica, and the servants; and, when she reveals the truth the opinionated Bassanio can only acquiesce. Neither the law nor the truth, but the timing of their presentations determines the outcome.

A suggestion that the outcome of conflict resolution through law is a function not only of prejudice and epistemological divisions but of timing and presentation underlies *Merchant*. When a negotiation stumbles or stalemates, when parties refuse to bargain, when litigation drags, when reason fails to predict the operation of what is purported to be a system founded on reason, it is frequently because a hand behind the scene is turning the system to its own purpose. Portia epitomizes the worst as-

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correct objection to show trials, produced for commercial or political reasons, is an objection not to theater *per se* but to the misappropriation of one type of theater with its own purpose—trials—for some other type with different, sometimes dishonorable, purposes." *Id.*

58. MERCHANT, *supra* note 6, at act 1, sc. 2, at lines 97-102.

59. MERCHANT, *supra* note 6, at act 4, sc. 1, at line 311.

pects of the adversary system: her facade of neutrality sends two Princes (and other suitors not shown) away humiliated.[60] Her dissembling leads Antonio to the baring of his breast and the apparent certainty of his death; her desire to have the upper hand on Bassanio batters him as well. Yet the viewers are supposed to rejoice at the end of this "comedy." If the audience has a problem with Portia, it is not only because she seems racist, anti-Semitic, and self-serving, but because she denigrates conceptions of procedural and substantive justice to which many modern viewers are attached. Portia is, in fact, emblematic of all the motivations for the shift toward legal realism: so long as the law depends upon the bravado of courtroom theatricality and the guile of the attorney, the most letter-perfect system of justice is itself unjust.

The play asserts the inviolability and transparency of the law (the ideology of the law) and also its flexible contingency (the theatricality of the law). Shakespeare's characters give voice to the former in public, but they generally pursue the latter in practice. The need for a strict, formalist legal system to preserve the state gets at a minimum lip service. Shylock exclaims, "I stand here for law."[61] Antonio explains why he believes the Duke must uphold the bond with Shylock: "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."[62] In the burgeoning bourgeois world of Renaissance England, "justice" is defined by market values, and the "law" is portrayed as whatever best facilitates trade by adhering to a rigid code. As we have already seen, subjective conceptions of justice persist, and the Duke is eager to find a way out of the law for Antonio's benefit.

The mediator here appears to be Portia, who is sometimes praised by readers of Shakespeare for her sensitive, even feminist, mastery of formalism in the service of a merciful brand of justice. But two points are worth recording. First, Shylock would not have so smugly demanded a strict judgment of law if he had known for what the law called. He thought his contract would be deemed legally binding because it was agreed to and sealed and because practical considerations prevent the Duke from bending the law. The stature of Venice as a commercial

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60. *See* Carrie Menkel-Meadow, *Portia Redux*, *supra* note 8 (reevaluating the author's earlier opinion, as discussed in her article, *Portia in a Different Voice*, *supra* note 8, about Portia as a symbol of feminine justice and mercy).

61. MERCHANT, *supra* note 6, at act 4, sc. 1, at line 141.

62. MERCHANT, *supra* note 6, at act 3, sc. 3, at lines 26-31.

center would be jeopardized if word got out that money lending contracts were not enforced strictly. Shylock, however, did not know about the law governing "aliens" that Portia uses to trump him. Had he known the law that punishes with death and forfeiture of property designs on the life of a citizen, he would not have entered a contract with a Christian that could so easily be construed as a design on the Christian's life. He also certainly would not have sought "law" so forcefully in the enemy's court. Portia does not teach Shylock mercy. She teaches him the importance of having a broad knowledge of law and the ability to manipulate courtroom theatrics.

Second, Shylock probably capitulated too easily to Portia's interpretation of the contract as permitting the taking of flesh but not blood. The patent impossibility of taking precisely a pound of flesh without taking a drop of blood makes Portia's rendering of the contract implausible. Arguably, the parties understood that with flesh comes blood and probable death.[63] Portia's interpretation of the contract stands only because she is not competently challenged by a respected advocate for the distraught, alien Shylock. In short, her interpretation stands only because its theatrical timing makes it indisputable.

Outside of the court, this realistic approach to the law predominates. Portia remarks that, "The brain may devise laws for the blood, but a hot temper leaps o'er a cold decree."[64] The theme that passion overruns ordered structure and wisdom runs throughout the play. If Shylock were not so bent in vengeance on having his pound of flesh, he would have a comfortable remedy under the law. Bassanio and Antonio, for their part, cannot seem to prevent themselves from leaping into contracts. Bassanio promises Portia never to take off his betrothal ring, and he has no sooner been forgiven of that breach than he promises again never to take it off.[65] Antonio, who might have learned something about the dangers of promising too dearly, is no sooner redeemed from Shylock than he is offering his "soul" to Portia in bond for Bassanio's word.[66]

Bassanio, during the casket-test, provides the ultimate explanation of the law when he remarks, "In law, what plea so tainted and corrupt /

63. *See* O. HOOD PHILLIPS, SHAKESPEARE AND THE LAWYERS 93 (1972) ("We may as well say that a person entitled to an easement may not leave footmarks on the land because this was not expressly mentioned in the grant.").

64. MERCHANT, *supra* note 6, at act 1, sc. 2, at lines 17-18.

65. MERCHANT, *supra* note 6, at act 5, sc. 1, at lines 240-248.

66. MERCHANT, *supra* note 6, at act 5, sc. 1, at lines 251-253.

But, being seasoned with gracious voice, / obscures the show of evil."[67] This realist view of the law is never supplied vocally in the courtroom, but its enaction is embedded in all the occurrences of the play. Perhaps the most striking and ironic juxtaposition of the formalist and theatrical/realist approach to the law arises in the clown Launcelot's bantering with Lorenzo. Lorenzo, finally tired of Launcelot's word games, longs to "understand a plain man in his plain meaning."[68] Typically, no one is as wise as the fools in Shakespeare's plays, and one can infer from Launcelot's word-play that there is no such thing as plain meaning. Words (including the logos of Portia's legal theater) mean what one makes of them.

CONCLUSION

An ambivalence toward the law pervades *The Merchant of Venice* and modern thought as well. On the surface rests a commitment to the letter of the law and the ideology of the marketplace that makes transaction itself possible—to the optimism of "Dick Whittington." Beneath this, however, the view expressed is ultimately pragmatic, for one can view law and contract as bending to the needs of the moment and reflecting deep hostilities and fundamental breaches among different cultural groups.

The pragmatism in the play appears to be the product of a time when the growth of international trade and the dawn of the bourgeoisie forced the relations of law, capital, and society into rapid change. In some ways this historical moment mirrors America's, for the expanding trading ports of the Renaissance parallel modern America's new information/global economy. Shakespeare's pessimistic revelations about intercultural exchange in such a transforming society provide a trenchant critique of America's experience that, like all fine art, leaves individuals with more questions than it answers. *Merchant* prompts renewed consideration of whether international commerce requires a truly multinational, multicultural forum for dispute resolution; whether intercultural commerce and contract, in a world that accepts an irreducible difference among contracting parties, necessitates increasing abandonment of formalist principles and myths if merchants are to speak of "bargaining" at all; and whether the ideology of the marketplace persists in its usefulness as a lubricant among transactors often otherwise inclined toward

67. MERCHANT, *supra* note 6, at act 3, sc. 2, at lines 75-77.
68. MERCHANT, *supra* note 6, at act 3, sc. 5, at lines 52-53.

xenophobia and isolationism. In a sense, *The Merchant of Venice* is a reminder that when one goes to the market or to the law, one should go to a sort of play where one can accept enough game-playing to bridge the epistemological gap while maintaining a tight enough hold on formalist equality to achieve an approximation of justice. In a world of such balance, the optimism of *Whittington and His Cat* might ultimately be justified.