Shylock as a Symbol of the Disenfranchised Jew – A Comparative Study of Karl Emil Franzos' and Rudolf von Jhering's Legal Thinking

It would, at first glance, seem difficult to imagine Shakespeare's Shylock as a positive character, one with whom you could identify. That he could be promoted to the status of a Jewish civil rights activist seems even more incredible. But both phenomena arose in the 19th-century Habsburg Empire in a wide range of cultural events, in the fine arts, and in political thought.[1] This essay will concentrate on the interaction between literature and legal theory, mainly represented by the Galician author Karl Emil Franzos and the Prussian professor of law Rudolf von Jhering. Both discussed the fate of Shakespeare's Shylock in their texts and treated him as a symbol for the judicial and religious persecution of Jews in 19th-century Galicia. While Jhering focused on anti-Jewish discrimination, Franzos delved, moreover, into the different inner-Jewish conflicts between the Haskalah[2] and Hasidism.[3] Franzos knew Jhering's publications and adapted his teacher's ideas to the specific situation in Galicia.

1 Maria Kłańska, »Shylock im Osten,« in Renate Heuer, *Verborgene Lesarten. Neue Interpretationen jüdisch-deutscher Texte von Heine bis Rosenzweig*, vol. 20 (Frankfurt a. M.: Campus Judaica, 2003), 73–97, and Ezra Mendelsohn, *Painting a People. Maurycy Gottlieb and Jewish Art* (Hanover, NH: Brandeis University Press, 2002).

2 The Haskalah, also called the Jewish Enlightenment, was a social and religious movement. It was founded by Moses Mendelssohn in Germany in the 18th century. In Eastern Europe it developed in the 19th century and competed later with other religious, cultural, and political movements such as Zionism, Communism, and especially Hasidism. Important social aims of the Maskilim, the members of the Haskalah movement, included the integration of the Jewish population into mainstream society, and laying better foundations for economic growth and cultural development. *YIVO Encyclopedia of Jews in Eastern Europe*, s.v. »Haskalah«.

3 Hasidism is a movement of religious revival, which developed in Eastern Europe in the late 18th century and especially spread in the poorer regions of the Habsburg and Russian Empires. Founded by the religious leader Yisra'el ben Eli'ezer, known as Ba'al Shem Tov (»Master of the Good Name« – also abbreviated as Besht) it was connected to a magical and spiritual movement, strongly linked to his person and other so called Tsadikim (righteous), who seemed to have a closer link to the divine sphere. The followers of Hasidism

Why exactly the authors assigned Shylock this role is an intriguing question, since the most common interpretation of his character is rather negative. Ezra Mendelsohn writes that

> Shylock, Shakespeare's Jewish moneylender, is surely the most famous Jewish character in all of European literature. He has been viewed, traditionally, as the stereotypical Jew, obsessed with filthy lucre and driven by revenge, a hater of Christians and Christianity, whose tragicomic fate at the hands of Christian Venice is fully justified.[4]

Shylock's behaviour is certainly questionable. He not only desires the death of his Christian competitor Antonio, but also of his own daughter Jessica, who ran away with a Christian.[5] In accordance with the common anti-Jewish prejudice, he is avaricious and sly.

It might therefore appear surprising that Karl Emil Franzos reinterpreted the role of this dramatic figure. He directly treated the subject of Shylock twice. In his novel *Der Shylock von Barnow* (»Shylock of Barnow«), written in the late 1860s and published in 1877 in the volume of stories *Die Juden von Barnow* (»The Jews of Barnow«), Franzos still supported a rather negative interpretation. This changed within his key novel *Der Pojaz* (The Pojaz), written in the late 1880s. In this novel Shylock as a symbol is used to denounce the deprivation of the rights of the Jews in his native country. This shift in Franzos' Shylock interpretation is the topic of this paper.

I argue that the influence of Jhering's thoughts actually evoked this change of view in Franzos' writing. To follow this idea one needs, first of all, to outline Shakespeare's drama, focusing on the paragraphs relevant to the new interpretation of the play, especially the legal case. Afterwards, I will look into Karl Emil Franzos' life and analyze his two works *Der Shylock von Barnow* and *Der Pojaz*, as well as Rudolf von Jhering's legal philosophy and its connection to Franzos' work and thought. Subsequently, I will outline the political ideas Franzos expressed in his literature.

Shakespeare's Shylock

Shakespeare's play *The Merchant of Venice*, written at the end of the 16th century,[6] takes place in medieval Venice. The play is about the downturn in the merchant

were generally conservative and did not only oppose the Haskalah but secularisation, nationalism, and Zionism. *YIVO Encyclopedia*, s.v. »Hasidism.«

4 Mendelsohn, *Painting a People,* 124.

5 William Shakespeare, *The Merchant of Venice* (New York: American Library, 1965), 88.

6 Gustav Landauer, *Shakespeare. Dargestellt in Vorträgen* (Frankfurt a. M.: Literarische Anstalt Rütten & Loening, 1923), 43.

Antonio's fate.[7] Although Antonio is the title figure, the emerging conflict is fought between the Jewish moneylender Shylock and the rich countess Portia. As only the court scene is important for Jhering's and Franzos' interpretations, I will concentrate on that part of the play.

The Jewish moneylender Shylock lends 3000 ducats to his Christian competitor Antonio on the condition that he would have to give him one pound of his own flesh if he could not pay back the money in time. It is actually not Antonio who needs the money, as he lends it to his friend Bassiano, who wants to marry the rich countess Portia. The way the contract is written expresses Shylock's desire for revenge against this Christian, who had until then despised him for being a Jew. Bassiano even warns Antonio against accepting this obviously immoral contract.

Shylock could not foresee that he had a realistic chance of getting the flesh, since Antonio was a very rich merchant who seemed to have wide influence in Venice.[8] However, Antonio surprisingly becomes insolvent and Bassiano forgets about his friend's debt. After the expiration of the deadline, Shylock demands »his right« before the Venetian court on the basis of their contract. The court allows the plaintiff to take a pound of Antonio's flesh with evident displeasure.[9] Not even the offering of a higher compensatory payment can turn Shylock away from his intentions. Antonio already seems lost, when Portia, the wife of Bassiano, enters the stage dressed as a judge. She too declares the contract to be valid and appeals to Shylock's mercy. He leaves no doubt in his response, however, that he seeks revenge and his rights. Portia responds by allowing Shylock to cut out the flesh, but without taking an ounce more or less and without spilling a single drop of this »Christian's blood«.[10] Shylock is forced to give in and is later even convicted for the attempted murder of Antonio. He loses all of his property, one half to Antonio and the other to his own daughter, Jessica, who had run away with a Christian, stealing treasure from her father along the way.

After Shylock's conviction he is forced to convert to Christianity,[11] while for all the other characters the play has a happy ending. The further fate of Shylock is not mentioned.

7 I am grateful to Dorothee Gelhard for her advice concerning the interpretation of Shakespeare's *Merchant of Venice*.
8 Hermann Sinsheimer, *Shylock* (München: Ner-Tamid-Verlag, 1960), 129–132.
9 Shakespeare, *The Merchant of Venice*, 110.
10 Ibid., 120.
11 Ibid., 122–123.

Shylock in Franzos' work

Karl Emil Franzos revisited Shylock in two of his works, first referring to him in the late 1860s[12] in his novella *Der Shylock von Barnow*, and twenty years later in the novel *Der Pojaz*. However, as I demonstrate, the two depictions feature important differences that reflect the development of Franzos' thinking over time.

Karl Emil Franzos was most probably born in 1847 in the provincial Galician town of Czortkow[13] as the youngest son of a doctor in Hasidic surroundings. How much he was involved in the religious life of his town is not known.[14] Franzos went to high school in Chernivtsi and studied law in Vienna and Graz, with – amongst others – Professor Rudolf von Jhering.[15] However, after he finished his education, he followed his literary inclination rather than practising a law-related profession. He worked as a journalist, published the periodical *Deutsche Dichtung* (»German Poetry«), and became the author of several novels and many novellas. In both his literature and his social engagement he was particularly interested in the legal situation of minorities, which he also described in his works.[16]

In the preface to *Die Juden von Barnow*, Franzos was quite open about his educational aim. With his stories he wanted to positively influence the situation

12 See the preface to the 6th edition of *Die Juden von Barnow* in which he states that he wrote the novella between 1868 and 1872, and thus prior to Jhering's article. Karl Emil Franzos, *Die Juden von Barnow* (Stuttgart and Berlin: J.B. Cotta'sche Buchhandlung, 1929), v.

13 Anna-Dorothea Ludewig, *Zwischen Czernowitz und Berlin: Deutsch-jüdische Identitätskonstruktionen im Leben und Werk von Karl Emil Franzos (1847–1904)* (Hildesheim: Georg Olms Verlag, 2008), 16. Ludewig shows, that the birthdate and birthplace given by Franzos do not correspond to the dates on his birth certificate. According to her, Franzos reinterprets his own autobiography and changes some facts to fit in his own world-view. One should be very suspicious of his comments on his own life.

14 Franzos stated in his autobiographical essay *Mein Erstlingswerk*, first published in Leipzig in 1894, not to have been integrated into the Hasidic community. Chajim Bloch, however, quoted a school-friend Mose Sonnenschein, who told Bloch about his time together with Franzos in the *kheder*, the Hasidic primary school. Karl Emil Franzos, »Mein Erstlingswerk: Die Juden von Barnow,« in *Karl Emil Franzos. Kritik und Dichtung*, ed. Fred Sommer (New York: Peter Lang Verlag, 1992), 125–144, here 133 and Chajim Bloch, »Erinnerungen an Karl Emil Franzos,« in *Gemeindeblatt der Israelitischen Religionsgemeinde zu Leipzig*, no. 41 (1931), 1.

15 Karl Emil Franzos, *Deutsche Dichtung*, vol. 13 (1892/1893), (Berlin: Verlag Fontane, 1893), 50.

16 Horst Sendler, »Karl Emil Franzos (1848–1904): Ein Kämpfer ums Recht,« *Neue Juristische Wochenschrift*, vol. 23 (1987): 1361–1369.

of the Jews in the eastern regions of Europe.[17] His audience was to be »readers of the West«,[18] and he wanted to show them the living conditions of the Jews in »Semi-Asia«,[19] as he called the region of Galicia and Bukovina. But he also mentions a translation into Yiddish and Hebrew to cautiously win the Orthodox Jews over to a freer form of worship.[20] In addition to this introduction, the narrator often comments critically within his stories on the events he recounts.

The protagonist of the novella *Der Shylock von Barnow,* Moses Freudenthal, is described as a gentle and very rich man, who is devout to his religion and tradition. All his love is directed to his only daughter Esther, a very intelligent girl. Though it is quite unusual, her father allows her to pursue a secular education, until he becomes afraid of the emerging differences in her view of the world. He thus tries to force her back into the »normal« Hasidic way of life and marry her to a local man. After forbidding her from reading any more books, she begins to borrow them secretly. Formed by her readings, Esther then perceives the shtetl as narrow-minded and flees, together with a Christian, from an arranged marriage. Moses thereupon disowns his daughter and prefers her death to any repentant return – just like Shakespeare's Shylock.

Nevertheless, there is a significant difference between Esther and Shylock's Jessica. Jessica not only steals from her father, but betrays him in every aspect of her behaviour. She speaks badly of him, converts to Christianity, and gives away her mother's ring, which had meant a great deal to her father. Shylock therefore wishes Jessica to lay »dead at his foot«[21] as he counts the money she stole and the cost of finding her. This scene, in particular, supports a negative reading of the character Shylock, since Shakespeare refers here to one of the oldest anti-Semitic stereotypes of Jews as greedy usurers, where money counts more than one's own daughter.

This stereotype is not adopted in Franzos' novella, even though the Christian townsmen interpret Moses' behaviour in this way.[22] Moses, in contrast, is rich and generous. Esther did not steal an ounce of money and Moses does not stop loving her. But he still prays to God for her death, »so that I don't have to curse my only child, that she dies, my Lord and God, she or I …!«[23] Even as Moses

17 Franzos, *Juden von Barnow*, viii.
18 »Der Leser des Westens«. Ibid., vii.
19 Ibid., vii. The term »Semi-Asia« [Halb-Asien] originates from his book entitled *Aus Halb-Asien: Culturbilder aus Galizien, der Bukovina, Südrußland und Rumänien* (Leipzig: Verlag Duncker und Humblot, 1876).
20 »[um] die orthodoxen Juden vorsichtig für eine freiere Glaubensrichtung zu gewinnen.« Franzos, *Juden von Barnow*, vi.
21 Shakespeare, *The Merchant of Venice*, 88.
22 Franzos, *Die Juden von Barnow*, 40.
23 »ich flehe nur, daß sie sterbe, damit ich meinem einzigen Kinde nicht fluchen muß, daß sie sterbe, mein Herr und Gott, sie oder ich! …«. Ibid., 8.

suffers from his harsh judgement, he feels forced to treat her in this manner. His religious conviction and social surroundings demand this of him and he knows no other way. In contrast with Shakespeare's Shylock, Franzos emphasizes the force of circumstances in his novella. Moses' harsh judgement is due to the strict religious convictions of the community, and Franzos did not forget to mention in the foreword that the long-term causes should be sought in the exclusion of Jews from Christian society.[24] Within the novella, the Jewish doctor, a Maskil[25] with a broad secular education, explains the reasons for the tragic end: Moses and, to an even greater extent, his daughter Esther, are described by him as victims of both – Hasidic and Christian society.[26] In the end, Esther returns, but her father is no longer willing to welcome her back. She dies of starvation the same night in front of his house and Moses remains a broken man until the end of his life. His money is then bequeathed to the miracle Rabbi of Sadagora, the symbol of all backwardness and religious fanaticism in Franzos' literature.[27]

Comparing the novella *Der Shylock von Barnow* to *Der Pojaz*, the dubious element of Shylock's character still dominates in the first text. In *Der Shylock von Barnow* Moses is described in an ambivalent way: Even though he is blamed for Esther's death, his extraordinary narrow-mindedness is presented as a result of his upbringing, and he does not know any better. The saddest fact about this event is that nothing changes in the end, nobody learns from it, apart from the already educated Jewish doctor. None of the Christians want to hear his explanations. Moses, who after these events is called the Shylock of Barnow, dies rich, but isolated and broken.

This all changes in Franzos' second treatment of the Shylock figure. In his novel *Der Pojaz*, in which he also refers to the Shylock of Barnow, the character acquires a noteworthy and positive new interpretation to which I now turn.

Shylock in the novel Der Pojaz

Franzos' most famous work, *Der Pojaz*, also addresses legal questions. Its hero perishes, caught between the state's laws and the narrow-mindedness of his own religious community. The novel was first printed in a Russian translation and

24 Ibid., vii–viii.
25 Adherent of the Haskalah movement. See footnote 2.
26 Franzos, *Die Juden von Barnow*, 34 and 38.
27 The same collection of stories contains the novella *Das Kind der Sühne*, in which the »miracle Rabbi« of Sadagora plays a very unpleasant role. He gives bad advice, takes the money of the poorest and keeps them in mental backwardness. Ibid., 124–169.

appeared in the Jewish-Russian magazine *Voskhod* (sunrise).[28] Published as a novel in St Petersburg[29] in 1895, it was also printed posthumously in German in 1905. Why Franzos published it first in Russian is not clear, but there are different speculations on the matter.[30]

The novel describes the life of the protagonist Sender Glatteis, known as Pojaz, who is born in a Hasidic shtetl. The name Sender is a short form of Alexander and refers back to the glorious Hellenic era in Jewish history. However, the surname Glatteis (»black ice«) serves on the one hand as a symbol of the discriminating practice of naming in the Habsburg Empire, in which the administration could give Jews funny sounding or even insulting surnames.[31] On the other hand, his surname can also be associated with his very unstable path in life. The Yiddish word *payats* can be translated as »comedian«, »clown«, or »actor«, figures that play a vital role in the shtetl tradition.[32] From the beginning Pojaz is representative of the outsider. He lives in a non-conformist way and questions many of the proscriptions and prohibitions of shtetl life. He repeatedly comes into conflict with the community, which meets him alternately with great love and great resentment.

The Hasidic town is described as very backward, although benevolently so.[33] The narrator points out the religious fanaticism, the lack of secular education

28 The Russian-Jewish monthly *Voskhod* was published in St. Petersburg from 1881 to 1906. Its founder and editor was Adolph Landau and his assistant the historian Simon Dubnow. The journal promoted the Haskalah, a distinct Jewish identity, and advocated against total assimilation. Between 1881 and 1884 it called for Jewish self-defence against the anti-Jewish pogroms taking place in the western provinces of the Russian Empire. *Encyclopaedia Judaica*, 1st ed., s.v. »Voskhod.« *Voskhod* printed the novel in two parts, in a version that differs slightly from the German version published in 1905, one year after Franzos' death. Rudolf Mark and Dieter Kessler »›Sender Glatejz‹. Ein unbekannter Roman von Karl Emil Franzos?« in *Juden in Ostmitteleuropa von der Emanzipation bis zum ersten Weltkrieg*, ed. Gotthold Rhode (Marburg: J.G. Herder-Institut, 1989), 311–319, here 312.

29 Karl Emil Franzos, *Sender Glateyz: Roman iz evreiskoi narodnoi zhizni* (St. Petersburg: Tipografiia A. E. Landau, 1895).

30 For more about these speculations see Ludewig, *Zwischen Czernowitz und Berlin*, 269. In the foreword of his Russian version Franzos explains his reasons for wanting to write a novel to meet the needs of his Russian readers. As a second reason he names the legal situation, as well as a lack of agreements between the Russian Empire and Germany to protect intellectual property.

31 Franzos, *Der Pojaz*, 12.

32 Dorothee Gelhard, *Spuren des Sagens. Studien zur jüdischen Hermeneutik in der Literatur* (Frankfurt a. M.: Peter Lang, 2004), 92.

33 Right in the beginning the narrator explains that a pious Jew has to get married according to religious law. Even if he gets divorced the next day, it is still better

and the subordination of reason and morality to putative religious laws to be the greatest deficiency in the small town of Barnow, which was also the home of Moses and Esther in *Der Shylock von Barnow*. This is connected to the linguistic, economic, and social isolation, which the narrator addresses critically. The most severely attacked deficiency is connected to language. In Hasidic towns, Jews spoke and wrote Yiddish and Hebrew, with only some of them understanding and speaking Polish or Russian as well, but they did not learn the Latin alphabet or German, which was, according to the narrator, the language of high culture. Since most Hasidic Jews did not speak the languages of their neighbours or the state administration, they could not communicate or take part in political life. This depiction expressed what Franzos saw as the attitude of the Hasidim towards politics and law. They did not feel the need to participate as long as they could live according to their religious rules. The situation of legal and social discrimination appeared to them to be a normal state.[34]

Sender is a very positive character, though unstable in his interests. Since he is not willing to go to school or practise any proper trade, he becomes a carter and leaves his hometown. After encountering a theatre group in Chernivtsi, he discovers that it is his destiny to become an actor. His nickname Pojaz (*payats*) had indeed derived from his natural ability to imitate people and act in sketches. The play that kindles this wish, in a pivotal experience, is Shakespeare's *Merchant of Venice*.[35] Remarkably, Sender identifies with the tragic role of Shylock who stands alone in defence of his rights in opposition to the Christian world. Only a part of the play is described, that is until Shylock loses the trial and has to convert to Christianity. What happens afterwards is not described and seems to be of no interest to Sender.

The play is retold from Sender's point of view. He does not understand some scenes but all in all recognizes a number of situations which are familiar to him such as the lending of money, the injustice of Christian courts towards Jews, and the insulting behaviour of the neighbours and servants.[36] Decisive for Sender's identification is Shylock's famous speech in which he articulates the silently suffered grief of all Jews, including his own. The best known quotation of the famous Shylock monologue is: »If you prick us, do we not bleed? if you tickle us,

than staying single. The narrator comments on this religious law with his usual satire. Franzos, *Der Pojaz*, 29.

34 Philipp Theisohn, »Eruv. Herkunft an den Grenzen der Aufklärung. Karl Emil Franzos' *Der Pojaz*« in *Herkünfte. Historisch – ästhetisch – kulturell; Beiträge zu einer Tagung aus Anlass des 60. Geburtstags von Bernhard Greiner,* eds. Barbara Thums and Bernhard Greiner (Heidelberg: Winter, 2004), 171–190, here 177.

35 Franzos, *Der Pojaz*, 68.

36 Ibid., 62–66.

do we not laugh? if you poison us, do we not die? and if you wrong us, shall we not revenge?«[37]

Shakespeare's Shylock appeals to his Christian adversaries to recognize the equality of Jews and Christians, not only on a legal basis, but also in everyday life. If they treat him his whole life as a person worthy of hatred, he will behave as they expect him to. Sender compares the situation of Shylock and the Jews of Venice to his situation and the Jews of Galicia. After watching the play he feels the political and social injustice which is inflicted on the Jews by the Christians in his daily life. Pojaz resumes:

> »Yes,« the old man said, beginning to talk about Christians and Jews, and how we are so bitterly persecuted by the Christians – it goes straight into my bone and marrow and deep into my heart. Until now I never thought much about us and the Poles, I just thought that was the way it was, but now my eyes have been opened to the bloody injustice that we suffer.[38]

Shakespeare's Shylock points to the anti-Semitic behaviour of Venetian people, but obviously still believes in his legal equality, which is probably why he persists in the literal fulfilment of the sentence, whereas Sender views the contract and Shylock's obstinate insistence on the flesh as wrong. He, in contrast to Shylock, is convinced, based on his own Galician experience, that Jews have no hopes for justice in a Christian court.[39] Sender follows the development of the case with great curiosity. After Portia, the false judge, recognizes the contract and rules that Shylock is not allowed to spill a single drop of blood, or he will lose his entire capital, Sender still accepts the outcome of the case, because he hopes it could solve the situation and restore justice. He hopes for Shylock to only take his money and does not appreciate his decision to try to finish with three times as much as was offered him in the beginning. Only when Portia decides that Shylock will not get a single ducat, does Sender see this as the beginning of the »injustice of the Christians that just does not end.«[40]

Shakespeare's Shylock is indeed condemned for the attempted murder of a Christian. Sender sums it up in his disbelief that someone can first borrow money, is then not able to pay it back but receives ten times as much later, while the moneylender loses everything, even his religion. The accuser, who demands

37 Shakespeare, *The Merchant of Venice*, 87.

38 »›Ja‹ sagt der Alte und fängt an zu reden über Christen und Juden, und daß wir so bitter von den Christen verfolgt werden – durch Mark und Bein ist es mir gegangen und durch das tiefste Herz. Bis dahin hab' ich noch nicht so viel nachgedacht über uns und die Polen, und hab' geglaubt, es schickt sich so, aber jetzt haben sich mir die Augen aufgetan über das blutige Unrecht, das wir erdulden.« Franzos, *Der Pojaz*, 63.

39 Ibid., 64.

40 »und hier fängt das Unrecht der Christen an und hört gar nicht auf.« Ibid., 68.

his rights, ends up being the accused. Sender reacts with outrage. It may be a coincidence, but this is very similar to a reaction described by Heinrich Heine when he saw the play in England. He recounts that an English woman called out at the end that »the poor man is wronged.«[41] Sender also shares his emotions on the matter with an insightful analysis as well: »Threatened [Antonio's] life? Why did Antonio sign such a bond? Why did the court allow such a bond to be sued for? Now it occurs to them!«[42]

Here, Sender Glatteis, an apparently naive and poorly educated Hasid, shows an unusually sophisticated legal understanding. He not only, like Heine's female spectator, feels that the lawsuit is unfair. He also knows the exact reason for this: The immoral contract should never have been accepted by the judge as something enforceable. Therefore, although one could have stopped Shylock on legal grounds from the very beginning, they instead led him into a trap. Shylock is brought down by the deliberate misconstrual of the law and even accused of attempted murder,[43] thus changing positions from being the accuser to being the defendant. The false jurist is even impudent enough to say that »he« was being gracious towards Shylock by not ordering his execution.

The remarkable difference in the view of Shylock in Franzos' two works is thus quite evident. What made Franzos change his interpretation as strongly as he did within merely a decade? One answer can be found in the legal philosophy of Rudolf von Jhering, who in his essay *Der Kampf ums Recht* (»The Struggle for Law«) interprets the lawsuit in nearly the same way that the character Sender does, a few years before *Der Pojaz* was written. This common new understanding of Shylock's mischief is unlikely to be a coincidence. There are several connections between the intellectuals Franzos and Jhering, who indeed met one another at least at two different stages of their lives, as Franzos wrote in his article on Jhering in the *Deutsche Dichtung* monthly.[44] Their first meeting took place at the University of Vienna as professor and student;[45] their second twenty years later, after Franzos published his novel *Ein Kampf ums Recht* (»A Struggle for

41 »Als ich dieses Stück [Kaufmann von Venedig] in Drurylane aufführen sah, stand hinter mir, in der Loge, eine blasse Britin, welche am Ende des vierten Aktes heftig weinte und mehrmals ausrief: the poor man is wronged! (dem armen Mann geschieht Unrecht!).« Heinrich Heine, »Shakespeare's Mädchen und Frauen,« in *Heinrich Heines Sämtliche Werke*, vol. 8 (Leipzig: Insel-Verlag, 1913), 155–302, here 252.

42 »Nach dem Leben getrachtet? Warum hat Anton so einen Wechsel unterschrieben? Warum hat das Gericht erlaubt, daß so ein Wechsel eingeklagt wird? Jetzt fällt es ihnen ein!« Franzos, *Der Pojaz*, 64.

43 Sinsheimer, *Shylock*, 135.

44 Franzos, »Rudolf von Jhering«, in *Deutsche Dichtung*, 50–52.

45 Ibid., 50.

Law«). This novel refers to Jhering's ideas in its title, and explores his philosophy in literary form for the first time. Franzos' novel concentrates, however, on the Galician Hutsuls[46] and their struggle against a Polish nobleman.[47] Jhering read and even commented on the novel in later editions of his essay *The Struggle for Law*.[48]

Jhering and his article The Struggle for Law

In 1872 Rudolf von Jhering held a talk on his understanding of law during his farewell ceremony as professor of law in Vienna. He published it under the title *The Struggle for Law*[49] the same year. Jhering's work is not only of high literary quality, it is also an attempt to present his ideas to non-lawyers. His success is reflected in the high number of sales of his essay, which was translated into more than fourteen languages and was in its sixth German edition by 1880.[50]

In his article, Jhering advanced the view that a legal system only operates effectively if the individuals are ready to assert their rights. At the same time he defended the absolute validity of the law as the basis of these rights.[51] He accentuated the innovative power that a sense of justice can provide, as »without the suspension of existing rights [...] legal progress is inconceivable«.[52] According to him, the internal development of law was connected to the external – cultural and historical – development of the affected society.[53] He therefore pleaded for the responsible adoption of the law, which not only entails its application, but also the need to fight for one's rights, if one feels that they have been violated. Jhering accentuated the importance of having a sense of justice, arguing that law is not only an abstract norm to be followed; it is also connected to one's personality. If someone robs you, not only are your rights violated, but your welfare and honour are affected as well. According to Jhering, fighting for the law meant standing up for oneself, something that should also be an obligation with regard to one's community. For Jhering, it was the idea within

46 Ruthenian Greek-Catholic mountain dwellers of the Carpathians.
47 Karl Emil Franzos, *Ein Kampf ums Recht* (Berlin: Verlag Neues Leben, 1970).
48 Rudolf von Jhering, *Der Kampf um's Recht* (Wien: Manz, 1872), IX, 64–65.
49 Ibid.
50 See Jhering's preface to the 6th edition of his essay. Rudolf von Jhering, *Der Kampf um's Recht* (Wien: Manz, 1880), vii–viii.
51 Rudolf von Jhering, *Der Geist des Rechts*, ed. Fritz Buchenwald (Bremen: Carl Schünemann Verlag, 1965), 28.
52 »ohne Aufhebung bestehender Rechte [...] ist der Fortschritt des Rechts selber nicht denkbar.« Jhering, *Geist des Rechts*, 30.
53 Elias Hurwicz, *Rudolf von Ihering und die deutsche Rechtswissenschaft. Mit besonderer Berücksichtigung des Strafrechts* (Berlin: Guttentag Verlagsbuchhandlung, 1911), 2.

the law that was paramount. He believed that most people litigated for idealistic reasons, and not only as the result of a cost-benefit analysis.[54]

To explain his theses, he chose no lesser example than Shakespeare's drama *The Merchant of Venice* and polemicized against the contemporary interpretation of the case that »justice« is shown to Shylock. After having analysed the play briefly he came to the conclusion that the root of injustice lay in the recognition of the debenture by the court. Jhering argued: »The bond was in itself null and void because its provisions were contrary to good morals; the judge should, therefore, have refused to enforce its terms on this ground from the first.«[55] However, because the court had accepted the debenture, the next interpretation of the contract was, from a legal point of view, more than just simply wrong:

> But as he did not do so, as the »wise Daniel« admitted its validity, it was a wretched subterfuge, a miserable piece of pettifoggery, to deny the man whose right he had already admitted, to cut a pound of flesh from the living body, the right to the shedding of the blood which necessarily accompanied it.[56]

According to Josef Kohler, a contemporary colleague and professor of law at the University of Würzburg, Jhering, whom he deemed »one of the most prominent scholars of our time«, was the first ever to defend Shylock from a legal perspective, thus directing the attention of the legal community to Shakespeare. According to Kohler, Jhering broke with common opinion on the case and argued that Shylock, whose downfall had been glorified and celebrated to that point, had in fact been seriously wronged.[57]

Kohler harshly disagreed with Jhering's case interpretation. He dedicated to the Shylock case a large chapter of his book *Shakespeare vor dem Forum der Jurisprudenz* (»Shakespeare before the forum of jurisprudence«) and demonstrated a completely different understanding of the law and its evolution. According to Kohler, Portia's judgement was right, not due to any legal argumentation, however, but because Shylock's purposes were evil. His desire to abuse the law as a means of attaining malicious revenge thus warranted that any opportunity could be taken to stop him. Kohler argued that the spirit of justice is not on Shylock's side, but on that side of the judge, who is forced to bend the law for a higher good. This argumentation explains why the judge must convict Shylock with such harsh severity to create an example for the future.[58] As even Shylock

54 Jhering, *Der Kampf um's Recht* (Wien: Manz, 1884), 18.
55 Rudolf von Jhering, *The Struggle for Law*, trans. John J. Lalor (Chicago: Callaghan and Company, 1915), 87.
56 Jhering, *Struggle for Law*, 87–88.
57 Josef Kohler, *Shakespeare vor dem Forum der Jurisprudenz* (Würzburg: Verlag Stahel'sche Universitätsbuch- und Kunsthandlung, 1883), 12.
58 Kohler, *Shakespeare vor dem Forum*, 95.

does not appeal against the verdict, he shows that he accepts the outcome of the case to his disadvantage.

Kohler did not doubt for a second that Shylock was the villain in this play and every opportunity to defeat him was therefore good. He thus even praised the breaking of the law by the false lawyer as the epitome of progress.[59] Kohler also disagreed with Jhering's interpretation that the case revealed an anti-Semitic motivation. According to Kohler, Shylock was to be reviled as a usurer, not as a Jew. Furthermore, Kohler defended the judge's decision that Shylock had to convert to Christianity as a »historical« truth, as people were always forced to convert »under the sign of the executioner.«[60] The contrast in their interpretation of the play could not be starker.

According to Jhering, Shylock's case was so uniquely interesting because the law itself was addressed in the verdict. He quoted what was for him Shylock's most important remark:

> The pound of flesh, which I demand of him,
> is dearly bought, is mine, and I will have it;
> If you deny me, fie upon your law!
> There is no force in the decrees of Venice!
> – I crave the law
> – I stay here upon [sic!] my bond.[61]

Jhering argued that Shylock's concern is not for the flesh, but the principle:

> These four words [I crave the law] change Shylock's claim into a question of the law of Venice. To what mighty, giant dimensions does not the weak man grow, when he speaks these words! It is no longer the Jew demanding his pound of flesh; it is the law of Venice itself knocking at the door of Justice; for his rights and the law of Venice are one and the same; they both stand or fall together.[62]

According to Jhering, the whole tragedy of the play lay in the betrayal of Shylock's belief in his rights and the rights of all medieval Jews, when he called him »that pariah of society who cried in vain for justice.«[63] Using the example of Shylock, Jhering showed that he had to fail due to the unequal treatment of Jews and Christians and not because of the merits of the case. For him, the same legal system had to be equally valid for Christians and Jews – both in medieval Venice and, even more so, in the Habsburg Empire.

59 Ibid., 90.
60 »mit dem Winke des Henkers«. Ibid., 96.
61 Shakespeare cited by Jhering, *Struggle for Law*, 80. In the German version Jhering cites the translation by August W. Schlegel and Ludwig Tieck, retranslated into English by Lalor.
62 Jhering, *Struggle for Law*, 86–87.
63 Ibid., 82.

Legal equality is based on a very modern understanding of law, within the field of legal studies as well. It is linked to an acknowledgement of the equality of people within society, as the French Revolution established in Europe for the first time. With the growth of the Enlightenment, along with Napoleon's campaign, it spread over Europe.[64]

Jhering's interpretation of the Shylock case was by no means welcomed as a long overdue corrective, whether in legal literature or in Shakespearean research. Even in later interpretations, one can find different understandings of the case. Gustav Landauer (1870–1919), a German Jewish philosopher, writer, and political activist, preferred to support Kohler's argumentation and listed other Shakespeare scholars, who agreed with this view.[65] Landauer, like Kohler, wrote that Shylock accepted the shift in the case – the literary interpretation. This served for him as evidence that Portia's resolution was correct with respect to the contemporary understanding of contracts.[66] Landauer supported the opinion that the play represented a struggle for a milder understanding of law. The contract had been legal according to the old Roman law, but was no longer in accordance with the new understanding of morals, which is why Landauer supported the turn of the case: »If you take the contract so seriously, so literally, do not wonder and do not complain if the judge is as literal about it as you: blood is not flesh.«[67] Like Kohler, Landauer did not see a single reason to defend Shylock.

Shylock between Haskalah and Hasidism

There is no doubt that Franzos had read Jhering's article and discussed his legal philosophy in his novel *Der Pojaz*. Franzos addressed the particular problems of the Galician shtetl using the example of Shylock – but even more so, the example of Sender's fate. Since at least two different Jewish worldviews co-existed in the

64 *Handwörterbuch zur deutschen Rechtsgeschichte*, vol. 1, s.v. »Gleichheit«.

65 Landauer, *Shakespeare*, 46–47. Among Shylock interpretations of these days one can name the one by Dietrich Schwanitz, who contradicts Jhering directly, but does not even understand his argument. He tries to prove that only Portia was able to read the contract abstractly, but then beats Shylock with his own weapon and reads the contract even more literally than Shylock himself. Though his argumentation is self contradictory, he did not even take into account the possibility of refusing the contract. His Talmudic argument misses any scientific foundations. Dietrich Schwanitz, *Das Shylock-Syndrom oder die Dramaturgie der Barbarei* (Frankfurt a. M.: Eichborn, 1997), 104.

66 Landauer, *Shakespeare*, 49.

67 »Nimmst du's mit dem Vertrag so ernst, so buchstäblich, so wundre dich nicht und beklage dich nicht, daß auch der Richter es buchstäblich macht wie du: Blut ist kein Fleisch.« Ibid., 48.

region, Haskalah and Hasidism, neither of them could be without influence. Sender stands between the two and his personal conflict with his hometown also derives from his confrontation with the possibilities offered him by the Jewish Enlightenment. Through this text Franzos was »intent on furthering the Haskalah ideal of dual and compatible German national/cultural and Jewish religious identities among as yet unacculturated Central and Eastern European Jews.«[68]

In tracking the fate of Sender one can find different approaches to link the two perspectives. Sender carries in his heart both the heritage of the shtetl and the vision of a better life. He never wants to fight the Hasidim, but to open them to Western culture and secular education. By playing Shylock he wants to evoke the same change of view in his co-religionists, with the play serving to illustrate the injustice inflicted on the Jews in Galicia. Sender prefers this role even to Lessing's *Nathan der Weise* (»Nathan the Wise«),[69] which renders homage to reason. This gentle and wise man seems at first glance much more suitable to teach society to be more tolerant than the ambiguous Shylock. The distance felt by Sender towards Nathan and his rational world[70] may have been precipitated by the fact that his way of thinking, arguing, and acting is very different to the reasoning the Hasidim were used to. The play is instead geared more toward the Western European intelligentsia.[71] Sender chooses Shylock as the most interesting role because of his emotional nature. He is even ashamed by the fact that he prefers such a wild and vindictive character to the noble and mild Nathan.[72]

It is therefore likely that the points of reference of Franzos' novel were mainly the seemingly irrational and emotional Hasidim and their particular circumstances, with the author even perhaps slightly distancing his work from the intellectual perspective of the Haskalah.[73] The colourfully dramatized injustice in Shakespeare's drama was closer to the real situation at hand and evoked a great sense of injustice. Shylock wants revenge, is not mild and understanding,

68 Elizabeth Loentz, »Karl Emil Franzos and Bertha Papenheim's Portraits of the (Eastern European Jewish) Artist,« in *The Jews of Eastern Europe*, eds. Leonard Greenspoon, Ronald A. Simkins, and Brian J. Horowitz (Omaha: Creighton University Press, 2005), 81–82.

69 Lessing published the play *Nathan the Wise* in 1779. It was directly influenced by the thought of Moses Mendelssohn. The play teaches the equality of all religions and the character Nathan represents a wise, mild, intelligent, and enlightened Jew.

70 Franzos, *Der Pojaz*, 104.

71 Ibid., 95–99.

72 Ibid., 104.

73 Sybille Hubach, *Galizische Träume. Die jüdischen Erzählungen des Karl Emil Franzos* (Stuttgart: Verlag Hans-Dieter Heinz, 1986), 134.

but instead returns the hatred he was treated with throughout his life.[74] Perhaps Franzos saw the need for a rebellious Shylock to prepare the ground before anyone would be able to behave as mildly and understandingly as Nathan.

By comparing the fate of Moses, the »Shylock of Barnow«, and Sender's interpretation of Shylock, I will focus on the development in Franzos' interpretation of Shylock and his understanding of law. In the first story the narrator directly criticises Jewish religious and social laws as well as the narrow-mindedness and lack of education, with the narrator indirectly intimating that the situation was also a product of anti-Jewish behaviour and legislation. The novella reveals the inner conflict of the feelings and religious understanding of Moses, the father: Even if people are good, they do wrong because they do not know any better. The character Shylock is identified with Moses, a man who brings about his daughter's death, although it brings him suffering as well. He even senses the injustice of the matter, but he still hurts her due to his religious convictions.

As mentioned before, this text is connected to the novel *Der Pojaz* as both stories take place in the same fictional town of Barnow. Franzos used to link many of his stories and some of his characters appear in different works, which is why the figure Sender knows the figure Moses and his family tragedy. Even though Sender is a particularly moral and upright person in his Hasidic shtetl, he supports Moses' treatment of Esther and compares her to Shakespeare's Jessica, because she ran away with a Christian and left her father. Only later does he learn from his first love Malke, a very intelligent and educated »Germanized«[75] Jewish woman, to understand Esther's decision. Later, Sender helps Malke to run away with her beloved, whom she chose of her own accord.

In contrast to Franzos' first novella, Sender identifies with Shylock and, therefore can also be identified with him. Shylock as a symbol moves from being a perpetrator to a victim in two regards: Actively, because Sender interprets Shakespeare's Shylock as a victim of the anti-Semitic Christian court; passively, because Sender is the victim of Hasidic injustice, i.e. its intolerance towards his artistic needs.

Just like Esther, Sender receives a secular education and holds an unacceptable wish in his heart and mind. Both characters represent what Franzos considered to be modern and progressive – a change within society towards the integration of secular culture within the religious community. Sender appraises theatre the same way as he does religion: For him acting entails commitment to a service, and in it he sees his own calling and fulfilment. But this ostensibly harmless wish stands in contrast to his surroundings. For Hasidim, performing on a stage and

74 Shakespeare, *Merchant of Venice*, 87.

75 For Franzos, »Germanizing« means cultural nationalism, but not baptism. Like the Maskilim, he considers Judaism to be a religion, not a nation.

learning German to this purpose is a sin to be punished very severely in accordance with their religious law. That is why Sender has to learn German secretly in a Dominican monastery and falls ill with consumption. When the local rabbi finds out about it, he banishes him from the community. Even though Sender is later reintegrated into society, when the rabbi lifts his ban, he runs away from his hometown to pursue his life purpose, but in doing so exposes himself unprotected to the Galician winter, which wears down his already weakened body. Before he manages to escape completely, he is caught by his foster mother who, against all reason, forces him to return to the shtetl, where he ultimately dies.

In the end, the reader is left with a feeling of injustice. The death of Sender seems at first glance to be completely senseless and arbitrary. Reconsidered in connection with Jhering's thinking, however, it becomes clear that Sender died, in some way, on a mission for subjective rights. In German the word »Sender« is indeed associated with being sent, perhaps as a missionary or messenger. Sender's struggle can then be understood as his personal fight in the spirit of the Haskalah. By performing Shylock on stage, Sender seeks to change Christian-Jewish relations; in his struggle for his personal rights he fights against what he perceives as antiquated Hasidic customs and works to change Jewish society. The shtetl does not however allow him to follow his calling as an actor, thus robbing him of any chance at self-fulfillment. Sender's struggle to be able to perform theatre turns not only into a struggle for his rights – it involves, from Jhering's view, his very moral survival.[76] Sender never questions his religion, but he trusts in his God-given talent and fate. While he questions some of the antiquated laws of the Hasidim, he never questions his Jewishness or the law of God. But he seeks a new interpretation of these things that allows him to be who he is.

Until his death Sender remains true to himself and believes in the honesty of his subjective rights. But his concrete dream remains unfulfilled: he never has the chance to play Shylock on stage in front of an audience. Still, in the last days of his life, when death is already looming, he is allowed to see his Shylock role performed by the talented and world famous Jewish actor Bogumil Dawison,[77] who descended, just like him, from a poor family in a Galician shtetl. In contrast to the novel's character Sender, the very real Dawison had quite a successful

76 Jhering, *Der Kampf um's Recht*, 20.

77 Dawison, Bogumil (1818–1872), was a Jewish actor from Galicia, who began his career in Warsaw and achieved great success as an interpreter of Shakespeare, Goethe, and Schiller on the German stage. His greatest successes were the Shakespearean roles of Richard III, Shylock, Lear, and Othello. Dawison was regarded as one of the great actors of his time and one of the first of Jewish origin. *Encyclopaedia Judaica*, s.v. »Dawison«.

acting career. This suggests that Galicia was already changing, something that could be interpreted as a positive sign for the future for those Galician Jews, who wanted to take part in Western culture.[78]

Conclusion

If Jhering had been asked to write an essay on »religion in the mirror of law« he would have argued that, in the eye of the law, people are equal no matter which religion they belong to. Using the example of Shylock, he showed that it was neither the law of Venice nor the behaviour of Shylock that directly led to his conviction, but rather the intentional misconstrual of the law in support of the widespread anti-Semitism of the time. Furthermore, Jhering characterized Shylock as a symbol of civil-rights activism, since he had nothing to gain apart from justice. Shylock treats the law idealistically and believes in its power and his own rights. According to Jhering, this was the way that everyone should understand the law. Law is organically connected to society and is transformed as society changes. As Shylock's case shows, it is not only important to contend with the state as a means of shaping the law, but in private matters as well. Religious communities should thus adapt to the needs of their believers.

Franzos concentrated on this point and confronts his readership with law in the mirror of Hasidism. He sought to demonstrate that in many respects, its law is outdated, especially in questions of education, marriage, and possible participation in secular politics, culture, and society. Nevertheless, he also points out the interdependence between constitutional law and the cultural isolation of the Jewish minority of Eastern Europe.[79] As Franzos saw it, decades of judicial and social oppression of Jews had led to a need for them to create their own cultural system, and one which protected their identity as a defence mechanism against inhospitable Christian surroundings. Franzos therefore expanded the new symbolic role of Shakespeare's Shylock, who helps to understand the anti-Semitic prejudices in Europe and its courts, and to depict the effects of blind hatred and arrogance. The identification of Shylock with Sender also symbolizes

78 Another particularly famous example was the Galician actor and author Alexander Granach, who identified directly with Sender and his perception of Shylock. In his autobiography, *Da geht ein Mensch*, he fulfilled the wish and fate of the fictive character Sender. He not only plays Shylock on stage, but he also changes the end of Shylock's history within his text, both according to Sender's dream. The author born as Jessaja even changes his name to Alexander, the original Greek version of Sender, as explained on the first pages of Franzos' novel. Alexander Granach, *Da geht ein Mensch. Autobiographischer Roman* (Augsburg: Ölbaum Verlag, 2003).

79 Theisohn, Eruv. Herkunft, 173–178.

the struggle to define law within the Hasidic world. Sender does everything it takes to fulfil his existential wish to become an actor but, in doing so, comes again and again into conflict with the customary law of the Hasidim. His death – as Franzos sees it – is a direct consequence of the antiquated Hasidic system and their unwillingness to change to meet the needs of the younger generation.

The difference between Jhering and Franzos is one of perspective, not of intention: They both sought to educate people to be responsible in their treatment of the state, and of private and religious law, and to strengthen their sense of justice; both did this in their respective fields, Jhering in legal philosophy and Franzos in literature. In light of the legal reforms of the Habsburg Empire and the new, though still rather theoretical, equality of the Jews,[80] it was Franzos' view that the Jews needed to take an active role in their own equality, behaving as citizens and taking part in the new social order and thus in their own legal emancipation.

Without the application of legal knowledge, a law is worth as much as Shylock's contract with Antonio. The philosophy of *The Struggle for Law* is suggested as a solution to the »Jewish question« in Galicia, as an ethical and practical way out of isolation. As a learned lawyer and professional writer, Franzos can be understood in this regard, but also a messenger in that he transformed the theoretical ideas of Jhering into literature and used the example of a Hasidic town to illustrate how one should understand law and behave as a responsible citizen. In doing so, he did not suggest giving up tradition, but opening it and reforming it.

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80 Wolfdieter Bihl, »Die Juden,« in *Die Habsburgermonarchie 1848–1918*, vol. 3, part 2: *Die Völker des Reiches*, eds. Adam Wandruszka, Peter Urbanitsch and Helmut Rumpler (Wien: Verlag der Österreichischen Akademie der Wissenschaften 2003), 880–948, here 890–896.