“WHEN MERCY SEASONS JUSTICE”¹

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The quality of mercy is not strained.
It droppeth as the gentle rain from heaven
Upon the place beneath. It is twice blest:
It blesseth him that gives and him that takes.
'Tis mightiest in the mightiest; it becomes
The throned monarch better than his crown.
His scepter shows the force of temporal power,
The attribute to awe and majesty
Wherein doth sit the dread and fear of kings;
But mercy is above this sceptered sway.
It is enthronèd in the hearts of kings;
It is an attribute to God Himself;
And earthly power doth then show likest God's
When mercy seasons justice. Therefore, Jew,
Though justice be thy plea, consider this:
That in the course of justice none of us
Should see salvation. We do pray for mercy,
And that same prayer doth teach us all to render
The deeds of mercy.²

INTRODUCTION

Peace is the ultimate goal of our society. To have peace, there
must be justice. Justice is at hand when people operate accord-
ing to what is “morally right,” “equitable,” and “fair”; punish-

¹ WILLIAM SHAKESPEARE, THE MERCHANT OF VENICE act 4, sc. 1, 203 (Barbara A. Mo-
² SHAKESPEARE, supra note 1, at act 4, sc. 1, 190-206. Portia, while disguised as Baltha-
zar, the doctor, spoke these words in answer to Shylock's question: “On what compulsion
must I [be merciful]?” Id. at 189.
ments must be "deserved [or] merited." By nature, people are good, but no person is perfect. Therefore, people will inevitably disturb the peace within our society. Societies created laws to promote peace, but those laws exist in vain if implemented unjustly. Along with justice, a peaceful society must have love and mercy; mercy is "[c]lemency and compassion shown to a person who is in a position of powerlessness or subjection, or to a person with no right or claim to receive kindness; [it is] kind and compassionate treatment in a case where severity is merited or expected, esp[ecially] in giving legal judgment or passing sentence." Mercy must fuse with justice.

Our criminal justice system should be based upon this goal. Peace breeds happiness. From a utilitarian standpoint, an action can only be justified if the happiness it brings outweighs the discontent; "the purpose of all laws is to maximize the net happiness of society." Deterrence is the ultimate function of the laws; if people are deterred from committing crimes, the lives of those within our society will be more peaceful, and in effect, happier. Since we live in a world of both good and evil, not all people can, or will, be dissuaded from participating in criminal activity. Once a crime is committed, the question arises: What is the just result?

I. THEORIES OF PUNISHMENT

The first step towards attaining justice lies within an understanding of the theories of punishment: rehabilitation, deter-

4 OXFORD ENGLISH DICTIONARY ONLINE, supra note 3 (defining "mercy").
5 JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 14 (3d ed. 2001) (discussing the principles of classical utilitarianism, as formulated by Jeremy Bentham).
6 Compare JOSHUA DRESSLER, CASES AND MATERIALS ON CRIMINAL LAW 34 (3d ed. 2003) (asserting that "[t]he general object which all laws have . . . is to augment the total happiness of the community" (quoting JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION, 83-84 (John Bowring ed. 1843), with DRESSLER, UNDERSTANDING CRIMINAL LAW, supra note 5, at 14-15 (expounding upon the basic principles of "classical utilitarianism, formulated by Jeremy Bentham," that "[l]aws should be used to exclude, as far as possible, all painful and unpleasant events" and that these goals, "as applied to the criminal law" are manifest in "general deterrence [according to which,] D is punished in order to convince the general community to forego criminal conduct in the future").
rence, incapacitation, and retribution. In order for peace and justice to be obtained, all four theories must coexist. Many within our society strive for justice, but different people often have differing perceptions of justice. A joke notes that the definition of justice is “an outcome in your favor.” In reality, a just result is obtained through fairness, reason and truth. Peace departs when an unjustified harm occurs, just as it does when that harm is punished unjustly.

What makes a punishment unjust? From a retributivist standpoint, when a punishment is harsher than deserved, justice has not been attained, and an injustice has occurred. While “[t]o an uncompromising retributivist, the wrongdoer should be punished, whether or not it will result in a reduction of crimes,” the philosophy of an uncompromising retributivist has no place within our criminal justice system. Our society’s theory of punishment, and, in effect, our theory of justice, cannot be as simple, or as harsh, as punishing for the sake of just deserts. When faced with each individual crime, and when facing each individual person who committed that crime, one must ask: “Why?” “Why did this person commit this crime?” “Why are we inflicting this punishment and what purpose do we hope to fulfill through its implementation?” Retributivism is only relevant to punishment when “determining whether and how much to punish a particular person.” Punishment ought to be calculated in accordance with the severity of the crime and the culpability of the person who committed that crime, thus comporting with fairness and reason. Still, determining adequate punishment, especially in terms of years or monetary fines, can be somewhat enigmatic, akin to comparing apples and oranges. How many years of punishment

7 Compare supra page 2 (arguing that in our criminal justice system “mercy must fuse with justice”), with DRESSLER, CASES AND MATERIALS, supra note 6, at 35-36 (explaining basic principles of general deterrence, individual deterrence and incapacitation, three classic utilitarian justifications for punishment meted out by a criminal justice system), and DRESSLER, UNDERSTANDING CRIMINAL LAW, supra note 5, at 15-16 (explicating the fundamental goals and principles of rehabilitation as “[a] non-classical variety of utilitarianism” as a justification for punishment versus the basic principles of retributivism to justify punishment).

8 Compare supra note 3 and accompanying text page 1 (defining just as “what is ‘morally right,’ ‘equitable,’ and ‘fair’”), with DRESSLER, CASES AND MATERIALS, supra note 6, at 40 (noting that under negative and positive retributivism, it is immoral to punish a wrongdoer more than he deserves).

9 DRESSLER, UNDERSTANDING CRIMINAL LAW, supra note 5, at 16.

10 DRESSLER, UNDERSTANDING CRIMINAL LAW, supra note 5, at 22 (emphasis in original).
adequately punishes an assault? A robbery? A murder? When, if ever, is the death penalty justified? Societal norms must answer these questions through trial and error of the people, using the legislative process.

As evils and temptations continue to exist in our society, crimes will also persist. Therefore, our primary focus should be upon rehabilitation, rather than punishment. Our ultimate goal is neither to punish, nor to inflict further harms, but to remedy the harms inflicted and prevent additional harm. Thus, the unique, individual nature of each case demands an individualized remedy or punishment, such as "psychiatric care, therapy for drug addiction, or academic or vocational training." For those unable to be rehabilitated, incapacitation can, to an extent, prevent them from harming others and from consequently causing discord in a peaceful society. It is debatable whether jail can be rehabilitating.

II. CULPABILITY

Punishment is just only when he who is penalized is culpable; he is "guilty," "blameworthy," and "deserving punishment or condemnation." What makes a person culpable? The weightiest determinant is whether or not that person has free will. To measure the fairness of a sentence, it is essential to first determine that actor's capacity to choose. Mercy can be bestowed only on one who is culpable. When reducing or eliminating the punishment of a person lacking free will, it is justice, rather than mercy, that is imparted.

When an individual commits a crime but completely lacks free will, culpability is absent. However, the consequences of that

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1 See Dressler, Understanding Criminal Law, supra note 5, at 15. "Adherents of rehabilitation prefer to call the reformative process 'treatment' or 'healing,' rather than 'punishment.' However, because the process does not require the criminal's consent and is the result of a criminal conviction, reformative procedures constitute punishment." Id. at n.34.


13 Oxford English Dictionary Online, supra note 3 (defining "culpable").

14 See Marcia Johnson, Genetic Technology and Its Impact on Culpability for Criminal Actions, 46 Clev. St. L. Rev. 443, 470 (1998) (concluding that the root principle of crimi-
person's criminal actions continue to exist. The situation must be addressed, but not through retributive means. To make a person "pay for his crime" when he is not culpable, not only would be unjust, but would also serve no purpose. The consequences can and should be remedied through avenues other than criminal punishment, such as helping agents tailored for the victim and his family's health and well-being, remembering that the ultimate goal is peace.15

In a few instances, most notably situations involving duress and certain mental diseases or defects, the law characterizes a person as not culpable for her actions.16 New York's Penal Law limits the definition of duress in such a way that a person may not simply claim duress to avoid criminal responsibility where it is warranted: a person will not be sentenced for an offense when she engaged in the illegal conduct because she was compelled to do so "by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would have been unable to resist."17 Further, a person cannot successfully claim duress when he "intentionally or recklessly places himself in a situation in which it is probable that he will be subjected to duress."18 Under circumstances such as these, the actor is culpable in consciously inserting himself into such a situation.

Likewise, suffering from a "mental disease or defect"19 lessens the amount of culpability that person might be thought to pos-
Humans are not just bodies, but are composed of minds, hearts, and souls. While an emotion such as revenge or anger is not a valid excuse for committing a crime, suffering from a mental disease or defect can be. If a person cannot understand or appreciate the nature and consequences of her conduct, or does not know that her conduct is wrong, she cannot be held responsible for such conduct. Severe punishment would most likely be inappropriate, whereas court-ordered rehabilitation, including receiving psychiatric care and/or medication would benefit not just that person, but also society.

Most often, however, life is not simply black and white, but many shades of gray.

III. THE MERCHANT OF VENICE AND BEOWULF

A study of Shylock, the villain/victim of Shakespeare's The Merchant of Venice, lends insight into the optimal interplay of justice and mercy for a peaceful society, while a reading of Beowulf demonstrates the perils of a society where mercy is absent. Even though Shakespeare wrote The Merchant of Venice in

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20 See United States v. Freeman, 357 F.2d 606, 615 (2d Cir. 1966) (noting as “fact that the law has, for centuries, regarded certain wrong-doers as improper subjects for punishment”); see also Leblanc, supra note 14, at 1286-88 (recounting the history of the insanity defense).


23 It is impossible to know or discover who first observed that life consists of shades of gray rather than clear black and white meaning. This assertion however is such a commonplace that it has become a bit of a bromide.

and the poem of Beowulf is said to have been “composed some time between the middle of the seventh and the end of the tenth century of the first millennium,” our society can learn much from the juxtaposition of their characters’ backgrounds, ideals, and emotions. That The Merchant of Venice and Beowulf are fictional only adds to their relevance and inherent truthfulness. In the words of the late Kurt Vonnegut:

[T]he only way in which Americans can rise above their ordinariness, can mature sufficiently to rescue themselves and to help rescue their planet, is through enthusiastic intimacy with works of their own imaginations. I am not especially satisfied with my own imaginative works, my fiction. I am simply impressed by the unexpected insights which shower down on me when my job is to imagine, as contrasted with the woodenly familiar ideas which clutter my desk when my job is to tell the truth.

Delving into works of fiction, particularly The Merchant of Venice and Beowulf, can have the same effect that Vonnegut expresses above: by thinking imaginatively, we attain insight that enables us to find innovative, practical ideas and solutions.

IV. BEOWULF

A. Synopsis of Beowulf

Beowulf, while known as a story of heroism, has morsels of vigilantism combined with justice. According to Beowulf’s translator, Seamus Heaney:

The poem was written in England but the events it describes are set in Scandinavia, in a “once upon a time” that is partly historical. Its hero, Beowulf, is the biggest presence among the warriors in the land of the Geats, a terri-

25 See Internet Shakespeare Editions, The Merchant of Venice: Shakespeare in Performance, (asserting that Shakespeare’s “Composition Date” for The Merchant of Venice is “1596: 1595-1597”), http://internetshakespeare.uvic.ca/Theater/sip/play/MV/main.html; see also MICROSOFT ENCARITA ONLINE ENCYCLOPEDIA, The Merchant of Venice (2007) (stating that the Shakespearian comedy The Merchant of Venice was written around 1596), http://www.encarta.msn.com/text_1741500443___0/Merchant_of_Venice.html.

26 BEOWULF, supra note 24, at xxiii.

27 KURT VONNEGUT, WAMPETERS, FOMA & GRANFALLOONS (OPINIONS) xxv-vi (Dial Press Trade Paperbacks 2006).
tory situated in what is now southern Sweden, and early in the poem Beowulf crosses the sea to the land of the Danes in order to rid their country of a man-eating monster called Grendel. From this expedition (which involves him in a second contest with Grendel’s mother) he returns in triumph and eventually rules for fifty years as king of his homeland. Then a dragon begins to terrorize the countryside and Beowulf must confront it. In a final climactic encounter, he does manage to slay the dragon, but he also meets his own death and enters the legends of his people as a warrior of high renown.\textsuperscript{28}

Beowulf was, and is, looked upon as a hero, but he lacked mercy. Beowulf began his adult life with an intense desire to fight for the benefit and welfare of the people of his society; he essentially strove for peace. Conversely, his life ended when he was led by a vastly different passion: his pride. Just as in \textit{The Merchant of Venice}, Beowulf often makes reference to God and His will, but while \textit{The Merchant of Venice} seems to focus on the New Testament’s mercy, \textit{Beowulf}’s heart lies with Old Testament justice.\textsuperscript{29}

Grendel, the monster for whom Beowulf traveled to the land of the Danes, was reminiscent of Satan. Just as the archangel Lucifer was jealous of God and turned to evil, Grendel, the “powerful demon,”\textsuperscript{30} “nursed a hard grievance;”\textsuperscript{31} Grendel hated to hear the songs and praise in the mead hall, where people were joyous and thankful for their Almighty’s creation.\textsuperscript{32} Grendel, “a fiend out of hell,”\textsuperscript{33} lived:

\begin{quote}
in misery among the banished monsters, 
Cain’s clan, whom the Creator had outlawed 
and condemned as outcasts. For the killing of Abel 
the Eternal Lord had exacted a price:
\end{quote}

\textsuperscript{28} \textit{Beowulf}, supra note 24, at xxiii-iv.

\textsuperscript{29} \textit{See} Marie Padgett Hamilton, \textit{The Religious Principle in Beowulf}, 61 PMLA 309, 309-10, (1946) (stating that the people in the novel “are loyal to one true God ... like the chosen people of the Old Testament”); \textit{see also} LOREN COBB, \textit{BEOWULF: A POETIC WEAPON FOR PEACE} (2000) (noting that Beowulf presents a fascinating picture of the early influence of Christianity and “addresses an audience that knows the Old Testament well”), http://www.aetheling.com/essays/Beowulf.pdf.

\textsuperscript{30} \textit{Beowulf}, supra note 24, at 5, l. 86.

\textsuperscript{31} \textit{Beowulf}, supra note 24, at 5, l. 87.

\textsuperscript{32} \textit{Beowulf}, supra note 24, at 5, ll. 87-89. “It harrowed [Grendel] to hear the din of the loud banquet every day in the hall. ...” \textit{Id}.

\textsuperscript{33} \textit{Beowulf}, supra note 24, at 5, l. 100.
Cain got no good from committing that murder because the Almighty made him anathema, and out of the curse of his exile there sprang ogres and elves and evil phantoms.\textsuperscript{34}

The Biblical references are unambiguous: Cain and Abel were the sons of Adam and Eve.\textsuperscript{35} Cain was jealous of Abel because God favored Abel over Cain.\textsuperscript{36} Cain killed Abel.\textsuperscript{37} Consequently, God put a curse on Cain, banishing him from the land and causing him to suffer for the remainder of his life.\textsuperscript{38} Led by evil more so than Cain, Grendel possessed neither goodness nor compassion; he lacked humanity.

Grendel’s attack upon the Ring-Danes was no small feat:

> greedy and grim, he grabbed thirty men from their resting places and rushed to his lair, flushed up and inflamed from the raid, blundering back with the butchered corpses.\textsuperscript{39}

The very next night, the

> merciless Grendel struck again with more gruesome murders. Malignant by nature, he never showed remorse.\textsuperscript{40}

Grendel’s “vicious raids and ravages”\textsuperscript{41} lasted for twelve

\textsuperscript{34} \textit{Beowulf}, supra note 24, at 6, ll. 105-12.
\textsuperscript{35} \textit{Genesis} 4:1-2. “Adam lay with his wife Eve, and she became pregnant and gave birth to Cain. She said, ‘With the help of the LORD I have brought forth a man.’ Later she gave birth to his brother Abel.” \textit{Id.}\textsuperscript{36}
\textit{Genesis} 4:2-5.

Now Abel kept flocks, and Cain worked the soil. In the course of time Cain brought some of the fruits of the soil as an offering to the LORD. But Abel brought fat portions from some of the firstborn of his flock. The LORD looked with favor on Abel and his offering, but on Cain and his offering he did not look with favor. So Cain was very angry, and his face was downcast.

\textit{Id.}\textsuperscript{37}
\textit{Genesis} 4:8 “And while they were in the field, Cain attacked his brother Abel and killed him.” \textit{Id.}\textsuperscript{38}
\textit{Genesis} 4:10-12.

The LORD said, “What have you done? Listen! Your brother’s blood cries out to me from the ground. Now you are under a curse and driven from the ground, which opened its mouth to receive your brother’s blood from your hand. When you work the ground, it will no longer yield its crops for you. You will be a restless wanderer on the earth . . .”. \textit{Id.}\textsuperscript{39}
\textit{Beowulf}, supra note 24, at 6, ll. 122-25.
\textit{Beowulf}, supra note 24, at 6, ll. 135-37.
\textit{Beowulf}, supra note 24, at 7, l. 152.
years. During which time:

he would never
parley or make peace with any Dane
nor stop his death-dealing nor pay the death-price.
No counselor could ever expect
fair reparation from those rabid hands.
All were endangered.

For the Danes, these times were far from peaceful. In order to
cope with Grendel’s ceaseless attacks, the people began reaching
out to powerful counselors, who

would lend advice
plotting how best the bold defenders
might resist and beat off sudden attacks.

Still the attacks continued, with

panic after dark, people endured
raids in the night, riven by the terror.

At long last, Beowulf,

the mightiest man on earth,
highborn and powerful,
sailed to save those “who needed defenders,” offering them his
“wholehearted help and counsel” when he heard the

stories of the plight [they] suffer[ed]
in [their] legendary hall.

He hoped to overcome Grendel in a single battle, even renounc-
ing his sword and shield because Grendel refused to use wea-

42 See BEOWULF, supra note 24, at 6, l. 147 (describing Grendel’s rule lasting for “twelve winters”).
43 BEOWULF, supra note 24, at 7, ll. 1547-59. See also id. at n.2 “According to Anglo-Saxon law, a murder or any unlawful killing could be resolved by the payment of a substantial fine to the family of the victim. It was the society’s means of preventing the cycles of feuds from beginning.” Id.
44 BEOWULF, supra note 24, at 7, ll. 172-74.
45 BEOWULF, supra note 24, at 8, ll. 192-93.
46 BEOWULF, supra note 24, at 8, ll. 197-98.
47 BEOWULF, supra note 24, at 8, l. 201.
48 BEOWULF, supra note 24, at 10, l. 278.
49 BEOWULF, supra note 24, at 13, ll. 411-12.
50 See BEOWULF, supra note 24, at 13, l. 426.
Beowulf trusted fate for the outcome:

Whichever one death falls
must deem it a just judgment by God.
If Grendel wins, it will be a gruesome day;
he will glut himself on the Geats in the war-hall,
swoop without fear on that flower of manhood
as on others before. Then my face won’t be there
to be covered in death: he will carry me away
as he goes to ground, gorged and bloodied;
he will run gloating with my new raw corpse
and feed on it alone, in a cruel frenzy
fouling his moor-nest.

. . .

Fate goes ever as fate must.52

Beowulf risked his life to end Grendel’s.
While Grendel was feared and viewed as a horrendous mon-
ster, Beowulf was known as the “prince of goodness,”53 but

proudly asserted:
“When it comes to fighting, I count myself
as dangerous any day as Grendel.
. . .”54

Still, God was in control, and had laid his favor upon Beowulf ra-
ther than upon “God-cursed Grendel,”55 for:

the Lord was weaving
a victory on His war-loom for the Weather-Geats.
Through the strength of one they all prevailed;

51 See BEOWULF, supra note 24, at 13, ll. 433–40
I have heard moreover that the monster scorns
in his reckless way to use weapons;
therefore, to heighten Hygelac’s fame
and gladden his heart, I hereby renounce
sword and the shelter of the broad-shield,
the heavy war-board: hand-to-hand
is how it will be, a life-and-death
fight with the fiend.

Id.

52 BEOWULF, supra note 24, at 13–14, ll. 440–55.
53 BEOWULF, supra note 24, at 19, l. 676.
54 BEOWULF, supra note 24, at 19, ll. 676–78.
55 BEOWULF, supra note 24, at 19, l. 711.
they would crush their enemy and come through
in triumph and in gladness. The truth is clear:
Almighty God rules over mankind
and always has.\textsuperscript{56}

A terrible battle ensued, with Beowulf overwhelming Grendel;\textsuperscript{57}
Beowulf

was not inclined
to allow [Grendel] to depart alive:
he did not consider that life of much account
to anyone anywhere.\textsuperscript{58}

And so:

Beowulf was granted
the glory of winning; Grendel was driven
under the fen-banks, fatally hurt,
to his desolate lair.

\textellipsis

Clear proof of this
could be seen in the hand the hero displayed
high up near the roof: the whole of Grendel's
shoulder and arm, his awesome grasp.\textsuperscript{59}

Beowulf was honored and revered by the people for his heroism,
but he gave thanks to the Lord God for His help in loosening
evil's grasp on their society.\textsuperscript{60}

The chieftain of those previously scourged by Grendel compens-
sated Beowulf with gold for his great feat,\textsuperscript{61} for Grendel

would have killed more, had not mindful God

\textsuperscript{56} \textit{Beowulf}, \textit{supra} note 24, at 19, ll. 696-702.
\textsuperscript{57} \textit{Beowulf}, \textit{supra} note 24, at 21, l. 787. Grendel “was overwhelmed.” \textit{Id.}
\textsuperscript{58} \textit{Beowulf}, \textit{supra} note 24, at 21, ll. 790-93.
\textsuperscript{59} \textit{Beowulf}, \textit{supra} note 24, at 22, ll. 817-35.
\textsuperscript{60} See \textit{Beowulf}, \textit{supra} note 24, at 25, ll. 927-41. Beowulf offers a prayer of thanks to
God:

now a man,
with the Lord's assistance, has accomplished something
none of us could manage before now
for all our efforts.
\textit{Id.} at ll. 938-41.
\textsuperscript{61} See \textit{Beowulf}, \textit{supra} note 24, at 27, ll. 1052-53 (describing Beowulf's compensation,
paid in gold).
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and one man's daring prevented that doom.\textsuperscript{62}

While Grendel was incapacitated from committing future murders,

\begin{quote}
\textit{an avenger lurked and was still alive, grimly biding time.}\textsuperscript{63}
\end{quote}

Grendel's mother, who lived in "the cold depths"\textsuperscript{64} of the "fearful waters,"\textsuperscript{65} having been banished there after Cain killed his brother, for Cain bore

\begin{quote}
misbegotten spirits . . .
the banished and accursed.\textsuperscript{66}
\end{quote}

She

\begin{quote}
sallied forth on a savage journey,
grief-racked and ravenous, desperate for revenge.\textsuperscript{67}
\end{quote}

She went to the hall of Heorot, coming upon and killing a great warrior while he was asleep, and then

\begin{quote}
[s]he . . . snatched their trophy,
Grendel's bloodied hand.\textsuperscript{68}
\end{quote}

Once again, evil and madness had a hold on the people, as the murder of one powerful force, Grendel, spurred the rage and revenge of a second force, Grendel's mother.

Beowulf pledged to end the life of Grendel's mother, as

\begin{quote}
[i]t is always better
to avenge dear ones than to indulge in mourning.
\end{quote}

\begin{quote}
. . .
\end{quote}

\begin{quote}
Let whoever can
win glory before death.\textsuperscript{69}
\end{quote}

\textsuperscript{62} BEOWULF, supra note 24, at 27, ll. 1055-56.
\textsuperscript{63} BEOWULF, supra note 24, at 34, ll. 1257-58.
\textsuperscript{64} BEOWULF, supra note 24, at 34, l. 1261.
\textsuperscript{65} BEOWULF, supra note 24, at 34, l. 1260.
\textsuperscript{66} BEOWULF, supra note 24, at 34, l. 1266-1267.
\textsuperscript{67} BEOWULF, supra note 24, at 35, ll. 1277-78.
\textsuperscript{68} BEOWULF, supra note 24, at 35, ll. 1302-03.
\textsuperscript{69} BEOWULF, supra note 24, at 37, ll. 1384-88.
Beowulf, "indifferent to death," slaughtered Grendel's mother, and retrieved Grendel's head from his corpse, bringing it back to the people as a sign of glory. Once again Beowulf praised God for his victory, just as Beowulf himself was praised by the people once more:

as the son of Halfdane spoke this wisdom:
“A protector of his people, pledged to uphold

truth and justice

... In all things [Beowulf is]
even-tempered, prudent and resolute.”

Beowulf was acknowledged for drawing the Geat nation and the Danes into shared peace and a pact of friendship in spite of hatreds [they had] harbored in the past.

Beowulf was known to all as a great and heroic warrior:

Thus Beowulf bore himself with valor; he was formidable in battle yet behaved with honor and took no advantage; never cut down a comrade who was drunk, kept his temper and, warrior that he was, watched and controlled his God-sent strength and his outstanding natural powers.

At the end of his reign, however, Beowulf was once again faced with a formidable enemy: a dragon. Although Beowulf was older and more frail, he

was too proud to line up with a large army

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70 BEOWULF, supra note 24, at 38, l. 1443.
71 BEOWULF, supra note 24, at 44, ll. 1699-1706.
72 BEOWULF, supra note 24, at 48, ll. 1857-58.
73 BEOWULF, supra note 24, at 55, ll. 2177-83.
74 See BEOWULF, supra note 24, at 56, ll. 2208-12 (stating that Beowulf ruled his kingdom in peace for fifty years before "a dragon on the prowl" began causing turmoil).
against the sky-plague.\textsuperscript{75}

As King, rather than engaging in warfare for the welfare of his people, he

\begin{quote}
\text{pursue[d] this fight for the glory of winning.}\textsuperscript{76}
\end{quote}

Beowulf killed the dragon, but lost his life as well. His death not only left his society without a king, but endangered their security as well, as the Swedes were likely to cross their borders and “attack in force”\textsuperscript{77} when they found out that Beowulf was dead.\textsuperscript{78}

B. The Justice within Beowulf

Beowulf was known as a great hero because he was strong, powerful, brave and effective. He brought peace to his people by ridding them of monsters, but with his successes, he may have allowed new evils to befall them. Beowulf courageously remedied horrific situations single-handedly, but focused on the safety of the people within his society rather than on bestowing true justice upon violent offenders. To Beowulf, justice was “eye for an eye,” rather than “turn the other cheek.” When taking the whole picture into account, however, merciless justice may have been Beowulf’s only option, especially as to Grendel.

Not often do we come across a manifestation of pure evil: Grendel was not human, he was a monster. Grendel was culpable of his crimes because he had free will. Motivated by jealousy and hatred, Grendel killed men because they were joyous and singing. Possessing no remorse, he killed not just one, but many men. It seems that there was no possibility of rehabilitation or even deterrence with Grendel, so incapacitation was the only remedy. No place existed that could contain a monster of Grendel’s caliber, and so death was most likely the only means of incapacitating him from murdering again. Beowulf’s killing of Grendel was just because it was the most fair and reasonable choice.

Determining the level of Grendel’s mother’s culpability is more

\textsuperscript{75} \textit{Beowulf}, \textit{supra} note 24, at 59, ll. 2345-47.
\textsuperscript{76} \textit{Beowulf}, \textit{supra} note 24, at 63, ll. 2513-15.
\textsuperscript{77} \textit{Beowulf}, \textit{supra} note 24, at 74, l. 3002.
\textsuperscript{78} \textit{Beowulf}, \textit{supra} note 24, at 74, ll. 2999-3003 (describing the belief that once the Swedes discover that Beowulf is dead, they will revive their “vicious feud”).
complicated. As a mother, she was significantly affected by Grendel's death. She was mad, possibly insane with sadness, and imposed her grief onto the people through murder. As Beowulf said:

It is always better
to avenge dear ones than to indulge in mourning.\textsuperscript{79}

When Grendel's mother acted in accordance with Beowulf's mantra, Beowulf fought and killed her, in order to protect the people. Beowulf's actions were in harmony with the very same mantra, but he was rewarded as a hero. The reason is that Beowulf worked for peace, while Grendel and his mother strove against it. They represented all that is evil, while God favored Beowulf. When peace and happiness are the primary desires of society good is encouraged and evil discouraged. In order to accomplish his society's goal of peace, it was necessary for Beowulf to also kill Grendel's mother because she was a monster of proportions similar to her son, capable of wiping out their entire society in one fell swoop. While Grendel's mother may have seemed more justified in her killings than Grendel, she was not. It is not justifiable to kill for revenge or out of anger, with no purpose other than for retribution. It adds nothing to society, and removes a life. Grendel's mother did not deserve mercy.

As the poem of \textit{Beowulf} comes to an end, it is evident that Beowulf operated under dissimilar motivating factors near the end of his life and reign as king. Whereas he was originally motivated solely by God's will, peace, and the best outcome for society, in his old age his pride became a greater influence upon him.\textsuperscript{80} He risked his life to kill an enemy of his society and succeeded.\textsuperscript{81} However, Beowulf died from that fight, leaving his society without a leader, and without a protecting force.\textsuperscript{82} They became vul-

\textsuperscript{79} \textit{Beowulf}, \textit{supra} note 24, at 37, ll. 1384-85.
\textsuperscript{80} \textit{See} \textit{Beowulf}, \textit{supra} note 24, at 63, ll. 2510-15 (noting Beowulf's boast that though he was old, he would fight as King "for the glory of winning").
\textsuperscript{81} \textit{See} \textit{Beowulf}, \textit{supra} note 24, at 67, ll. 2688-2706 (describing Beowulf's battle with the dragon, "the bane of the people" during which the dragon clamps his fangs into Beowulf's neck).
\textsuperscript{82} \textit{Compare} \textit{Beowulf}, \textit{supra} note 24, at 74, ll. 2724-2736 (recounting Beowulf dying words in which he described how, during his life, he had protected his people form all neighboring clans because none would dare attack him) \textit{with} \textit{Beowulf supra} note 24 at
nerable to invasions from neighboring enemy states. While it was just for Beowulf to kill the dragon, it was also just for Beowulf to die as well because he killed for the wrong reasons. Killing the dragon may have been necessary, but Beowulf killed him to prove his strength as a warrior and courage as a king, despite the fact that he was older and had a more important duty: to protect his people through his leadership and guidance. Significantly, mercy was not a component in the execution of justice within Beowulf. Rather, forces of pure evil, that wreak havoc and cannot be rehabilitated or deterred, must receive merciless justice, and the justice given must be fair, reasonable, and in accordance with truth. Mercy cannot be bestowed when it will inhibit peace.

V. THE MERCHANT OF VENICE

A. Synopsis of The Merchant of Venice

The Merchant of Venice is a story of love, and may even be a story of trials and tribulations, but a story of justice and mercy it is not. Antonio, the play's namesake, was a Venetian merchant whose wealth was invested overseas. Antonio, though he [held] the world but as the world []
A stage where every man must play a part,
[A]nd [his] a sad one,

he found some pleasure in lending money to Bassanio, his "most noble kinsman." Bassanio appealed to Antonio with a plan to "unburden all [his] plots and purposes," for in "Belmont [was] a lady richly left" Portia. Bassanio told him

74, ll. 2999-3003 (predicting that the Swedes, a neighboring clan, were likely to attack Beowulf's people once they learn that he is dead).

83 See BEOWULF, supra note 24, at 74, ll. 2999-3003 (predicting that the Swedes were likely to cross the border and attack once the learned that Beowulf was dead).

84 SHAKESPEARE, supra note 1, at act 1, sc. 1, ll. 1-46. Antonio contemplated his sadness while his companion, Salarino, assumed Antonio was distressed about his merchandise. Id. at 1-41. However, Antonio had faith in his wealth and said his merchandise was not the cause of his sadness. Id. 42-46.

85 SHAKESPEARE, supra note 1, at act 1, sc. 1, ll. 81-83.

86 SHAKESPEARE, supra note 1, at act 1, sc. 1, l. 60.

87 SHAKESPEARE, supra note 1, at act 1, sc. 1, l. 140.

88 SHAKESPEARE, supra note 1, at act 1, sc. 1, l. 168.
Antonio’s “fortunes [were] at sea”; he had neither

money nor commodity
To raise a present sum.

Even so, Antonio offered his credit to Bassanio, which he would allow to be strained
even to the uttermost
To furnish [Bassanio] to Belmont to fair Portia.

a. The Loan

And so the stage was set for the drama of The Merchant of Venice. Bassanio went to Shylock, a Jewish moneylender, to borrow three thousand ducats in Antonio’s name, to be paid back at the end of three months. Shylock did not want to lend the money to Antonio, but agreed to do so under intense terms: that Antonio would sacrifice a pound of his flesh to Shylock if he forfeited the bond. Antonio sealed unto the bond, undeterred, saying, “[t]he Hebrew will turn Christian; he grows kind,” and felt secure because his “ships [were to] come home a month before the day.”

People referred to Shylock as a “devil,” and an “evil soul.” Shylock’s own servant, Lancelet, deserted him. Worse, Shy-
lock's daughter abandoned him soon after, saying:

But though I am a daughter to his blood,
I am not to his manners.

I shall end this strife,
Become a Christian and [Lorenzo's] loving wife.\(^{101}\)

Though Shylock's daughter Jessica claimed she would end her paganism and become Christian, while in her flight from her father, she stole his jewels and his money.\(^{102}\) Shylock was intensely angered at her desertion and at his losses. Tubal informed Shylock of Antonio's ill luck overseas, and Shylock was pleased.\(^{103}\)

b. The Trial

All the while, the love between Bassanio and Portia was growing. When Portia discovered Antonio's dire fate, she vowed to save her lover's friend, and accomplished this through deceit, saying:

I never did repent for doing good,
Nor shall not now.\(^{104}\)

Portia viewed herself as a savior of Antonio:

How little is the cost I have bestowed
In purchasing the semblance of my soul
From out the state of hellish cruelty.\(^{105}\)

LANCELET: To be ruled by my conscience, I should stay with the Jew my master, who (God bless the mark) is a kind of devil; and to run away from the Jew, I should be ruled by the fiend, who (saving your reverence) is the devil himself. Certainly the Jew is the very devil incarnation, and, in my conscience, my conscience is but a kind of hard conscience to offer to counsel me to stay with the Jew. The fiend gives the more friendly counsel. I will run, fiend. My heels are at your commandment. I will run.

Id.\(^{101}\) SHAKESPEARE, supra note 1, at act 2, sc. 4, ll. 18-21.

See SHAKESPEARE, supra note 1, at act 2, sc. 8, ll. 12-23. Solanio, laughing with Salario at Shylock's misfortunes, referred to Shylock as "dog Jew" and recount his reaction to his daughter fleeing. Id.\(^{102}\)

See generally SHAKESPEARE, supra note 1, at act 3, sc. 1 (depicting Tubal sharing with Shylock the "news from Genoa.").\(^{103}\)

SHAKESPEARE, supra note 1, at act 3, sc. 4, ll. 10-11.\(^{104}\)

SHAKESPEARE, supra note 1, at act 3, sc. 4, ll. 19-21.\(^{105}\)
Portia disguised herself as a doctor of laws, with a letter of introduction for the Duke from Doctor Bellario, Portia's cousin, who had written a letter of falsities for her.\textsuperscript{106} Portia arrived at Antonio's trial, with a plan to overthrow Shylock and benefit Antonio along with her new husband, Bassanio, and through their happiness, she would also profit. Shylock was aware that mercy was expected of him,\textsuperscript{107} but could not bring himself to grant it.\textsuperscript{108} Antonio acknowledged the contract he had executed with Shylock to be valid.\textsuperscript{109} Portia implored Shylock to be merciful and attempted to "mitigate the justice of [his] plea,"\textsuperscript{110} but Shylock was steadfast in his determination for a pound of flesh from Antonio and turned down an offer of even three times the amount of the money that he had lent.\textsuperscript{111} In his conversation with Portia, Shylock's intense hatred for, and malice against, Antonio was apparent as he refused Portia's suggestion that a surgeon be present to stop

\textsuperscript{106} SHAKESPEARE, supra note 1, at act 4, sc. 1, ll. 152-71. The letter read:  
Your Grace shall understand that, at the receipt of your letter, I am very sick, but in the in that your messenger came, in loving visitation was with me a young doctor of Rome. His name is Balthazar. I acquainted him with the cause in controversy between the Jew and Antonio the merchant. We turned o'er many books together. He is furnished with my opinion, which, bettered with his own learning (the greatness whereof I cannot enough commend), comes with him at my importunity to fill up your Grace's request in my stead. I beseech you let his lack of years be no impediment to let him lack a reverend estimation, for I never knew so young a body with so old a head. I leave him to your gracious acceptance, whose trial shall better publish his commendation.  
\textit{Id.} (italics in original).  
\textsuperscript{107} See SHAKESPEARE, supra note 1, at act 3, sc. 3, l. 1. Shylock protests: "Tell me not of mercy." \textit{Id.}  
\textsuperscript{108} See SHAKESPEARE, supra note 1, at act 3, sc. 3, ll. 5-9. Despite expectations to the contrary, Shylock remains firm:  
I'll have my bond. Speak not against my bond.  
I have sworn an oath that I will have my bond.  
Thou call'dst me a dog before thou hadst a cause,  
But since I am a dog, beware my fangs.  
The Duke shall grant me justice.  
\textit{Id.}  
\textsuperscript{109} See SHAKESPEARE, supra note 1, at act 3, sc. 3, ll. 27-29 (showing that even though Solanio thought the Duke would "never grant this forfeiture to hold," Antonio lamented that "The Duke cannot deny the course of law").  
\textsuperscript{110} SHAKESPEARE, supra note 1, at act 4, sc. 1, l. 209.  
\textsuperscript{111} See SHAKESPEARE, supra note 1, at act 4, sc. 1, ll. 235-38 (refusing the offer of "thrice the money offered" him, Shylock insists to make good the oath that he has "in heaven").
Antonio's wounds from bleeding during the cutting of his flesh because it was not expressed in the bond.112

Portia used wit and cunning in her interpretation of Shylock's bond with Antonio in order to reach the most favorable result for her husband's closest friend. Portia read the contract as *expressio unius est exclusio alterius*,113 stating:

This bond doth give thee here no jot of blood.
The words expressly are "a pound of flesh."
Take then thy bond, take thou thy pound of flesh,
But in the cutting it, if thou dost shed
One drop of Christian blood, thy lands and goods
Are by the laws of Venice confiscate
Unto the state of Venice.114

Portia validated her words with the pleas of Shylock:

For, as thou urgest justice, be assured
Thou shalt have justice more than thou desir'st.115

In vain, Shylock attempted to give Antonio leniency to preserve his own interests, first applying for Antonio's offer of three times the bond amount, and then settling for a mere repayment of the bond's principal.116 However, Portia refused him because he had refused both options in open court and now should "have merely justice and his bond."117 On top of this castigation, Portia brought further charges against Shylock:

Tarry, Jew.
The law hath yet another hold on you.
It is enacted in the laws of Venice,

112 See SHAKESPEARE, supra note 1, at act 4, sc. 1, ll. 269-74 (refusing the suggestion that a doctor be present, Shylock justifies his position because the presence of a doctor was not part of the agreement).
113 BALLENTINE'S LAW DICTIONARY 4421 (3d ed. 1969). Defining *expressio unius est exclusio alterius* as:

The expression of one thing implies the exclusion of another thing. A maxim applied in a construction of contracts to the effect that the expression in a contract of one or more things of a class implies the exclusion of all not expressed. . . A principle of statutory construction, but as an aid to construction, not a rule of law, the principle being of limited use and application.
Id.
114 SHAKESPEARE, supra note 1, at act 4, sc. 1, ll. 319-25.
115 SHAKESPEARE, supra note 1, at act 4, sc. 1, ll. 329-30.
116 See SHAKESPEARE, supra note 1, at act 4, sc. 1, ll. 332-50 (negotiating to no avail for the enforcement of the terms of his bond).
117 SHAKESPEARE, supra note 1, at act 4, sc. 1, ll. 353.
If it be proved against an alien
That by direct or indirect attempts
He seek the life of any citizen,
The party 'gainst the which he doth contrive
Shall seize one half his goods; the other half
Comes to the privy coffer of the state,
And the offender’s life lies in the mercy
Of the Duke only, 'gainst all other voice.
In which predicament I say thou stand'st
For it appears by manifest proceeding
That indirectly, and directly too,
Thou hast contrived against the very life
Of the defendant, and thou hast incurred
The danger formerly by me rehearsed.
Down, therefore, and beg mercy of the Duke.\textsuperscript{118}

In answer to this peril, the Duke immediately responded:

That thou shalt see the difference of our spirit,
I pardon thee thy life before thou ask it.
For half thy wealth, it is Antonio’s;
The other half comes to the general state,
Which humbleness may drive unto a fine.\textsuperscript{119}

Shylock, miserable at the prospect of being penniless, lamented:

you take my life,
When you do take the means whereby I live.\textsuperscript{120}

Portia raised the possibility of mercy to Antonio, who answered:

So please my lord the Duke and all the court
To quit the fine for one half of his goods,
I am content, so he will let me have
The other half in use, to render it
Upon his death unto the gentleman
That lately stole his daughter.
Two things provided more; that for this favor
He presently become a Christian;
The other, that he do record a gift,
Here in the court, of all he dies possessed

\textsuperscript{118} SHAKESPEARE, supra note 1, at act 4, sc. 1, ll. 361-78.
\textsuperscript{119} SHAKESPEARE, supra note 1, at act 4, sc. 1, ll. 384-88.
\textsuperscript{120} SHAKESPEARE, supra note 1, at act 4, sc. 1, ll. 392-93.
Unto his son Lorenzo and his daughter.\textsuperscript{121}

And so Shylock left the court, with his life, but without his faith; neither mercy nor justice was bestowed upon him.

B. Shylock

a. Shylock's Situation in Life

A victim of oppression from the womb, Shylock was denied citizenship in Venice even though it was the city of his birth.\textsuperscript{122} His Jewish heritage and religion conferred "alien"\textsuperscript{123} status on him. In the third scene of the first act of *The Merchant of Venice*, Shylock is introduced into the scene as "Shylock the Jew," while the accompanying person, a Christian Venetian, is simply "Bassanio."\textsuperscript{124} When Bassanio and Antonio entreated Shylock to loan the three thousand ducats to them, Shylock callously responded:

\begin{quote}
I hate him for he is a Christian,

\ldots

He hates our sacred nation, and he rails,
Even there where merchants most do congregate,
On me, my bargains, and my well-won thrift,
Which he calls "interest." Cursed be my tribe
If I forgive him!\textsuperscript{125}
\end{quote}

A stranger to Shylock's past would think him harsh, but his emotional outbursts are understandable in combination with his background. As Antonio implored Shylock to loan the money to him, Shylock replied:

\begin{quote}
Signior Antonio, many a time and oft
In the Rialto you have rated me
About my moneys and my usances.
\end{quote}

\textsuperscript{121} SHAKESPEARE, *supra* note 1, at act 4, sc. 1, ll. 396-406.

\textsuperscript{122} See SHAKESPEARE, *supra* note 1, at 166 n.364 (explaining that "[a]s a Jew, Shylock would have been denied citizenship in Venice).

\textsuperscript{123} SHAKESPEARE, *supra* note 1, at act 4, sc. 1, l. 364; see also Peter K. Yu, *Piracy, Prejudice, and Perspectives: An Attempt To Use Shakespeare To Reconfigure The U.S.-China Intellectual Property Debate*, 19 B.U. INT'L L.J. 1, 43 (2001) (noting that the alien statute that applied against Shylock had a discriminatory effect against Jews).

\textsuperscript{124} SHAKESPEARE, *supra* note 1, at act 1, sc. 3 (indicating Bassanio and Shylock the Jew enter the scene).

\textsuperscript{125} SHAKESPEARE, *supra* note 1, at act 1, sc. 3, ll. 42-52.
Still I have borne it with a patient shrug
(For suffrance is the badge of all our tribe).
You call me misbeliever, cutthroat dog,
And spet upon my Jewish gaberdine,
And all for use of that which is mine own.
Well then, it now appears you need my help.
Go to, then. You come to me and you say
"Shylock, we would have moneys"—you say so,
You, that did void your rheum upon my beard
And foot me as you spurn a stranger cur
Over your threshold. Moneys is your suit.
What should I say to you? Should I not say
"Hath a dog money? It is possible
A cur can lend three thousand ducats?" Or
Shall I bend low, and in a bondman's key
With bated breath and whisp'ring humbleness,
Say this: 'Fair sir, you spet on me on Wednesday last;
You spurned me such a day; another time
You called me 'dog'; and for these courtesies
I'll lend you thus much moneys?\(^{126}\)

To the citizens of Venice, especially Bassanio and Antonio, Shylock was not human, because he was a Jew.

b. The Relationship of Shylock and Antonio

A life of subjugation encompassed Shylock's past, present and future. Upon encountering Shylock, Antonio would disgrace him in every way imaginable. Persecuting him for his religion, Antonio called Shylock a "misbeliever."\(^{127}\) Antonio spit on Shylock's Jewish robe and on his beard, even kicking him and calling him a "dog."\(^{128}\) Still, Shylock revealed the aching and wretchedness he felt about his life, expressing to Antonio:

I would be friends with you and have your love,
Forget the shames that you have stained me with,
Supply your present wants, and take no doit,
Of usance for my moneys, and you'll not hear me!\(^{129}\)

Aware that any attempt at amity or even tolerance with Antonio

\(^{126}\) SHAKESPEARE, supra note 1, at act 1, sc. 3, ll. 116-39.
\(^{127}\) SHAKESPEARE, supra note 1, at act 1, sc. 3, l. 121.
\(^{128}\) SHAKESPEARE, supra note 1, at act 1, sc. 3, l. 138.
\(^{129}\) SHAKESPEARE, supra note 1, at act 1, sc. 3, ll. 149-52.
would be in vain, Shylock agreed to lend the money to him, with
one caveat.\textsuperscript{130} If Antonio forfeited the loan in three months, he
would also forfeit a pound of his flesh,

\begin{quote}
to be cut off and taken
In what part of [Antonio's] body pleaseth [Shylock].\textsuperscript{131}
\end{quote}

Shylock effectively designated a contract for Antonio's life. Antonio, however, was not dissuaded, and sealed to the bond.

What motivated Shylock in his desire to kill Antonio? Suffering from oppression may have influenced Shylock to cruelly wager against Antonio's life, but it cannot be said he was predisposed to commit crimes against Christians. Shylock had free will. Not only was his crime premeditated, but he also had several chances to have mercy on Antonio and refused them.\textsuperscript{132} Although Shylock's position in life was undesirable and all whom he came in contact with treated him harshly, his actions were unjustifiable. Revenge drove Shylock to long for the blood of Antonio:

\begin{quote}
SALARINO: Why, I am sure if he forfeit, thou wilt not take his flesh! What's that good for?

SHYLOCK: To bait fish withal; if it will feed nothing else, it will feed my revenge. He hath disgraced me and hindered me half a million, laughed at my losses, mocked at my gains, scorned my nation, thwarted my bargains, cooled my friends, heated mine enemies—and what's his reason? I am a Jew. Hath not a Jew eyes? Hath not a Jew hands, organs, dimensions, senses, affections, passions? Fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same winter and summer as a Christian is? If you prick us, do we not bleed? If you tickle us, do we not laugh? If you
\end{quote}

\textsuperscript{130} See Randy Lee, Who's Afraid of William Shakespeare?: Confronting our Concepts of Justice and Mercy in the Merchant of Venice, 32 U. DAYTON L. REV. 1, 11 (2006) (describing Shylock's request that he "may take a pound of Antonio's 'fair flesh').

\textsuperscript{131} SHAKESPEARE, supra note 1, at act 1, sc. 3, ll. 162–63.

\textsuperscript{132} Compare SHAKESPEARE, supra note 1, at act 4, sc. 1, ll. 10-14 (describing Shylock's action as "tyranny") with SHAKESPEARE, supra note 1, at 140 n.14 (clarifying that "tyranny" in this context means "unmerciful action").
poison us, do we not die? And if you wrong us, shall we not revenge? If we are like you in the rest, we will resemble you in that. 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.\textsuperscript{133}

Shylock claimed Christians taught him villainy, but rather than forgiving them, he looked at them with a retributivist eye.\textsuperscript{134} Shylock spoke these words not to invite sympathy, but as “self-justification for [the] villainy intended.”\textsuperscript{135}

c. The End

i. First, as to Antonio

While Antonio’s behavior may have been morally reprehensible, it is not usually warranted or justifiable to punish ethical wrongs criminally. The difference between Antonio and Shylock was that Shylock acted on his malicious thoughts. And while we would like to deter such thoughts in the first place, we cannot punish thoughts. Racial prejudices and economic inequalities evidence larger societal problems.\textsuperscript{136} The prevention of larger problems comes through fixing the roots of those problems. When people commit crimes, it is vital to understand why they committed those crimes, so that the underlying causes may be addressed. Every child should have adequate food, clothing and shelter, and have the opportunity to grow in a supportive, loving, stable environment. A school’s quality of learning should not

\textsuperscript{133} SHAKESPEARE, \textit{supra} note 1, at act 3, sc. 1, ll. 50–72.

\textsuperscript{134} See Michael Jay Willson, \textit{A View of Justice in Shakespeare’s The Merchant of Venice and Measure for Measure}, 70 NOTRE DAME L. REV. 695, 721 (1995) (describing one actor’s portrayal of Shylock “as an embodiment of the Old Testament ‘justice’ which was an ‘eye for an eye’”).


vary according to which neighborhoods it serves. Early in life, schools must teach that we are all equal in worth, and not just to tolerate, but to embrace each other’s differences.

The violent philosophies and temperaments of both Shylock and Antonio are partly due to their environments and upbringing, as is evident from their deeply held prejudices. Antonio violently spat on Shylock, shunning him with vulgarities and demeaning names, while Shylock violently executed a contract for a pound of Antonio’s flesh, which Shylock would cut himself. Understanding the reasons why people act in certain ways is vital for the prevention of crimes. In our society today, as the faces of criminals become younger and younger, we must realize that just “[a]s in the natural world, there are complex links between the quality of individual human development and the status of the human community.” If we can adequately target the youths of our society, not only to teach them love and mercy, but also to better their environments, the peaceful effects upon our society will be boundless. According to Robin Karr-Morse, licensed family therapist and first executive director of the Children’s Trust Fund of Oregon, and Meredith S. Wiley, Chief of Staff to the Oregon Speaker of the House, “[t]he quality of the human environment is directly tied to each individual’s ability to love, to empathize with others, and to engage in complex thinking. By failing to understand the cumulative effects of the poisons assaulting our babies in the form of abuse, neglect, and toxic substances, we are participating in our own destruction.”

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137 See Ken Masugi, Race, the Rule of Law, and The Merchant of Venice: From Slavery to Citizenship, 11 NOTRE DAME J.L. ETHICS & PUB. POL’Y 197, 204 (1997) (outlining relations between Antonio and Shylock).


142 KARR-MORSE & WILEY, supra note 139, at 12.
Morse and Wiley, writers of *Ghosts from the Nursery*, worked together to design and manage the Children's Care Team a group charged with restructuring Oregon's services to families and children. Their message supports the idea that it is not enough to provide food, shelter, and clothing for every child—love is essential.

Considering that "a growing percentage of our babies are now gestating in and being born into an environment perfectly designed to breed rage and despair," it is not surprising that so much violence takes place every day in our society in "physical, emotional, social, [and] verbal" forms. Living in a peaceful society encompasses more than the criminal world: Peace starts at home. "Home" is a fluid concept in regards to where and with whom children are living, but a "home" should always have love and support. Where love is absent, hatred abounds.

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145 KARR-MORSE & WILEY, supra note 139, at 14.

146 KARR-MORSE & WILEY, supra note 139 at 14. See also id. at 13-14.

Each year the Children's Defense Fund publishes a yearbook entitled *The State of America's Children.* According to their 1996 and 1997 issues: A baby is born every minute to a teenage mother. The mortality rate for American babies under the age of one is higher than that of any other western industrialized nation; African-American babies are more than twice as likely to die in their first year of life as white babies. Twenty-five percent of our preschool children live below the poverty level. One in four foster children in five states sampled entered foster care before his or her first birthday. Newborns make up the largest share of those infants. One in three victims of physical abuse is a baby less than twelve months old. Every day a baby dies of abuse or neglect at the hands of his or her caregivers. Three of every four children murdered in the twenty-six top industrialized nations combined were American. Only 8.4 percent of infant and toddler care in U.S. child care centers is considered developmentally appropriate care; 51.1 percent was judged mediocre quality care, and 40.4 percent poor quality care.

Id. See generally HelpingAmericasYouth.gov, Introduction to Risk Factors and Protective Factors, http://guide.helpingamericasyouth.gov/programtool-factors.cfm (last visited Mar. 24, 2008). This excerpt identifies certain risk factors, including being from a broken home, to participating in risky behaviors, including violence. Id.

147 See KARR-MORSE WILEY, supra note 139, at 300. Factors associated with violence include larger environmental factors: "Living below community economic norm, modeling of violent solutions to problems by key models, modeling of weapon use in community; access to weapons, unavailability of involved adult who teaches values and values child, [and] modeling of alcohol, drug use to deal with problems." Id. The authors present "The
ii. Shylock's Sentence

Shylock was wronged countless times throughout his life. He invites sympathy and sympathy is warranted. But his response, vengeance, was not warranted. While it was understandable and justifiable for Shylock to have felt strong, angry emotions against his persecutors, he was not justified in acting on those emotions in a criminal manner. Criminal acts of vengeance and revenge are not acceptable or desirable for a peaceful society.

In killing Antonio, Shylock's oppression would not end. When people act on their emotions of anger and vengeance, violence is perpetuated amongst society. In life, returning evil for evil, causing further harm to punish a previous harm, only brings strife and more sadness. While Shylock should have been rehabilitated, it is questionable whether incapacitation would have been warranted. He obeyed the law to the best of his ability; even in his attempt to take a life, Shylock did so by executing a contract, which the "victim" willingly signed. Shylock's crime, making a contract in which the penalty for forfeiture was a pound of flesh, did not bring about a tangible harm because Antonio did not lose an ounce of blood, and was even able to save his principal from the...
However, it is impossible to know whether Shylock would have completed his crime had Portia not interfered with the outcome of the contract.

The optimal punishment for Shylock was one that both deterred him from pursuing violent means to an end, and rehabilitated him from acting on angry impulses. If Shylock were arrested today for this same crime, he would most likely serve time in jail and attend a court-mandated anger management program—a fair and reasonable punishment. The best sentence is that which is most likely to bring about societal peace. By punishing an attempted murder with imprisonment, other members of society should be deterred from committing like crimes. Programs focusing on rehabilitation bring about peace in a substantial, tangible way because upon successful completion of such a program, the subject should not only be less likely to commit future crimes, but should also become a more positive force in society. Retribution is a check on imprisonment, ensuring that the offender does not serve more time in jail than is warranted by the crime he committed. The purpose of retribution is not the happiness of the victim(s) family and friends. People who are victims of crimes are in need of, and deserve, help from their society, but that "help" should not come through retributive means.

150 See The Complete Works of William-Shakespeare, The Merchant of Venice, http://www.shakespeare-literature.com/The_Merchant_of_Venice/0.html (noting that Antonio defaulted on his loan to Shylock, yet did not give a pound of flesh to Shylock as was promised for such a default).

151 See generally PAUL KARSTEN FAUTECK, GOING STRAIGHT: AN EX-CONVICT/PSYCHOLOGIST TELLS WHY AND HOW (Iuniverse 2001) (arguing that criminal rehabilitation is helpful in reducing recidivism rates); see also Alfred Himelson, Prison Programs That Produce, http://www.worldandihomeschool.com/public/2003/december/cipub1.asp (last visited April 13, 2008) (noting that "we should typically expect program subjects to have 10 to 15 percent less recidivism than nonprogram subjects with comparable backgrounds").

152 See e.g., Ivana Bacik, Crime and Punishment—Retribution or Rehabilitation (2005) available at http://lawlibrary.ie/viewdoc.asp?Docid=144&Catid=18&StartDate=01+January+2001&m= (providing that most retributive punishment systems are based on proportionality between the crime committed and the punishment served); see also James Marshall, The Justifications of Punishment (2000), available at http://www.ffst.hr/ENCYCLOPAEDIA/punishment1.htm (explaining that retribution is a method of punishment focusing only on paying for the wrong already committed).

153 See Bacik, supra note 152 (arguing that retributive theories of punishment seek to punish the offender based upon what is morally appropriate given the crime); see also Marshall, supra note 152 (explaining that the purpose of the retributive system is to have an offender pay for his offense, despite a recent trend that focuses on the needs of the victims or their families).
Those affected should use the situation as a means to grow, to learn, and to help others. This is not to downplay their suffering or anger in any way, but just as Shylock would not be justified in acting out of vengeance, neither are the loved ones of a victim of a crime. Our governments should provide programs made especially to benefit and help victims and their loved ones without cost.

Shylock's punishment was unjust. His penalty should not have benefited Antonio, his persecutor. A fine that goes toward benefiting society is a more fair choice because it allows the judge imposing that fine to remain impartial. Shylock's judge was far from unbiased: she not only had a vested interest, but she was not even a real judge! Portia used deceit to put herself in a position where she could influence a decision in Antonio's favor against Shylock. Having him convert to Christianity was gratuitous. The Duke thoughtlessly assented to Antonio's idea of mercy, saying:

He shall do this, or else I do recant
The pardon that I late pronounced here.154

Antonio most likely thought of this idea due to his antiquated belief that only Christians, not Jews, could understand the concept of mercy.155 In reality, anyone is capable of mercy. Mercy blends with justice when sentences are imposed with love rather than hatred.

The mercy of which Portia spoke was divine.156 Unfortunately for Shylock, the "mercy" Portia, the Duke, and Antonio bestowed upon him was not really mercy at all. In the Bible, Jesus tells a parable of the Pharisee and the Publican that is reminiscent of

154 SHAKE SPEARE, supra note 1, at act 4, sc. 1, ll. 407-08.

155 See Patricia Truxler Coleman, The Merchant of Venice: Neither Comedy, Romance, Nor Tragedy, MID SUMMER MAGAZINE (1992), available at http://www.bard.org/education/studyguides/themerchantofvenice/merchanttragedy.html. "[F]or the citizens of Venice . . . that mercy which 'is an attribute to God himself' is the just due only of those who are like them in appearance, behavior, beliefs, and values." Id. For a contrary view, see Cooper, supra note 136, at 121. "Though [Shylock's] forced conversion to Christianity seems to us to be cruel and insulting, we are meant, I think and as many critics have said, to see this as the altogether kindly conversion of Shylock to the new rule of mercy and thus his liberation of the dilemma of the old law." Id.

156 See SHAKE SPEARE, supra note 1, at act 4, sc. 1, ll. 190-206 (utilizing a divine metaphor, Portia describes that mercy "droppeth as the gentle rain from heaven").
Portia and Antonio:157

And [Jesus] also told this parable to certain ones who trusted in themselves that they were righteous, and viewed others with contempt: “Two men went up into the temple to pray, one a Pharisee, and the other a tax-gatherer. The Pharisee stood and was praying thus to himself, ‘God, I thank Thee that I am not like other people: swindlers, unjust, adulterers, or even like this tax-gatherer. I fast twice a week; I pay tithes of all that I get.’ But the tax-gatherer, standing some distance away, was even unwilling to lift up his eyes to heaven, but was beating his breast, saying, ‘God, be merciful to me, the sinner!’ I tell you, this man went down to his house justified rather than the other; for everyone who exalts himself shall be humbled, but he who humbles himself shall be exalted.158

For our society to appropriately emulate the mercy exemplified Portia’s speech, we must look to its source: the Bible. Portia believed that

earthly power doth then show likest God’s
When mercy seasons justice.159

VI. THE BIBLE

A. Justice and Mercy

“For if you forgive men for their transgressions, your heavenly Father will also forgive you. But if you do not forgive men, then your Father will not forgive your transgressions.”160 According to the Bible, in the end, “God Himself is Judge.”161 Still, judges in the United States would do best to emulate God’s ways to the best of their abilities. Judges must be impartial, omniscient, and

157 See Cooper, supra note 136, at 121 (describing that “with hardness of heart [Shylock] reject[ed] the new law of mercy, and with the pride of the Pharisees he [was] confident that he [was] justified by obedience to the letter of the law.”)
159 SHAKESPEARE, supra note 1, at act 4, sc. 1, ll. 202-03.
decide fairly, having discernment. “He will judge the world with righteousness, [a]nd the peoples with equity.”162 A judge who is like God would possess the “spirit of wisdom and understanding,”163 “counsel and strength,”164 and “knowledge;”165 he would judge the poor “with righteousness . . . [a]nd decide with fairness for the afflicted of the earth.”166 As if speaking directly to Shylock’s case, God instructed judges to “judge righteously between a man and his fellow countryman, or the alien who is with him,”167 not to “show partiality in judgment,”168 but to “hear the small and the great alike.”169

In judging with equity, a judge must look upon all with fairness: he “shall do no wrong in judgment”170 and shall use “just balances [and] just weights.”171 A judge must evaluate without prejudices; justice is blind.172 Judges “shall judge the people with righteous judgment.”173 Judges “shall not distort justice; [they] shall not be partial, and [they] shall not take a bribe, for a bribe blinds the eyes of the wise and perverts the words of the righteous.”174 God does not pervert justice; he does not pervert what is right;175 God gives “justice to the afflicted.”176 “Righteousness and justice are the foundation of [God’s] throne; [l]oving kindness and truth go before [Him].”177 “Evil men do not understand justice.”178 If we desire heavenly lives, we need to “let justice roll down like waters [a]nd righteousness like an ever-flowing stream.”179 Jesus expressed dismay when rulers neglected the

163 Isaiah 11:2.
164 Isaiah 11:2.
165 Isaiah 11:2.
166 Isaiah 11:4.
167 Deuteronomy 1:16.
168 Deuteronomy 1:17.
169 Deuteronomy 1:17.
170 Leviticus 19:35.
171 Leviticus 19:36.
172 See Leviticus 19:15 (proscribing that “[y]ou shall do no injustice in judgment; you shall not be partial to the poor nor defer to the great, but you are to judge your neighbor fairly.”).
173 Deuteronomy 16:18.
174 Deuteronomy 16:19.
175 See Job 8:3. “Does God pervert justice [o]r does the Almighty pervert what is right?”
176 Id.
177 Job 36:6.
178 Psalm 89:14.
180 Amos 5:24.
"weightier provisions of the law: justice and mercy and faithfulness." As to mercy, "God is OPPOSED TO THE PROUD, BUT GIVES GRACE TO THE HUMBLE." Therefore, mercy is most appropriate when the person in need of it is truly sorry for his criminal act.

B. The Answer

When the goal is peace, our objectives must comport with mercy both inside and outside of the courts. We should hope to stay out of the court as much as possible. In order to do so, our lives must be lived putting others before ourselves:

Let love be without hypocrisy. . . . Bless those who persecute you; bless and curse not. Rejoice with those who rejoice, and weep with those who weep. Be of the same mind toward one another; do not be haughty in mind, but associate with the lowly. . . . Do not be wise in your own estimation. Never pay back evil for evil to anyone. Respect what is right in the sight of all men. If possible, so far as it depends on you, be at peace with all men.

CONCLUSION

"[I]f you love those who love you, what reward have you?"

Matthew 23:23. "Woe to you, scribes and Pharisees, hypocrites! For you tithe mint and dill and cummin, and have neglected the weightier provisions of the law: justice and mercy and faithfulness; but these are the things you should have done without neglecting the others." Id.

James 4:6. (capitalization in the original).

Romans 12:9-18.

Matthew 5:46. See also Matthew 5: 38-48.

You have heard that it was said, 'AN EYE FOR AN EYE, AND A TOOTH FOR A TOOTH.' But I say to you, do not resist him who is evil; but whoever slaps you on your right cheek, turn to him the other also. And if anyone wants to sue you, and take your shirt, let him have your coat also. And whoever shall force you to go with him one mile, go with him two. Give to him who asks of you, and do not turn away from him who wants to borrow from you. You have heard that it was said, 'YOU SHALL LOVE YOUR NEIGHBOR, and hate your enemy.' But I say to you, love your enemies, and pray for those who persecute you in order that you may be sons of your Father who is in heaven; for He causes His sun to rise on the evil and the good, and sends rain on the righteous and the unrighteous. For if you love those who love you, what reward have you? Do not even the tax-gatherers do the same? And if you greet your brothers only, what do you do more than others? Do not even the Gentiles do the same? Therefore you are to be perfect, as your heavenly Father is perfect.

Just like justice, mercy must be bestowed fairly and equally. We must be “good to all”\textsuperscript{184} by being “gracious and merciful; [s]low to anger and great in loving kindness.”\textsuperscript{185} In determining the precise situation to grant mercy, remember that the end result must be peace. Mercy is never deserved, but can be justified when the person to whom it is being bestowed is truly humble. Once a person understands that what he did is wrong, is sorry and asks forgiveness, the purposes of punishment have been attained. That person should not repeat that crime. In order for change to take place, a person must realize and acknowledge that a change is necessary.

\textsuperscript{184} \textit{Psalm} 145:9.

\textsuperscript{185} \textit{Psalm} 145:8.