

**The Literary Club**

**Budget: The Missing Years**

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Bill's scholarly analysis of Shakespeare's early and late plays leaves open his middle period. Tom, the gadfly on this stage, suggests that only a woman could write about matters of the heart with such delicacy. Well, the old conservative in me cannot quite join Tom's feminist campaign. At least, not now. As the third take tonight: Shakespeare wrote Shakespeare and the key to his genius lies in his missing years and in other of his plays. His genius lies in the depth of his philosophy; a philosophy grounded in his understanding of law; his understanding of jurisprudence.

Shakespeareans know he is missing from the historical record for seven years after marrying a pregnant Anne Hathaway. Speculation is he went to London and learned the actor's craft. Truth is he was also in London serving as a law clerk. The proof is in the work. We lawyers proudly claim him as one of ours. Theatergoers know law runs throughout Shakespeare. The casual theatergoer may not realize the breadth and depth of his knowledge.

Let's start with *The Merchant of Venice*, an obvious, but irresistible, play about law written shortly after he returned from London where he obviously learned about commercial transactions.

Recall, Bassanio borrows 3000 ducats from Shylock. Antonio, a merchant and Bassanio's close friend, guarantees the loan with his own body believing he will be flush as soon as his ship came in. The due date comes; the ship does not. Bassanio defaults and Shylock wants his bond; he wants his pound of Antonio's flesh.

Taking his bond will kill Antonio. So, to save him, Bassanio offers Shylock 6000 ducats in an exchange of mercy. Bassanio implores the Doge to allow the substitution. He pleads: “To do a great right/ do a little wrong.” Bassanio is asking the Court to ignore not only Shylock’s contract but also the laws of Venice. The response: “There is no power in Venice that can alter a decree established.” Venice cannot, will not, breach its own laws. Here’s Shakespeare:

“The Duke cannot deny the course of law;  
For the commodity that strangers have  
With us in Venice, if it be denied,  
Will much impeach the justice of the state,  
Since that the trading profit of the city  
Consisteth of all nations.”

Shylock knowingly, intentionally demands that the letter of law be honored at Antonio’s expense and at the expense of Venice in atonement for all of their sins; otherwise Venice will crumble. “If you deny my bond, let the danger light/upon your charter and your city’s freedom.” The Duke’s plea of mercy is contemptuously rejected. “What judgment shall I dread, doing no wrong?” Shylock stands in Court not for clemency “I stand here for law.”

Enter the disguised Portia as she pleads for lenience. Mercy, sadly, is the gentle rain he rejects. “I crave the law,” so says Shylock. Reaching for the high ground, Shylock declares he has made an oath in Heaven; an oath he will not surrender for Venice for fear of losing his own soul. So he stands on his oath; on his contract. Portia relents: “Why, this bond is forfeit/and lawfully by this the Jew may claim/a pound of flesh, to be by him cut off/nearest the merchant’s heart.” Shylock is impressed “It does appear you are a worthy judge/you know the law, your exposition/hath been most sound.” Portia then asks whether Shylock has brought a surgeon to staunch the bleeding. He questions: “Is it so nominated in the bond?” No. “It is not so expressed.” No surgeons then. Antonio must bleed out.

Portia delivers her judgment: “A pound of that same merchant’s flesh is thine/the Court awards it, and the law doth give it.” Shylock concurs. “Most rightful judge!” Portia continues: “And you must cut flesh from off of his breast/the law allows it, and the Court awards it.” Shylock: “Most learned judge!”

As he whets his knife and prepares to cut, Portia warns: “Tarry, Jew!/The law hath yet another hold on you.” You may not shed a jot of Christian blood, otherwise the state claims half of your goods; Antonio the other half; and, the your life rests in the hands (and at the mercy) of the Doge. Antonio’s friends now see Portia is, indeed, a most learned judge; a wise judge who assures Shylock “For, as thou urgest justice, be assured/thou shall have justice more than thou desir’st.” “The Jew shall have all justice.” Shylock wins his case and by winning is broken. He is awarded justice because he did not give mercy. It is a costly justice; he loses his estate, his daughter, and his religion as he is forced to convert.

Throughout *Merchant*, Shakespeare discusses the law of guaranty; commercial laws; the law of dowries; and the laws of statutory interpretation and construction; as well as, the rules of civil procedure and evidence. Through this, he makes two philosophical claims. First, law does not sit in opposition to justice, mercy does. Law and justice are conflated. Shylock bets his very being on the equation of law and justice. The strict application of the law, he wagers, will guarantee his pound of flesh. His reliance on strict construction unearths a problem about the letter and the spirit of the law recognized 13 centuries earlier by St. Ambrose: “The letter is death-dealing; but the spirit gives life.” Portia exploits this tension once she realizes that the letter of the law cuts both ways; it can cut against Shylock and she so cuts. Portia’s mercy will be extorted from Shylock’s desire for justice.

The second pillar of the Bard's jurisprudence is world historic, rather I should say world ahistoric. In Shakespeare, mercy can be realized and the strict application of the law can be evaded but not by justice; mercy can be realized by deception. The fake doctor of laws, Portia, twists the law against Shylock. Law and justice can be eluded by human duplicity; a pattern that reappears in *Measure for Measure*.

In *Measure*, Vincentio, the Duke of Vienna, is distraught by the moral decay of his city and by his own negligence allowing it; license having given way to licentiousness. Vienna (read London) is surrounded by brothels and the city is plagued with the accompanying afflictions. The city needs a course correction and the Duke temporarily transfers power (with complete discretion), to Lord Angelo "Your scope as is my own/so to enforce or qualify the laws/as to your soul seems good." Angelo, like Shylock, is committed to the letter of the law; both are strict constructionists. For both, law is justice.

As his first act, Angelo condemns Claudio to death for the crime of fathering a child out of wedlock with his fiancée Julietta. Premarital fornication is to be recompensed by beheading. The Duke knew Angelo would be severe because he "follows close the rigor of the statute." Isabella, Claudio's sister who has newly entered the convent, is enlisted to seek compassion for her brother. Her plea fails despite the fact that laws against fornication were honored more in the breach than in the observance. Angelo, either the repressed prude or simply a common hypocrite, is smitten with Isabella. Feigning concern, he listens to her petition. He has other plans, however. He bargains her virginity against Claudio's life.

If reason will not sway Angelo, deception might. The Duke, disguised as a friar, concocts a plan. He tells Isabella to agree to the seduction. However, instead of Isabella visiting

Angelo in the night, Angelo's fiancé Mariana will be Isabella's substitute in the bed trick. The assignation takes place, but Angelo reneges and demands Claudio's head as proof of his execution. A head is delivered to Angelo; it just happens to be the head of a recently (and conveniently) deceased pirate not Claudio's.

Action then travels to Angelo's Court where the Duke reveals himself; exposes Angelo as a fraud; orders him to marry his fiancée Mariana; then, right after the marriage, Angelo is to be executed giving Mariana his estate as recompense for her lost dowry. Mariana, joined by Isabella, pleads with the Duke for Angelo's life. This time commutation is granted with conditions: Angelo must marry Mariana; Claudio must marry Julietta; and the Duke proposes to Isabella. She, the novitiate nun, remains silent.

As in *Merchant*, Shakespeare canvasses a range of laws in *Measure* including: laws of betrothal and marriage; laws of succession; laws of morality; and, he tells us about the rules of Isabella's convent, the Order of the Poor Clares. These legal references serve as background for Shakespeare's meditation about justice and mercy; a meditation on the philosophy of law and on High Renaissance culture.

Like *Merchant*, the ancient tension between justice and mercy is broken in *Measure* via a deception. Indeed, there is, at least, a triple deception in the play: Mariana substitutes for Isabella; the pirate's head is delivered instead of Claudio's; and the Duke pretends to be a friar. In Shakespeare's jurisprudence, deception is the interplay between mercy and justice.

The same tension appears in *The Winter's Tale*. Two childhood friends, Leontes and Polixenes, kings of Sicilia and Bohemia, are vacationing together. Leontes asks his friend to stay longer. Polixenes declines saying he must return to Bohemia. Leontes implores his pregnant wife,

Hermione, to persuade him to stay which she successfully does. Her winning imprecations, though, trouble Leontes. How could she succeed where he failed he wonders until the green monster leads him to accuse her of infidelity and condemn her to death.

The King then tells Camilo, a Lord in his court, to poison Polixenes. Camilo, instead, reveals the plot to Polixenes and they both escape to Bohemia. In the King's mind, their flight confirms Camilo's guilt and his own jealous suspicions. Hermione is sent to jail while Leontes sends emissaries to Delphi to confirm his accusation of his wife's treachery. While in jail, Hermione gives birth to a daughter and her servant, Paulina, tells her to present the infant to Leontes who will naturally soften his condemnation. The stratagem fails and the King commands Paulina's husband Antigonus, to abandon the child in a desolate place. He abandons her in Bohemia; there she is found by shepherds; named Perdita (the lost one); and she thrives.

Word from Delphi reaches Sicilia, confirming Hermione's innocence, the king's blunder, and Camilo's honesty. Not to be upstaged, the adamant, arrogant, stubborn Leontes puts Hermione on trial where she is denied any reprieve or shown any mercy. As a result of the family tumult, the king's son, Mamillius, dies followed by Hermione's apparent suicide as a result of grief.

Time, now, is suspended for 16 years. In Bohemia, Camilo asks to return to Sicilia but Polixenes refuses. The Bohemian King is troubled; his son, Florizel, is about to marry a shepherd girl, a marriage that will belittle him. To foil the ceremony, the King and Camilo disguise themselves and attend the betrothal festival. Once there, they are exposed and the King threatens the shepherd and his daughter with death. So threatened, Perdita and Florizel disguise themselves and travel to Sicilia seeking Leontes' blessing to marry. Polixenes follows intending to stop the marriage. Eventually, all is revealed and everyone learns that Perdita is Leontes' daughter.

Overjoyed, Leontes asks Polixenes for forgiveness and, miracle of miracles, a newly completed statute of Hermione comes to life. The kids are engaged. Celebrations ensue.

*The Winter's Tale* is a reworking of Sophocles' *Antigone*. Consider the parallels: Creon/Leontes; both lose sons and wives; both ignore Greek prophets; both assert and rely upon the power of human law strictly applied; both refuse to defer to pleas of mercy; both ignore arguments of reason; and, finally, both are victims of their own harsh constructions of the law. Justice, though, is treated differently in each. And, in the second half the *Tale*, Leontes finds redemption. A redemption facilitated by, (what else?), deception.

Note the parallels: Antonio is condemned to death for breach of contract; Hermione is condemned for her alleged breach of marriage vows; and, Claudio is condemned for violating the rules of betrothal. Note also the parallel deceptions with women substituting for men; kings for shepherds and friars; and fiancés for nuns among others ploys.

Before Shakespeare, and since, legal systems have had to balance the harsh letter of the law against the reality of human frailty, emotion, and desire. Law demands order; it also requires flexibility. Law, after all, is a human construct. To achieve balance, legal systems have safety valves to release us from law's most exacting applications. These safety valves are as old as Aristotle's *epikeia* and reach down into our own common-law through the English Chancery Courts, which were created precisely to provide equitable solutions for hard cases.

These plays reveal an issue deeply embedded in the Western tradition. They ask: What is the relationship between law and justice. More precisely: What is the relationship between law and the virtue of justice; what is the relationship between law and morality? Shakespeare rejects

the idea of justice as classically understood; that is, he rejects the concept of justice as a moral virtue.

Throughout history and philosophy, the virtuous spirit of justice tempered painful laws. In pagan Greece, the four Platonic virtues consisted of wisdom, moderation, courage, and justice. In the Christian tradition, the four Cardinal virtues ran parallel and are comprised of prudence, temperance, fortitude, and justice. In both cases, justice is the amalgam, not the residue, of the other three virtues. Classical justice, so conceived, is on a plane with the good, the true, and the beautiful. Justice is the highest virtue, yet Shakespeare denies that and substitutes human cunning for moral virtue. That switch is the vehicle for his plot twists. It is also his contribution to the philosophy of law.

Instead of treating justice as a virtue; he simply eliminates it by equating justice with law. In place of the virtue of justice, he gives us human deception. Human disguise, wit, and guile will deliver mercy – a humanistic mercy – a mercy that is made available by human agency and neither by Platonic nor Christian theologies. By re-conceiving virtue (and vice) as essential to the human condition, Shakespeare shows, in William Hazlitt's words, to be "the greatest of all moralists."

Shakespearean humanism repositions classical virtue. Instead of Platonic and Christian moralisms that seek confirmation somewhere outside of this world; Shakespeare locates his virtues and vices in our very human characters, behaviors, and lives. Human fallibility is used to evade the harshness of the law. Human empathy cancels the pains of strict construction. Human empathy provides the dramatic tension in Shakespeare's plays as it moderates the tensions in Shakespearean jurisprudence: letter versus spirit; strict construction versus a living interpretation; law versus equity; justice as law versus mercy as empathy.

Shakespeare may not have intended to upset the ancient order of jurisprudence in which the cold brutality of the law can be warmed by appeals to virtue. Still, he did intend to revel in the power of the human; of the human power to realize at least a modicum of our higher selves on this mortal coil. Finally, then, consider this: If Shakespeare can tease mercy out of a crabbed definition of law and by doing so save the lives of Antonio, Claudio, and Hermione, then simply imagine what he could do with love.

Thank you

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