

SHYLOCK AND EQUITY IN SHAKESPEARE'S *The Merchant of Venice*

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ABSTRACTS

La controversa interpretazione della figura di Shylock nel "Mercante di Venezia" di Shakespeare non si è finora avvalsa di due importanti aspetti iscritti nella testualità del dramma e che possono bene spiegarne le apparenti contraddizioni.

La rilettura del contesto socio-storico all'epoca di Shakespeare ad opera di Lawrence Stone ha introdotto una nuova prospettiva, focalizzata sull'importanza dell'incipiente nascita della borghesia ("the rising gentry"), della rivoluzione culturale e del vivace dibattito politico, in particolare dell'ideologia Country, con le sue polemiche etiche ed economiche, centrali nei sistemi di valori del dramma. Sebbene sempre più confermata dai più recenti studi storico-giuridici, tale prospettiva non ha tuttavia ancora esercitato la sua influenza sulla controversia in questione, nonostante la decisiva luce che essa può gettare sul pubblico shakespeariano, i suoi interessi e il suo orizzonte di attesa.

Anche la corretta interpretazione del problema giuridico centrale nella lunga scena del processo, che inizia in regime di "common law" e procede passando, nella seconda parte, ad una corte di "equity", di fatto con un secondo processo presso la Chancery, come bene spiegato da Mark Andrewes, è stata per lo più trascurata senza discuterla, nonostante il suo preciso rilievo nel testo.

Lungi dall'essere anti-semita o contraddittorio in tal senso, "Il Mercante di Venezia" è un testo complesso, che ha influenzato la più importante riforma giuridica voluta nel 1616 da Giacomo I e da Francis Bacon e ha sorprendentemente anticipato la riforma del diritto inglese dei Judicature Acts del 1873-75, che hanno ridisegnato l'attuale sistema giuridico inglese.

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Controversial interpretations of Shakespeare's "The Merchant of Venice", with particular reference to Shylock's treatment, have so far taken little or no account of two important aspects inscribed in the play, that can explain apparent contradictions.

Lawrence Stone's re-description of the socio-historical set up in Shakespeare's time has introduced a new outlook, focusing on the importance of "the rising gentry", the "educational revolution" and the contemporary rich political debate, including the Country ideology, with its emphasis on ethics and economics, central in the value systems of the play. Though progressively confirmed by the more recent historical and law and literature studies, this perspective has yet so far exerted no influence on the controversy mentioned, in spite of the decisive light it can shed on Shakespeare's audience and its interests and expectations.

The correct interpretation of the juridical issue at stake in the long trial scene, which starts in terms of common law, but then shows the superseding of equity in the second part, actually a second trial in Chancery, as well explained by Mark Andrews, has also remained generally both unused and unchallenged, in spite of its relevance and importance in the play. The combination of the two outlooks can offer a new perspective: far from being anti-Semitic or contradictory, "The Merchant of Venice" is a complex text, that influenced the 1616 major judicial reform James I and Francis Bacon agreed upon, and surprisingly anticipated the reform brought about in England by the 1873-75 Judicature Acts, still extant today.

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1. A FRAME OF REFERENCE

Opposing interpretations of *The Merchant of Venice* have led to the paradox of its double use by the Jews for their cause and by Nazis against the Jews. As anxiety over the Semitic problem has been growing, contradictory comments have been produced even by some of Shakespeare's most convinced estimators. For such a major Shakespeare critic Harold Bloom (of Jewish origin), who has placed Shakespeare at the core of what he calls "the western canon"¹ and the western "invention of the human", Shylock is meant as an anti-Semitic villain and Portia's role in the trial is unduly aggressive². In the Indian critic Ania Loomba's 2002 volume *Shakespeare, Race and Colonialism*, Portia is construed as both racist and anti-Semitic: a surprising charge for the author of *Othello*, and at variance with Loomba's own promotion of Shakespeare in the light of her political standing³. As for the trial scene in particular, it seems to have given rise to ideological tension.

The play (dating to 1597) refers to a period of social and juridical evolution amply revisited by scholars from the 70's to the 90's as one of the most controversial periods of English history, leading to Cromwell's rebellion. The search for the causes of the 1642 Puritan revolution stimulated a prolonged debate and led to Lawrence Stone's influential studies. If further research, by Richardson or Russell, seems to have added to the analysis of the revolutionary moment itself, Stone's re-description of the socio-historical set up in Shakespeare's time during the reign of Elizabeth and James I has established an unchallenged new outlook. Yet it has so far exerted no influence on new historicism

1 H. Bloom, *The Western Canon*, Riverhead Books, New York, 1995.

2 H. Bloom, *Shakespeare, the Invention of the Human*, Fourth Estate, London, 1999.

3 A. Loomba, *Shakespeare, Race and Colonialism*, Oxford University Press, Oxford, 2002. Portia's racism is detected in her attitude to the Prince of Morocco, a Moor and an outstanding military hero seeking a Venetian wife, clearly an *Othello in nuce*: but certainly Shakespeare cannot be accused to side with racism in *Othello*. Neither was he schizophrenic nor did he change his mind from one play to the other: the linguistic mistake, owing to interpretive distortion, is here later explained in note 24.

critics or on major Shakespearian criticism and the controversy mentioned.

The fact that the trial scene stages a major juridical problem has been considered by few law experts, but hardly at all by literary critics, while no reading combining juridical awareness and the renewed socio-historical outlook has been attempted. Mark Edwin Andrewes' analysis of the trial scene line by line in *Law v. Equity* has duly explained all its steps and implications in the light of the history of English jurisprudence⁴, as two successive legal procedures are adopted by Portia, one at common law and one at equity. This reading, limited to the trial scene, disposes of all the impatient, uninformed labellings of the trial as based on a 'legalistic quibble', and accounts for the precision of Shakespeare's language in the technical workings of the confrontation in favor of equity. Yet it has been ignored by main stream literary criticism, and understandingly so. Confined to few legal experts for the time-consuming competence it involves, it has not appeared to contribute to a better definition of the crucial problems in the interpretation of the play. Andrewes suggests nothing from this point of view and accepts as obvious the audience's anti-Semitic outlook⁵.

Among American law and literature experts, Daniel Kornstein - convinced of Shakespeare's legal expertise, to which he devoted a volume ranging throughout the author's work - owns indeed that a winning battle for equity is staged in *The Merchant*, but resents its outcome at the cost of turning Shylock into a discriminated loser.⁶ Why place Shylock on the wrong side, turning him from a victorious prosecutor at common law to a losing defendant at equity? Kornstein proposes what he calls a minority view, or "minority report", sharing the remarks already voiced by Richard Weisberg⁷: both

4 M.A. Andrewes, *Law versus. Equity in "The Merchant of Venice"*, University of Colorado Press, Boulder, 1965.

5 Ibidem, p.70.

6 D. Kornstein, *Kill All the Lawyers? Shakespeare's Legal Appeal*, Princeton University Press, Princeton, 1994

7 R. Weisberg, *Poethics and Other Strategies of Law and Literature*, Columbia University Press, New York, 1992.

authors question the outcome of the equity in the play. Appreciating Portia's intelligence, Weisberg tries to deflect from Portia to Antonio's "mediation" the responsibility for what he considers an unnecessarily cruel conclusion of the trial, while yet his full awareness of the whole play leads him rightly to realize that Shakespeare's portrayal of Shylock is not anti-Semitic⁸.

Thus, paradoxically, a greater difficulty seems to have arisen from greater legal awareness. On the one hand, Shakespeare's play appears to advocate the importance of equity against a strict resorting to common law with surprisingly lucid anticipation: *The Merchant* prepares the 1616 legal reform by James I and Francis Bacon, which solved a long contraposition between common law and equity (here later described) by establishing the supremacy of the Chancery. Portia's role in the trial as a lawyer envisages a solution – a dual jurisprudence to be applied in the same court and trial – anticipating a concept which will become operative in England only with the Supreme Court of Judicature, established with the Judicature Acts of 1873-75. On the other hand, Shakespeare's extraordinary juridical intuition, combining in the play with the 'Shylock problem', increases questions as to the value systems with which the text is imbued.

But recent studies allow a reconsideration of the socio-judicial frame of reference for the play. Wilfrid Prest's two volumes on the London inns of court and on the legal professions in Shakespeare's England⁹ suggest new aspects of the setting of *The Merchant*, which well combine with Stone's historical re-evaluation of the period. Both authors implicitly suggest, as we shall see, the problem of Shakespeare's audience 'inscribed' in the play. As for Orgel's 2004 essay *Shylock's Tribe*, it has attracted attention to a more immediate detail, which

8 See Ibidem, pp.43, 93-104. Weisberg points out that Shakespeare's "attraction to Jewish ethical dialogue is too clear, and the dignity of his villain too great" (p.100), but is convinced that this purports a reversal of values, that "to put it legally, law conquers equity and the covenant regains its ascendancy" (p.103).

9 W. Prest, *The Inns of Court under Elizabeth I and the Early Stuarts (1590-1640)*, Longman, London, 1972, and *The Rise of the Barristers*, Oxford University Press, Oxford, 1986.

throws new light on Shylock's role¹⁰. Orgel's relatively brief and apparently non-committal essay on *The Merchant* convincingly argues that the name of "Shylock the Jew" does not at all point to Jewish origin, but to a typical English surname, historically traceable and equivalent to Whitelocke, or Whitehead, suggesting 'white hair'. The name Shylock did exist in England before Shakespeare's play, though it tended to disappear after the play, for the implications it suggested. As for the name Whitelocke, it was attached to important magistrates, particularly John Whitelocke and his son Bulstrode Whitelocke, a friend of John Selden, the famous jus-naturalist and expert in common law, but also an eminent scholar of Hebrew.

This 'name detail' disposes of the various awkward attempts at finding a Jewish background to Shylock's name, which is actually the only English name in a play properly full of Latin-Italian names (Antonio, Bassanio, Portia, Lorenzo etc.), consistent with the Venetian ambience. As Shakespeare is always highly attentive in choosing his names, why should only Shylock the Jew of all characters sound English?

In the re-designed cultural horizon important missing clues – self-evident to Shakespeare's audience and later lost or altered by the weight of subsequent historical problems – allow a relocation of equity in the play. Equity not only introduces the chancery procedures in the second part of the trial: in a sense it seems to extend to the overall meaning of the play. An equitable logic is here embedded, in the balancing of the textual counterparts, as in the evaluation of more ideological issues at the same time. A degree of both recognition and detraction is allowed to Shylock as well as to Antonio, whose names figured jointly in the unusual double title of the play: *The History of the Merchant of Venice or the Jew of Venice*¹¹. But perception of necessary evidence requires the reconstruction of the socio-legal background of the play, its central economic issue and the reference audience the trial scene was conceived for.

10 Stephen Orgel, *Shylock's Tribe* in T. Clayton, S. Brock, V. Forès editors, *Shakespeare and the Mediterranean* (Selected Proceedings of the International Shakespeare Association World Congress Valencia 2001) Rosemont, Cranbury, N.J., 2004, pp.38-53.

11 See the entry in the Stationer's Register on 22 July 1598.

2. THE RISING GENTRY AND THE INNS OF COURT

Lawrence Stone's historical outlook has re-designed the social landscape of Shakespeare's time, characterized by what he calls "the educational revolution" and a social mobility described as the development of an early bourgeoisie, or "rising gentry". Wilfred Prest's two studies have enlarged this perspective on the specific ground of the growth of juridical studies and of the professional classes. The formation, role and fortune of English barristers in the sixteenth and seventeenth centuries call into question current historical assessments which postpone the rise of the professional classes in England to the age of the industrial revolution, failing to recognize their existence and importance since Shakespeare's age. A long tradition describing late Tudor and Stuart English society as based on three social pillars, king, aristocracy and an undifferentiated 'people', must give way to a more complex and dynamic interplay of social strata, whose mobility, economic struggle and success prepared the setting for an opposition to absolute monarchical power and the raising of an army surprisingly capable of facing the king's army in the subsequent Puritan revolution.

As both the formation and the career of legal professionals concentrated in London, they advocate a new evaluation of Shakespeare's audience, of the specific weight of current legal debate and culture, of the playwright's opportunity to reckon on foreseeable impacts and play on complex allusions, appealing to the informed section of his audience, though later lost or difficult to retrace.

As Stone points out in *The Causes of the English Revolution from 1529 to 1642*, in England between 1540 and 1640, the landed classes trebled in numbers, while the population as a whole scarcely doubled¹². Great social mobility brought about "an impressive rise of the gentry as a status group in terms of numbers and wealth"¹³, which ran parallel and in good part

merged with the rise of the professional classes, the most influential group being the lawyers, followed by the medical profession and the merchants. Education was rapidly improving, as grammar schools and the two universities of Oxford and Cambridge saw a very large increase in enrolments¹⁴. Concomitant with the decline of the aristocracy, which was losing its military supremacy and economic hegemony, the increasing gentry ranged from the younger children of the aristocracy, excluded from inheritance, to minor nobility, absorbing the rising middle class, formed by the richer merchants and yeomen, eager to rise socially. In *The Past and the Present* Stone even more openly describes an alliance of common lawyers, gentry, Puritans and the merchant community¹⁵. Educated at Oxford and Cambridge, this rising class was no longer tied by allegiance to the nobles, but to the counties, to regional forces and the defense of their rights in Parliament. Their socio-political awareness grew along with their culture, as with a spreading of juridical knowledge and the successful development of the common law, connected to one specific institution central to its formation: the London inns of court¹⁶.

Great collegiate institutions, alimeted by the growing prosperity of the gentry, by merchants and yeomen (in spite of complaints about the

¹⁴ Ibidem, p.95.

¹⁵ L. Stone, *The Past and the Present*, Routledge & Kegan Paul, London, 1981, p.187 and *passim*.

¹⁶ Born as voluntary unincorporated associations from groups of practicing lawyers, who clubbed together to provide themselves with lodging houses and offices, the inns of court had turned by 1400 from professional fraternities into teaching institutions. The four great inns, Lincoln's Inn, Inner Temple, Middle Temple and Gray's Inn, offered study and training in common law, as distinguished from lesser preparatory inns of chancery. The educational revolution in Elizabethan and early Stuart England, connected to the demographic upswing which reached a peak in the middle of the reign of James I, brought about their growth: between 1500 and 1600 admissions to the inns quadrupled, Gray's Inn, in particular, enjoying twice as many students as any other house. Students were admitted at an age between 16 and 20, to gain two or three years seniority, then attended university at either Oxford or Cambridge and came back actually to attend the inns.

¹² See L. Stone, *The Causes of the English Revolution 1529-1642*, Routledge & Kegan Paul, London, 1972.

¹³ Ibidem, p.74.

intrusion of lower classes), the inns soon became “the nurseries for the greater part of the gentry of the realme”¹⁷. They provided talents with the ladder on which to climb to power and riches, ensuring social mobility. As Erasmus pointed out, there was “no better way for an Englishman to attain fame and wealth than by becoming a common lawyer”¹⁸. While the universities trained civil lawyers¹⁹ and taught in Latin, the inns taught the common law, of Norman codification, which required a mixture of Latin and “law French”. Common lawyers acted not only as legal experts, but also as accountants, brokers, financiers and land agents, as there was no specific institution for economics.

The inns provided not only legal training but also a good conventional gentlemanly education, combining the law, as useful for landowners as for future professionals, with lessons of fencing, dancing and music. Thus, they appealed to the sons of legal dynasties and to future peers, but also, provided they could pay the fees, to merchants and yeomen, men of bourgeois or small farmer stock, whose sons, if admitted to study the law, would be called “Masters” as a first mark of social growth²⁰. Relations with the London merchant oligarchy were close and cordial: many lawyers intermarried with London mercantile families.

The organization of the inns was based on three levels: the students, the barristers and the benchers and rulers of the inns, who conferred qualification for audience in the high courts, choosing from their barristers. Typical students’ exercises were disputations, “case-putting”, “moots” or doubtful cases, arguments etc., but they also included a cult of wit, incessant versifying, theatre-going, as the theatres were not far away and helped develop linguistic training: language ability was sought after as coinciding with social mobility (which

is indeed ironically mirrored in *The Merchant*²¹ as in the cemetery scene in *Hamlet*). Gaming or unrestrained expenditures on clothes and extra consumption attached to a gentlemanly education often led young men, far from home and family, to debts and even economic ruin: more than one Bassanio would have studied at the inns and been part of Shakespeare’s audience, whose front rows would be filled by students who would actively participate in all the situations (social, economic, legal, emotional) represented in the play. As during termtime presences at the inns could amount to about 2000 and “the passion for play-going among members remained a stock literary joke”²², it is reasonable to assume that inns of court attendance could offer Shakespeare a reference audience, as must have been the case at least for his two so-called “legal plays”, *The Merchant of Venice* and *Measure for Measure*.

Immediate allusions to such an audience are not lacking indeed in *The Merchant*: they range from Lancelot’s playful social pretensions with his father when he styles himself as “Master Lancelot” (we have seen the social meaning of the term “Master” at the inns), to his extravagant and defiant use of wit with Lorenzo; or from the links between law and economy in the play, to the traits of the well-educated but impoverished young ‘scholar’ Bassanio, as of course to the trial scene and Portia’s devices as a lawyer.

The educational revolution also brought about the political growth of the counties. They assumed a symbolic cultural meaning as an ideal opposite to city or court life. The county meant a rural world and country houses, a kind of Arcadia healthy, green and blessed by beautiful landscapes, trees and birds, as in the description of Portia’s Belmont in *The Merchant*, contrasted with the city or court, polluted by over-crowding or by political intrigue. In Stone’s analysis, this outlook nurtured the so-called “Country ideology” (which would

17 W. Prest, *The Inns of Court under Elizabeth I and the Early Stuarts (1590-1640)*, cit. p.20.

18 Ibidem, p.21.

19 For the Chancery, the Admiralty Court, the Court of Requests and ecclesiastical courts.

20 W. Prest, *The Inns of Court under Elizabeth I and the Early Stuarts (1590-1640)*, cit. p.23.

21 See Lancelot’s wit with Lorenzo in 3.5,45-59 (the reference edition of *The Merchant of Venice* used is the 1994 Oxford University Press one, edited by Jay Halio).

22 Of one Edward Heath we know that in the mid-1620s he attended 49 plays in a year and a half (Prest, *The Inns of Court under Elizabeth I and the Early Stuarts (1590-1640)*, cit. p.155).

later give rise to a party) and was, in the late Elizabethan years and early Stuart period, one of four currents of thought 'resisting' court and crown. The other three were Puritanism, the common law (with Edward Coke as its champion) and "skepticism" (or relativism), represented by Bacon's philosophy and, we may add, by Montaigne's *Essays* (translated by Florio and evoked in Shakespeare's plays at least since *Hamlet*). These currents of thought converged in establishing the "prerequisites" for the 1642 revolution against the king.

Within the wider social frame, Stone's description of the Country ideology in particular reveals a peculiar interplay of cultural changes ranging from ethics to economy. It stressed such aspects as "being thrifty", "responsibility as employers of domestic labour", ethical pride, and reference to the bench of justices, all of which are evident in *The Merchant*, as attached to Shylock:

"The third component in the mentality of the opposition was the ideology of the 'Country'. Spread by poets and preachers, and stimulated by the news letters about the goings-on at Court, it defined itself most clearly as the antithesis to this negative reference group. The Country is firstly an ideal.

It is that vision of rustic arcadia that goes back to the Roman classics and which fell on the highly receptive ears of the newly educated gentlemen of England who had studied Virgil's *Georgics* at Oxford or Cambridge. It was a vision of environmental superiority over the City. [...] It was also a vision of moral superiority over the Court: the Country was virtuous, the Court wicked; the Country was thrifty, the Court extravagant; the Country was honest, the Court corrupt [...] secondly the country is a culture and style of life, again defined as much by what it is not as by what it is. As its name implies, it stood for rural residence in a country house, as opposed to living in rented lodgings in London; for the assumption by the owner of paternalist and patriarchal responsibilities as employer of domestic labour, dispenser of charity, landlord of tenants, and member of the bench of justices"²³.

In *The Merchant of Venice* the connections linking the rising gentry with the new economy, the Country ideology and the legal environment, appear well evident. The nobles are far from being the protagonists, as usually elsewhere in Shakespeare: indeed, when they do appear, it is only to their disadvantage, as with Portia's discarded suitors, about whom

23 L. Stone, *The Causes of the English Revolution 1529-1642*, cit. pp.105-7.

her comments are constantly disparaging. A Neapolitan prince, a County Palatine, a French lord, a young baron of England, a Scottish lord, the Duke of Saxony's nephew, described as departing, and then the Prince of Morocco and the Prince of Arragon, acting on stage, are not simply queuing up to emphasize Portia's appeal: they represent a whole range of the international aristocracy of the time and are all equally and ironically found inadequate by Portia. She judges them not by their *ascriptive* qualities, like titles or aspect, but by their personal qualities, or 'character': or rather "complexion", the term Shakespeare uses for the first of the suitors appearing on stage, the Prince of Morocco. Morocco happens indeed to be a foreigner with a brown skin, which helps attenuate in naïf eyes the daring discarding of aristocracy he actually introduces, while the more sophisticated 'rising gentry' would quickly recognize in Portia's irony with all her noble suitors their own self-pride in *acquisitive* qualities and their socio-ideological antagonism to nobility.

As for the term "complexion", it is used four times in *The Merchant* and its first meaning was then character (a person's complex sum of qualities or "complexion") and did not refer only to skin as it does today²⁴: not a race problem

24 The meaning of *complexion* (used in *The Merchant* four times) is in Webster as follows: "1. originally the combination of the four humors, or the qualities of cold, heat, dryness and moisture, in certain proportions believed to determine the temperament and constitution of the body. 2. the temperament or constitution. 3. the color, texture and general appearance of the skin, particularly of the face. 4. the general appearance of anything; aspect; character; nature. Portia's words after Morocco has failed the test, "Let all of his complexion choose me so", have been considered racist by some critics, as if resuming Morocco's own previous use of the term, unequivocally referring to his skin. But the term *complexion* also appears in the play once before and once after these two cases, the last use being unequivocal in the sense of *character*: Jessica's elopement in 3.1, 27-9 is compared by Solanio to the migration of birds, "the bird was fledge; and then it is the complexion of them all to leave the dam". A similar use referred to a rebellious personality, and not to skin, is attached in the first scene of *The Tempest* to a boatswain impatient with social subordination, on board a ship ready to sink ("his complexion is perfect gallows", 1.1, 29). Portia's mentioned use seems ironically to correct Morocco's

but a social class and personality evaluation problem hovers over the whole suitors' scene in the play. Hence Portia's 'mass disapproval' of her aristocratic suitors and the elaborate psychological nature of the casket 'personality test', which is based on the opposition between two verbs, *taking* and *giving* in marriage: that is between marriage as social acquisition or as reciprocal human and emotional exchange²⁵. By contrast Bassanio – who has no aristocratic title, as the play emphasizes by ironically styling him Lord Love – is simply a scholar and passes the love test.

The rising gentry's acquired qualities of education, stressing individual identity rather than inherited attributes, combine here with the ideology of the elective couple, as opposed to aristocracy's tradition of dynastic marriages. In fact all the protagonists of the play belong to a well-to-do untitled bourgeoisie. Everything pertaining to Portia and Bassanio points to this status: no title is attached to Portia's fabulous wealth and her Belmont country seat; her connections are with the professional classes, represented by her cousin, a famous Paduan lawyer, whom she successfully imitates by playing a lawyer in the trial scene; she shares with Bassanio both the ideals of learning and scholarship and the 'gentile' life style which Bassanio insists in preserving, even though it means borrowing from Antonio, who stands for the mercantile class. Lorenzo and Gratiano, Jessica and Nerissa represent lower strata of the same gentry.

anxiety at her possible dislike of his skin, acutely aiming instead at his personality, made evident in his boasts as a Mars entitled to his Venus for his military heroism. In fact we have seen that Portia evaluates *all other suitors* on the sole basis of their character. Ironical ambiguity also invests the remaining use of *complexion* in the play, in Portia's first remark on Morocco, before she sees him: "If he have the condition of a saint and the complexion of a devil, I had rather he should shrive me than wive me" (1.2,127-8). This may be construed as meaning "had he the (sexual) character of a devil (black men were deemed to be fierce lovers: see in *Othello*), although socially behaving like a saint, I would prefer to inhabit his sanctuary than accept sexual excess as his wife".

25 There is no room here for a proper analysis of the love plot, the casket scene and Bassanio's position between Antonio and Portia, which add greatly to the complexities of the play.

Within the so-called rising gentry there were, indeed, different social components and attitudes to money, introduced in the play not without tensions, as between Shylock and Antonio. In fact, there is an ideological split, as two moral outlooks regarding property are highlighted. One is Shylock's *thrift* (a characteristic which we have already seen as attached to Country ideology), the other is the prodigality of renters, who considered money and estate only as a means for high quality life, to be shared with friends, relatives or even in part with domestics: this position is represented by both Bassanio (who is generous even to Lancelot) and Portia, who are imitated by Jessica and Lorenzo and admired by Nerissa and Gratiano. As for Antonio, he becomes heavily indebted just to help Bassanio in his marriage suit, apparently unaware of money or investment risks, as liberal-minded as Bassanio, virtually an aspiring renter²⁶.

26 In Venice in the sixteenth century gentrified inheritors of the merchant class were indeed turning into *rentiers* or professionals, anxious to distance themselves from their unfashionable mercantile connections. The play mirrors both the Venetian and English abhorrence of money dealings connected with the gentleman, which explains Antonio's strange detachment from money matters, while for her lawyer's fee Portia refuses to be paid with more than a ring, anxious to shun "a more mercenary mind" (4.1,414). Money was necessary to be fully human and free and to imitate, in Renaissance terms, the Roman *virtus*, but it was still often considered better to inherit it than to earn it, to spend it 'liberally' rather than be 'thrifty' like Shylock. An example of what was happening in Venetian society at the time (and similarly in English society, which looked at Venice with admiration) can be provided by a Venetian pamphlet, dedicated in 1570 by Girolamo Cappello to cardinal Giovanni Grimani, to whose family Cappello belonged. Here, this young graduate from the University of Padua celebrates landed property as the necessary basis for human dignity and virtue. Surprisingly, against his own family's past and against centuries of Venetian mercantile tradition, he rejects the figure of the patrician merchant, because commerce, aiming at 'making money', "vile et sordidum est", is vile and dirty. In Venetian society merchants used to sea-voyaging and seeking profit were becoming landed country gentry, living in elegant villas on reclaimed lands. (See Gino Benzoni, "Comportamenti e problemi di comportamento nella Venezia di Giovanni Grimani" in Irene Favaretto and Giovanna Luisa Ravagnan editors, *Lo Statuario pubblico della Serenissima*, Venezia, 1997, pp.21-22). In England, as Stone points out

3. SHYLOCK'S DOUBLE SPLIT

If a reckless renter's use of money was closer to the aristocratic tradition, the thrifty one would better appeal to professionals living off their work, or to severe Puritans, both connected with the new economy which was changing Renaissance Europe, where the Medici had built their fortune as bankers and had become art patrons to hush Christian church resentment against their practice of lending money at an interest. The new economy was based on careful budgeting, expenditure control or parsimony, profit and investment, personal ability and work contracts, as opposed to inflated prestige expenditure, based on a combination of inheritance and a debt economy, social hierarchy exploitation and scarce attention to gain or budget.

This economic contraposition is carried on by Shylock, who, when on stage, is seen not as imposing high rates in money lending, but rather proudly insisting on his economic awareness. From beginning to end he is a champion of *thrift*, which would not be received equally by all components of the contemporary audience, but would appeal to social sections sharing the Country ideology or Puritan values and to part of the inns of court students and professionals: in fact, the term "thrift" is insistently disseminated throughout the play and Shylock's predicament in the plot seems particularly designed to stress the opposing economic ideologies.

Bassanio, a profligate impoverished scholar, though already heavily indebted with his friend Antonio, does not hesitate to ask him three thousand ducats stylishly to court and try to marry the beautiful rich woman he is in love with, Portia. Antonio, in his turn, is ready to help his friend of whom he is all too fond. But in spite of his proud position as a "royal merchant" of Venice, whose "argosies" in *The Crisis of the Aristocracy 1558-1641*, Oxford University Press, Oxford, 1965, the merchants were long considered socially inferior to the landed gentry: land-owning was the prerequisite to sit in Parliament as a representative, or for an official post. It was only in 1906 that a man from the working class could join the government. (p.43)

sail throughout the world, he appears unable to raise the necessary amount of cash, except by borrowing money from Shylock, while at the same time despising him for acting as a bank. Yet, far from trying to profit in the transaction, Shylock gives the money at no rate of interest, borrowing part of it himself from his Jewish friend Tubal: but on condition that he and Antonio underwrite a bond, the penalty of which, in case of default, would be a pound of Antonio's flesh. No greed for money here pushes Shylock: he is in fact trying to force Antonio to admit that money and life are one, that his economic role as money lender is useful and not to be vilified and heavily scorned, as Antonio publicly used to do. Nor does it appear likely that a rich merchant like Antonio would not be able to payback in three months' time. When Antonio actually fails to do so, two unforeseeable events have happened that turn the "merry bond" into a dangerous revenge device: none of Antonio's many ships has yet come back, all of them being apparently lost, and Shylock's only daughter has eloped to marry Antonio's friend Lorenzo, denying her father and faith, to become Christian like her husband. She has also taken with her the family jewels, including the marriage ring Shylock had given her dead mother, which he particularly cherished. To enforce the bond then becomes for him a tragic form of justice, which Tubal's comments and Antonio's scorn and cultural counter-positions push him to and resorting to common law makes legally possible²⁷.

Before the plot develops to Shylock's prosecution of Antonio for the bond, the Jew's

²⁷Apart from prejudices voiced by others, the one passage in the play which might confer Shylock a murderous intent on first proposing the bond is Jessica's words in III, 2 282-8: "When I was with him I have heard him swear/ To Tubal and to Chus, his countrymen,/ That he would rather have Antonio's flesh/ Than twenty times the value of the sum/ That he did owe him; and I know, my lord, / If law, authority, and power deny not,/ It will go hard with poor Antonio." But Quiller-Couch and Dover Wilson (Cambridge edition 1953) and Halio after them (Oxford Edition 1993) observe that Jessica's jarring words remain strangely unheeded, as if unrelated with the dialogue going on: which suggests interpolation, if so with obvious interpretative intentions.

economic outlook is repeatedly explained. In his first appearance on stage Shylock imparts Antonio a lesson in economics which the latter does not understand. To justify his position as a money lender, Shylock evokes the Laban/Jacob episode in the Bible (Gen.27), proposing Jacob's ability in cunningly getting more sheep than expected from Laban as an example of effective enterprise. He insists on an idea of money as "breeding" or producing profit, against the traditional Christian viewpoint, which considered money as necessarily "sterile" or fruitless, according to the principle that "pecunia non parit pecuniam", money does not beget money. But Antonio, though a merchant, sees Jacob's success only as a case of inscrutable Divine Providence. In an aside, Shylock better explains his economic-ideological grudge against Antonio, who "rails" against "my well-won thrift, which he calls interest" (1,3,47-48): the contraposition between "thrift" as a value and "interest" as despicable is central in the ideological debate of the play.

References to the "thrift issue" are recurrent²⁸: even Lancelot is by Shylock disparaged as "an unthrifty knave", while in 2.5,36, Shylock is "by Jacob's staff" proud of his "sober house", as shortly later of his "thrifty mind". Shylock's economic criticism of Antonio as a "prodigal Christian" (2.5,15), "a bankrupt, a prodigal" (3.1,41-2), or "a fool that lent out money gratis" (3.3,2) and again "a bankrupt" in 4.1,121, appears even more pronounced than his grudge at Antonio's social disavowal: this is indeed the very core of their opposition, which is not that of a miser to a "royal merchant", but rather of a new economist to an aristocratically-minded or else a medieval merchant, who seems to ignore all banking problems and investment risks. Moreover, there are other traits in Shylock pointing to advanced socio-economic awareness.

Shylock's careful dealing with the salary problem, staged in his relationship with his servant Lancelot (still meaningfully uncertain between faithful feudal subjection

to a master and a work contract), suggests his economic awareness of the need for a labor market. Unsatisfied with Lancelot's service, he dismisses him, but arranges for his passing to Bassanio's service for a better salary he is not ready to grant, aware of a worker's right to choose. But, at the same time, he tries to stimulate Lancelot to learn by comparing his own thrift with Bassanio's profligacy²⁹.

Later Shylock denounces slavery as illicit. His concept of thrift, free labor market and everyman's reason and capability of judgment will become the rule in the western world, as will the abolition of slavery: aware of a need for banking, risk evaluation and business fair play as for labor contracts, Shylock does not stand for old usury, neither does he impersonate the usurious miser deemed by Solanio, Salario and Salarino. Aptly named by a critic as the "three Sallies"³⁰, these characters interchangeably represent the racist anti-Semitic opinion current at the time at popular level, but not a culturally dominant attitude in the higher and in the professional classes. While the Sallies' scornful descriptions of Shylock after Jessica's elopement interpret the miser's frenzy of their imagination we do not see on stage, Shylock actually always appears on stage as dignified, a severe Puritan-like man of principles. He mirrors throughout a set of values which were often shared by the new Puritan culture, based, like Jewish culture, on the Old Testament rather than the Gospels and implying a connection, if not correspondence, between economic success and salvation, as later emphasized in Max Weber's *The Protestant Ethic and the Spirit of Capitalism* (*Die protestantische Ethik und der Geist des Kapitalismus*, 1905).

At stake are, with the moral aspects of the economic rights and usage of money and estate, what are called in the play "life props": the coincidence between money and life itself or actual flesh, as signified not only in the pound of flesh bond, but also in the slavery/property issue raised by Shylock during the trial, and again when

28 For the terms "thrift, thrifty" of "unthrifty" the list includes 1.1,75; 1.3,47 and also 87 and 173; 2.5,1 and 54; 5.1,16. Moreover see the use of "sober" in 2.5,36; of "prodigal" in 2.5,15 and 3.1,42; and reference to money in 3.3,2 and 4.1,121.

29 In 2.5,1-2 Shylock proudly addresses Lancelot: "Well, thou shalt see - thy eyes shall be thy judge - / The difference of old Shylock and Bassanio."

30 See Jay Halio's Introduction to his edition of *The Merchant of Venice*, Oxford University Press, Oxford, 1994.

in 4.1,370-3 he refuses to survive if deprived of all his means. This position Antonio himself is later forced to acknowledge: economic means and life are one and the same thing and life might well be taken away if the economic means for it are taken away (4.1,264-69). Through parallel experiences this awareness can be finally shared by both Antonio and Shylock, who had started out from opposite economic viewpoints. In fact Shylock's economic issue was linked with Shakespeare's own scarcely considered (usually ignored) personal background.

As Kornstein rightly recalls – only in the general introduction to his volume, to justify Shakespeare's experience with law, on which he builds his study, but strangely not later in his specific analysis of *The Merchant of Venice*, where it would have been directly relevant for interpretation – Shakespeare's father had been tried at court twice in 1570 “for breaking the usury laws by lending money at 20% interest”³¹. This socially equated John Shakespeare with Jews, and in the play with Shylock. A similar practice would not be unknown at the time to Catholic recusants, as well as to other religious groups excluded, like Jews, from public office, and, therefore, inclined to cover the absence of, and socio-economic necessity for banking, by risking their money in lending it at higher rates than legally allowed. John Shakespeare was actually a Catholic recusant, as was at least one of William's two daughters, while Shakespeare's career made of him part of the rising gentry.

Three social cultures seem in fact to interact in the play on the economic issue: the Christian shame connected with interest raising involves both lower and higher social strata, introduced as attached to both the Sallies' popular contempt for Jews and the “noble”, “royal” Antonio, or to Bassanio, imitating an aristocrat economic model. But these two ‘money cultures’ cede to a third attitude, a middle class professional one, represented by Shylock. This is ironically hinted at by rich Portia's lofty refusal to be paid as a lawyer and finally appropriated by Antonio himself, when on the verge of ruin he shares Shylock's equation “money is life”, and when, like a skillful

31 See Daniel Kornstein, *Kill All the Lawyers? Shakespeare's Legal Appeal*, Princeton University Press, Princeton, 1994, p.16.

equity lawyer, he provides with legal means for Jessica's and Lorenzo's economic future.

Shylock, though, not only faces an ideological split on economics. He is also involved in a second and overlapping split, a complex legal one. This fully involved the described ambience of the inns and again makes awareness of specific aspects of the context necessary before re-investigating Andrewes' analysis of the trial scene.

In the 2004 reprint of Basil Brown's 1921 *Law Sports at Gray's Inn (1594)*³², Francis Bacon, then a law student at Gray's Inn, appears to have organized the 1594 *Law Sports* at the inn, including the *Gesta Grayorum*, in which the speeches of six councilors were written by him. The performance was attended by the Queen herself and among the outstanding personalities present there were the Earl of Essex and the Earl of Southampton³³, Shakespeare's patrons. Shakespeare's *Comedy of Errors* was also performed in the same year at Gray's Inn, possibly as a portion of the *Law Sports*, and, in the same year, Shakespeare appears first attached to the Lord Chamberlain's Players. From this concomitance and a number of other details, Basil Brown conjectures that it was Francis Bacon who introduced Shakespeare to London as he fled from Stratford: “without his shelter he would have been classed as a vagabond and a masterless man”³⁴.

At the time Bacon was relatively poor, out of the Queen's favour, tormented by law suits for debts, particularly in 1597 and 1598, usually solved recurring to equity, as was the case with his dear brother Anthony Bacon, also a student at law. Secretary and close friend of Essex, Anthony Bacon survived Essex' execution in 1603 by only three months, his attachment to Essex bringing to mind Antonio's love for Bassanio, their names coinciding³⁵. To disparage Francis with the Queen, in 1601 Coke insulted him in the Exchequer alluding to his early poverty and to a writ of *capias utlegatum* against him for debts³⁶. Models for Shakespeare's Bassanio or

32 Basil Brown, *Law Sports at Gray's Inn (1594)*, privately printed by the Author, New York 1921, re-print edition by The Lawbook Exchange, New Jersey, 2001.

33 Ibidem, p.IX.

34 Ibidem, p.XXXIX.

35 Ibidem, p.LXI and p.67.

36 Ibidem, pp.34-35. This has been traced to a 1597 debt

Antonio were not lacking at the inns: they were close to the author and in a sense 'binding'.

In the same year 1594 in which Bacon organized the Law Sports at Gray's Inn, Elizabeth appointed Edward Coke Attorney General in preference to Francis Bacon, whose fortune Essex was in vain trying to promote, which engendered long hostility between Coke and Bacon³⁷, coinciding with an opposition between the common law, defended by Coke, and equity, fostered by Bacon and Egerton. For Coke, the Chancery could not act as a court of appeal annulling judgments. The problem was long standing.

Since about 1330, when Edward III allowed his Chancellor to hear cases which the rigid judges of common law would not hear, two separate and different systems of jurisprudence existed in England. The common law courts acted *in rem* on the property of the litigants; the equity courts acted *in personam* on the person of the litigants. A conflict soon arose between these courts, and there followed a struggle, which lasted approximately three hundred years. The effect was that if a litigant, say Mr A, went into a court of common law and obtained a *judgement* against Mr B, then Mr B could go to the Court of Chancery and, if the Chancellor thought that the judgement against him was inequitable, he could obtain a *decree* in his favour. In such a case Mr A could not enforce the judgement in his favour, say on a bond, a debt or a covenant, without incurring the charge of contempt of court with regard to the Chancellor's decree and being sent indefinitely to jail for it. The problem had been increasing all the time and "by the reign of Elizabeth (1558-1603) literally hundreds of cases were recorded

with William Johnson of Gray's Inn: "Bacon was outlawed after judgement and a *capias ut legatum* was delivered to the sheriff in court. And now Bacon brought error...*quod contra legem*." (pp.44-5) and somehow escaped the danger.

37 Edward Coke (1552-1634), was a lawyer's son, had attended a chancery inn for a year, then Cambridge and Lincoln's Inn. In 1606 James I made Coke chief justice of the Court of Common Pleas, and six years later chief justice of the King's Bench. But in 1616 he allowed Bacon, allied with the Lord Chancellor Egerton, to win the legal battle in favor of "the precedency of the Chancery". On Egerton's death Bacon succeeded him.

in which one litigant had a *judgement* in his favour and the other litigant had a *decree* in his favour, in the same controversy"³⁸.

By 1598, the date when *The Merchant of Venice* was entered in the Stationer's Register, Edward Coke (future judge of the Court of Common Pleas), Lord Ellesmere (soon to become Lord Chancellor of the Court of Chancery) and Francis Bacon were all members of the inns of court. In that year the common law/equity contraposition "was referred to all the judges of England assembled in the Exchequer Chamber. Coke participated in the arguments, which went through all the grounds which were to be raised in 1616"³⁹, when a settlement was reached. The moment had been building up and was tense.

The social reference frame here described shows how Shylock's trial dramatized legal problems which touched Shakespeare's friends or patrons (Essex, Anthony and Francis Bacon), while working up to a peak in the history of the country and of the English legal system, which would later lead to the 1616 solution. Moreover, like the economic issue of the play, its legal split also touched Shakespeare personally and, once again, his own father.

If John Shakespeare had found himself in Shylock's economic predicament, he and his son had also found themselves in Antonio's position as a debtor and as defendant in common law suits for debts. A lawsuit with Edmund Lambert, John's brother-in-law, had started in 1580 and lasted twenty years. John had borrowed 40 pounds from Edmund Lambert, mortgaging 44 acres of land in Wilmcote, owned by John's wife; but on the payment date Edmund had refused to accept the money unless John's other debts to him were paid, and he claimed default. In 1588-90 John sued Lambert again to win back what would be William's inheritance; then the parties apparently reached a settlement⁴⁰. But in 1597 the John Shakespeare versus Edmund Lambert case was reopened:

38 M. A. Andrews, *Law versus Equity*, cit. p. XI.

39 J. H. Baker, *The Legal Profession and the Common Law*, cit. p.208.

40 D. Kornstein, *Kill All the Lawyers?*, cit. pp. 16-17.

William sued Edmund's son in the Court of Chancery, expecting better luck at equity. In 1599 the case was finally settled, but William never recovered the land lost by his father, as Kornstein notes in his *Introduction*⁴¹, yet forgets when discussing *The Merchant*, which was presumably written in 1597 and staged in 1598. Both the national conflict between common law and equity and Shakespeare's own litigation were impending while the author was engaged in writing the play.

Given this background, a degree of identification is likely to have involved Shylock, but, at the same time, the merchant of Venice himself, Antonio: John Shakespeare had experienced both roles, as money lender and as debtor. Shylock's defense of the economic meaning and necessity of thrift or interest could well be a defense to redeem John's 'Jewish-like usury', as many would have called it. This may well be relevant to the choice of an English name for Shylock, the more so as interest raising was indeed practiced by many Englishmen in London and these were not isolated private problems, but basic social ones, widely shared by what Lawrence Stone has called "the rising gentry", staged in the play with a number of its different components.

Before analyzing the confrontation between common law and equity in the trial scene, one last preliminary question is now left as to the way in which Shylock, thus charged with a double split, economic and legal, would be received as a Jew by the inns of court section of the audience.

The alliance between common law, Puritanism and Hebraism, fostered by Coke or by his friends at Gray's Inn, later attachable to the distinguished jurist and Hebraist John Selden (1584-1654), and then to Cromwell, was incipient. Selden considered equity "roguish"⁴².

From 1571 to 1578 the reader of divinity at the Temple Church, common to the Inner and the Middle Temple, was a protestant Spanish Jew, Antonio de Corro, who had influential backers

41 *Ibidem*, p 17.

42 J. Selden, *Table Talk* (1927 ed.), p.43, in J. H. Baker, *The Legal Profession and The Common Law*, The Hambledon Press, London, 1986, p.228.

like the earl of Leicester, "patron-in-chief of the Puritans"⁴³. Jews would be later favored by Cromwell and practically readmitted to England after a banishment of centuries by the Puritan revolution⁴⁴. An ideological line headed by Coke was developing, connecting common law, Puritans, Hebraism and Jews, while another ideological line seemed to connect equity and what Stone has termed as "Bacon's skepticism", but might equally well be called relativism (a concept insisted on in *The Merchant of Venice* in Act 5.1,89-108).

Bacon was close to Essex and Southampton, Shakespeare's patrons, who, as pointed out by Trevor-Roper, were a point of reference for the country gentry as opposed to the Court⁴⁵. The trial in *The Merchant* does not therefore only dramatize the common law/equity or Coke/Bacon opposition, envisaged by Andrewes, who rewrites the 397 lines of the scene in a closely parallel prose, imagining it as occurring in London as a double trial, first before Coke and then Egerton. It also stages a larger ideological split, in which common law and "puritanized Jews" or "judaizing Puritans"⁴⁶, in a sense combined forms of 'rigidity', were allied against Baconian relativism and equity. The latter were two major values to Shakespeare, at the time addressing the Chancery in the hope of solving the major law suit in his experience of litigation.

Shakespeare could only be aware that to the inns of court audience a Puritan-like Jew on the side of common law and thrift like Shylock would appear to stand for Coke and a respectable position. Now the first crucial question – did not Shakespeare realize the risks of an anti-

43 W. Prest, *The Inns of Court under Elizabeth I and the Early Stuarts (1590-1640)*, cit. p.190.

44 James Shapiro, cit.

45 See Trevor-Roper, *The Gentry 1540-1640*, "The Economic History Review Supplements", Cambridge University Press, London and New York, 1953, p.32. Though partly in contrast with Stone, Trevor-Roper, who calls Cromwell's revolution "The Great Rebellion", admits that "The difficulties of the excluded Elisabethan peers led to the brief inglorious rising of the Earl of Essex" and that "the gentry not only gave substance to that abortive rising: they continued far beyond it and led directly to the Great Rebellion".

46 J. Shapiro, *Shakespeare and the Jews*, Columbia University Press, New York, 1996, pp. 20-21.

Semitic interpretation obscuring the complex issues at stake in the play? – can find an answer: to an inns of court audience the text would be as stimulating as evident in its issues as would Shylock's economy and the play's siding with the rising gentry, or its meaningful insistence on thrift; while the Sallies or Gratiano (who is not casually described as *not a proper gentleman*) would be unappealing to such an audience. In their eyes, Shylock's competence in common law as in economy recommended him, while his English name could well imply that the Jew was in fact 'one of them'.

4. THE TRIAL SCENE: SHYLOCK AND EQUITY

Described in its technical aspects by Andrewes, the trial scene in *The Merchant of Venice* was meant to show the full workings of equity devices, compared to the technical insufficiency of "remedies" at common law. Common law judges had recurrently to admit that there were cases for which there was "no remedy at common law", or, as the phrase went in legal French, "il ne poit avoir remedy per nostre ley".

The setting of the trial is carefully contrived to be highly impressive, even sensational, better to attract attention to its central issue. A major contemporary legal problem is brought to bear on a double love plot, in which a psychic test story (staged in the fabulous terms of a choice among three caskets imposed on Portia's suitors) is interlaced with an intense attachment between two men, Antonio and Bassanio, verging on a love and death outcome (possibly evoking Antonio Bacon's attachment to the earl of Essex). With Antonio's default to pay his debt on time, the comedy turns into a potential tragedy, as Shylock is driven to use his pound of flesh bond to revenge his long ill-treatment by Antonio, and Jessica's sudden elopement with Antonio's friend Lorenzo, organized, Shylock thinks, with Antonio's help. Bassanio is then torn between his love story with Portia and his tie with Antonio, who is ready to die to prove the strength of his love, emphasizing the latent opposition between the heterosexual and the homosexual couple. Portia understands that Antonio's

death would spoil her marriage to Bassanio, and decides to prevent it, disguised as a (male) lawyer at Antonio's trial. Emotions run high for the two competing couples and Portia's skillful elusion of the social gender division (which allowed no female lawyers): the legal problem thus appears staged in a context both extreme and socially outstanding. It involves Antonio's possible dramatic death at law under Shylock's vengeful knife, not for lapsing into an intentional crime, but for Bassanio's sake, combined with an unbelievable bad luck with his ships abroad. At the same time Antonio is an outstanding merchant of Venice, the Venetian Duke himself deeply grieving for him, but impotent to prevent the application of the law on which the state of Venice depends. The legal stalemate, thus powerfully worked up, is then suddenly and surprisingly overcome by having the common law procedure give in to a chancery procedure and its elaborate issues. These finally involve not only the two litigants, but the future of two of the three couples forming in the play.

In the scene, Andrewes distinguishes four phases belonging to two subsequent trials and procedures. The first phase of the common law trial (4.1, 1-118) sees the Duke probe Shylock's intentions. On his refusal to relinquish the pound of flesh penalty, even when offered twice the money borrowed by Antonio, the Duke appears ready to dismiss the court adjourning it to wait for Balthasar, the "learned doctor" from Padua he expects assistance from. Emphasis is placed by Shylock on a limitless right of property, even though arisen to either irrational or ethical extremes. He points out that, if it pleased him, or "his humour", he could well spend ten thousand ducats to have his house freed of a rat, just as he chooses to refuse any amount of money – even six thousand times the money due to him (4.1,84) – rather than give up Antonio's pound of flesh, which he has sworn to have in the synagogue, "by our holy Sabbath". He is by common law – indeed a property law – entitled to his pound of flesh, just as, he points out, Christians think they are entitled to the slaves they have bought, using human bodies "like your asses and your dogs

and mules”, “in abject and in slavish parts” (4.1,90-1). Here, while indignantly denouncing slavery, Shylock confirms that the common law extended to the human body and allowed no breach in application: “If you deny me, fie upon your law! There is no force in the decrees of Venice” (4.1,100-1), which position is shared by the Venice Duke himself. Thus in fact, for revenge’s sake, Shylock is ready to use the very logic of slavery he has desecrated, while turning Christian ‘logic’ against the Christians themselves. At the same time common law allows scope for such a use.

The revenge issue is an important one, but in the circumstances given it is not obviously humiliating for Shylock. It confers on him a dignified sense of honour, reversing the current image of the Jewish miser: Shylock is, for moral reasons, ready to relinquish the money due to him, which casts off from him the expected image of covetousness. He prefers to pursue fruitless redress for offences not enforceable at law (Antonio’s long-standing scorn and Jessica’s recent elopement), resorting to the enforcement of a common law procedure over a money issue, thus exposing its weak and dangerous aspects. But this is done highlighting two important implications.

The first is that Shakespeare is careful to define the revenge overtones as *not Jewish*, not deriving from the Hebrew tradition of Old Testament (as he might have done, and as for instance Melville did for Ahab’s thirst for revenge in *Moby Dick*): it is rather, ironically, an imitation of *Christian values*⁴⁷. The second is that revenge, as connected with honor and prestige, was indeed well attached to Venice: its famous admiral and Duke Sebastiano Venier, admired in England and throughout Europe for his success against the Turks in the naval battle of Lepanto (1571), was also famous for his avenging of Venetian honor, as he had unhesitatingly hanged Spanish officers who had belittled it on his ship⁴⁸.

47 In 3.1,55-69, Shylock vindicates his human rights in the famous passage “Hath not a Jew eyes?” (a “declaration of man’s rights” *ante litteram*) and comments “If a Jew wrong a Christian, what is his humility? Revenge. If a Christian wrong a Jew, what should his sufferance be by Christian example? Why, revenge. The villainy you teach me I will execute, and it shall go hard but I will better the instruction.”

48 See J.J. Norwich, *A History of Venice*, Random House,

At the same time, Shylock’s attack on slavery is meant to confer on him ethical status and win consent in some social areas, confirming Puritan qualms on the subject, though common law was to exclude slavery only at the beginning of the 18th century. Shylock’s qualities, both moral and economic, would thus appeal to a large part of the inns of court audience, the more so as Shakespeare avoids all absurd pretences of physical difference or allusions to legendary Jewish crimes against Christians and emphasizes that Shylock’s difference from a Christian is confined to his diet and prayers. In fact, the play sees Shylock repeatedly compared with Christians to his advantage, as when he alludes not only to slavery in Christian society, but to the Jewish concept of marriage contracts (soon to be studied by Selden), or disparagingly comments on Christians’ matrimonial lassitude. If, as a Jew with his profile and an English name, Shylock would not fare badly with at least a section of the inns of court audience, his competence and confidence in common law, inducing him to take no counsel in the trial, would recommend him to all inns of court students or professionals, whose attention would be raised by a painstaking use of procedural details.

When Portia arrives disguised as young lawyer Balthasar, accompanied by Nerissa, disguised as his clerk, she bears the letter of the famous lawyer Bellario, which the Duke reads. Its contents are specific: Bellario states he has studied the “cause in controversy” together with Balthasar, turned many books (the common law records) to provide his “opinion”, a technical term meaning the outcome of his study, and recommends to have Balthasar admitted at the bar. Here he acts as the bencher of an inn of court, who was entitled to choose who could discuss a case. Portia is then admitted by the Duke as *Amicus Curiae* and counsel for the plaintiff Shylock, and proceeds to identify the parties (emphasizing that there is no physical difference between the Jew and the Venetian). Then the second phase of the trial starts.

Stressing both the “strange nature” of the suit and the importance of “rule by law”, that

New York, 1989, p.483.

is of a “strictum jus” logic (4.1,174-5), Portia tries, as appropriate in the case, to convince Shylock to be “merciful”: which does not mean that Shylock should bow to a superior sense of mercy in Christian terms, as often intended by uninformed criticism, but rather that he could accept to solve such a “strange” and extreme case without impairing the rule of law, a technical solution called the “equity of redemption”. If a debtor’s failure was due to an unforeseeable cause, independently of his will or control (for instance he had been robbed of his money while on his way to bring it punctually), the plaintiff could allow him the “equity of redemption”: a solution well applicable to Antonio’s unbelievable simultaneous loss of all his ships. The “equity of redemption” was often used, as Portia hints, “to mitigate the justice of the plea”, and often accepted as profitable for the plaintiff, who was entitled to thrice the money due to him to compensate for the delay. But this equity device could not be enforced by the judge in trials at common law: it was based on the plaintiff’s acceptance to destroy the expired bond (in one of three alternative ways: by cancelling, tearing or burning it) and accept the money in court, or at a new established date. This solution indeed usually solved a good number of debtors’ cases. When Portia suggests such a solution (“take thrice thy money. Bid me tear the bond”: 4.1,231), Shylock’s answer, though, appears inflexible, as he has taken an oath to stick to the law: “I crave the law” (4.1,203); “Proceed to judgement. By my soul I swear/ There is no power in the tongue of man/ To alter me. I stay here on my bond” (4.1,237-9).

As already pointed out, Shylock is using the “rule by law”, or *strictum jus* at common law, as a means of revenge, with an evident “strange” unbalance between Antonio’s default and the insistence upon his death, for which indeed “there was no remedy at common law”. The bond, clearly stated and signed by Antonio before a notary, could only be considered valid. From Portia acting as Balthasar, Shylock therefore at first sees his right to a pound of Antonio’s flesh recognized, as he has not received back in time the 3000 ducats Antonio had borrowed from him: “the law allows it”, “the law doth give it”,

“the court awards it” are the correct formulae used for judgment by *strictum jus* and *in rem*.

When Portia, though, suggests that Shylock provide a surgeon to assist Antonio, “lest he do bleed to death” (4.1,255), Shylock again sticks to the bond, mentioning no such obligation: but by so doing he proves he is ready to kill Antonio. He thus provides the evidence necessary to produce a “writ of error”, with which to start an equity procedure to contrast the common law course.

Here the second phase of the trial ends and with it the common law procedure as such: when Portia starts with her “Tarry a little”, she actually turns into a chancery lawyer, for Antonio as plaintiff, versus Shylock as defendant. Technically she proceeds with a “temporary injunction”, halting the common law procedure “for impending injury irreparable” (Antonio’s possible death), connected to a breach of the “doctrine of waste”: the bond mentions no blood, which is therefore not due, but the ‘waste of blood’ would be likely to kill Antonio⁴⁹.

When Portia/Balthasar warns Shylock he must not shed a drop of Antonio’s blood, which is not included in the bond, she is not producing a “quibble”, as many critics have deemed: she rather starts a second trial in Chancery, for the “cause in controversy” resorting to the equitable device of the “doctrine of waste”. Then Shylock cannot enforce the previous judgement in his favour, as he becomes liable to “contempt of court”, which would mean spending the rest of his life in jail or worse.

The “impending injury irreparable” was a formula meant to protect property rights from the exercise of opposing property rights, if these were likely to encroach upon or damage the property of others. Thus Shylock is informed he may neither shed blood nor cut more or less flesh than one pound. When he backs away, ready to give up the pound of flesh and take his principal, Portia denies him this right, resorting to an “estoppel”, as

49 Andrewes illustrates the case quoting an example of injunction granted by the court of equity to stay irreparable injury regarding the Bush vs Field case. Plaintiff Bush asked to stay Field, entitled at common law to restructure his rooms, from pulling down a wall joining his own house, which might impair his own property (Andrewes 64).

he had already relinquished the money in the open court, and proceeds to inform him he now stands under a new charge. As the equity court (unlike the common law judge) could deal with a cross action, reference is also made to an existing Alien's Statute.

While at common law the judge could consider one issue at a time, which could mean a series of trials, at chancery the judge proceeded "for all issues", the aim being to exhaust all possible legal proceedings at the same time. According to the Alien's Statute an alien seeking a Venetian's life was liable to lose all his estate, a half of which would go to the party imperiled, and the other half to the state, while the offender's life would lie at the Duke's mercy. The Duke grants Shylock's life and appears ready to take only a fine, rather than appropriate half of Shylock's goods. When Portia then asks Antonio "What mercy can you render him?" she does not again mean Christian mercy, but rather the so-called "balancing of equities", inviting him to follow the Duke's example.

Then Antonio proposes a further double or "balanced" reduction of Shylock's punishment: he invites the Duke to relinquish even the mentioned fine, while he himself relinquishes the ownership of his half of Shylock's estate, turning it into a temporary possession, that is into a kind of trust, or more properly into a "use after use"⁵⁰. Which means that, in spite of his own desperate need for money after his apparent loss of all his wealth, Antonio refuses to appropriate the part of Shylock's riches he would be entitled to. He will just keep it for Jessica and Lorenzo, as for their future children to inherit it at Shylock's death (not at his own), on two conditions: that Shylock sign a gift to his daughter of all he will die possessed of, recognizing her right to choose her own husband, and that he become a Christian, a point which will be discussed later.

As the typical equity instrument of the trust is here used, it should be recalled

50 See Andrewes p.74. With the creation of this "use after use" Antonio obtains first use of half of Shylock's estate during Shylock's life: he is entitled to all of the income, but not the principal, which he manages but cannot dissipate and is accountable for, while on Shylock's death the use after the first use passes to Lorenzo, Jessica and then their first child.

that it was meant flexibly to distribute the benefits deriving from property between the parties, while the common law could rigidly assign property to one party only. In fact two trusts are used in this second chancery trial: Antonio's use after use and a trust for what remains in Shylock's possession, guaranteed by the Duke, who accepts this solution and finally pronounces a decree *in personam* for Shylock: "Get thee gone, but do it".

By juxtaposing the two legal proceedings in one scene Shakespeare can effectively show the informed part of his audience the difference between 'a strict court' and justice by equity. As Andrewes pointed out, if the story had ended after the first suit, Shylock:

"1.would have cut the pound of flesh off Antonio's breast, which the law allowed ("It was axiomatic, at common law, that, where one held a legal right, he had all the remedies necessary to a full enjoyment of that right, for, otherwise, the right itself would be without avail; a bond under seal could not be impugned for fraud or violence); 2. would not have been informed of any other hold which the law had upon him [...], for this would have raised more than one issue in a suit at common law; 3. would then have been tried in a criminal proceeding for his attempt against the life of a citizen and, upon conviction, his life and half his property would have been forfeit to the state⁵¹."

Thus Antonio would have first lost his life and Shylock later both his life and property. By proceeding with equitable devices, Shakespeare instead: 1. spared the lives of both the litigants; 2. provided for each of them and for Shylock's heirs the means or estate necessary for their social survival; 3. created a case for public debate, while solving all the striking problems raised in the plot.

Some have objected indeed to the very mention here of the Alien's Statute. Apart from the possible importance of such a Statute in Elizabethan England, open to Spanish and Catholic dangers at a time of religion wars (suffice it to consider what was happening in the France of Henry IV), the Alien's Statute fully proves the potentialities and advantages of the equity procedures. Only these allowed the simultaneous treatment of all issues connected to a case and consented the so-

51 E. J. White, *Commentaries on the Law in Shakespeare*, p.141, in M. E. Andrewes, cit., p.77.

called “balancing of the equities”. Besides, Antonio is offered the chance to “accept Shylock” (countering Gratiano), and become, against his long prejudices, an agent of the Jew’s social integration, and of Jessica’s rights and ‘elective couple’ choice, confirming the ‘un-racist’ acceptance of integration which Lancelot had laughed at answering Jessica’s anxiety over the matter⁵².

Yet one major point is still left unconsidered: Shylock’s forced conversion. First it must be noticed that Shakespeare imposes it through Antonio, all of a sudden, *ex abrupto* at the last moment and with no comment, obviously obeying Elizabeth’s Uniformity Act: belonging to a Catholic recusant family (as already suggested, Shakespeare’s father and one of his two daughters were Catholic recusants), the playwright would have probably willingly avoided doing so. We also know that the inns of court accepted covert Catholics⁵³ as well as Puritans. But religious peace was only possible at the time by ensuring at least outward public observance of the Uniformity Act. With dignified self-control, though he feels ill, English-named Shylock avoids all protest, as if sharing his author’s prudence and awareness.

As for the remaining question, the first we posed, “why place Shylock the Jew on the losing legal side?” we can now return to it from a new point of view. From what I have argued, it can now appear that for Shakespeare Shylock must lose the legal issue not only to favor equity, as two more reasons are to be added.

One entails the revenge issue. Perceivable by an inns of courts audience as akin to a respectable ‘Puritan’ common lawyer, with moral superiority as to the slavery issue and domestic ethics, Shylock is though at the same time exposed (as Puritans were) to the temptation of revenge. The problem of revenge is indeed a recurrent theme in Shakespeare’s canon, starting from *Henry VI*, where aristocrat revenge causes unending wars and civil strife, up to Shakespeare’s last

52 See III, 5, 1-32.

53 See Geoffrey de C. Parmiter, *Elizabethan Popish Recusancy in the Inns of Court*, University of London Institute of Historical Research, London, 1976.

play *The Tempest*, where revenge is dismissed not without a reference to Montaigne’s *Essays*, translated into English by John Florio. Between these two limits, the beginning and end of his dramatic career, Shakespeare polemically went back to the problem various times, in *As You Like It*⁵⁴, most notably in *Hamlet*, where it is notoriously central, and again in *Julius Caesar* and *Coriolanus*, in different typologies, its ideologies invariably rejected.

But there was one more important reason to drive Shakespeare in Shylock’s case: the dangers the author dreaded in the forthcoming historical alliance and corresponding cultural ‘conflation’, of strict common law, strict Puritanism and Hebraism⁵⁵. Though philo-Semitic from the economic and human point of view, implicitly revenging his own father’s “Jewish” choices, at the same time Shakespeare was taking sides with Bacon, equity, relativism, and must have been worried about Puritan rigidity. The Puritans would not only readmit Jews, they would also close down theatres. Shakespeare’s next “legal play” will be *Measure for Measure*, meant to promote tolerance and correct Angelo’s Puritan, strict enforcement of the law, partly foreshadowed in the ‘judaizing’ barrister Shylock evokes. As in contemporary culture, one of the richest periods in western history, so in Shakespeare’s carefully constructed plays many implications and motivations were interlaced.

5. STRUCTURAL EQUITY

Throughout the plot of *The Merchant Antonio* and Shylock appear, if well compared, to share parallel destinies, being both half

54 In *As You Like It* Orlando rejects his chance to take revenge on his brother Oliver (who had tried to kill him and forced him into utter indigence) and saves his life against a lioness: in IV, 3, 128 comment on this choice defines it “kindness nobler ever than revenge”.

55 James Shapiro (cit.) repeatedly stresses associations, current at the time, of radical English Puritans and Jews: see the chapter “False Jews and Counterfeit Christians”. English Protestant sects emulated Jewish Sabbath observance and dietary laws (p.14), and during Cromwell’s revolution some royalists even began to call their Puritan opponents Jews (22). Fostering of Jews’ conversion to Christianity and to Christian Protestantism is also discussed by Shapiro (see p.146 and on).

winners and half losers: a strikingly revealing symmetry seems to tie them, mirroring the double title of the play, as well as John Shakespeare's double legal experience as both usurer and debtor. This balancing of Shylock's and Antonio's destinies is achieved with a carefully dosed textual development, which can be neither casual nor meaningless.

In the opening scene, Antonio's sadness reflects the sudden deprivation of his beloved friend Bassanio, who is seeking marriage. He feels depressed and implicitly bereft, just as Shylock is later suddenly abandoned by his only daughter and remaining close relative Jessica, who also leaves him in order to marry, precipitating him into an anguished state of mind.

Then Antonio is surprisingly faced with utter ruin, after the apparent loss of all his ships at sea, just as, during the trial, Shylock is menaced, under the unforeseen Alien's Act, with a similar utter economic ruin. They both find their lives in danger for legal reasons: in this sense the Alien's Statute balances Shylock's danger with Antonio's pound of flesh bond. Then both Antonio and Shylock recover a good part of their property: three of Antonio's argosies come back and Shylock is granted back half of his riches by the Duke, while the other half of his goods and his line of inheritance will be safeguarded by Antonio. In the end Antonio and Shylock are both left alone, economically linked to each other, in a sense turned from enemies into allies, bound to recognize each other.

But there are also subtler symmetries. As three couples are happily married by the end of the play, Antonio is recognized by Portia not only as Bassanio's best friend, but also his 'double': yet he can advance no claim on him and is forced to acknowledge Bassanio's love for his wife, and even guarantee for it through the rings episode. Shylock is, in his turn, both forced to accept his daughter's marriage and his son-in-law Lorenzo, while he is also recognized by Antonio, who had previously denied his human dignity, and must undersign a trust to guarantee his daughter's future. He is finally integrated into Venetian society, but at the cost of being forced to become Christian, at least formally. Are then Antonio and Shylock, one could ask, both left to a degree

frustrated for parallel social reasons, though both have managed to avoid the worst?

Antonio is indeed, as the language of the play insinuates, a "maid not vendible" (I,1,112: society would not allow him to marry Bassanio), while Shylock is equally unable to retain his religion, which was "not vendible" under Queen Elizabeth's Uniformity Act. Is then the play equally condescending and persecutory, or "balancing the equities", with the Jew and with the Venetian (or English) "royal merchant"? Does this symmetry reveal a double 'soft denunciation' Shakespeare could not shout aloud, but could hint at to a social section of his audience and put off till a better future? Like the economic and the legal issues involving both Shylock and Antonio, so also the sexual and religious ones again touched Shakespeare or his family closely.

Besides the balancing of Antonio's and Shylock's destinies, the complexity of the aspects blending in the plot may seem to correspond to an equitable evaluation of more issues at a time. While Shylock's loss of the 3000 ducats, which are not given back to him, seems to punish his craving for Antonio's life and close the 'debt plot', Antonio's final recourse to a "use after use" and a trust confers upon him Shylock's place as a father financially providing for Jessica's marriage, which ends the elopement plot. Of course, the objection could be raised that Antonio gains possession of half of Shylock's estate, as if the play compensated him for the loss of his ships, while only Shylock in the end loses. Is then Shylock discriminated against, and Antonio unjustly privileged?

In fact Antonio always appears ready to give: he has given Bassanio even too much and gives back to Jessica and Lorenzo what might have been his own at a moment of need, while Shylock does not show towards Jessica the same generosity Antonio has for Bassanio. If Antonio, like Bassanio in the casket scene, is ready to "give and hazard all he hath" for love's sake, Shylock is certainly not ready to do the same with Jessica: he does not love her enough to accept her choice, but rather behaves like Hawthorne's Puritan Chillingworth with Hester Prynne in *The Scarlet Letter*: he cannot

forgive her. The outcome of the play seems to remunerate this difference. If Shylock and Antonio are compared for their demands on Jessica and Bassanio, which equally endanger their lives, an unbalance appears and seems to call for different outcomes. But the two corresponding 'love plots', in a sense, suggest two further issues, the rights of which could not be socially and legally formulated, as both were unacknowledged at the time: homosexual love and a daughter's personal rights as opposed to patriarchal powers.

Of course, as the play is 'equitably complex', so must interpretation also be. We have to refer to the socio-historical background of Shakespeare's audience to better grasp the play's intricacies or symmetries: only by combining all aspects does the play appear ultimately consistent as not anti-Semitic, but quite the reverse. Shylock stands for the Puritan-like common lawyer – a respected figure in the inns of court – as for Shakespeare's own economy. At the same time Portia and finally Antonio stand for equity, a position Shakespeare wants to recommend, while he is worried about Puritan rigidity. As English as his name, Shylock seems to become a Jew because of the usury polemics and the economic issue at stake, so important in Shakespeare's own life. No exception in Shakespeare's logic of tolerance and inclusiveness, he points out, in the eyes of the best-knowing among the audience, the distance to be taken from the three Sallies. Shylock is not 'the Jew' and a 'villain' to be chastised by the Christians, but rather an 'acceptable Jew', receivable and finally received in the general community.

Indeed Shakespeare's use of equity in the play appears surprisingly to foreshadow future developments: it did suggest to James I and Francis Bacon, then Attorney General, the judicial reform conferring precedence upon equity in 1616, putting an end to the long controversy between Coke on the one hand and Ellesmere and Bacon on the other⁵⁶. But by merging

⁵⁶ Andrewes finds echoes of passages from *The Merchant* in Bacon's formulation of the 1616 resolution establishing the precedence of equity, and Kornstein owns that this play, "a legal parable" which influenced contemporary judges, "may have changed the course of English legal history" (cit. p.88), also considering that King James I unusually asked to see two performances of the play on two consecutive days. This happened on February 10th and

common law and equity procedures, it more surprisingly anticipated the 1873-75 Judicature Acts solution in force today. At the same time Shakespeare was offering a vast vivid fresco of his society, honoring his later definition of the players in *Hamlet* as "the abstracts and brief chronicles of the time" (2.2,515).

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February 12th 1605. At such a date, seven years after *The Merchant* was recorded in the Stationer's Register and five years after the 1600 publication of its first quarto edition (from which most of our modern editions are derived), the king's choice to meditate on the by then well-known play may only mean that it had been highly influential on public opinion. Circulating in print for five years, it had probably long been a source of legal debate, deserving the king's particular attention, although a final decision on equity would have to wait eleven more years.