

SHYLOCK AT THE HAGUE: Embracing Shylock and Disdaining the International Criminal Court



Illustration from Phillip Medhurst Collection depicting Joshua fighting Amalek (Exodus 17).

by Howard Rotberg

“As for legal niceties, the team of august lawyers Israel summoned to the Hague gives a shot in the arm to the ICJ, signalling that Israel concedes the case can be won on legalities. Israel was naive to rely only on jurists to defeat antisemites. One expert on anti-Israel propaganda could be worth a bench full of gowns.” – [Steve Apfel](#)

I am trained as a lawyer, but sometimes great literature is more enlightening than great law.

“Thou callst me dog before thou hadst a cause;
But, since I am a dog, beware my fangs:”

– Shylock in William Shakespeare’s *The Merchant of Venice*

Anti-Israelism has passed into the realm of anti-Semitism through its holding of Israel to different standards than any other country, and its focus on the retributive aspects of Israeli reactions, rather than the actions of murderers attacking Israel.

The underlying premise is that modernity and culture itself, whether it was the modernity of a supposedly cultured German society in 1939, or whether it is present day modernity and culture, offers no protection for the well-being and safety of Jewish civilians. To the extent that modernity has embraced moral relativism, it is by nature hostile to our cause. And no assertion of a higher morality, be it religious, secular, judicial, or (as the Jews and later the American founding fathers saw it), a type of hybrid where religious notions could be adapted to a liberal, secular, and just democracy will be attractive to post-modern relativists.

The relativists, however, have eliminated the notion of personal and community responsibility from their lexicon. The severance of rights from responsibilities is the essence of today’s anti-Semitism and anti-Israelism. If the Palestinians are going to have the right to a sovereign nation, they must accept the responsibility to stop killing Jewish civilians, and the responsibility to create some kind of justice system and some freedoms in their own society. If the relativists simply critique Israel’s reactions without dissecting the actions that caused those reactions, that is bias, and a rather nasty bias, too. In a world of moral relativism, in a world of violent Islamism where European countries again are sacrificing Jews to aggressive

totalitarianism (this time Islamism), we need more than ever a vigilance in our pursuit of justice. Tragically, the more vigilant we Jews and our homeland are, the more we are labeled “vengeful”, “disproportionate”, “unmerciful” and “extreme”. In other words, we risk being seen as Shylocks.

At least, Shakespeare gave Shylock the voice to ruminate over his situation (“Hath not a Jew eyes?”); the vast majority of persecuted Jews, including those of the Holocaust, had no Shakespeares to emphasize their profound moral struggles and their ultimate fates, which were certainly no more palatable than Shylock’s.

Jonathan Pollard, about whom I wrote in *The Second Catastrophe*, stepped outside the law; Shylock tried to have his “contract” enforced within the law. In fact, Shylock was judged in a sham of a trial, presided over by Portia impersonating a Roman doctor named Balthasar. Driven to madness by his faith that a Court controlled by anti-Semites could ever dispense justice, Shylock continues to assert his claim for a surety’s pound of flesh, even when presented with the option of taking three times the monetary indebtedness. Pollard’s greatest error, ultimately, was also his faith in a corrupted Justice system (corrupted by Caspar Weinberger’s secret memo to the Judge.) He also passed into a form of madness due to the refusal of his superiors to pass on a clear threat to an ally, and so he also ignores justice while he continues to insist on it. He thought a plea bargain for a charge of passing secrets to a friendly nation would attract the appropriate sentence for that crime, not a sentence commensurate with treason. Shylock’s fate was forced conversion to Christianity; Pollard’s fate was abandonment by his community – many American Jews would “excommunicate” him if they could. Finally, after serving his unjust sentence he has been released and is now living in Israel.

If, as American politician Barry Goldwater argued, “moderation in the pursuit of justice is no virtue”, and if there were

some severe problems in the administration of justice when it comes to both Pollard and the fictional Shylock, there is a problem, that too many commentators have glossed over. The actions of Pollard and Shylock can be seen as neurotic responses to travesties of justice, rather than themselves being unjust. In Shylock's case, look at what the Duke, who presided over the Court in Venice (before turning it over to Portia's impersonation) had to say to Antonio, at the very start of the trial, about the other litigant:

"I am sorry for thee: thou art come to answer
A stony adversary, an inhuman wretch."

A Court this predisposed against him could not render justice to Shylock, and he knew it. That knowledge more than anything else explains why he turns aside an offer of three times the debt, and instead insists on his contractual "pound of flesh". As he states in the quote at the start of this Chapter, having been called a "dog" without any cause, and since he has been pre-judged to be a dog, then, he states, "beware my fangs".

The Jewish "dog", says Shakespeare, is forced to seek salvation in justice because he cannot understand Christian concepts of mercy. Says Portia in the famous speech which starts with the words:

"The quality of mercy is not strained...":
"And earthly power doth then show likest God's
When mercy seasons justice. Therefore, Jew,
Though justice be thy plea, consider this,
That, in the course of justice, none of us
Should see salvation: we do pray for mercy;
And that same prayer doth teach us all to render
The deeds of mercy. I have spoke thus much

To mitigate the justice of thy plea;
Which if thou follow, this strict court of Venice

Must needs give sentence against the merchant there.”

Goldwater disagreed: Moderation in the pursuit of justice is no virtue.

Goldwater says that the Americans are with the Jews on this one.

This is the key to understanding our current cultural struggle against Islamism, and why the Americans and the Israelis are on one side, and most Europeans are on the other side. It is an issue of Justice and Liberty. Unfortunately, any Jew in England or France or Israel today who insists on Justice, may find himself descending into that particular madness of Shylock. Israel avoids this fate only because of its military and other elements of its power and is not as isolated as Shylock.

Given their situations, neither Pollard nor Shylock had any alternative to the courses of action they tried. If their sad fates are meant to serve as a warning, however, I think we should rethink the whole matter of just what the warning tells us. The reader might ask, “Understanding Shylock is one thing, but embracing him is surely going too far?” I respond: In embracing Shylock we are not condoning his acts of madness, but instead we are embracing him as he faces his horrible situation. We are showing mercy. We are showing mercy towards one whose very existence is marginalized by an anti-Semitic society that allows him only the occupation of a usurer. We are showing mercy to one who clings to Justice as his only friend, his only protector, even as it is clear that the rules of justice have been subverted, subverted by the Duke who at the outset of the trial calls him an “inhuman wretch” and then abdicates his judicial duties by turning over the decision-making to a supposed Roman doctor, who is actually Portia in disguise. The anti-Semite focuses on Shylock’s evil character. We focus on the evil character of the Justice system as described by Shakespeare. Surely, the

Judge in the trial between Shylock and Antonio could simply have directed Shylock to accept the funds tendered by Bassanio and release the bond. Instead, Portia tricks Shylock by pointing out that his bond is only a pound of flesh and not any blood, so that it is impossible to take the flesh without causing bleeding, thus voiding this evil bond. Throughout the Court scene, the Duke and Portia (in her disguise as Balthasar) subvert justice rather than carry it out. Poor Shylock – surely the modern mind realizes that his sanity has been jeopardized by the actions toward him; his actions and words are not as much the result of his evil character, or the evil Jewish character, as they are of the anti-Semitism of Venetian society.

And so we embrace him, embrace him for the pitiful example of what happens to the Jew who is powerless, who ceases even to recognize that it is ridiculous to insist on Justice in a world in which the justice system is itself corrupted and used against him. We embrace him because of what he tells us about the world today. Even in America, the left is weaponizing the justice system and using injustice such as lawfare and removal of candidates from the ballot. Israel in the United Nations is like Shylock in the Court of Venice. Jonathan Pollard in the American Court system in the time of Caspar Weinberger and CIA Director Bobby Ray Inman, was like Shylock in the Court of Venice. Israel, defending itself against Hezbollah and Hamas missiles aimed at Israeli civilians, is seen by much of the world as exacting its “pound of flesh” against the “innocent” Palestinian civilians, notwithstanding that these civilians had allowed Hezbollah and Hamas to use their apartment blocks as launching sites, and notwithstanding that Israel dropped warning leaflets before bombing the launching sites. Yet Shakespeare’s Shylock was powerless. In the end, he is forced to convert to Christianity. We do not embrace him for the sad fact of what was his fate in 16th century Venice; we embrace him because of what it tells us about 16th century Venice, about 20th century Europe, and now about 21st century

Iran. The evil is not in the Jew; it is in the anti-Semite. The Duke characterizes Shylock as inhuman even as the trial begins. The mullahs of Iran characterize Israel as deserving of destruction as they prepare their nuclear weapons knowing that America is appeasing them. Shylock tried to adhere to Justice, but in his society, justice was not meant for the Jews. Israel tries to adhere to Justice, and then is told by the United Nations that it is a Shylock, it is vengeful, it uses "disproportionate force", and its ruthless neighbours are hardly criticized.

We return to Shylock's words:

"Thou calledst me dog before thou hadst a cause;
But, since I am a dog, beware my fangs:"

No we do not depart from our quest for Justice and Liberty, but be sure, if you make us into dogs, because of your animal conduct, beware our fangs. Yet here is the question: how do we use our fangs, in a just and productive manner? To use our fangs is to empower Shylock, and thus to transform him. Have we not learned anything from the history of the Holocaust and modern day Israel? Strength of the Jewish state, Israel, creates respect; Weakness conduces to anti-Semitism. It is that simple. Diaspora Jews must learn that lesson, above all. Respect does not come from our accomplishments; it does not come from our wealth. Look how quickly Europeans are turning on their Jews in the last few years. Shylock's wealth did not save him. Only a strong Jewish state could inhibit the unjust actions of the corrupt Venetian Court. Only the option of removing himself entirely from their jurisdiction (to a jurisdiction where a Jew could obtain justice) would give Shylock the strength and sanity he lacked.

The late Isi Leibler, a heroic and wise former leader of Australian Jewry, who moved to Israel, wrote the following in the October 31, 2006 edition of the *Jerusalem Post*: "The reality is that when Israel is perceived as strong and able to

stand up to its foes, anti-Semitism tends to decline. Public manifestations of Judeophobia reached their lowest point following the Six Day War. In contrast, the exponential revival of anti-Semitism can be traced back to the Oslo Accords, reaching its climax in the course of the Gaza disengagement and during the Lebanese war, which were perceived by our enemies as manifestations of weakness.

“Unlike the 1930s there is an Israel and it is not powerless in the face of anti-Semitism and, together with Jewish communities throughout the world, not least the influential American Jewish community, we can defend ourselves. But we must galvanize to confront the barbarians in the war of ideas with no less determination than our adoption of countermeasures against terrorists seeking to bleed us. The decision is ours.”

So, to answer the question, how do we use our fangs, in a just and productive manner: The fangs that ultimately protect every Jew around the world, every potential Shylock, are the fangs of the Israel Defence Forces, and the strength and wisdom of Israel's political and military leaders, to keep Israel strong and safe, while at the same time upholding freedom and justice. We Diaspora Jews must give our support, both financial and moral, to keep Israel strong. Israel's strength, then protects all Jews from future victimhood, and protects all Jews from becoming pathetic Shylocks. Yet strength is one thing; knowing when to use it is another. In other words, if we are constrained by our confusion, or by international pressures, from using our strength, we begin to lose it, and our enemies know this. Accordingly, we must examine the threshold issue of when to use our strength.

This is a particularly difficult question in an age of moral and cultural relativism, which is loath to label anyone as “evil” and holds that in all conflicts, there must be wrong on each side, there must be evil on both sides; otherwise there would have been some way to avoid the conflict, some

negotiated settlement possible. For example, the relativists still see Israel as faulty as the Palestinians that there is no settlement of the dispute, notwithstanding that Israel has tried every type of offer, even vacating Gaza, only to have Palestinian violence and terrorism increase. An ideologically based reluctance to label any people or any leader as evil is the trend today. I am opposed to that trend, because I contend that the leader of Iran, with his holocaust-denial, his threats to create a nuclear bomb and "wipe out" Israel, is more than just "nasty"; I contend that he is evil, just as Hitler was evil. I know that my language is outside the norms of the language used by the post-modernists, the relativists and the politically correct. But that is because I take seriously the words of the Jewish Torah. In particular I take seriously the teaching concerning Amalek. In Deut. 25:17-19 we read: "Remember what Amalek did unto thee by the way, when ye were come forth out of Egypt; How he met thee by the way, and smote the hindmost of thee, even all that were feeble behind thee, when thou wast faint and weary; and he feared not God. Therefore it shall be, when the Lord thy God hath given thee rest from all thine enemies round about in the land which the Lord thy God giveth thee for an inheritance to possess it, that thou shalt blot out the remembrance of Amalek from under heaven; thou shalt not forget it."

Rabbi Marc Gellman has written: "What made Amalek so dastardly was that unlike any other enemy who attacked the Israelites fleeing slavery in Egypt from the front, Amalek attacked the rear. This meant that his soldiers could kill women and children, the elderly and the infirm and in so doing avoid engagement with the soldiers at the front. In this way he could produce maximum carnage and maximum terror. The moral problem the Bible addresses is that this is not warfare, it is the slaughter of innocents—it is terrorism."

Rabbi Gellman concludes: "Why, I wondered, would God command us to remember the terrorist Amalek? There are other villains

in the Bible, but there is no biblical command to remember Pharaoh or Nebuchadnezzar, or Cyrus. We are commanded only to remember Amalek... Indeed our remembrance of Amalek is combined with a chilling pledge from God that is also unique in the Bible: 'The Lord will have war with Amalek from generation to generation' (Exod. 17:16). Our enemies are just our enemies except if our enemy is Amalek. In that case our enemy is also the enemy of God. Amalek thus becomes the symbol of terrorism in every generation. He is the symbol not of evil but of radical evil. In our generation Amalek is alive and well."

And so the Jewish people have faced an Amalek in every generation. In my father's generation, he was Hitler; in my generation, he is Ayatollah Ali Khamenei. We are commanded, not to seek out what might be good with such Amaleks, not to try to appease and negotiate with such Amaleks, but we are commanded to "blot" them out, that is, to wipe them out. When doing so, we shall try to minimize the death or injury of innocent civilians, but we are commanded to do so, and do so we must. Then we must never lose sight of the distinction that our armies, uniformed and subject to the laws of warfare, are morally different from non-uniformed terrorists who fight under the cover of their own civilians and intentionally attack our weakest, that is, our women, children and old people. Amalek represents the terrorists; the moral world must defeat Amalek, must defeat the terrorists, and must understand that failure to use our strength is not a moral position.

Shylock failed to understand the evil of the pseudo-justice system of the Venetian Court, and that is why he submitted his case to it. So many of us today fail to understand the evil of Radical Islam and that is why some of us submit to it or fail to meet it with the strength and determination required. Let us not make Shylock's mistake. Let us understand the lesson of the Torah that when we face an evil, we must call it an evil, and we must blot it out as we have

been commanded to do.

Relying on an unjust court system is, as Steve Apfel argues in the quote that starts this essay, "naive".

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