

# CIVIC FRIENDSHIP IN THE POSTMODERN POLIS: LAW AS MEDIATOR IN SHAKESPEARE'S *THE MERCHANT OF VENICE*

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## ABSTRACT

In *Merchant of Venice*, Shakespeare explores whether commercial republicanism can alone sustain civic virtue. Putting Shakespeare into conversation with pillars of American political thought, *Merchant of Venice* seems to support John Adams' contention that a republican constitution is "made only for a moral and religious people" and "is wholly inadequate to the government of any other." Economic liberty as an end unto itself cannot form the basis of a coherent political order and must ultimately erode public-spiritedness. By examining the character of the Venetian regime and the irreconcilable differences between its citizens regarding the nature of the Good, the attentive reader can identify barriers to civic friendship and evaluate whether law can serve as a mediating influence against what Publius calls "faction" in *The Federalist*. Shakespeare suggests that law's mediating influence on faction is at best tenuous and follows the Aristotelean belief that civic friendship depends in large part on substantial agreement about first principles. These themes find their echoes in American political thought and remain deeply relevant to the legal and political challenges facing republican self-government today.

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### 1. INTRODUCTION

John Adams contended that “[o]ur Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.”<sup>1</sup> In the Hamiltonian tradition, some disagree, arguing that the Constitution creates a commercial republic that maximizes individual freedom, especially economic freedom.<sup>2</sup> Such economic liberty allows individual self-interest to promote virtue and the common good without necessary recourse to religious piety. According to this line of reasoning, a commercial society fosters self-control, honest dealing, and self-reliance among its citizens. And in turn, these values promote limited government and the growth of civic associations. On this view, our Constitution works regardless of the morality or piety of the people it governs.

But is commerce alone sufficient to promote civic virtue? More importantly, can a political community survive without widely shared beliefs about what constitutes virtue? Shakespeare offers an answer to these questions in *The Merchant of Venice*.<sup>3</sup> There, he suggests that economic liberty

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<sup>1</sup> Letter from John Adams to the Officers of the First Brigade of the Third Division of the Militia of Massachusetts (Oct. 11, 1798), in 9 THE WORKS OF JOHN ADAMS, SECOND PRESIDENT OF THE UNITED STATES 228, 229 (Charles Francis Adams ed., Boston, Little, Brown, & Co. 1854).

<sup>2</sup> See generally The Federalist Soc’y, *Eighth Annual Rosenkranz Debate: The Constitution and Morality*, YOUTUBE (Nov. 14, 2015), <https://perma.cc/LK2T-9PEP> (remarks of John O. McGinnis).

<sup>3</sup> See generally WILLIAM SHAKESPEARE, THE MERCHANT OF VENICE (c. 1596–1597), reprinted in WILLIAM SHAKESPEARE: THE COMPLETE WORKS 453, 453–79 (Stanley Wells et al. eds., 2d ed. 2005) [hereinafter MERCHANT OF VENICE].

untethered from the restraining forces of religion and objective morality cannot quell fierce cultural divergence among citizens. Shakespeare ultimately indicates that law is at best an imperfect mediator between such divergences. Instead, civic friendship borne out of substantial agreement on first principles is necessary to sustain a republican form of government.

## 2. THE COMMERCIAL SPIRIT OF VENICE

Shakespeare's Venice was a wealthy commercial republic that grew powerful by sublimating differences between men through bonds of trade. Capital and credit dominate *The Merchant of Venice's* opening scene. In the first lines, we learn that Antonio—the titular merchant—has trading vessels “tossing on the ocean” with valuable cargo.<sup>4</sup> Although he tells his friend Bassanio “all my fortunes are at sea,”<sup>5</sup> this is not quite true. His wealth is in fact dispersed and “not in one bottom trusted / Nor to one place.”<sup>6</sup> But when Bassanio discloses that “great debts” prevent him from presenting an appropriate dowry to Portia of Belmont,<sup>7</sup> Antonio urges Bassanio to “Try what my credit can in Venice do.”<sup>8</sup>

To facilitate commerce, Venice elevates economic liberty from its place as an instrumental good rooted in justice and ordered toward the common good to the status of an intrinsic good. We soon learn that this commercial emphasis has resulted in a peculiar feature of Venetian law: the absolute freedom of contract.<sup>9</sup> That freedom, exemplified by Shylock's “merry bond” against Antonio for a pound of flesh if he defaults,<sup>10</sup> appears to stem from the venture-capital economy that propels Venice's economic success.

Venice was generally considered to be a place where men who would never have shared a common way of life could mingle and live together in

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<sup>4</sup> *Id.* act I, sc. 1, l. 8.

<sup>5</sup> *Id.* act I, sc. 1, l. 177.

<sup>6</sup> *Id.* act I, sc. 1, ls. 42–43.

<sup>7</sup> *Id.* act I, sc. 1, l. 128.

<sup>8</sup> *Id.* act I, sc. 1, l. 180.

<sup>9</sup> See generally Thomas Vincent Svogun, *Jurisprudence in Shakespeare's Merchant of Venice*, in *THE SOUL OF STATESMANSHIP* 79, 79–97 (Khalil M. Habib & L. Joseph Hebert Jr. eds., 2018).

<sup>10</sup> *MERCHANT OF VENICE*, *supra* note 3, act I, sc. 3, l. 172.

civil concord.<sup>11</sup> “It was not thought possible to educate men to a tolerant view or to overcome the power of the established religions by refuting them,” writes Allan Bloom in his penetrating essay on *The Merchant of Venice*.<sup>12</sup> “The only way was to substitute for the interest and concern of men’s passions another object as powerfully attractive as religion.”<sup>13</sup> In this case, that substitute was the desire for material gain. This commercial spirit created the veneer of tolerance that made life in Venice possible—but only for a time. As Cicero observes, maritime cities are particularly prone to corrupting influences and changing social mores.<sup>14</sup> After all, foreign customs and manners are imported as easily as foreign merchandise.<sup>15</sup>

Though both are religious men, Antonio the Christian and Shylock the Jew draw upon vastly different first principles, and those principles inform the nature and extent of their membership within the political community. Shylock follows the Mosaic law, refusing to deal with Gentiles except at arm’s length:

I will buy with you, sell with you, talk with you, walk with you,  
and so following, but I will not eat with you, drink with you,  
nor pray with you.<sup>16</sup>

For Shylock, virtue means strict adherence to Hebrew law. He follows the Deuteronomic command against charging interest to other Jews but takes advantage of its proviso excluding Gentile borrowers.<sup>17</sup> Antonio, inspired by the generosity of the Christian God’s mercy, showers extravagant grace upon fellow Christian citizens and expects them to do the same for him (“He lends out money gratis”).<sup>18</sup> Both men treat coreligionists favorably because they share the same fundamental values with them. The virtue Shylock considers

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<sup>11</sup> Allan Bloom, *On Christian and Jew: The Merchant of Venice*, in ALLAN BLOOM WITH HARRY V. JAFFA, *SHAKESPEARE’S POLITICS* 14 (1964).

<sup>12</sup> *Id.* at 16.

<sup>13</sup> *Id.*

<sup>14</sup> See MARCUS TULLIUS CICERO, *ON THE REPUBLIC* 117 (Clinton W. Keyes trans., Oxford Univ. Press 1928) (c. 51–54 B.C.) (“Maritime cities also suffer a certain corruption and degeneration of morals; for they receive a mixture of strange languages and customs, and import foreign ways as well as foreign merchandise, so that none of their ancestral institutions can possibly remain unchanged.”).

<sup>15</sup> *Id.*

<sup>16</sup> *MERCHANT OF VENICE*, *supra* note 3, act I, sc. 3, ls. 32–35.

<sup>17</sup> See *Deuteronomy* 23:19–20.

<sup>18</sup> *MERCHANT OF VENICE*, *supra* note 3, act I, sc. 3, l. 42.

to be ultimate is incompatible with that which Antonio esteems, for law is the opposite of grace. Virtue for the one is vice to the other.

Shakespeare elaborates on this theme in *Othello*, his other Venetian drama.<sup>19</sup> Othello, though a foreign-born Moor, converted to Christianity and attempted to secure membership in the political community through marriage and martial valor on the city's behalf.<sup>20</sup> His outlook is cosmopolitan in the sense that he believes he can earn his place within the city by merit of his virtue, despite his outsider status.<sup>21</sup> Although Brabantio and Iago emphasize his appearance as emblematic of ineradicable difference,<sup>22</sup> Othello at least partially succeeds because the Duke and many Senators respect his courage and greatness of spirit.<sup>23</sup> Nevertheless, he remains a mercenary, a man who fights for self-interested gain rather than from self-sacrificial devotion to the city and its laws.<sup>24</sup> In this way, the very means by which Othello hopes to receive the city's honors is but a degradation of the highest act of service a citizen could bestow upon the city.<sup>25</sup> The service Othello renders to Venice is thus perceived to be a distortion or deficiency of virtue, rather than virtue itself.<sup>26</sup> Individual distinction rather than the common good drives Othello, and irreconcilable understandings of virtue are again set against each other in a context of cultural difference.

Based on the tragic fates of Shylock and Othello, Shakespeare communicates pessimism about the ability of a commercial republic to maintain long-term civic peace when its people hold radically pluralistic fundamental commitments.<sup>27</sup> Even at the height of Venetian power, Shakespeare knew the city was founded on unsteady and sinking ground.<sup>28</sup> As Bloom puts it, "laws are not sufficient; they must be accompanied by good dispositions on the

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<sup>19</sup> See generally WILLIAM SHAKESPEARE, *OTHELLO* (c. 1603–1604), reprinted in WILLIAM SHAKESPEARE: THE COMPLETE WORKS, *supra* note 3, at 873, 873–907 [hereinafter *OTHELLO*].

<sup>20</sup> Allan Bloom, *Cosmopolitan Man and the Political Community: Othello*, in BLOOM & JAFFA, *supra* note 11, at 46–51.

<sup>21</sup> See *id.* at 57–59.

<sup>22</sup> See, e.g., *OTHELLO*, *supra* note 19, act I, sc. 1, ls. 10–15; *id.* act I, sc. 3, ls. 94–96; see also Bloom, *supra* note 20, at 41–42.

<sup>23</sup> See Bloom, *supra* note 20, at 49–50.

<sup>24</sup> *Id.* at 57–58.

<sup>25</sup> *Id.* at 47–48.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 13–14, 36.

<sup>28</sup> *Id.* at 16–17.

parts of those who live under them.”<sup>29</sup> Lacking any common vision of the Good, the diverse Venetians inevitably ran aground the ship of state.

### 3. THE VIRTUE OF CIVIC FRIENDSHIP

When citizens do not share fundamental principles, in what sense do they constitute community? One might well ask with the prophet Amos: “Can two walk together, unless they are agreed?”<sup>30</sup> According to the classical view, political community does not arise among those who simply share a common location and exchange goods.<sup>31</sup> A state must be concerned with virtue; otherwise it is simply a kind of alliance, differing “only in location from other alliances in which the allies live far apart.”<sup>32</sup> An alliance is but a contractual or commercial relationship, which is the state imagined by Hobbes, Locke, and Rousseau.<sup>33</sup> But in the contractual state or state-as-alliance, law is an uneasily negotiated settlement and cannot act as a tool to “make the citizens good and just.”<sup>34</sup>

In *The Merchant of Venice*, Shakespeare seems to endorse the classical arrangement of the state based on civic friendship. “Friendship would seem to hold cities together,” Aristotle observes, and for that reason, he encourages lawgivers to be more concerned about friendship than justice.<sup>35</sup> Civic friendship entails mutual concern, a reciprocal desire for the other’s well-being, and a shared understanding of what is noble and base.<sup>36</sup> The best citizens care about “what sort of people the others should be.”<sup>37</sup> Rather than valuing others for their productive or economic value, civic friends wish each other well simply because they are fellow citizens.<sup>38</sup> Their mutual

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<sup>29</sup> *Id.* at 17.

<sup>30</sup> Amos 3:3 (New King James).

<sup>31</sup> ARISTOTLE, *POLITICS* bk. III, at 1280a30–1281a3 (C.D.C. Reeve trans., Hackett Publ’g Co. 1998) (c. 350 B.C.).

<sup>32</sup> *Id.* at 1280a30–1280b4.

<sup>33</sup> See LEO STRAUSS, *NATURAL RIGHT AND HISTORY* 231–32, 282–83 (1953).

<sup>34</sup> ARISTOTLE, *supra* note 31, at 1280a30–1280b4.

<sup>35</sup> ARISTOTLE, *NICOMACHEAN ETHICS* bk. VIII, at 1155a24–33 (Terence Irwin trans., Hackett Publ’g Co. 1999) (c. 384 B.C.).

<sup>36</sup> See Sibyl A. Schwarzenbach, *On Civic Friendship*, 107 *ETHICS* 97, 105–06 (1996).

<sup>37</sup> ARISTOTLE, *supra* note 31, at 1280a30–1280b4.

<sup>38</sup> See Schwarzenbach, *supra* note 36, at 97; Micah Watson, *C.S. Lewis and Aristotle on Civic Friendship*, *PUB. DISCOURSE* (Oct. 23, 2018), <https://perma.cc/BT2P-KAPC>.



You, that did void your rheum upon my beard,  
And foot me as you spurn a stranger cur  
Over your threshold.<sup>45</sup>

When Antonio agrees to the terms of the bond, he tells Shylock:

If thou wilt lend this money, lend it not  
As to thy friends; for when did friendship take  
A breed for barren metal of his friend?  
But lend it rather to thine enemy,  
Who if he break, thou mayst with better face  
Exact the penalty.<sup>46</sup>

Some differences of character, disposition, and belief may be too difficult to reconcile, making political friendship impossible. Commerce can only gild those underlying fissions.

The condition of civic enmity between Christian and Jew in *The Merchant of Venice* is particularly illuminating when one considers Aristotle's belief that intermarriage facilitates political friendship.<sup>47</sup> This is precisely what Shylock's faith forbids.<sup>48</sup> Moses warned the Israelites intermarriage with non-Jews would lead to idolatry and divine judgment:

You shall not intermarry with them, giving your daughters to their sons or taking their daughters for your sons, for they would turn away your sons from following me, to serve other gods. Then the anger of the LORD would be kindled against you, and he would destroy you quickly.<sup>49</sup>

Indeed, Hebrew scripture repeatedly records intermarriage as a snare and a thorn to the children of Israel.<sup>50</sup> Shylock's religious piety and obedience to God are thus an impediment to the cultivation of Venetian civic friendship. The same can be said of Antonio's Christianity, which warns believers not to be unequally yoked with unbelievers.<sup>51</sup> For intermarriage to facilitate peace, one side or the other would be required to abandon its most deeply held

<sup>45</sup> MERCHANT OF VENICE, *supra* note 3, act I, sc. 3, ls. 110–11, 116–18.

<sup>46</sup> *Id.* act I, sc. 3, ls. 130–35.

<sup>47</sup> See ARISTOTLE, *supra* note 31, at 1280b34–36 (“But this will not be possible unless they do inhabit one and the same location and practice intermarriage.”).

<sup>48</sup> Cf. MERCHANT OF VENICE, *supra* note 3, act II, sc. 8, ls. 12–22; *id.* act III, sc. 1, ls. 23–34.

<sup>49</sup> Deuteronomy 7:3–4 (English Standard).

<sup>50</sup> See, e.g., Exodus 34:16 (discouraging Hebrew intermarriage); Joshua 23:12–13 (same); Judges 14:1–3 (same); 1 Kings 11:2 (same); Ezra 9:12–14 (same).

<sup>51</sup> See 2 Corinthians 6:14.



beliefs. Shylock's daughter Jessica understands this and plans to marry Lorenzo to cure this source of political division: "I shall end this strife, / Become a Christian and thy loving wife."<sup>52</sup> But to find peace, Jessica must abandon both her religion and her city, seeking solace in Belmont.<sup>53</sup>

Will Jessica's peace last? Shakespeare hints at the tragic potential in the union between Jessica and Lorenzo, even within the harmonious confines of bucolic Belmont. They elope from Venice because they lack familial and community support for their union.<sup>54</sup> Even more ominously, the "un-thrift" lovers compare themselves to Troilus and Cressida, Pyramus and Thisbe, and Aeneas and Dido.<sup>55</sup> All these mythic couples held divided loyalties of city, house, or nation, and none achieved a permanent and stable marital union.<sup>56</sup> Jessica's conversion and marriage to Lorenzo might form a basis for future political friendship, but even this solution appears tenuous in Shakespeare's estimation.

#### 4. THE TEST OF THE CASKETS

Peace in Belmont rests on a common understanding of the nature of things, which makes possible a shared concern for and understanding of virtue. That undergirding is most clearly revealed through the test of the caskets. According to "the will of her dead father,"<sup>57</sup> Portia must wed the suitor who correctly chooses between gold, silver, and lead caskets:

This first of gold, who this inscription bears:  
 'Who chooseth me shall gain what many men desire.'  
 The second silver, which this promise carries:  
 'Who chooseth me shall get as much as he deserves.'  
 This third, dull lead, with warning all as blunt:  
 'Who chooseth me must give and hazard all he hath.'<sup>58</sup>

<sup>52</sup> MERCHANT OF VENICE, *supra* note 3, act II, sc. 3, ls. 20–21.

<sup>53</sup> *See id.* act V, sc. 1, ls. 14–17.

<sup>54</sup> *See id.* act III, sc. 1, ls. 23–34; cf. WILLIAM SHAKESPEARE, ROMEO AND JULIET (1595), *reprinted in* WILLIAM SHAKESPEARE: THE COMPLETE WORKS, *supra* note 3, at 369, 369–400.

<sup>55</sup> MERCHANT OF VENICE, *supra* note 3, act V, sc. 1, ls. 1–17; *see also* MARJORIE GARBET, SHAKESPEARE AFTER ALL 303 (2004).

<sup>56</sup> GARBET, *supra* note 55, at 303.

<sup>57</sup> MERCHANT OF VENICE, *supra* note 3, act I, sc. 2, l. 24.

<sup>58</sup> *Id.* act II, sc. 7, ls. 4–9.

The correct choice contains Portia's picture.<sup>59</sup> Proper interpretation of the caskets and their inscriptions—not chance—decides the “lottery.”<sup>60</sup> As Nerissa indicates, “whereof who chooses his meaning chooses you, will no doubt never be chosen by any rightly but one who you shall rightly love.”<sup>61</sup>

Shakespeare suggests national, religious, and ethnic differences render the game of interpretation more difficult. Portia ridicules English, Scottish, French, German, and Neapolitan suitors who previously visited Belmont.<sup>62</sup> The first serious suitor to attempt the test is the Prince of Morocco, an outsider from the outset—Moorish, Muslim, and dark-skinned.<sup>63</sup> He urges Portia to judge him by the content of his character rather than his color: “Mislike me not for my complexion, / The shadowed livery of the burnished sun”.<sup>64</sup> But in his selection, Morocco is guided by appearance and deceived by ornament:

Is't like that lead contains her? 'Twere damnation  
To think so base a thought. It were too gross  
To rib her cerecloth in the obscure grave.  
Or shall I think in silver she's immured,  
Being ten times undervalued to tried gold?  
O sinful thought! Never so rich a gem  
Was set in worse than gold.<sup>65</sup>

Morocco thus chooses the golden casket, mistaking external value for internal worth.<sup>66</sup> Consistent with the Venetian commercialism we have described, his obsession with private gain runs contrary to the posture of self-giving that characterizes marriage.

The Spanish Prince of Aragon, too, is an outsider. Like Morocco, he at first recognizes the folly of choosing according to appearance:

By the fool multitude, that choose by show,  
Not learning more than the fond eye doth teach,  
Which pries not to th'interior but, like the martlet,

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<sup>59</sup> *Id.* act II, sc. 7, ls. 11–12.

<sup>60</sup> *Id.* act I, sc. 2, l. 28.

<sup>61</sup> *Id.* act I, sc. 2, ls. 30–32.

<sup>62</sup> *Id.* act I, sc. 2, ls. 38–96.

<sup>63</sup> *See id.* act II, sc.1, ls. 1–6; *see also* GARBER, *supra* note 55, at 289.

<sup>64</sup> *MERCHANT OF VENICE*, *supra* note 3, act II, sc.1, ls. 1–2.

<sup>65</sup> *Id.* act II, sc. 7, ls. 49–55.

<sup>66</sup> *Id.* act II, sc. 7, ls. 55–60.

Builds in the weather on the outward wall

Even in the force and road of casualty.<sup>67</sup>

But he then chooses the silver casket and its equivocal inscription, assuming his merit qualifies him to marry Portia.<sup>68</sup> He chooses silver, the metal of commerce that Bassanio calls “pale and common drudge / ‘Tween man and man,”<sup>69</sup> and rejects the leaden casket because of its appearance: “You shall look fairer ere I give or hazard.”<sup>70</sup> The fool’s head is his reward.<sup>71</sup>

Only Bassanio exercises practical reason in his choice, applying his theoretical knowledge about the deceptiveness of appearance to the test. He reasons:

So may the outward shows be least themselves.

The world is still deceived with ornament.

In law, what plea so tainted and corrupt

But, being seasoned with a gracious voice,

Obscures the show of Evil? . . .

Thus ornament is but the guiled shore

To a most dangerous sea, the beauteous scarf

Veiling an Indian beauty; in a word,

The seeming truth which cunning times put on

To entrap the wisest.<sup>72</sup>

The scroll accompanying Portia’s picture within the leaden casket confirms Bassanio’s antithesis between appearance and reality: “You that choose not by the view / Chance as fair, and choose as true.”<sup>73</sup> Bassanio sees the nature of things and puts his knowledge into practice.<sup>74</sup>

The test that Portia’s “ever virtuous, and holy” father devised thereby proves wise.<sup>75</sup> The successful suitor and Portia are not deceived by appearance—they share a common understanding of what is valuable and common, beautiful and ugly, noble and base. Or as Portia later puts it:

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<sup>67</sup> *Id.* act II, sc. 9, ls. 25–29.

<sup>68</sup> *Id.* act II, sc. 9, ls. 48–51.

<sup>69</sup> *Id.* act III, sc. 2, ls. 103–04.

<sup>70</sup> *Id.* act II, sc. 9, l. 21.

<sup>71</sup> *Id.* act II, sc. 9, ls. 53–59.

<sup>72</sup> *Id.* act III, sc. 2, ls. 73–77, 97–101.

<sup>73</sup> *Id.* act III, sc. 2, ls. 131–32.

<sup>74</sup> *Id.* act III, sc. 2, ls. 104–07.

<sup>75</sup> *Id.* act I, sc. 2, l. 27.

Whose souls do bear an equal yoke of love,  
 There must be needs a like proportion  
 Of lineaments, of manners, and of spirit.<sup>76</sup>

The “like proportion” of manners and spirit necessary for marital companionship is implicitly political, mirroring the primary action of the play in Venice and providing an answer to its civic turmoil.

How then to interpret Portia’s apparently prejudiced and appearance-focused response to Morocco’s failed choice—“Let all of his complexion choose me so”?<sup>77</sup> Or her remark: “If he have the condition of a saint and the complexion of a devil, I had rather he should shrive me than wive me”?<sup>78</sup> Perhaps Portia lacks Bassanio’s practical wisdom, finding it “easier [to] teach twenty what were good to be done than to be one of the twenty to follow [her] own teaching.”<sup>79</sup> But that explanation comports uneasily with Portia’s sound judgment as revealed in the courtroom scene.<sup>80</sup>

More likely, Portia’s reflexive rejection of Morocco stems from her intuition that great differences in manners and spirit—as evidenced by their different national, religious, and ethnic backgrounds—would prove an unstable basis upon which to form a marital union. Judging Morocco according to appearance would ignore the very lesson learned from the test of caskets. But true differences in ontology and metaphysics, foundational disagreements that sound the depths of the soul, *do* matter. Shakespeare examines that theme in greater depth through the tragic marriage of Othello and Desdemona.<sup>81</sup> There, as here, Othello’s ethnic difference and outsider status as a foreign mercenary is a stand-in for distinctions in culture and worldview that sow faction and animosity.<sup>82</sup> The test of the caskets once again mirrors the strife arising from the extreme heterogeneity of manners and spirit in Venice.

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<sup>76</sup> *Id.* act III, sc. 4, ls. 13–15.

<sup>77</sup> *Id.* act II, sc. 7, l. 79.

<sup>78</sup> *Id.* act I, sc. 2, ls. 126–28.

<sup>79</sup> *Id.* act I, sc. 2, ls. 15–17.

<sup>80</sup> *See id.* act IV, sc. 1; *see also* Tovey, *supra* note 42, at 216–18.

<sup>81</sup> *See generally* OTHELLO, *supra* note 19.

<sup>82</sup> *See id.*; *cf.* Bloom, *supra* note 20, at 41–43.

## 5. POLITICAL COMMUNITY IN A POSTMODERN AGE

In a postmodern age, the Western world faces even greater differences than those between Christian, Jew, and Moor. Americans no longer share a common concept of what it means to be human—much less of marriage, of maleness or femaleness, or of virtue. We cannot even agree that such concepts exist in any meaningful or shared reality.

This divide is not merely moral but metaphysical. Postmodern people think of humanity and the material world as infinitely malleable, subject to individuals who *fashion* reality according to the objects of their will.<sup>83</sup> But in the pre-modern view, everything—including mankind—possesses an essential nature by virtue of what the thing is.<sup>84</sup> In other words, reality is not optional. It is objective. It cannot be fashioned; it is fixed. That chasm leads Americans not only to reach different conclusions from the same observations but also to *see* different things because of their presuppositions about the nature of reality.

Materialistic commercial traders perceive no need to engage in rigorous philosophical pondering; the received philosophy of cultural oracles from Drake to Disney seems sufficient for them. But the Declaration of Independence, in asserting that “all men are created equal,”<sup>85</sup> implies that the brotherhood of man exists even unto the highest part of the soul, that rational part which the Greeks called the *nous*.<sup>86</sup> Every human being is by nature a rational creature and is in this sense equal to every other human being. The Declaration makes a political and philosophic statement, not merely a biological statement, about our shared species. Yet without a shared philosophical grounding, brotherhood can only exist at the lowest common denominator—the biological. This low commonality is precisely what Shylock piteously appeals to:

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<sup>83</sup> See, e.g., *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992) (plurality opinion) (“At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”); see also Paul Sheehan, *Postmodernism and Philosophy*, in *THE CAMBRIDGE COMPANION TO POSTMODERNISM* 20, 20–42 (Steven Connor ed., 2004); JEAN-PAUL SARTRE, *EXISTENTIALISM* 18 (Bernard Frechtman trans., 1947).

<sup>84</sup> See ARISTOTLE, *METAPHYSICS* bk. VII, at 1028b33–1029a1 (C.D.C. Reeve trans., Hackett Publ’g Co. 2016) (c. 350 B.C.); ARISTOTLE, *supra* note 31, bk. I, at 1253a1–10.

<sup>85</sup> THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

<sup>86</sup> See *nous*, BRITANNICA, <https://perma.cc/53M5-DRR5>.

Hath not a Jew eyes? Hath not a Jew hands, organs, dimensions, senses, affections; fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same winter and summer as a Christian is? If you prick us do we not bleed? If you tickle us do we not laugh? If you poison us do we not die?<sup>87</sup>

That type of brotherhood extends no further than the bodily facts of our DNA. It is, in the words of Leo Strauss, the “low but solid ground” of self-interest and self-preservation.<sup>88</sup> The higher parts of the soul—which form opinions about the Good, True, and Beautiful—diverge and conflict so forcefully that citizens within the republic must become not merely partisans but political enemies.

That political enmity permeates the contemporary culture war and its petty skirmishes. Postmodern progressivism permits no dissent, as the wedding vendor cases and the trend toward de-platforming demonstrate.<sup>89</sup> Those who hold opposing views must be hunted down and made to pay their pound of flesh. Clearly, America’s commercial spirit is insufficient to restrain license, safeguard freedom of belief, or create a common moral language.

## 6. LAW AS MORAL MEDIATOR

A positivistic approach to law does not provide an obvious solution to this deep conflict. As mentioned earlier, the Venetian law of contracts apparently guaranteed enforcement of private agreements to a practically limitless degree.<sup>90</sup> This conferred an autonomous sovereignty with the prerogative to exercise quasi-legislative powers.<sup>91</sup> Of course, freedom of contract can

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<sup>87</sup> MERCHANT OF VENICE, *supra* note 3, act III, sc. 1, ls. 54–62.

<sup>88</sup> See STRAUSS, *supra* note 33, at 247.

<sup>89</sup> See, e.g., 303 Creative LLC v. Elenis, 600 U.S. 570, 580–84 (2023); Masterpiece Cakeshop v. Colo. C.R. Comm’n, 138 S. Ct. 1719 (2018); NetChoice, L.L.C. v. Paxton, 49 F.4th 439 (5th Cir. 2022); NetChoice, LLC v. Att’y Gen., 34 F.4th 1196 (11th Cir. 2022); Ganesh Sitaraman, *Deplatforming*, 133 YALE L.J. 497, 497 (2023) (explaining the deplatforming problem); Joshua J. Craddock, *The Case for Complicity-Based Religious Accommodations*, 12 TENN. J.L. & POL’Y 233, 259–61 (2018); *NEW: 2024 College Free Speech Rankings Show Alarming 81% Success Rate of Deplatforming Attempts at Nation’s Most Censorial Schools*, FOUND. FOR INDIVIDUAL RTS. & EXPRESSION (Sept. 6, 2023), <https://perma.cc/2433-6EBY> (same).

<sup>90</sup> See Svogun, *supra* note 9, at 80.

<sup>91</sup> *Id.*

promote human flourishing by allowing individuals to exercise practical reasonableness—that is, to create a coherent plan of life concerning the allocation of one’s material resources.<sup>92</sup> But unmoored from the deep principles that animate and direct law toward its appropriate ends, the unfettered power of contract may be turned toward malicious purposes. These observations lead us to the courtroom scene.

Venetian law requiring strict contractual performance threatens Antonio’s life because Shylock demands specific performance and refuses monetary compensation:

I have possessed your grace of what I purpose,  
And by our holy Sabbath have I sworn  
To have the due and forfeit of my bond.  
If you deny it, let the danger light  
Upon your charter and your city’s freedom.  
You’ll ask me why I rather choose to have  
A weight of carrion flesh than to receive  
Three thousand ducats. I’ll not answer that,  
But say it is my humour. Is it answered?<sup>93</sup>

In the face of a valid contract, positive law bars even the Duke’s interference and neglects the natural law’s limitations on the freedom of contract.<sup>94</sup> Put differently, there is no necessary connection between law and morality in Venice, or at least the positive law supersedes natural law in cases of conflict.<sup>95</sup> As Portia declares, “There is no power in Venice / Can alter a decree established.”<sup>96</sup>

The effect on Venetian trade is one of the primary reasons that a contract, once solemnized, cannot be altered.<sup>97</sup> Portia knows well that foreign merchants who distrust Venetian courts to enforce contracts by their terms are unlikely to do business with the republic:

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<sup>92</sup> See ADAM J. MACLEOD, *PROPERTY AND PRACTICAL REASON* 120–21 (2015); JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 100–05 (2d ed. 2011); Adeline A. Allen, *Surrogacy and Limitations to Freedom of Contract: Toward Being More Fully Human*, 41 HARV. J.L. & PUB. POL’Y 753, 764–65 (2018).

<sup>93</sup> *MERCHANT OF VENICE*, *supra* note 3, act IV, sc. 1, ls. 34–42.

<sup>94</sup> See Svogun, *supra* note 9, at 87; cf. Allen, *supra* note 92, at 753, 761–69.

<sup>95</sup> See Svogun, *supra* note 9, at 88, 93.

<sup>96</sup> *MERCHANT OF VENICE*, *supra* note 3, act IV, sc. 1, ls. 215–16.

<sup>97</sup> See Bloom, *supra* note 11, at 16; GARBER, *supra* note 55, at 293; Svogun, *supra* note 9, at 89–90.

‘Twill be recorded for a precedent,  
And many an error by the same example  
Will rush into the state. It cannot be.<sup>98</sup>

On the surface, Portia’s observation favors giving effect to settled expectations. The enforcement of contracts is a sound rule of public policy, but the application of a general principle to factual circumstances demands prudence. Portia’s judgment implicitly critiques Venice’s indefeasible law of contract, which treats the relative goods of economic liberty and material gain as absolute goods and its subordination of human flourishing to those idolized goods. In her estimation, the law was made for man, not man for the law.<sup>99</sup> Agnosticism about the final cause of contract—the end or purpose for which contracts exist—thus leads to moral subjectivity in Venetian law.<sup>100</sup>

This subjectivity stands at odds with the natural law Blackstone described as “binding over all the globe in all countries, and at all times.”<sup>101</sup> Recall again Bassanio’s observation before choosing the leaden casket that subjectivity and appearance can obscure objectivity and truth even in law:

The world is still deceived with ornament.  
In law, what plea so tainted and corrupt  
But, being seasoned with a gracious voice,  
Obscures the show of evil?<sup>102</sup>

The problem of deceptive subjectivity is all the more formidable when judges who do not share a common concept of the Good attempt to apply common legal tests. For example, how does one identify a “compelling governmental interest” without recourse to first principles?<sup>103</sup> Is racial diversity in education a compelling governmental interest?<sup>104</sup> Is cost-free access to birth control a compelling governmental interest, as the Supreme Court assumed without deciding in *Hobby Lobby*?<sup>105</sup> By what standard?

The Canadian Supreme Court’s 2018 decision in *Law Society of British Columbia v. Trinity Western University*<sup>106</sup> is a case in point. There, the court

<sup>98</sup> MERCHANT OF VENICE, *supra* note 3, act IV, sc. 1, ls. 217–19.

<sup>99</sup> Cf. Mark 2:27.

<sup>100</sup> See Svogun, *supra* note 9, at 87.

<sup>101</sup> 1 WILLIAM BLACKSTONE, COMMENTARIES \*41.

<sup>102</sup> MERCHANT OF VENICE, *supra* note 3, act III, sc. 2, ls. 74–77.

<sup>103</sup> Cf. Note, *Let the End Be Legitimate: Questioning the Value of Heightened Scrutiny’s Compelling- and Important-Interest Inquiries*, 129 HARV. L. REV. 1406, 1409–12 (2016).

<sup>104</sup> See *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003).

<sup>105</sup> See *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 691–92 (2014).

<sup>106</sup> [2018] S.C.R. 293 (Can.).



decided that it was “reasonable” for a provincial law society to deny accreditation to a law school that imposed a mandatory religious-based covenant for student conduct.<sup>107</sup> The court said its decision “proportionately balanced” freedom of religion against the objectives of “diversity in the legal profession” and of “preventing the risk of significant harm to LGBTQ people.”<sup>108</sup> What is “reasonable” or constitutes “proportionate balancing,” of course, greatly depends on a judge’s presuppositions about the nature of man, religious obligation, and human sexuality. As Justice Jimmy Blacklock of the Texas Supreme Court recently opined in a case involving related issues, such “competing visions of the human person diverge at the most basic level” and that “divergence is unbridgeable.”<sup>109</sup> The lesson of *Trinity Western University* and similar cases is not that government failed to maintain strict neutrality between competing conceptions of the good life; rather, it is the mendacity of assuming that neutrality is possible or desirable.<sup>110</sup> “The question is not *whether* the law will reflect a moral vision of justice,” Justice Blacklock observes, but rather “*whose* moral vision of justice the law will reflect” and “whether the moral vision reflected in the law is a true vision or a false vision.”<sup>111</sup> No regime can construct a morally vacant public square.<sup>112</sup>

Portia understands that law is ultimately grounded in and directed toward the common good rather than individuals’ aggregated desire for pleasure or gain. Therefore, she does not aspire to neutrality when applying Venetian law. Disguised as the Roman jurist Balthasar, Portia offers Shylock several chances to grant mercy, such as urging him to allow a surgeon to staunch Antonio’s wound.<sup>113</sup> But Shylock retreats to a formalistic interpretation of the contract: “Is it so nominated in the bond? . . . I cannot find it. ‘Tis not in the bond.”<sup>114</sup> But Shylock has walked into Portia’s trap. Recognizing that positivism treats as law any sovereign command possessing proper

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<sup>107</sup> *Id.* at 317.

<sup>108</sup> *Id.* at 341, 349.

<sup>109</sup> *State v. Loe*, No. 23-0697, 2024 WL 3219030, at \*16 (Tex. June 28, 2024) (Blacklock, J., concurring).

<sup>110</sup> *Cf.* Kelsey Curtis, Note, *The Partiality of Neutrality*, 41 HARV. J.L. & PUB. POL’Y 935 (2018).

<sup>111</sup> *Loe*, 2024 WL 3219030, at \*16 n.3 (Blacklock, J., concurring) (“[M]ost laws of any consequence arise from a moral vision and reflect the moral judgment of the law-maker. Law cannot be separated from moral judgment.”).

<sup>112</sup> *See* RICHARD JOHN NEUHAUS, *THE NAKED PUBLIC SQUARE* 86 (1986).

<sup>113</sup> *MERCHANT OF VENICE*, *supra* note 3, act IV, sc. 1, ls. 254–55.

<sup>114</sup> *Id.* act IV, sc. 1, ls. 253, 256.

formalities and commanding assent, regardless of its moral content,<sup>115</sup> Portia turns strict formalism against Shylock through a woodenly literal reading of the contract:

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.<sup>116</sup>

That interpretation of the bond is manifestly unreasonable, but it is Shylock’s own methodology and jurisprudence unexpectedly applied against him.<sup>117</sup> Portia then parries Shylock’s belated acceptance of Bassanio’s triple repayment (“He shall have nothing but the penalty,”<sup>118</sup>) and attempt to reclaim the principal (“He hath refused it in the open court. / He shall have merely justice and his bond”<sup>119</sup>). Finally, having waited until the attempt on Antonio’s life became proximate, Portia drops her final bombshell:

The law hath yet another hold on you.  
It is enacted in the laws of Venice,  
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.<sup>120</sup>

At this, Antonio grants Shylock the “mercy” of foregoing the half of Shylock’s goods to which he is entitled if Shylock will “presently become a Christian” and “record a gift . . . of all he dies possessed” to Lorenzo and Jessica.<sup>121</sup> Of course, such mercy is cold comfort; only in a spiritual sense does

<sup>115</sup> Cf. JOHN AUSTIN, *THE PROVINCE OF JURISPRUDENCE DETERMINED* 5–20 (1832); H.L.A. HART, *THE CONCEPT OF LAW* 20–25 (3d ed. 2012).

<sup>116</sup> *MERCHANT OF VENICE*, *supra* note 3, act IV, sc. 1, ls. 302–09.

<sup>117</sup> See KENJI YOSHINO, *A THOUSAND TIMES MORE FAIR* 44 (HarperCollins 2011).

<sup>118</sup> *MERCHANT OF VENICE*, *supra* note 3, act IV, sc. 1, l. 319.

<sup>119</sup> *Id.* act IV, sc. 1, ls. 335–36.

<sup>120</sup> *Id.* act IV, sc. 1, ls. 344–53.

<sup>121</sup> *Id.* act IV, sc. 1, ls. 375, 384–87.

Antonio believe he has saved Shylock from a damnable fate. The Duke and Portia ratify those harsh conditions,<sup>122</sup> which disturbs modern readers steeped in an ethos of liberalism and toleration.

But let us reconsider the significance of the pound of flesh. In his negotiations with Antonio in Act I, Shylock nominates “for an equal pound / Of your fair flesh to be cut off and taken / In what part of your body pleaseth me.”<sup>123</sup> One need not be Freudian to take Shylock’s threat to “cut off” Antonio’s “flesh” as an allusion to circumcision,<sup>124</sup> the distinctive mark of the Jewish covenant that God made first with Abraham and then with Moses: “ye shall circumcise the flesh of your foreskin; and it shall be a token of the covenant betwix me and you.”<sup>125</sup> Only later in the trial scene does Shylock declare he will cut “nearest [Antonio’s] heart.”<sup>126</sup> But this only confirms the circumcision motif.<sup>127</sup> The Apostle Paul, for example, condemned Christians who sought to circumcise believing gentiles, emphasizing that under the new covenant “circumcision is that of the heart, in the spirit, and not in the letter.”<sup>128</sup> Shylock rejects this spiritualized view of circumcision and turns it against Antonio by restoring its physicality.<sup>129</sup> Interpreted this way, Shylock’s bond would symbolically convert Antonio through performance, in a sense, of Judaism’s sacred rite.<sup>130</sup> Antonio’s insistence that Shylock convert to Christianity is thus a sudden reversal and poetic justice. Viewed through this lens, Portia’s ratification of that harsh condition is not a condemnation of religious freedom and toleration, but rather an acknowledgment that Venice’s pluralistic liberalism fails to mediate deep conflicts, and an implicit recognition that regimes cannot maintain neutrality between mutually exclusive truth-claims about first principles.

Despite receiving the strict justice he demanded, Shylock has received “justice more than [he] desir[es].”<sup>131</sup> He considers himself unfairly treated and, in his eyes, a death sentence would have been more merciful.<sup>132</sup>

<sup>122</sup> See *id.* act IV, sc. 1, ls. 388–90.

<sup>123</sup> *Id.* act I, sc. 3, ls. 148–50.

<sup>124</sup> See JAMES SHAPIRO, *SHAKESPEARE AND THE JEWS* 121–22 (20th Anniversary ed. 2016).

<sup>125</sup> *Genesis* 17:11 (King James).

<sup>126</sup> *MERCHANT OF VENICE*, *supra* note 3, act IV, sc. 1, l. 251.

<sup>127</sup> See SHAPIRO, *supra* note 124, at 127.

<sup>128</sup> *Romans* 2:29 (King James).

<sup>129</sup> SHAPIRO, *supra* note 124, at 127.

<sup>130</sup> See *id.* at 130.

<sup>131</sup> *MERCHANT OF VENICE*, *supra* note 3, act IV, sc. 1, l. 314.

<sup>132</sup> *Id.* act IV, sc. 1, ls. 371–74.

Reconciliation is impossible because Shylock and Antonio lack the mercy and mutual forbearance that characterizes civic friendship. Portia's judgment therefore cannot achieve civic peace.<sup>133</sup> Though imperfect for that purpose, her adjudication nevertheless reaffirms the inner morality of law, supports intermarriage (by providing for Jessica's dowry), and alleviates the factionalism arising from radical divergence between citizens through the blunt and imperfect instrument of conversion.

## 7. SHAKESPEARE'S WARNING

Portia's sound judgment averts would-be tragedy. But Shakespeare's warning for republican Venice—and by extension, the United States<sup>134</sup>—is clear. John Jay, writing in *Federalist* No. 2, contended that the American people are knit together by shared ancestry, language, religion, customs, and common cause in the War for Independence—not its desire for material gain.<sup>135</sup> Whereas in Venice true political community was impossible, Jay believed these shared commonalities between the newly independent states could be the basis for a united nation.<sup>136</sup>

Of course, as James Madison understood, a Portia will not always be available to mediate the disputes that inevitably arise between factions: "It is vain to say that enlightened statesmen will be able to adjust these clashing interests and render them subservient to the public good. Enlightened statesmen will not always be at the helm."<sup>137</sup> "[T]he philosophical race of kings wished for by Plato," he wrote, is "as little to be expected as" an entire "nation of philosophers."<sup>138</sup> This is because, Madison explained, "a zeal for different opinions concerning religion [and] concerning government" have "divided mankind into parties" and "inflamed them with mutual animosity" to the detriment of the state's pursuit of the common good.<sup>139</sup> Rather than address the *causes* of faction, which Madison believed could not be helped, he

<sup>133</sup> See Bloom, *supra* note 11, at 28.

<sup>134</sup> Cf. PETER MARKOE, *THE TRAGIC GENIUS OF SHAKESPEARE; AN ODE* (1787), reprinted in *SHAKESPEARE IN AMERICA* 8, 12 (James Shapiro ed., 2014) ("Shakespeare's bold spirit seeks our western shore . . . The noblest Bard demands the noblest Stage.").

<sup>135</sup> *THE FEDERALIST* NO. 2, at 9 (John Jay) (Jacob E. Cooke ed., 1961).

<sup>136</sup> See *id.*

<sup>137</sup> *THE FEDERALIST* NO. 10, *supra* note 135, at 60 (James Madison).

<sup>138</sup> *THE FEDERALIST* NO. 49, *supra* note 135, at 340 (James Madison).

<sup>139</sup> *THE FEDERALIST* NO. 10, *supra* note 135, at 58–59 (James Madison).

argued its *effects* should be mitigated—such as by pitting ambition against ambition and through an expansive federal republic.<sup>140</sup>

The latter structural safeguard would at least partially ameliorate the difficulty faced in Venice, because, according to Madison's argument, statesmen drawn from a "greater variety of parties and interests" and imbued with "enlightened views and virtuous sentiments" could perhaps transcend "local prejudices and schemes of injustice."<sup>141</sup> This is, in part, the role Portia plays at the trial. She possesses singular wisdom and virtue and, as a non-Venetian, transcends the local obsession with commercial gain.

But *The Merchant of Venice* also suggests that too great a variety of parties and interests within a republic can undermine the foundation of the state because extreme heterogeneity makes civic life impossible. Furthermore, if the cultivation of civic friendship proves difficult in a city-state such as Venice, how much more in an expansive republic like the United States, where bonds of affection and cords of memory are less acute? If our interpretation of Shakespeare is correct, structural safeguards alone are not enough to temper factional hostility. The causes of faction must also be mitigated, even though they can never be eliminated altogether.

Republicanism relies on self-government, which requires the people to possess a substantial measure of public spiritedness and moral rectitude. That is because a republic depends on its people to select wise and moral representatives, engage the public square, and fulfill civic duties. "As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust," Madison wrote, "so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form."<sup>142</sup> A base and vulgar commons will elect a government in its own image. The less wisdom and virtue a people have to perceive and seek the Good, the less suited they are to republican government.

In that sense, the unwritten American constitution emphasized by Jay—its religion, traditions, customs, and mores—remains just as important to the fabric of civic peace as the structural safeguards of our written Constitution, if not more so. Hence Adams's admonition that our Constitution would only effectively govern "a moral and religious people" and that republican governance could not contend against "human passions unbridled by

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<sup>140</sup> *Id.* at 61–62.

<sup>141</sup> *Id.* at 64.

<sup>142</sup> THE FEDERALIST NO. 55, *supra* note 135, at 378 (James Madison).

morality and religion.”<sup>143</sup> Indeed, this view was so widespread at the Founding that, writing a half-century later, Tocqueville found it remained common to the entire nation and to every rank of society.<sup>144</sup>

## 8. CONCLUSION: BLISS FOUND IN BELMONT, NOT VENICE

If that be the case, whence and whither the American republic? Shakespeare reveals the answer in Portia’s land of Belmont. The Romanesque setting suggests philosophical reflection and religious mystery.<sup>145</sup> Even Portia’s name is Roman, evoking the philosophic daughter of Cato the Younger.<sup>146</sup> In Belmont, Bloom writes, “[t]he ultimate harmony of men is a harmony, not on the level of their daily lives, but on that of a transcendence of them, an indifference to them, an assimilation to the movements of the spheres.”<sup>147</sup> Such harmony cannot long be found among a nation of traders unless their outlook is elevated by religious and philosophic life. It must be refined and enlarged by wise statesmen such as Portia<sup>148</sup>—or by great poets, such as Shakespeare.

Although commerce tends to promote certain civic goods and to coincide with limited government, commercial relationships alone are insufficient to long-sustain national virtue. Even the father of American commerce, Alexander Hamilton, acknowledged that commercial republics are not less prone to appetitive vices and aggression than other nations, for every government is administered by men.<sup>149</sup> He rejected the notion that commerce would be enough to “cultivate a spirit of mutual amity and concord” among Americans.<sup>150</sup>

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<sup>143</sup> Letter from John Adams, *supra* note 1, at 229.

<sup>144</sup> See ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 280 (Harvey C. Mansfield & Delba Winthrop trans. & eds., Univ. Chi. Press 2000) (1835) (“I do not know if all Americans have faith in their religion—for who can read to the bottom of hearts?—but I am sure that they believe it necessary to the maintenance of republican institutions. This opinion does not belong only to one class of citizens or to one party, but to the entire nation; one finds it in all ranks.”).

<sup>145</sup> See Bloom, *supra* note 11, at 24.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 31.

<sup>148</sup> Cf. THE FEDERALIST NO. 10, *supra* note 135, at 82 (James Madison).

<sup>149</sup> See THE FEDERALIST NO. 6, *supra* note 135, at 28–29 (Alexander Hamilton).

<sup>150</sup> *Id.* at 56.

Similarly, Tocqueville—though he found the American hustler attitude worthy, legitimate, and even heroic—recognized that the single-minded pursuit of material gain would ultimately cause Americans to “lose the use of [their] most sublime faculties” and “degrade” themselves with physical pleasures.<sup>151</sup> Such inward-focused materialism corrodes republican political life, which must look outward toward the common good. Tocqueville’s critique evokes Shakespeare’s Antony and Cleopatra, whose self-absorbed pursuit of physical pleasure exhibited an anti-political abdication of responsibility.<sup>152</sup> Commerce, contract, and trade—when treated as intrinsic and ultimate goods—must ultimately erode public-spiritedness and virtue.

Indeed, without the restraining and uniting force of a shared moral language, the very concept of virtue is unintelligible, much less attainable. Shared religious and moral conviction is a useful, if not necessary, element for the cultivation and sustenance of civic virtue. Thus, Tocqueville identified the task of statesmen to preserve Americans’ “ancient beliefs” as the most effective means to restrain materialism and promote the qualities necessary for participation in public life.<sup>153</sup>

That preservation is the task before us. To be elevated to the level of Belmont, the American political community must receive proper moral education. Only by learning from guides like Scripture and Shakespeare can the American people begin to reclaim the qualities that made them capable of self-governance in the first place.

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<sup>151</sup> TOCQUEVILLE, *supra* note 144, at 519 (1840).

<sup>152</sup> WILLIAM SHAKESPEARE, *ANTONY AND CLEOPATRA* act I, sc. 1, ls. 35–36 (1606) (“Let Rome in Tiber melt, and the wide arch / Of the rang’d empire fall.”), *reprinted in* WILLIAM SHAKESPEARE: *THE COMPLETE WORKS*, *supra* note 3, at 995, 997.

<sup>153</sup> TOCQUEVILLE, *supra* note 144, at 406; *see also* HARRY V. JAFFA, *CRISIS OF THE HOUSE DIVIDED* 347–48 (1959) (quoting Abraham Lincoln’s 1854 Peoria speech, which refers to the teaching of Lincoln’s “ancient faith” that “all men are created equal”).