Journal des Economistes et des Etudes Humaines

Volume 15, *Number* 1 | 2009 | *Article* 3

Money and Contract in *The Merchant of Venice*

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Abstract

The fortunes and misfortunes of Shylock and Antonio are pervaded with economic and legal ideas. Both characters tend to overlap and confuse in several dimensions–the most celebrated one is to believe that the Jew is the merchant–and are alternatively victim and victimizer. The analysis of the play focusing in money and contract, economics and the law, market and morality, allows us to delve into the nuances of one of the most engaging characters in the history of literature and to ponder the classical liberal message of justice and charity.

KEYWORDS: usury, law and economics, morality and justice, classical liberalism

[*]Comments by Isabel Gómez-Acebo, Francisco Cabrillo, Juan Urrutia , David Teira and Eduardo Serra are gratefully acknowledged.

Introduction: Dramatis Personae

Some people believe that Shylock is the merchant of Venice, when he is neither: he is surely a Jewish moneylender and very possibly a foreigner. An analogous mistake is made in thinking that Hamlet's most famous monologue has to do with a non-existent skull that only appears two acts later. Confusion and duplicity predominate in *The Merchant of Venice*, where the worlds of Venice and Belmont, and the lives of Portia and her suitors collide; as Burckhardt writes, the kingdom of law and love, the public and private are united by contract, or more precisely, by a variety of contracts. And while we are ignorant of the details of these contracts, we do know their outcomes: the paradisiacal Belmont derives its fortune from Portia's father, who gained his wealth through trade.[1]

Shakespeare is also illuminating to economists, who should analyze him bearing in mind that intellectuals have very rarely sympathized with finance, commerce and markets, from Plato to our own days.[2] Aside from the legal issues, *The Merchant of Venice* poses economic questions, starting with the business of lending at interest. Shakespeare, who was an important investor, approved of charging interest, which at the time in England was regulated downwards; between the mid-sixteenth, when interest was legalized, and the mid-seventeenth centuries, the maximum authorized rate fell from 10 percent to 5 percent.[3] As was to be expected, this fostered clandestine moneylending at higher rates: Shakespeare's own father was accused on two occasions of lending money at rates around 20 percent (Kish-Goodling 1998, 337).

The protagonists are businessmen. The scene is Venice, whose legendary splendor would soon fade as the explosion in navigation and exploration shifted Europe's economic center to the West. The play, based on a fourteenth century Italian novel, was deemed a comedy, perhaps in contrast to the sinister Barabas in *The Jew of Malta*, which debuted in 1597 (a few years before *The Merchant of Venice*) and was written by Shakespeare's great rival Christopher Marlowe. Only toward the end of the nineteenth century did it become considered a tragedy. From the caskets to the trick with the blood, the play took ideas and arguments from prior works. Unlike the Jew of Malta, Shylock is not a sharply drawn

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[1] Burckhardt 1968, 211; Szatek 2002, 334.

[2] Until the nineteenth century, the majority of intellectuals were aristocrats and priests, not people generally predisposed to appreciating trade. In the twentieth century self-proclaimed progressive intellectuals took charge, but they shared with their aristocratic and religious predecessors the same disdain for the market. Marc Shell is an example. His noteworthy erudition is neutralized by his obscure analysis, with Marxist echoes and a lack of economic understanding; Frederick Turner is much more perceptive: Shell 1978 and 1989. See also Turner 1999 and Cantor 2000.

[3] Turner 1997 recalls the advice "neither a borrower nor a lender be" in *Hamlet* comes from a hard-to-commend source, Polonius. Deutoronomy 15:6 reads: "thou shalt lend unto many nations, but thou shalt not borrow".

character. This sparked a debate about Shakespeare's anti-Semitism –a natural debate considering the Jewish character is not that bad nor the Christians particularly good. The usurer can be serious and affectionate, and defend contracts and property, while the Christians are imprudent, wasteful and racist.[4]

In Shakespeare's time, the market developed financial and legal instruments while complaints about usury, the classic Jewish endeavor and for the longest time condemned by Christianity, grew stronger. It is unclear what type of businessman Shylock is. He insists on collecting in kind (flesh from Antonio) instead of taking advantage of a high interest rate, an unexpected stance for a *homo economicus*. Cohen (1982, 769) writes: "the crisis of the play arises not from his insistence on usury, but from his refusal of it". These questions are explored in the present essay: Shylock is victim and victimizer, and the analysis of money and contract, economics and justice, market and morality, will allow us to delve into the nuances of one of the most engaging characters in the history of literature and ponder the classical liberal message of justice and charity.

The Play

The play opens with the main character, Antonio, the merchant of Venice. The First Scene takes place in a merchant's proper surroundings: the port, from where Antonio's ships have set sail, probably with imported goods from the East. We have economic reasoning from the outset. Faced with a melancholic Antonio, his friends highlight the defining characteristic of the business world: risk (Farnam 1931, 30). Salerio points to the sea, and together with Solanio, agrees that, logically, Antonio should worry about his business, so dependent on chance. Salerio says:

> Your mind is tossing on the ocean. (I.i.8)

And Solanio:

> Believe me, sir, had I such venture forth,
> The better part of my affections would
> Be with my hopes abroad. (I.i.15)

For Salerio, the conclusion is clear:

> But tell not me; I know Antonio
> Is sad to think upon his merchandise. (I.i.39)

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[4] See for example: Luxon 1999, Stirling 1997, Cohen 1980, Luttall 2007, 260-1. For the historic context surrounding the naturalization of Jews in eighteenth century England, and an allegory about it and Nazism, see: Shapiro 2000 and Lerner 2000. Judge Posner says that for an Englishman in Shakespeare's time, a Jew was an almost mythical being: strange rumors circulated about Jews, including they drank Christian children's blood during Easter, a rumor that is reflected in the "pound of flesh" clause; Posner 1998, 407-8. See Davis and Richards 1985, and footnote 32.

DOI: 10.2202/1145-6396.1219

But the merchant's answer suggests that he is a good entrepreneur because his business flourishes and he has diversified his investments:

> My ventures are not in one bottom trusted,
> Nor to one place; nor is my whole estate
> Upon the fortune of this present year. (I.i.42) (Roover 1946, 161; Watts 2003, 76-7).

Since it is not about the merchandise, his friends assume he must be in love. Antonio protests –although he never clarifies the reason for his sadness, to which he later alludes (II.viii.52).[5] The person who is, in fact, in love is Bassanio. He appears shortly thereafter and introduces another economic dimension. Bassanio ("a scholar and a soldier" as Portia's assistant Nerisa defines him: I.ii.96) has squandered his inheritance by living beyond his means; he is in debt, largely to Antonio:

> To you Antonio,
> I owe most in money and in love,
> And from your love I have a warranty,
> To unburthen all my plots and purposes
> How to get clear all the debts I owe. (I.i.130)

In his classic study of the law in Shakespeare, White suggests that the expression "warranty" can refer to Antonio having to answer with all his possessions for his friend's debts (White 1913, 111-2). Bassanio tells the merchant of his latest plan for repaying what he owes. Antonio offers to help, despite the scheme's foolishness, illustrated by his friend's habit of youth: shooting a second arrow in the same direction as he lost the first one. Admitting his "pure innocence," Bassanio asks Antonio for help in winning Portia, a woman from Belmont, beautiful but, above all, wealthy. She has many suitors, and Bassanio explains his plan:

> O my Antonio, had I but the means
> To hold a rival place with one of them,
> I have a mind presages me such thrift,
> That I should questionless be fortunate. (I.i.173)

Given what happens next, the conclusion to draw is that fondness clouded Antonio's thinking and led him to support Bassanio. We discover that the

[5] The merchant has no express relationship with any woman. This has stirred conjectures about a possible homosexual passion for Bassanio. The traditional interpretation focuses instead on father-son: Anderson 1985, 128; Oldrieve 1993, 90; Nuttall 2007, 256-9. The homosexual vision in some Shakepeare sonnets is well known. Turner (1999, 57-9) notes: "Dante, writing in a long tradition, associates the sin of usury with what was then regarded as the sin of homosexuality; the one made dead things reproduce, the other used the living reproductive organs to perform an essentially sterile act". This author claims Shakespeare did not accept these views and understood that the world is creative, while Marxism and other anti-capitalist ideas were in fact a throwback to the old tradition.

merchant is less prudent than his previous statements suggest (Engle 1986, 22): he doesn't have money or goods since "all my fortunes are at sea," but he tells Bassanio to ask for a loan with his guarantee –"Try what my credit can in Venice do." (I.i.177) This is a first for Antonio because he neither loans nor asks for loans,

> Yet to supply the ripe wants of my friend
> I'll break a custom. (I.iii.60) (Nelson 1947, 117)

The complicated Third Scene, where the deal is sealed, shows us the merchant's credit. Reasonably reticent, Shylock ratifies the merchant's carelessness: all he has is at sea, and therefore "his means are in supposition" (I.iii.15). Nonetheless, Shylock accepts the deal because Antonio is a wealthy man.

When Antonio enters we find out that he despises the Jew, and vice versa. And something more: Antonio

> In low simplicity
> He lends out money gratis, and brings down
> The rate of usance here with us in Venice. (I.iii.38)

And when the merchants meet, Antonio criticizes him for usury:

> On me, my bargains, and my well-won thrift,
> Which he calls interest. Cursed be my tribe,
> If I forgive him! (I.iii.45) (Farnam 1931, 104-5)

He sees, then, a competitor, who disparages Shylock and the other Jews who are professional moneylenders, a then not forbidden but not respectable activity rejected by Antonio, signaling the berth between Christian and Jewish doctrines (Posner 1988, 91; McCloskey 1992). Immediately, the Jew recites the story of Jacob, Laban, and the sheep, which ends with a line Farnam correctly highlights as a declaration of liberal thought:

> And thrift is blessing if men steal it not. (I.iii.88)[6]

It is notable that this conclusion does not seem to follow from the previous story, that shows trickery, and may explain why Antonio first comments, in a roundabout way, that Jacob's fortune depends on God, as if there had been no ruse, but then states more clearly:

> Mark you this, Bassanio
> The devil can cite Scripture for his purpose. (I.iii.95)

Shakespeare's subtlety suggests that he is the one playing the devil with the Bible.[7] Parallels with the sacred texts are evident. Shylock's wife was named

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[6] Farnam 1931, 7. This author, no enthusiast of libertarian thought, points out that there are different positions in other works by Shakespeare; see Chapter VII: "Social Economics."

[7] A similar expression appears later:

> In religion
> What damned error, but some sober brow
> Will bless it, and approve it with a text,

DOI: 10.2202/1145-6396.1219

Leah (III.i.101),[8] the same name as Jacob's first wife –a story of scheming and trickery much like *The Merchant of Venice*. And this is one of those tricks. Jacob is fooled by his uncle Laban. Laban presents him with Leah when Jacob really wants Rachel, the younger daughter. Rachel is now relegated to second place (Gn 29, 15-30). Both Leah and Rachel scheme and scam each other's slaves (and all four bear Jacob's children). Jacob's trick of planting rods of poplar, haze and chestnut in front of the watering troughs to gain control of a good part of Laban's flock takes place in the context of Laban having first tricked Jacob and prospered thanks to him (Gn 30, 30-43). Of course, Jacob's shrewdness was long apparent. Through trickery and help from his mother, Jacob gained primogeniture (Gn 25, 29-34) and paternal blessing (Gn 27). His mother devised the plan and is, in essence, the astute mother Shylock speaks of: "As his wise mother wrought in his behalf" (I.iii.71). When an impatient Antonio asks if Jacob charged interest, the Jew, before telling the story that ends up approving of profit, clarifies that "not as you would say directly interest" (I.iii.75).

Jacob resorts to *lex talionis* or "an eye for an eye," a Jewish tradition which Jesus explicitly rejects in what appears to presage the ideal Antonio.[9] It links to Shylock bewailing the insults and offenses he suffered at the hands of the same person who now demands his help. And to top it off, Antonio assures Shylock he will continue to insult him and asks that he loan him money as he would an enemy:

> 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. (I.iii.130)

The Aristotelian and Christian doctrine on the sterility of money is quite explicit.[10] Moreover, "penalty" opens a crucial alternative. It is not limited to money, but, as White (1913, 112) tells us, can include corporal punishment in case of a breach of contract –an important distinction for what comes later. But

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> Hiding the grossness with fair ornaments? (III.ii.77)

Montayne 2000, 588, sees the play as a conflict between the Old and New Testament. See also Lewalski 1962.

[8] The name Jessica refers to the Iscah in Gn 11, 29. Cf. Nathan 1950, 257.

[9] "You have heard it was said, 'An eye for an eye and a tooth for a tooth.' But I say to you, do not resist one who is evil. But if any one strikes you on the right cheek, turn to him the other also; and if any one would sue you and take your coat, let him have your cloak as well. And if any one forces you to go one mile, go with him two miles. Give to him who begs from you, and do not refuse him who would borrow from you." (Matt 5, 38-42).

[10] The Old Testament authorized the Jews to lend money at interest to foreigners, but not to brothers Israelites (Deut 23, 19-20). Turner 1999, 87, notes that the Jew Tubal would be willing to lend Shylock money at no interest.

Shylock also defends financial productivity; when the merchant mocks him and asks if his gold and silver are like the sheep and rams, Shylock denies the notion that money is sterile:

> I cannot tell, I make it breed as fast! (I.iii.94)[11]

Usury was hotly debated then, and in 1572, not long before Shakespeare wrote *The Merchant*, Sir Thomas Wilson published his influential *Discourse upon Usury*. But *The Merchant* is certainly no anti-usury pamphlet. It presents the complex situation of a creditor dealing with Christians that were neither prudent nor moderate (Merchant 1995, 13-6; Szatek 2002, 344). When the deal is ready, Shylock says:

> Go with me to a notary, seal me there,
> Your single bond, and, in a merry sport,
> If you repay me not on such a day,
> In such a place, such sum or sums as are
> Expressed in the condition, let the forfeit
> Be nominated for an equal pound
> Of your fairly flesh, to be cut off and taken
> In what part of your body pleaseth me. (I.iii.141)

The exchange is tinged with humor, but the legal forms are serious: there is a notary and a seal. White and others have noted the juridical detail of distinguishing between the "single bond" and the commitment to repay the loan on a specific date, and the "conditional bond," which incorporates the possibility of nullifying the contract as well as penalties and confiscations for failure to comply –punishments that, as Scott points out, were excluded in the old ban on usury.[12] Bassanio advises against accepting the deal, but Antonio believes he is not running any real risk. In just two months, that is a month before it is due, Antonio expects to receive profits nine times greater than the three thousand ducats, a rather large sum, he is borrowing (I.iii.153).[13]

Shylock reproaches the Christians' distrust. He is actually offering them a great deal: a pound of human flesh is worth much less than a pound of flesh from a sheep, cow or goat –and mark that no interest is charged. He is being friendly and Antonio recognizes this. He accepts the arrangement and comments that Shylock "grows kind." Shylock offers the deal based on "kindness." Bassanio says the Jew is a villain, but praises the terms of the agreement:

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[11] Farnam 1931, 6-7. This conclusion solves the biblical example, one that puzzled experts who tended to consider it apart from the question of usury; Holmer 1985, 64-5.

[12] White 1913, 114-5n. The seal is mentioned later:

> Till thou canst trail the seal from off my bond (IV.i.139)

And the same author highlights its legal importance, 125-6. See also: Scott 2004, 288-9.

[13] For a study on the role of various sums of ducats in the play, see Holland 2001. Also see, Ojima 2004.

DOI: 10.2202/1145-6396.1219

I like not fair terms and a villain's mind. (I.iii.176)

In the Second Act, Portia's suitors must choose from among three caskets, and in accordance with her father's demand that she marry whoever chooses correctly, we see that love and talent should point the suitors not toward the gold or silver –which was worth three times less than gold, II.vii.53 (Farnam 1931, 99)– caskets but toward "dull lead." The inscription on the lead casket suggests Bassanio's romanticism, but also the prodigal son, who instead of saving the business saves his soul. Bassanio has squandered everything, but is able to grant Gratiano the favor he asks, even before knowing what that favor is (II.ii.160). Antonio's generosity is noted: "A kinder gentleman treads not the earth" (II.viii.35). At the same time, the first news of one of Antonio's ships sinking in the English Channel is reported.

The Merchant presents the two sides of contracts. On the relationship between employer and employee, Launcelot, Shylock's servant, says: "I am finished in his service" (II.ii.95), but Shylock, who returns here to speak about the "prodigal Christian" (II.v.15), prefers to dispense with Launcelot's services, claiming he eats a lot and sleeps all day (II.ii.130 and II.v.45). The expression "prodigal" appeared before too: Bassanio uses it to refer to himself (I.i.129), but we should not forget the aforementioned Christian image of the prodigal son.

Here we also find the first mention of justice. Shylock's daughter, Jessica, has eloped with Lorenzo, a Christian, and Solanio makes fun of the Jew's reaction:

'Justice! The Law! My ducats, and my daughter!' (II.viii.15)

Shylock had warned his daughter: "Look to my house… I did dream of money-bags tonight" (II.v.16), but she betrays him; in the Sixth Scene she flees, though with some remorse, taking with her two bags of gold and jewels. There is another biblical parallel: "When Laban had gone to shear his sheep, Rachel stole her father's household gods" (Gn 31, 19).[14] The cry for justice is mocked upon, but in fact this is theft, explicitly acknowledged as such in the Fifth Act, when it is compared with Lorenzo´s stealing of love (with false promises):

In such a night
Did Jessica steal from the wealthy Jew. (V.i.13)

Portia, on the other hand, complies with her father's wishes for marriage, although it too is a conditional contract, the terms of which are outlandish, and yet the princes from Morrocco and Aragon accept them. They cannot reveal the secret

[14] It is true robbery, one Jacob ignores, but which is treated as such by the sacred author who, on the contrary, does not classify Jacob's trickery in the same way. Rachel's thieving goes unpunished –again, through secrecy and concealment– and the story has a happy ending: Laban and Jacob iron out their differences in a treaty (Gn 31, 30-54). The outfoxed Shylock goes from Jacob to Laban, as he too agrees to terms in the end; Nathan 1950, 259, Engle 1986, 32, Szatek 2002, 337-41.

and must renounce both to Portia and to any future marriage! (II.viii.10). In a few ironic pages, representing one of the first applications of game theory to literature, Williams suggests that this severe clause was designed to narrow the field of suitors who believe Portia irreplaceable. The importance of marriage cannot be underestimated: singles are marginalized and sad, and this might be the reason for Antonio's dejection; it is said single men are like castrati –this explains the terrible commitment and consequences for those who failed to choose the right casket. In Act One, Shylock says his money multiplies like sheep, and in Act Four Antonio confesses: "I am a tainted wether of the flock, Meetest for death," in other words, a castrated ram (IV.i.114).[15] The scene between Launcelot and his father is cruel. It recalls Jacob tricking his father by pretending to be Esau and Joseph's brothers fooling Jacob into thinking Joseph had died (Anderson 1985, 120). It also points to Shylock's cruelty. He refuses to allow his daughter to enjoy watching the carnival masks. She protests: "Our house is hell" (II.iii.2), which serves to justify her betrayal.

Act Three continues praising Antonio. Meanwhile the Jew, as in the rest of the play, is compared to the Devil. But economic events are making Antonio look less and less like a prudent businessman: Tubal, also Jewish, confirms for his friend Shylock the news from Genoa: one of the merchant's boats has sank; and this setback is enough to bankrupt Antonio: "He cannot choose but break…Antonio is certainly undone" (III.i.95 and 103). Amazingly, there is no mention of insurance, a common institution in Venice as far back as the fourteenth century (Kermode 2004, 30, 98-9; MacInnes 2008). The Venetian is accused of being wasteful, loaning out money "for a Christian curtsy" and not for interest, while criticizing the Jew for "usury" (III.i.39). Antonio is cruel to the moneylender, and mainly because he is Jewish, as Shylock complains in his monologue claiming that Jews are just like Christians and possess the right to compensation for damages inflicted on them. He pretends he wants justice, not vengeance: whoever causes the damage ought to be the one to pay for it; Christians do it, even though it can be wrong and Shylock, linking Jews and Christians, does not see why he shouldn't do it as well:

> The villainy you teach me I will execute. (III.i.59)

Shylock's anger over losing his money drives him to wish his daughter dead. Soon afterwards, we learn she not only robbed her father, but was cruelly capricious: Jessica exchanges a turquoise ring her mother Leah gave her father when they were courting (something Shylock valued more than money), for a monkey (III.i.102).[16] Shylock is confident he will be compensated for the damages the merchant has caused him and eliminate a competitor in the process:

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[15] Shell 1989, 56. On *The Merchant* and game theory in relation to the casket test see Williams 1966, 201-3, and Brams 1994, 36.

[16] The hypocrisy of all the characters is underscored in Hampson 1998.

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For were he out of Venice I can make what merchandise I will. (III.i.106)

In the long Second Scene, Bassanio chooses the right casket,[17] but not without clues from Portia. Like the biblical Rachel, she cheats her father's apparently arbitrary decision: the final three lines of her song end with words that rhyme with "lead" (III.ii.63).[18] There is an allegory and foreshadowing of what is to come. Portia laments:

O, these naughty times,
Put bars between the owners and their rights. (III.ii.18)

And Bassanio:

In law, what plea so tainted and corrupt,
But, being seasoned with a gracious voice,
Obscures the show of evil? (III.ii.75)

What follows is the second twisted use of the Scriptures that we mentioned earlier. It is an interesting reflection compared with the subterfuge we will see during the trial –although White thinks it is a nod to popular contempt for lawyers (White 1913, 117a-117b).

The triumphant lover –note the non-Venetians all lose– hasn't even read the inscriptions and bases his decision simply on a glance at the caskets ("You that choose not by the view" III.ii.131), disdains gold and silver, associating them with vain adornments and with money:

Therefore, thou gaudy gold,
Hard food for Midas, I will none of thee–
Nor none of thee, thou pale and common drudge
'Tween man and man. (III.ii.101)

Gold equals ambition, as the casket's inscription indicates: "Who chooseth me shall gain what many men desire," while the silver casket alludes to exchange equivalence: "Who chooseth me shall get as much as he deserves" (II.vii.5).

Bassanio confirms he is a spendthrift and has squandered everything:

I freely told you all the wealth I had
Ran in my veins. I was a gentleman (III.ii.253)

This fits with the unread inscription on the lead casket: "Who chooseth me must give and hazard all he hath" (II.vii.9) (Scott 2004, 294). It could refer to the total devotion demanded by true faith –a position with clear evangelical implications and one rewarded in this life too, as Gratiano says: "We are the Jasons, we have won the fleece" (III.ii.240). But mark the expression "I was a gentleman,"

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[17] Freud 1968, 1063-8, relates the caskets to the test King Lear poses for the love of his daughters. Anderson 1985, 121-2, among others, refers the test to Moses in the Old Testament. Cf. also Berger 1981.

[18] Gray 1927, 458-9, Turner 1999, 71. But see Burckhardt 1968, 217-8, Spinosa 1993, 62, and Halio 1993, 74-5.

someone placed above money. And this matches up with what we know about Antonio: his boats are wrecked and he is bankrupt, even though he assured Salerio and Solanio that his fortune did not depend on what might happen to his business this year. He overestimated his credit and cannot gather together the money to pay Shylock. Portia puts her fortune at Bassanio's disposal, but Salerio brings new information: Shylock, paradoxically, is not interested in money and wants the merchant's flesh (III.ii.282). Time has expired and Shylock has not received his money: he has the right to demand Antonio comply with the contract's terms, even though the merchant offers to pay. For White, the odious alternative of "forfeiture" was something that would turn the audience (in addition to the legal authorities and community of merchants) against the lender, skillfully depicted by Salerio (III.ii.273), in particular for a reason that we will see presently.

Shylock rejects all mediation; he wants to punish the "fool that lent out money gratis" (III.iii.2). Antonio, showing more generosity than ever, says:

> He seeks my life –his reason well I know;
> I oft delivered from his forfeitures
> Many that have at times made moan to me;
> Therefore he hates me. (III.iii.21) (Scott 2004, 290)

Antonio goes on to explain the liberal key to prosperity in Venice: its openness and rigor in applying justice, which not even the highest authorities can avoid.

> The Duke cannot deny the course of law;
> For the commodity that strangers have
> With us in Venice, if it be denied,
> Will much impeach the justice of the state,
> Since that the trade and profit of the city
> Consisteth of all nations. (III.iii.26)[19]

At the end of the act there is a funny little dialogue with economic content. Launcelot complains that if Christians convert more Jews, like Lorenzo with Jessica, the number of pork-eaters will increase, and this "will raise the price of hogs"! (III.v.20).

In Act Four, and though we do not know all the terms of this terrible, and possibly illegitimate, contract, we do know the law favors Shylock –portrayed now worse than ever (in the lengthy First Scene, for example, he is accused twice of envy: IV.i.10 and 126). The Duke pleads for clemency with the Jew, that he forgo punishment and half of the principal debt considering the extent of Antonio's losses were enough to ruin a "royal merchant" (IV.i.24). Shylock,

[19] "This speech shows that he [Shakespeare] grasped a fundamental principle of free enterprise, namely that commerce and profit are contingent on the legal protection of property rights", Benston 1979, 374. The matter of the deal's legality and the inviolability of the law is highlighted on six separate occasions, as noted by Waswo 1996, 22-5. Szatek 2002, 335, recalls that another libertarian aspect of Venice was its relative tolerance toward Jews and their business endeavors.

DOI: 10.2202/1145-6396.1219

parodying the goddess of Justice, appears with a dagger and scales to cut and weigh Antonio's flesh. He refuses clemency and demands his pound of flesh, although admitting its value, "carrion flesh," is less than the three thousand ducats owed. But that is his wish, or his bitter caprice (IV.i.42).

Bassanio, the cause of this entire affair, shows up with Portia's money and offers to repay double what Antonio owes; Shylock rejects his offer and, legally speaking, is entitled to do so.[20] The merchant certifies the validity of the deal and the Jew warns:

> If you deny me, fie upon your law!
> There is no force in the decrees of Venice! (IV.i.101)

Disguised as a lawyer, Portia, in a famous and beautiful speech, appeals to Shylock's pity and defends the virtue of compassion –it cannot be imposed, and it rewards both giver and receiver.

> The quality of mercy is not strained,
> It droppeth as the gentle rain from heaven
> Upon the place beneath. It is twice blessed:
> It blesseth him that gives, and him that takes. (IV.i.181)[21]

But she does not appeal to justice:

> Though justice be thy plea, consider this,
> That in the course of justice none of us
> Should see salvation. (IV.i.195)

No one escapes the law, not even by paying ten times the amount owed (IV.i.208). Because "malice bears down truth," Bassanio ends up begging the supposed lawyer to bend and break the law for a good cause:

> And I beseech you,
> Wrest once the law to your authority
> To do a great right, do a little wrong,
> And curb this cruel devil of his will. (IV.i.211)

Portia replies this is impossible because it would set a bad precedent. In the end, however, she gets her way. The Jew can charge his pound of flesh, but the contract, which is consulted a number of times in this scene, says nothing about spilling blood. If Shylock spills even a drop, the Venetian republic will confiscate all his possessions. The Jew cannot believe it, but Portia shows him the legal text (IV.i.311). The Jew, that has always kept to the law, starts to retreat, accepting

[20] Here is the only mention of slavery, and some commentators have suggested that it would have attracted the audience, given the debates taking place at the time: Scott 2004, 301. This author also notes Shylock spoke about the pound of flesh as something which, for him, was "dearly bought" (IV.i.100), the same expression Portia used regarding her future husband (III.ii.312).

[21] Pedro Calderón de la Barca, dramatist of the Spanish Golden Age, expressed later a similar idea in his play *Para vencer amor, querer vencerle*.

they pay him three times the amount owed (IV.i.315), but all is lost .[22] Portia uses his previous insistence that the contract be carried out to the letter to demand its fulfillment, with the resulting consequences for Shylock, who is now willing to accept Bassanio repaying just the principal. After consulting the law again, Portia demonstrates that Shylock should turn over all his possessions, half to Antonio and half to the government, and his life be put at the Duke's mercy. "That thou shalt see the difference of our spirit," the Duke pardons his life and suggests that if Shylock repents, the half expropriated by the state could be reduced to a simple fine –Portia clarifies that this pertains only to the public half, not Antonio's half (IV.i.364). Shylock prefers death to losing his livelihood:

> Nay, take my life and all, pardon not that.
> You take my house, when you take the prop
> That sustain my house: you take my life
> When you do take the means whereby I live. (IV.i.370)[23]

Portia had said this case was of a "strange nature…the Venetian law cannot impugn you as you do proceed" (IV.i.174). What is strange, says White (1913, 131-2, 135), is that this is exactly what happens at the trial, proving that the object of the case was incompatible with Venetian law and not only of a strange, but directly criminal nature. Its consequences, therefore, could be devastating for the accuser rather than the accused.

The scene is topped off by Antonio's humanity: he asks Shylock be allowed to keep half of his fortune, in exchange for converting to Christianity and, upon his death, bequeathing his possessions to Lorenzo and Jessica; as for the other half, the merchant will hold it "in use," and when Shylock dies, it too will

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[22] Benston 1979, 378. When Shylock believes a disguised Portia is helping him during the trial, he calls her "Daniel" (IV.i.220). Luxon 1999 plays with the idea, suggested earlier in "The quality of mercy," that the strict application of the law can lead to injustices. Shylock alludes to Dn 13, where, thanks to the merciful intervention of God, a young Daniel manages to rectify an unjust sentence –devised by two evil judges– and saves a woman falsely accused of adultery. Cf. also Colmo 2001, 321-3.

[23] Marx considered Shylock an exploiter and Judaism synonymous with capitalism, although he also viewed usury as a form of primitive capitalism. He took this quote as an example of the worker's precarious situation in a capitalist system. He also spoke of "clinging to the letter of the law, like Shylock" in reference to child labor. The Shakespearian quote most often used by Marx is that from *The Life of Timon of Athens* about gold turning the truth into falsehood:

> Come, damned earth,
> Thou common whore of mankind, that putt's odds
> Among the rout of nations. (IV.iii.41)

Pedro Scaron notes that Marx also used these lines in *Economic and Philosophic Manuscripts*, *The German Ideology* and *A Contribution to the Critique of Political Economy*: Marx 1975, 346-7, 593n., 1054. The image of money and its uses like a prostitute is much older, in fact as older as the Bible (Rev 17, 1-5), and was used by thinkers like Oresme and Saint Antoninus –there is also Goethe's association of money and feces; and Dante placed usurers in the last group in the seventh circle of hell (Cabrillo 2005; see also the epilogue of Keinzelman 1980).

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pass to his daughter and son-in-law (IV.i.376). After a strange trial in which the law appeared to clearly side with the Jew, Shylock ends up almost having to give thanks: his life is spared and loses only half his fortune –although conditioned upon Shylock renouncing to his religion. In the end, it is impossible to tell who is acting like a Christian and who like the stereotypical Jew, which explains Portia's paradoxical first question at the trial:

> Which is the merchant here, and which is the Jew? (IV.i.171)

The dramatic effect of all this is intense, and that is the point, of course, as it was recognized as early as in Hazlitt's classic study of 1817. But justice is done by violating the law, a law to which Shylock always appeals: "I stand for judgment… I stand here for law… I crave the law" (IV.i.103, 142, 203). In truth, as Moelwyn Merchant has pointed out, "the whole legal structure of the play is fallacious."[24] Judge Posner agrees that no legal system from the fifteenth century would have carried a penalty clause like the one in the play, which involved the death of the debtor, especially when he offers to repay the creditor at a very high interest rate.[25] White had already mentioned that the contract could never have been recognized in any court, but, even it were, Portia's trick would not have had any legal standing. Shylock should have won the case. It is easy to demonstrate that Antonio's blood was a necessary part of the object over which Shylock had a legal claim: Antonio's flesh. White quotes von Ihering:

> when he [Shylock] finally succumbs under the weight of the judge's decision, who wipes out his rights by a shocking piece of pleasantry; when we see him pursued by bitter scorn, bowed, broken, tottering on this way, who can help feeling that in him the law of Venice is humbled; that it is not the Jew, Shylock, who moves painfully away, but the typical figure of the Jew in the middle ages, that pariah of society, who cried in vain for justice? His fate is eminently tragic, not because his rights are denied him, but because he, a Jew of the middle ages has faith in the law –we might say just as if he were a Christian– a faith in the law firm as a rock, which nothing can shake and which the judge himself feeds, until the catastrophe breaks upon him like a thunder clap; dispels

[24] Merchant 1995, 22ff. William Hazlitt (1817) wrote: "The whole of the trial-scene, both before and after the entrance of Portia, is a master-piece of dramatic skill. The legal acuteness, the passionate declamations, the sound maxims of jurisprudence, the wit and irony interspersed in it, the fluctuations of hope and fear in the different persons, and the completeness and suddenness of the catastrophe, cannot be surpassed. Shylock, who is his own counsel, defends himself well, and is triumphant on all the general topics that are urged against him, and only fails through a legal flaw".

[25] Posner 1998, 408. At the end of the sixteenth century in these cases, English courts stipulated only pecuniary fines: Posner 1988, 93.

> the illusion and teaches him that he is only the despised medieval Jew to whom justice is done by defrauding him.[26]

The Act finishes with another promise left unfulfilled, and for a good cause too, with the play's other important contract: marriage.[27] Portia gave Bassanio a ring on the condition that he guard it forever. Otherwise, her love would extinguish (III.ii.172). But now he has given it to Portia herself, in gratitude to the brilliant lawyer who saved Antonio (IV.i.449).

In Act Five, Portia alludes to "a good deed in a naughty world" (V.i.90; it brings to mind III.ii.18). Bassanio's betrayal is cleared up. So is Gratiano's, when we learn he too gave his engagement ring to Nerisa in the belief that she was the lawyer's clerk (V.i.142). Portia, who while disguised as a man permitted herself to play with the sanctity of contracts, now calls Bassanio out and highlights his duplicity when in fact no one is more duplicitous than Portia herself. Apart from her disguise, there are economic aspects to her deception: she pretends to be dependent on men, starting with her father, but we see her freely disposing of a large sum to save the merchant (V.i.244).[28] Portia also provides important information: Antonio is not ruined, because three of his ships have reached port safely (V.i.275). And the merchant agrees with the Jew: his possessions are his life (V.i.286). This assures dramatic effect, although, as Posner says, it does so at the expense of realism: for example, the miraculous reappearance of Antonio's ships; or the impostor Portia, who even at her most effective is also unbelievable –how it is not obvious to everyone that spilling blood is an unavoidable aspect of taking a pound of Antonio's flesh?[29]

Finale: Toward Adam Smith

We have seen a moneylender broke because he refused to charge the exorbitant amount offered to him during the trial and instead, in public, insisted on what he admitted was useless: a pound of human flesh. While Christians are also resentful, Shylock is blinded by what he, in spite of his words, really wants: not justice but vengeance (III.i.55). He focuses on it more and more. Revenge, not his attachment to fulfilling contractual obligations and commitments, leads to his

[26] White 1913, 140-1. Also see: Spinosa 1993, Hirschfeld 1914 and Pollock 1914.

[27] Scott 2004, 304. "The ring episode is, in a sense, a comic parody of the trial scene": Lewalski 1962, 342.

[28] Judge Posner (1988, 409) writes that in the first scene of this act Lorenzo and Jessica evoke four classic romances (Troilus and Criseyde, Dido and Aeneas, Thisbe and Pyramus, Medea and Jason) all of which, except Thisbe and Pyramus, involve betrayal by one of the lovers. Also see Konstein 1993, Parten 1982, Saxe 1993, and Szatek 2002, 335, 345-7.

[29] Posner 1988, 94. See references in footnote 26. For more evidence of law professionals' distrust of Shakespeare and legality see Hutchcraft 1916.

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downfall.[30] He is a lender interested in claiming the bond not the money. As Masciandaro suggests, this means Shylock is not, in fact, a banker charging interest on money lent, but rather a usurer, someone looking for a windfall profit (someone else's life) and to put a competitor out of business. He celebrates the bad news about the merchant's ships and he rejects the offer to repay him large sums, far in excess of what Antonio owes him. In the end, he intends to return to being a banker and, humbled, barely recover the principal. But it is too late. He has lost everything and from drama comes comedy (Masciandaro 2001, 210-2). We must remember that what he loses are not ill-gotten gains. When Lorenzo thanks Portia and Nerisa with another biblical image, "you drop manna in the way of starved people" (V.i.293), this manna is in fact Shylock's hard won fortune.

Perhaps, justice should have sided with the lender. If it didn't, that is because he is devoid of compassion, his claims are just but immoral (Kermode 2000, 71-6). Individuals must be charitable, not the law. The law must be just. What we see in the trial scene is that the law is not just, regardless of the legal content, that everyone agrees that it isn't real: in a real trial, Antonio would not have been killed. His death is contrary to reason and nature. As Jordan says (1982, 58-9), something had to be done to save Antonio, even if that involved trickery. Halio (1993, 57-8) reminds us of something obvious: Shakespeare was not a lawyer, nor was he skilled in legal sleights of hand. What he wanted, and knew, was how to attract an audience. Today, with governments subsidizing theater, this is hard to understand. It is just as shocking to learn that Shakespeare was a successful businessman, writing works that today are seen as the antithesis of "commercial," but that made him rich. Londoners packed the theaters to see his plays, paying a penny a ticket –the price of a loaf of bread at that time. The point isn't the contract's validity, but the dramatic impact of the court scene –something Shakespeare used numerous times in his plays and which always draws a large crowd, as literature, cinema and even television series like *Perry Mason* and *L.A. Law* have proved time and again. Trials always impress and so does the one in *The Merchant of Venice*, among other things because it is not only a judicial but a prejudicial scene: it is reasonable to feel prejudice against this Shylock who remains alone during the entire scene.

As we pointed out earlier, the Christians are spendthrifts and gossipers; they are also slave-owners and, as Shylock bitterly notes, unwilling to free them (IV.i.90-100).[31] Shylock, the man who lends the money and stipulates the conditions of the contract, appears in only five of the play's twenty scenes, but his mystery makes him one of the most long-lasting of all dramatis personae. He is a villain who has the law on his side, but still loses. Perhaps this is another reason why we still pity him –something we do not feel for other treacherous and

[30] Turner 1997; Benston 1979, 381; Graham 1953.
[31] Cooper 1970, 122; Turner 1999, 64-7. See footnote 20.

thoughtful characters, like Richard III and Iago. He lacks the warmth that draws people to a hero, but also to those with a contract to be fulfilled (Burckhardt 1968, 207, 236). In the end, Shylock's fate seems too harsh, bereft of his possessions and forced to convert to Christianity, meaning he will no longer be able to lend at interest, his profession.[32] But the moneylender is also a villain, and his resentment causes him to throw away an opportunity to succeed and preserve his possessions (Alscher 1993, 2-4). During the trial, he uses the word law, not justice. Koelb says that this is not because he believes his demands are unjust but because he fears many in the room will think they are; Portia's interpretation of the bond "is precise in terms of law but excessive in terms of justice", and in her speech on the quality of mercy "she proposes that the justice of mercy is in fact more just that the justice of law". Antonio receives justice, Shylock receives the law –and each deserves what they get (Koelb 1993, 110-11).

Frederick Turner (1999, 13-4 and chap. 5) recalls that the etymological root of the word market (and merchant, commerce, merchandise…) is Mercury, the god of trade, commerce and thieves. This last one might raise some eyebrows, but it is logical: there has to be private property for there to be trade, and also for there to be robbery. If there are no merchants, how can there be pirates? The logic of opposites also applies to money and mercury: in alchemy, gold was derived from opposites, mercury and a solid, sulfur. And he possessed the caduceus, the winged staff with two serpents twined around it, used as a symbol of commerce and health, but in antiquity it was also the symbol of peace. Trade is associated with movement, just as the metal mercury never stays still in a single spot. This movement is both peaceful, but also compassionate, because it is free. Market stems from the same root as mercy, grace and compassion. This is true in other languages as well: *merced* in Spanish and *merci* in French. Compassion, unlike justice, cannot be forced, as Portia's reminds us during the trial in the headquarters of justice.

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[32] Weisberg 1998; Kornstein 1993, 45. Oldrieve 1993, 95, notes that in Elizabethan England a conversion was not merely a theological concern but "a life experience for many in Shakespeare's own audience, and a political and social issue that affected their daily lives". Halio 1993, 61, claims Antonio is compassionate (as is the Duke, who saves Shylock's life before the Jew even begs for it), but hard to understand for those living in the post-Holocaust world; his thesis is that the Elizabethan audience would see it this way and that is why Shylock accepts it: the alternative was worse for him. A different interpretation that gives less importance to the conversion and more to Shylock's "Christian" background, in Hamilton 1993. The scarcity of evidence about the Jews, who had been expelled in 1290 and theoretically could not touch English soil, has been debated. There was the case of Rodrigo López, doctor to Queen Elizabeth, most probably falsely accused of spying and executed. His story inspired Marlowe's play and some think Shakespeare's as well. And Popkin 1989 alludes to Alonso Núñez de Herrera, who lived in Shakespeare's England and was a Jewish merchant originally from Venice! Also see Greenblatt 2004, Chapter 9. For Turner 1999, 85-8, not only the play is not anti-Semite but, with its humane depiction of Shylock, anticipates future condemnation of anti-Semitism.

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It is interesting, and indicative of group think, that many place the market at the antipodes of its true meaning, associating it with force, cruelty, insensitivity and selfishness. From there comes the old interpretation of anti-liberal thinkers on the left and right, like John Ruskin, that Shylock is epitome of capitalism and not the merchant Antonio. Although he refuses to lend at interest, almost the only profession open to the Jew, nothing indicates Antonio isn't looking to earn a profit.[33] However, as Turner reminds us, in the market there are personalities and feelings, and the market compares favorably with any non-mercantile order. The market is people interacting, building relationships. In the market, one has to convince free human beings, not force them as the law does, and does politics, the alternative to the market.

Shylock speaks the word *mercy* for the first time in the play, and rejects it:

> Tell not me of mercy. (III.3.1)

Act Four has hardly begun, when the Duke accuses Shylock of being

> Uncapable of pity, void and empty
> From any dram of mercy. (IV.1.5-6)

He says this before Shylock appears. When he does come on stage, the Duke asks him:

> Thou'lt show thy mercy and remorse more strange
> Than is thy strange apparent cruelty. (IV.1.20-21)

When he rejects Bassanio's offer, the Duke repeats:

> How shalt thou hope for mercy, rendering none? (IV.1.88)

Then comes Portia's plea, and the next time someone utters the word is when she warns Shylock that his life depends on the Duke's mercy (IV.1.352) and Antonio showing him compassion. Portia explains the moral and voluntary nature of compassion and the Jew understands; when she asks him

> Then the Jew must be merciful. (IV.1.179)

And he replies

> On what compulsion must I? Tell me that.

With this, we end up in classical liberalism and Adam Smith. The penchant of some economists to use literature to illustrate their field is well-known. Equally well-known is the criticism that economics limits reality to economic reality. *The Merchant of Venice* is useful for approaching both matters,

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[33] Gross 1992, Chapter 16. Over a century before Turner, Ruskin mentions the etymology of market and grace, but emphasizes the relationship between grace and gratis, something Shylock disapproves of. Gross contrasts mercy, which is free, with *merces*, or retribution, which in the market he believes (as is common among anti-liberals) that is not agreed but forcibly imposed. Gross (287n) also points out that it is the same root as "mercenary", and that the original idea of mercy was God's Mercy, that is "the reward you got in Heaven for compassion you showed on earth." Also see Szatek 2002, 337-41.

with eye on learning and avoiding the temptation to depict Shakespeare as an ideologue, as several critics have claimed (Watts 2003, 328).

Turner writes about a Shakespearian vision of the market as something moral and social, in other words, the exact opposite of the usual criticism (Turner 1999, 72; Szatek 2002, 349). But he never quotes Smith, who thought the same thing. Smith also points to the contrast between justice and generosity: morality does not have precise rules, but justice does, and it is the only virtue with this characteristic: this is why Shylock brings a scale to the trial, and a disguised Portia frustrates him, apart from the blood argument, stressing that he will never be able to cut precisely one pound of Antonio's flesh. Though justice is indispensable, Portia notes that terrestrial power is more divine "when mercy seasons justice" (IV.i.195). Not being an artist, Smith's point of view (1982, 86, 175) is more realistic. Justice is the key. Without it there can be no society. But without generosity, society is neither comfortable nor beautiful.

Article 6 of an early liberal text, the 1812 Cádiz Constitution, sometimes foolishly ridiculed, stated that Spaniards must be just and generous –and love their country. The primacy of justice is noteworthy, and so is the fact that it is the Spanish people who are to be just and generous, not the authorities: the latter can impose justice, not beneficence. Over the past century, the two dimensions have joined together. Morality and law got mixed up in what is called in Spanish *derecho tuitivo* or protective law –*tuitivo* from the Latin *tuitus*, *tueri*, to look after; it is the root of the English word tuition. Morality dominated politics, and all resulted in the expansion of the state and a reduction in liberty because justice not only allows for exact rules like grammar. It has another characteristic: it can be imposed through the use of force. Injecting morality into the law extends the range of the state's powers and legitimizes the exercise of coercion over its citizens.

Can we claim *The Merchant of Venice* offers support to this anti-liberal message? No, because justice and morality are different, while today they blur together without end. Judge Posner reminds us that the "the quality of mercy" speech is not directed at the law, but at the person, at the lender who is incapable of compassion, and for this he suffers the consequences. If in the end he saves his life and part of his possessions it is because the court first proclaims justice and then shows what Shylock did not: clemency.[34] Perhaps the Christians are more generous than just, and the Jew more just than generous, but justice is not sufficient only by itself, nor is economy nor liberty. Shylock can brandish liberal arguments, such as the importance of contracts and the rule of law, or even the theory of subjective value (Posner 1988, 186-7), but as he is blinded by his hatred, ignoring the many pleas for compassion, he proves that he lacks generosity and

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[34] Posner 1988, 96-7. Also see Mackay 1964, Turner 1999, 85, and footnote 32.

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goodness. Benevolence might not be necessary for pure economic transactions. As Smith reasoned in a celebrated paragraph, we do not earn our dinner appealing to benevolence. But the same man who wrote *The Wealth of Nations* also wrote *The Theory of Moral Sentiments*, and argued that those sentiments are a necessary condition of a free society. Hatred and hostility, passions that enslave Shylock, are anti-social: "Too violent a propensity to those detestable passions, renders a person the object of universal dread and abhorrence, who, like a wild beast, ought, we think, to be hunted out of all civil society." Shylock, therefore, deserves to be made an example and receive such punishment from justice, from the exclusive severity of which Portia warned that there is no salvation for imperfect human beings. Its complement, generosity, is different because it cannot be imposed, as Shakespeare wrote and, later, in the same vein, Adam Smith:

Beneficence is always free, it cannot be extorted by force.[35]

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[35] Smith 1981, 27, Evensky 2005, 117, Smith 1982, 40, 78. One of the distortions in Shell (1989, 67-8) is to associate the freedom of contract with seizing other people's freedom or lives. As far as Shakespeare, Smith does not quote him in reference to profit –and really, he quotes him infrequently, despite the fact, as Rothschild 1994, 319, points out, the expression "the invisible hand" appears in one of Shakespeare's most celebrated tragedies: Macbeth (III.ii). The Scotsman was probably familiar with his plays, but it is worth noting that Shakespeare was popular first among the masses and only later among intellectuals; Voltaire, for one, whom Smith admired a great deal, thought little of the bard from Stratford-upon-Avon.

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