

An Art of Arbitration : Dispute Resolutions in Shakespeare's *The Merchant of Venice*

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Abstract

The main narrative of Shakespeare's *The Merchant of Venice* deals with a dispute over the matter of bond in regard to moneylending, and its consequences upon the eventual default. Only the clever interference of a lawyer or judge brings the crisis to an end. In solving his dispute over the bond between Antonio, the merchant of Venice, and Shylock, the money lender and a Jew, Shakespeare offers one of the most famous trial scenes in literature. This trial scene presents the art of arbitration by Portia who was disguised as a Doctor of Law and sheds light on the nature of law, justice, equity, and divine law. What one cannot overlook in this trial scene is the importance of reading ability. After all, interpretation is the next stage of reading. Drawing just verdicts and wise arbitration while at the same time deconstructing the implicit violence and incongruity in law is based on ceaseless effort of analytic and creative act of reading.

Key Words : Shakespeare, Merchant, Jew, Moneylending, Arbitration, Mercy,

1. Introduction

In the midst of many concerns over the withering interest in humanity fields in the present hyper technology era, one might say that Shakespeare still exerts a considerable weight on the mind of modern men almost collectively. Prof. Harold Bloom, an eminent scholar of humanity, has once averred that "The complete works of William Shakespeare is a scripture from which we derive much of our language, our psychology and our mythology."(Bloom 1). It is noteworthy that Shakespeare's emerging to a transnational cultural icon ironically owes partly to the very premise of the ultra technology based on society which tends to belittle the humanity field. The marriage of commercialism and technology found that they were in desperate need of supplying basic materials and imaginations to the ever growing industry of images and films for all kinds of screens. In this climate, recent years ever since the arrival of blockbuster film, *Shakespeare in Love*, found the stories and the narratives in Shakespeare as an unceasing fountain of software for a huge industry which is essential to the development of contemporary image related business. Shakespeare did not fail to be an unceasing fountain of attractive narratives.

As in all narratives in literary works, Shakespeare's plays are filled with conflicts and disputes. And plays in a way reflect nothing more than the showcases of conflict and dispute resolutions and are the essence of arbitration. Accordingly, depending upon the ways and impacts of conflict/dispute resolutions some plays are tragedies and others are comedies ended by either deaths or marriages.

The Merchant of Venice, one of Shakespeare's most brilliant comedies, deals with a dispute over the matter of bond in regard to moneylending, its consequences and upon the eventual default. The debtor (Antonio) promises to repay the loan on pain of forfeiture of some portion of his flesh should he fail to pay the loan in due time. But the debtor and the lender (Shylock) have already become sworn enemies, mainly because of their religious practice. Moreover, when the loan is due and the debtor cannot repay it, the lender demands the accursed usury. Only the clever interference of a lawyer or judge brings the crisis to an end. In solving this dispute over the bond between Antonio, the merchant of Venice, and Shylock, the money lender and a Jew, Shakespeare presents one of the most famous trial scenes in literature wherein the art of arbitration by Portia sheds light on the nature of law, justice, equity and divine law. This paper deals with this trial scene of the bond story involving flesh to investigate Portia's approaches and its implications of her task of conflict or dispute solving. It will attempt to elucidate how the act of reading and interpretation can be the basis of to an art of conflict resolution.

II. Context of The Merchant of Venice

The Merchant of Venice was probably written in 1597, after Shakespeare had written such plays as *Romeo and Juliet* and *Richard III*, but before he penned the great tragedies of his later years. Its basic plot outline with characters of the merchant, the poor suitor, the fair lady, and the villainous Jew, are found in a number of story collections. The story of the bond involving flesh appears for the first time in Western European literature in the late twelfth-or early thirteenth-century Latin poem, "the Dolopathos." According to the accepted scholarly pedigree of the story, it passed into several popular collections of tales, such as the late thirteenth-century English *Cursor Mundi*, the fourteenth-century Italian *Il Pecorone*, certain versions of *The Gesta Romanorum*, and various other important compilations (Jordan 49).

It is reported that the ancient Roman laws allowed a group of creditors to kill a defaulted debtor, tear him limb from limb, and distribute his remains among themselves in roughly the proportion in which he owed the individuals of the group. If each participant in the orgy took a little more or little less of the debtor's parts than he was entitled to, it did not leave him open to a suit for fraud. Obviously dismemberment inflicted upon the default of the debtor have been the basis for associating the Roman principle with the bond story.

As other plays of Shakespeare, his re-creation of the bond story born out of borrowed materials renders better one in his ingenuous creation of characters of Portia, Shakespeare's first great heroine, and the unforgettable villain Shylock.

The brief outline of the narrative runs as the following : Bassanio, a Venetian nobleman with financial difficulties, wishes to compete for the hand of Portia, a wealthy heiress of Belmont, in order to restore his fortune. He asks his friend Antonio, a successful merchant of Venice, to loan him the money necessary to undertake such an attempt. Antonio agrees, but, as all of his assets are tied up at sea, he will have to use his credit in order to obtain the money for his friend. They go to Shylock, a Jewish moneylender and enemy of Antonio's to borrow 3000 ducats. Shylock refuses to charge interest on this loan but jokingly draws up a bond, by which he shall be entitled one pound of Antonio's flesh, if the debt is not paid on time. While Shylock arranges this agreement, his daughter Jessica elopes with Lorenzo, a Christian youth, taking much of Shylock's fortune with her.

At Belmont, Portia is wooed by many suitors who do not impress her. Unfortunately, Portia is not free to choose her own husband, but must follow the procedure laid down by her father before his death. According to this procedure, every suitor must choose between three caskets of gold, silver, and lead. One of the caskets contains a picture of Portia. The first man to open the correct casket will win Portia in marriage. The prince of Morocco chooses the gold but this is not correct. The prince of Arragon is equally unlucky with the silver.

However, Bassanio rightly selects the lead casket and wins Portia, who has fallen in love with him. Disturbing news reaches Bassanio from Venice, that Antonio's ships have been lost at sea and he cannot repay Shylock's loan. The vengeful Jew insists on strict adherence to the law, his pound of flesh for the repayment. Portia eagerly encourages Bassanio to proceed at once to Venice with money to free his friend. Meanwhile, she pretends to retire to a nearby monastery for prayer before her wedding night. In reality, however, she dresses as a young lawyer and hastens to Venice.

At the court of Venice, Antonio prepares to lose his life. Shylock refuses all pleas of mercy from Antonio and the Duke himself. Moreover, he even refuses Bassanio's offer to repay the loan money many times over. He is hell-bent on revenge. Portia arrives, disguised as a Doctor of Laws and asks the Jew to be merciful. He refuses. She agrees that he is within legal rights. Bassanio and Antonio embrace each other in sad farewell and Shylock sharpens his knife. Portia reminds him that there is no clauses in the bond which will permit the shedding of blood. Shylock must take a pound of Antonio's flesh without shedding blood. This he cannot do, so he asks instead of repayment of his money. However, Portia has totally outwitted him. She reminds the court of another law, by which any alien who plots against the life of a Venetian will lose his life and property. Shylock, as an alien Jew, is therefore guilty of plotting against the life of Antonio. The Duke pardons the Jew his life, but he must give up half his fortune to Antonio and leave all his property in his will to Jessica and Lorenzo. Shylock leaves the court a broken man. Bassanio thanks the young Doctor of Law profusely for his helpful judgement, and but he will accept no fee. All he asks as reward is the ring which Portia had given to Bassanio to mark their engagement. Bassanio is very reluctant to part with the ring which he had promised to wear all his life. At the entreaties of Antonio, however, he reluctantly bestows the ring on the lawyer.

When the young nobles return to Belmont, they are met by Portia, who makes Antonio most welcome. When she discovers that Bassanio has given away her ring, she pretends to be very angry indeed. She threatens to leave Bassanio and take off with the Doctor of Law. Bassanio reasons with her and makes a solemn vow never to break his word to her again. She accepts this promise, which is guaranteed by Antonio. She offers her lover a ring- the same ring which he had given the lawyer in Venice. To the amazement of the men, she explains she was the Doctor of Law who saved Antonio at Venice. She gives them further good news that three of Antonio's ships have returned safely, laden with wealth. All the happy couples and Antonio look forward to the coming wedding with great joy.

However the reception of the play in regard to Shylock's being a Jew has stirred numerous arguments over some period whether or not this work was profoundly anti-Semitic. In the modern, post-Holocaust readings of *The Merchant of Venice*, the problem of anti-Semitism in the play has loomed large. No matter how Shylock appears to be a stereotypical caricature of a cruel, money-obsessed medieval Jew, Shakespeare's intentions in *Merchant* did not originate from anti-Semitic premise(Holmer 173). We must remember that Shakespeare's

England did not have a Jewish "problem" or "question". There were few Jews in England, at that time, and they lived quietly in London. Officially there were supposed to be no Jews at all in England between 1290 and 1665, and those that lived there did so discreetly, under constant threat of persecution. The only Jew known to the Elizabethans was a Portuguese physician named Lopez who had been sent to the scaffold, on a false charge of attempting to poison Queen Elizabeth. Many people speculate that in creating his moneylender character a member of an oppressed religious minority, Shakespeare may have wished to stress even further the isolation of the usurer from the national life (Kiberd, 45). On the other hand, Prof. Bloom explains that one of the reasons Shakespeare wrote *The Merchant of Venice* was to prove that his work could overcome the highly successful revival of Marlowe's *The Jew of Malta* wherein Dr. Lopez lives on as a shadowy provocation.

Recent studies of *The Merchant of Venice* have brought about the multiple aspects of this work in terms of the racial, national, sexual, and religious difference of others.

III. The Trial in the Venetian Courtroom : Portia's Arbitration as a Doctor of Laws

In the trial scene where the formulation of the flesh bond and its resolution takes place, the problems of usury and free lending, enemy and friend, hate and love, folly and wisdom, appearance and reality, safety and risk, keeping the law and violating the law, and justice and mercy are all 'interwoven.' It is Portia's task to solve this complex 'bound up' situation both legally and humanly.

The moment when Antonio agrees to seal the bond before a notary, even though Bassanio worries about the potential harm to Antonio that might result from this arrangement, Antonio as a borrower has to bear the brunt of the consequences. Shylock is shrewd enough to make a contract before a notary who would presumably make it official as a third party and legal witness. Hence Antonio allows himself in the position of literally 'being legally bound up' to the possible ramifications of losing a pound of his flesh which would endanger his very life. The cruelty of the bond is neither permissible nor imaginable in our contemporary view. However the Elizabethan audience in Shakespeare's time permits this type of contract. Some, however, raise objections to the bond as the bond formulation is made 'in a merry sport' (1.3. 141). Shylock's artful palliation of all suspicions disarm Antonio and Bassanio when Shylock insists on not taking any monetary interest and he proclaims his intention of no harm but only mere 'merry sport'.

. . Pray you tell me this :
If he should break his day what should I gain
By the exaction of the forfeiture?
A pound of man's flesh, taken from a man,
Is not so estimable, profitable neither. . .
As flesh of muttons, beefs, or goats. I say
To buy his favour, I extend this friendship.
If he will take it, so; if not, adieu,
And for my love, I pray you wrong me not. (1.3.155-63)

A man's pound of flesh constitutes no true gain because, unlike the marketable flesh of animals, a pound of man's flesh is not worth money, 'not so estimable, profitable' (1.3.159). Antonio is particularly susceptible to this reasoning because he has viewed Shylock for so long as a 'cut-throat dog' (1.3.103). For too long Antonio has viewed Shylock as a base creature motivated solely by monetary greed, so that it does not even occur to him how a pound of his flesh might be very 'estimable, profitable' in feeding a man's appetite for revenge. He was so sure of his mercantile sagacity. He was confident that his ships with wealth would be in time before the bond expired. In this frame of reasoning, Antonio takes the bond seriously from the beginning albeit Shylock's brilliantly deceptive 'fair terms' (1.3.172). Though cruel and risky, it is just a business deal for him. He would earn respect and friendship from Bassanio who is expected to earn fortune with this loan and to repay back what he owes to him. In any case, Antonio fully understands the terms of the bond and he is willing to accept them. This means he could die upon the enforcement of the bond. Precisely, because of this violent aspect of law's enforcement, according to O. Hood Philips, many legal scholars believe that the bond would be illegal because it is contrary to good morals and to public policy. They believe that Portia should have voided the bond upon these grounds in the trial scene(Philips, 91-118).

The trial is the dramatic climax in the play, of conflict between Antonio and Shylock wherein Portia's role as a doctor of law shines as an arbitrator. In her literal capacity as 'civil doctor' Portia serves the law of man, the strict laws of Venice. The trial scene presents and resolves two difference conflicts : first, the conflict between good (love) and evil (hate); and second, the conflict between a good (justice or the law) and a greater good (mercy or the law of love). The choice of 'either/or' pertains to the more obvious choice between good and evil. The choice of 'both/but' pertains to the more complex choice of a lesser and greater good. Nevill Coghill observes that the play presents 'the theme of justice and mercy, the Old Law and the New Law'. Both principles are recognized as 'inherently right. Yet they are only in conflict because, whereas God is absolutely

just as He is absolutely merciful, mortal and finite man can only be relatively so, and must arrive at a compromise'(Coghill 21). Both goods-justice and mercy - will be demonstrated as necessary but what priority is the issue of choice. Man needs and seeks justice, but given human frailty, mercy shines brighter. The trial scene anticipates a rhythm of completion, fulfillment, or 'seasoning' that Portia announces in the final act. This characterizes the play's ending : 'How many things by season seasoned are/ To their right praise and true perfection' (5.1. 107-8).

Shakespeare makes the legality of Shylock's bond unmistakably clear. When Portia first enters the court, she proclaims to Shylock : 'Of a strange nature is the suit you follow,/ Yet in such rule that the Venetian law/ Cannot impugn you as you do proceed' (173-5). Again, when Portia examines the bond, she declare : 'Why, this bond is forfeit,/ And lawfully by this the Jew may claim / A pound of flesh, to be cut off / Nearest the merchant's heart' (226-9). Not surprisingly, delighted Shylock praises Portia as 'Most rightful judge!' (4.1.297). Later Portia reasserts that Shylock's bond is legally valid, 'The court awards it, and the law doth give it (296). Without exception, everyone in the court recognizes that Antonio 'stands within [Shylock's] danger' (176) because the bond is lawful. As much as Bassanio and other Venetians would like to wrest the law to save Antonio's life, it cannot be done without impeaching 'the justice of the state' (3.3.29) that legally guarantees the benefits foreigners enjoy in Venice :

It must not be, there is no power in Venice
Can alter a decree established :
Twill be recorded to a precedent,
And many an error by the same example
Will rush into the state, --it cannot be. (4.1.216-20)

Portia affirms Antonio's remark that no one including the duke can disclaim Shylock's right to the bond. Doing so would put the justice of the state in jeopardy. Venice would contradict itself when it denies the decree it established. Portia is aware of this risk being taken if she denies Shylock's right. She pretends to affirm Shylock's right to Antonio's flesh : 'And you must cut this flesh from off his breast,/ The law allows it, and the court awards it' (4.1.289-99). Hence the next step would be to uphold Antonio's murder within the law. Herein lies the paradoxical situation within law. If Portia chooses to nullify Shylock's legal right to violence in order to save Antonio's life, it would threaten the legitimacy of Venice. If the state refuses to rely on law, it would lose its source of foundation and authority. On the other hand, the enforcement of the bond would be subject to criticism that law fails to protect the life of its innocent citizens from violence. Moreover, Portia by

way of adopting legalistic literalism present the best solution. Her solution is to show that saving Antonio's life would not necessarily contradict Shylock's right.

Tarry a little, there is something else,-
This bond doth give thee here no jot of blood,
The words expressly are a pound of flesh :
Take them thy bond, take thou thy pound of flesh,
But in the cutting it, if thou does shed
One drop of Christian blood, thy lands and goods
Are by the laws of Venice confiscate
Unto the state of Venice. (4.1.301-308)

Subsequently, Portia, then, dramatically reverses the case. She allows Shylock to take Antonio's pound of flesh, but she prohibits him from taking any blood of the defendant. Portia's literal interpretation of the bond is important and the consequent legal penalties contingent on this interpretation do not nullify Shylock's bond. At any moment Shylock can still turn and carve his pound of flesh, but now he can do so only at his own 'peril'(4.1.340). It is true that Portia's hyper-technical and literal interpretation of the bond saves Antonio's life. Literalism is usually derided as a defect in the trial scene, but Portia's interpretation of the bond reveals how literalism can be a legal virtue, not a vice, when used by a wise judge, not a vengeful plaintiff.

Portia's wise ruling in this bond story is first based upon the role of a reader as the act of reading is prior to the interpretive act. What cannot be overlooked at this point is this act of reading is exterior to law in a sense it can be neither stipulated nor defined within the book of law. Since law cannot specify how to define the bond, its experience demands extra-lawful aid. From this perspective, Portia interprets law outside law. She breaks the law in order to maintain it. This example is well manifested when Portia delivers a famous speech on mercy in the trial scene. In response to Shylock who insists on the forfeiture of the bond, Portia proposes mercy as the ultimate solution to the conflict between the moneylender and the debtor, Antonio :

The quality of mercy is not straind,
It droppeth as the gentle ran from heaven
Upon the place beneath : It is twice blest,
It bleeseth him that gives, and him that takes . (4.1. 180-83)

She points out why mercy is opposite to law. The latter consists in its inforceability whereas the former is

not enforceable. Portia suggests that mercy does not belong to law. It is something that cannot be defined in legal terms. It is natural just like rain dropping from heaven. It is voluntary and it is beyond extra-legal mercy. She tries to persuade Shylock to be merciful explaining thus :

T's mightiest in the mightiest, it becomes
The throned monarch better than his crown.
His scepter 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 heart of kings,
It is an attribute to God himself;
And earthly power doth then show likest Gods
When mercy seasons justice. (4.1.184-93)

Mercy, according to Portia, is more powerful than man's law. Laws of man can enforce people to accept what it dictates by means of 'dread and fear.' But it is not as powerful than mercy because the laws of God is beyond this. Here Portia equates mercy with God. She exhorts Shylock should show mercy that is beyond the laws of man within the practice of law. This emphasis on mercy might be far from the ways of conflict / dispute resolution as it is not entitled to enforcement. However, mercy can be something every person regardless of being a defendant or a plaintiff need. When Shylock turns out to be guilty with a covert murder attempt, his life lies in the mercy of the Duke

IV. Conclusion

Although conventionally placed among the comedies of Shakespeare, *The Merchant of Venice* might, with greater justice, be called 'a problem play'. A 'problem play' is one which raises certain difficult question, but leaves the audience in radical indecision as to how those issues are resolved.

In *The Merchant of Venice*, many important questions are raised such as the nature of love and friendship, the relation of man to money, the morality of lending money at interest, the plight of Christian and Jew, the questions of parental authority as gleaned from father-daughter relationship (Shylock and Jessica), the problem of

loneliness and the limited value of the civil law. In this sense, this play is an open text in which one can elicit various insights from these questions.

As a bond story among many others, this play contains matters of legal discrepancies and interpretation. It is the reader's challenge to detect how Shakespeare uses literary law for his literalistic legalism in the trial in the person of Portia who so brilliantly succeeds in her job at being an efficient arbitrator.

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