Race, the Rule of Law, and the Merchant of Venice: From Slavery to Citizenship

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From the first appearance of man upon the earth, down to very recent times, the words "stranger" and "enemy" were quite or almost, synonymous. Long after civilized nations had defined robbery and murder as high crimes, and had affixed severe punishments to them, when practiced among and upon their own people respectively, it was deemed no offence, but even meritorious, to rob, and murder, and enslave strangers, whether as nations or as individuals. Even yet, this has not totally disappeared. The man of the highest moral cultivation, in spite of all which abstract principle can do, likes him whom he does know, much better than him whom he does not know. To correct the evils, great and small, which spring from want of sympathy, and from positive enmity, among strangers, as nations, or as individuals is one of the highest functions of civilization.1

After seeing Booth as Shylock, [Lincoln] commended the performance, but said that he would rather read it at home. "A farce, or a comedy is best played; but a tragedy is best read at home." It didn't make any difference to him, he added, how Shakespeare was played as "with him the thought suffices."2

Abraham Lincoln's career is an almost eerie display of Shakespearean grandeur and pathos. Following numerous other

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observers on this theme, historian Don Fehrenbacher observes: "To some indeterminable extent and in some intuitive way, Lincoln seems to have assimilated the substance of the plays into his own experience and deepening sense of tragedy." 3 Lincoln's odd characterization of a popular comedy, The Merchant of Venice, as a tragedy is particularly telling. For the Merchant is a happy tale that, however, conceals an horrific conclusion intended, as I will argue here, to educate the audience to the terrifying potential of the new, emerging cosmopolitan world. 4 To use the imagery of the play, the Merchant is a golden casket which conceals a death's head. 5 Lincoln saw too that America might continue on in a seemingly happy way yet contain within itself the seeds of its downfall by legitimizing slavery. Lincoln's struggle against slavery was very much an attempt, perhaps a tragic one, to make America the earthly comedy it promised to be at its founding, the first nation based on universal premises, the self-evident truth of human equality. The American comedy might be as "near to perfection as any human institution ever approximated" 6—that is, America might be judged by the ancient standards of the best regime. These were the standards of Lincoln, of Shakespeare, and of classical political philosophers such as Aristotle: Human equality requires the rule of law, which is necessarily (and incidentally) color-blind. The success of the American experiment, necessarily involving this most vexing question, requires citizens' continuing appreciation of its theory and practice. And that understanding calls for those highest standards of the teachers of the West, which we seek to bring forth here.

But our immediate subject is race and the law. How should the two be related? My argument here will be that the emphasis American law has given to race has obscured the origins and enduring significance of the American dilemma—namely in the nature of republican, constitutional government, which in turn rests on natural rights. 7

3. Don E. Fehrenbacher, Lincoln in Text and Context 157, 158 (1987). Other sources for Lincoln's fascination with Shakespeare—even during the Civil War—can be found in this essay. Id. at 157-63.
4. For a brief synopsis of the play, see infra text accompanying notes 32-36.
5. Barbara Tovey, The Golden Casket, in Shakespeare as Political Thinker 215 (John Alvis & Thomas G. West eds., 1981). The golden casket is one that deceives the suitors who must guess the container of Portia's image; it contains a death's head, a skull.
7. As a correction of Alexis de Tocqueville's famous, pessimistic treatment of race in Democracy in America, one should consider his slighting of
America is essentially a dream. . . . The substance of the dream is expressed in these sublime words, words lifted to cosmic proportions: "We hold these truths to be self-evident, that all men are created equal. . . ."

Ever since the Founding Fathers of our nation dreamed this noble dream, America has been something of a schizophrenic personality, tragically divided against herself. As recently as Martin Luther King, black Americans were insistent on binding the civil rights cause to this Nation's founding principles and the political philosophers of the West from whom they were derived.

The American commitment to equality is to somehow make race, to some degree or other, against all previous political experience, irrelevant legally and politically. The commitment to race-neutrality is reflected in the wording of the U.S. Constitution itself, which, until the Fifteenth Amendment, never made mention of race. Moreover, the American proposition—"all men are created equal"—makes religion, military prowess, physi-

cractical life of the nation and hence principled statesmanship in dealing with this issue. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 509-28 (J.P. Mayer ed. & George Lawrence trans., Anchor Books 1969) (1855). Tocqueville thought that a race war was inevitable, and that the only way out of the racial divide was a third race formed through intermarriage. Tocqueville slights the natural rights origins of America; instead he sees America developing from a general historical movement toward equality. Hence he can omit any mention of the Declaration of Independence as a principled origin of this polity. See Ken Masugi, CITIZENS AND RACES: NATURAL RIGHTS VERSUS HISTORY, in TOCQUEVILLE'S DEFENSE OF HUMAN LIBERTY 321 (Peter Augustine Lawler & Joseph Alulis eds., 1993).


9. On the evening before his assassination, King spoke of seeing, in a dream, "Plato, Aristotle, Socrates, Euripides, and Aristophanes assembled around the Parthenon as they discussed the great and eternal issues of reality." Martin Luther King, I See the Promised Land, in TESTAMENT OF HOPE, supra note 8, at 279. In his famous "Letter from Birmingham Jail," he cites Saint Thomas Aquinas to justify civil disobedience. Martin Luther King, Letter from Birmingham Jail, in TESTAMENT OF HOPE, supra note 8, at 293. Contrast this King natural rights view with the historicist understanding of Lani Guinier. See LANI GUINIER, THE TYRANNY OF THE MAJORITY (1994).

10. I do not dwell on the obvious fact that if blacks were not present in America, there would be no "whites"—who would instead identify themselves as Irish, Mexican, Jewish, German, etc. As emigre professor Ludmila Yevsukov noted, in a personal observation, the only Americans now spoken of as a color—"African-American" having replaced "black"—are whites.

cal size, and, along with these, race, irrelevant for purposes of forming government by consent, which leads in turn to the rule of law. In other words, the more general case of how to establish the rule of law covers the specific instance of race. The themes of political theory such as government by consent, republicanism, and citizenship, should be brought to bear on the race question; a radical political problem deserves a radical treatment.

The failure of political debate to reflect on the place of citizenship and republican character is one indication of our contemporary detachment of the most wrenching issues from founding principles. The crisis in civil rights mirrors an even deeper crisis concerning constitutionalism and modernity in general. Liberalism, with its emphasis on an abstract individual and limited government is not sufficient sustenance for the human soul. A strong sense of citizenship, an American political identity, trumps race, as we see in early Progressivism's attempts to assimilate non-Anglo-Saxons. But the fear of such identity and the political demands it might inflict—consider the debates over immigration—have led many to sympathize with Michael Walzer: "America has no singular national destiny—and to be 'American' is, finally, to know that and to be more or less content with it." Content with living in private spheres in a commercial republic, increasing numbers of citizens do not even exercise the minimal obligations of civic participation. But even the high degree of Tocquevillean civic activity—our ability to form voluntary associations—does not fully reflect the political nature of man, as an examination of The Merchant of Venice will bear out. The theme of race and the law can be confronted only when we reach the political dimension that only the natural rights and citizenship issues bring forth.

12. Cf. Mari Matsuda et al., Words That Wound: Critical Race Theory, Assaultive Speech and the First Amendment 6 (1993) ("Critical race theory... ask[s] how... traditional interests and values serve as vessels of racial subordination.").


I. A-MORAL REPUBLICANISM: THE SLAVETRADERS OF VENICE

Our contemporary racial situation indicates why Lincoln, that profound student of Shakespeare, would refer to the popular comedy of The Merchant of Venice as a tragedy. Lincoln declared, as we noted above, that "[t]o correct the evils, great and small, which spring from want of sympathy, and from positive enmity, among strangers, as nations, or as individuals is one of the highest functions of civilization." Now Venice, both the historical one and the one described by Shakespeare, provided the opportunity for strangers to become friends—indeed, in Shakespeare's Venice, Jessica, Shylock's daughter runs off with a local Venetian, signaling the transformation of the republic into a multi-ethnic city. But the only "equality" the beautiful city recognizes is one of returning savagery for savagery. Thus, Venice, with all its potential for displaying the richness of human life (in more than the material sense but in arts, statesmanship, and faith) was a tragedy.

In a sense, the Founders and Lincoln understood America as a perfected Venice, a worldly Belmont. By examining Shakespeare's The Merchant of Venice, that alluring anticipation of the modern world, we can learn about the virtues and requirements of our own republican form of government, especially as it relates to race. This dark comedy educates us Americans in the uniqueness of our political order. We are simultaneously dazzled, delighted, and perplexed by the explosion of pagan and biblical themes, of ancient and modern standards, of particular and cosmopolitan urges, and of erotic and commercial longings and empires. We learn from real ugliness what true beauty is.

17. 2 Collected Works of Lincoln, supra note 1, at 472.
As depicted by Shakespeare, Venice's flaws highlight our own potential virtues and our vices.

No mere entertainer, William Shakespeare portrays the human soul in the same way as Plato did but with consideration of the political experiences of the Roman Empire and England, and, most importantly, the spiritual revolution of Christianity. In Venice we see both the dregs of Rome and of Christianity, as a new social order of modernity begins to unfold: willfulness without faith, spiritedness and eros uninformed by reason. Shakespeare follows Plato in seeing the human and political problem as the tripartite soul's attempt to govern itself: Just as reason governs the passions in a well-ordered soul, so reason must gain consent within the political community. An examination of the major characters' souls shows how The Merchant of Venice anticipates the political and spiritual disorders of modernity in general, and not just capitalism, as sometimes emphasized. As we will explain in our treatment of American political principles, what Venice lacks is the natural rights foundation of the American polity. A comparison of the play with our principles illuminates how natural rights is the means by which America can attach its republicanism to classical virtue, its practical judgment to moral splendor—the focus of Aristotle's political science. Political education, citizen education, produces citizens who act


23. As examples of Shakespeare following Plato, see The Tempest, where Prospero rules his daughter Miranda, his slave Caliban, and the spirit Ariel. William Shakespeare, The Tempest act 3, sc. 3, 5. See also Much Ado About Nothing, where Dogberry and the other bungling guardsmen in fact produce wisdom. William Shakespeare, Much Ado About Nothing act 4, sc. 2. Sometimes collective wisdom is equivalent to a single wise person's judgment.

24. For a provocative account on this theme, arguing that Locke is the successor to Shylock, see Edward Andrew, Shylock's Rights: A Grammar of Lockian Claims (1988).
not only in their self-interest but also from their sense of duty.\textsuperscript{25} Successful political action combines both "realism" and "idealism." Thus the speakers in the \textit{Republic} are dissatisfied with the attempt to reduce justice in a political community to the level of a gang of thieves, where it becomes a necessity: Such an indignity is morally and therefore politically unacceptable.\textsuperscript{26} Even the vulgar modern, commercial world can foster classical virtue.\textsuperscript{27} Indeed, our ability to think and act virtuously and humanely on our racial situation requires this perspective.

Moreover, natural rights not only protects property rights, but it also teaches religious toleration, which the Venetians respect within limits readily reached, as we see in Shylock's forced conversion to Christianity.\textsuperscript{28} The protection of property rights in America could not logically lead to the savagery of the bond Antonio and Shylock make.\textsuperscript{29} What Venice finds wanting, America can offer. The modern, commercial world can not only tolerate diversity; it can foster classical virtue. Indeed, our ability to think and act virtuously and humanely on our racial situation requires the \textit{kalon}.\textsuperscript{30}

The natural rights teaching is part of a broader consideration, that of human equality. This equality is a recognition that men are neither beasts nor gods, but in-between beings, who share in both divinity and mere animal traits.\textsuperscript{31} The possibility of

\begin{itemize}
\item \textsuperscript{25} See Abraham Lincoln, Speech at Springfield, Ill. (June 26, 1857), \textit{in} 2 \textit{Collected Works of Lincoln}, \textit{supra} note 1, at 409 ("Will springs from the two elements of moral sense and self-interest.").
\item \textsuperscript{26} See \textit{Plato}, \textit{Republic} bk. 1, 350c.
\item \textsuperscript{27} And we can thus appreciate, say, natural rights for the nobility it may contain. Modernity, as a creation of modern political philosophy seeking to create a new world on the basis of a lowest common denominator about how to think about man, is not simply low. We must learn to see beyond the leaden looks and discover the nobility of virtuous action on the part of men who enjoy their freedom and can defend it. See Joseph Cropsey, \textit{Political Philosophy and the Issues of Politics} (1977); Harry V. Jaffa, \textit{The Crisis of the House Divided} (1982); Leo Strauss, \textit{Natural Right and History} (1956).
\item \textsuperscript{28} See \textit{infra} text accompanying note 78 for discussion of George Washington's pride in America's religious toleration of Jews—required by our founding principles of natural rights.
\item \textsuperscript{29} Antonio's willingness to enter such a bond and what this says about his character and motivations cannot be overemphasized, as we will elaborate below, \textit{see infra} text accompanying notes 40-49.
\item \textsuperscript{30} See \textit{Aristotle}, \textit{Nicomachean Ethics} bks. 1-5. The noble or \textit{kalon} is emphasized as the object of moral or ethical virtue. For a Shakespearean character fixed on the noble, see Henry V; compare this character with Falstaff.
\item \textsuperscript{31} Harry V. Jaffa, \textit{How to Think About the American Revolution: A Bicentennial Cerebration} (1978). Jaffa continues to emphasize this theme in his later works. \textit{See} Harry V. Jaffa, \textit{American Conservatism and the American Founding} (1984).
\end{itemize}
noble action elevates the citizens of such a polity, reinforcing their loyalty to the regime and its principles. Thus the self-sacrifice of Washington and the martyrdom of Lincoln become an essential part of American political education. The best teachers of human equality and the democratic republican government that follows prove, ironically, to be god-like men. They must be contrasted with the false teachers of Venice, Antonio and especially Portia, whose beauty and wit mask serious flaws.

The Venetians are either tyrants or slaves. They cannot be merely human. The Venetians are unfit for republican citizenship, which requires self-government. They must be either gods or beasts, either tyrannizing or being ruled. The strong but warped souls of the play's main characters reflect Venice's liberalism, a liberalism which embodies the problem of modern nihilism: the collapse of law or reason into willfulness.

To facilitate what will strive to be a close reading of a few parts of the play, a brief summary may be helpful: Antonio, the world-weary merchant of Venice, lends a vast sum of money to a foolish young cousin, Bassanio, who wants to woo a wealthy heiress, Portia, in (fictitious) Belmont. With all his ships at sea, Antonio seeks a loan from Shylock, a Jewish moneylender whom he has insulted and assaulted in the past. A mischievous Shylock makes a bond with a pound of Antonio's flesh as surety. Regarding this as a "merry bond," Antonio gives the money to Bassanio, who then goes off to woo the woman he compares to the golden fleece and to Cato's daughter.\textsuperscript{32}

In the fictional city of Belmont, a world-weary Portia is bound by her dead father's will to marry the man who selects her image from three inscribed caskets of gold, silver, and lead. Despite the injunction that all who fail to choose properly are condemned to a life of chastity, suitors of all nations (including a Moroccan prince) arrive to woo her, and Portia is pleased to denounce them all in a stream of witty insults of their nationalities.

\textsuperscript{32} Portia thus recalls the sorceress Medea and ancient Rome. In the myth of the golden fleece, Jason and the Argonauts succeed in taking the legendary golden fleece (referring to Portia's blonde hair) through the aid of Medea, who falls in love with Jason. But Jason would prove to be unfaithful and Medea would work a terrible revenge, killing their children. \textit{See} Zuckert, \textit{supra} note 22. Cato was the preserver of republican Rome, who was, however, eventually defeated by Caesar. One of Cato's daughters was Portia, who marries Brutus, who leads the conspiracy against Caesar in Shakespeare's \textit{Julius Caesar}. Portia proves to be a more dedicated republican than Brutus: Following her father's example, she commits suicide when it becomes evident that the republican cause will fail; she imitates Lucretia. \textit{See infra} note 42.
Bassanio, with whom Portia had exchanged loving glances in a much earlier trip, arrives to crack the casket code (with her aid) and claim her image in the leaden casket. But Venetian messengers inform Bassanio of unhappy news: Antonio's ships have failed to come in, and now Shylock would have his bond. His daughter Jessica has fled with her Christian suitor, Lorenzo, and reports of their extravagant spending and bartering away of his late wife's jewelry turn Shylock into an utter monster. The two profligates also come to Belmont, with Jessica assuring Portia of her father's viciousness. Moreover, Shylock apparently has the law and the common good of Venice on his side, for any attempt to break the bond would result in a dishonoring of the Venetian ability to enforce contracts and hence to remain a prosperous center of commerce. Portia insists Bassanio leave immediately to rescue the man whom he now admits gave him the means to make the journey to woo her. (It must strike Portia that Bassanio was the fortune-hunter from which her late father attempted to protect her and that Antonio has an unnatural influence in their marriage.) Their marriage unconsummated, Bassanio immediately departs. Meanwhile, in Venice, Antonio concedes the rightness of Shylock's cause, given the economic costs to Venice of canceling the bond.

Portia and her companion Nerissa also go to Venice, but without their husbands' knowledge and appear as a lawyer and his assistant. The Duke of Venice welcomes them to the court. Portia at first grants Shylock his strict legal due, but just when he is about to take his pound of flesh, she intervenes, reminding the court of a law prohibiting an alien from threatening a citizen's life, and insisting that the pound of flesh contain no blood. A stunned Shylock accepts his legal defeat, but the Duke confiscates his property, apportioning half to his daughter and son-in-law, and Antonio demands his conversion to Christianity. As compensation, Portia successfully demands—with Antonio's support—Bassanio's wedding ring.

Once back at Belmont, the women cruelly toy with their husbands, and then admit their trickery. Urged on by Portia, Antonio pledges to be surety for Bassanio's faithfulness. She then informs him that his ships have indeed come in, thus giving the world-weary Antonio "life and living." Thus all the characters (except Shylock) attain their objects of desire. How then could this be a "tragedy," as Lincoln called it?

In fact, the parallels with the American antebellum situation are extraordinary. As one of the most popular plays of colonial
and antebellum days, the courtroom scene in *The Merchant of Venice* must have stunned audiences. Note Shylock’s defense of his taking a pound of flesh before the Duke and court:

What judgment shall I dread doing no wrong?
You have among you many a purchas’d slave,
Which (like your asses, and your dogs and mules)
You use in abject and in slavish parts,
Because you bought them,—shall I say to you,
Let them be free, marry them to your heirs?
Why sweat they under burthens? Let their beds
Be made as soft as yours, and let their palates
Be season’d with such viands? You will answer
"The slaves are ours,"—so do I answer you:
The pound of flesh, which I demand of him
Is dearly bought, 'tis mine and I will have it:
If you deny me, fie upon your law!
There is no force in the decrees of Venice:
I stand for judgment,—answer, shall I have it?  

Thus Shylock silences the Venetian court. The court cannot reply to defend the life of one of the city’s outstanding citizens. Shylock gives the same argument as Lincoln in his Peoria Address: “In our greedy chase to make profit of the negro, let us beware, lest we ‘cancel and tear to pieces’ even the white man’s charter of freedom.”  

Antonio’s charter of freedom, his right to life, was canceled and torn to pieces by Venice’s commitment to make profit of fellow human beings. The bond between him and Shylock proved to be self-destructive—for both characters.

Surprisingly, Antonio agrees with Shylock’s argument. Earlier, Antonio had declared:

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. . . .

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33. See Westfall, *supra* note 2, at 50-55.
34. *William Shakespeare, The Merchant of Venice* act 4, sc. 1, ll. 90-103 [hereinafter Merchant].
This use of "commodity" (convenience or benefit) reminds us of the bastard's famous speech denouncing commodity in Shakespeare's King John:

Commodity, the bias of the world—
   . . . this vile-drawing bias,
This sway of motion, this commodity
   . . . This bawd, this broker, this all-changing word
   . . . kings break faith upon commodity . . . ."\(^{37}\)

More broadly, a state of war exists within Venice, between slave-dealers and slaves, between citizen and alien, and presumably between citizen and citizen, despite the Christian overlay. Venice must destroy its best man, so that it may survive. To protect the trade and profit of the city, Venice must not injure the rights of an alien moneylender seeking justice.

As in Hobbes' state of nature, the only way for Venice to avoid a state of war and achieve the conditions of prosperity is to honor contracts. But even Hobbes' frightening covenants would not allow a contract to permit self-slaughter.\(^{38}\) Moreover, as Portia later discloses, Venetian positive law forbids a foreigner to contrive to kill a Venetian:

If it be proved against an alien,
That by direct, or indirect attempts
He seek the life of any citizen,
The party 'gainst the which he doth contrive,
Shall seize one half his goods, the other half
Comes to the privy coffer of the state,
And the offender's life lies in the mercy
Of the Duke only, 'gainst all other voice . . . ."\(^{39}\)

Let us be blunt: The infamous bond—when fully understood—unites a premeditated murderer and a would-be suicide, men who profess faith and then violate its fundamental tenets.\(^{40}\)

For all of Antonio's superficial good-heartedness and his vaunted reputation in Venice, and for all of Shylock's tragic depth, these are despicable men. Their flaws in turn bear on the tolerance

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37. William Shakespeare, King John act 2, sc. 1, ll. 574-98.
38. Thomas Hobbes, Leviathan ch. 21, para. 21 (Edwin Curley ed., 1994) ("For the right men have by nature to protect themselves, when none else can protect them, can by no covenant be relinquished.").
Christian states can have for those of different races and nationalities. *The Merchant of Venice* is thus far from an anti-Semitic screed, for it attacks both Shylock and Antonio as warped representatives of their faiths.

Antonio's monstrosity is borne out by a simple fact: If he had three months to pay off his debt, and he knew of his ships meeting with catastrophes, why did he not ask for a loan from some of his friends and thus pay off the bond? The bond should never have come due. Antonio need not have made himself a martyr for Venice's trading laws, in this caricature of Christian charity for the cause of a commercial republic. Antonio seeks literally to imitate Christ by expelling the money-changers from the temple of Venice. Antonio would also be a Lucretia for Venice: As Lucretia sought by her suicide to establish a republic, he would die to affirm Venice's commercial republic. As her death caused the Romans to expel the Tarquins, so might the Venetians be enraged enough to condemn Shylock. Antonio would appear to be a marvelous example of Machiavelli's critique of Christianity.

If Antonio is a caricature of Christianity, Shylock is a caricature of Judaism. He is convinced Venetian law is on his side. As a man of the law or Torah, a bond with him takes on sacred meaning. But Shylock's imitation of the Torah, in his pursuit of Venetian justice, is just as problematic as Antonio's attempted martyrdom. Shylock's belief in covenants, in conventions, allows him to posit the superiority of convention to nature.

Shylock does not appear to think himself swindled when Portia gives her explanation of why Shylock can take only Antonio's flesh and not his blood. Such a distinction strikes one

42. Lucretia committed suicide after resisting rape by the king, Tarquin. Roman outrage at the act caused them to expel the Tarquins and helped found the republic. See *William Shakespeare, Rape of Lucretia; John Alvis, Shakespeare's Understanding of Honor* 39-58 (1990); *Michael Platt, Rome and Romans According to Shakespeare* 1-40 (1983).
43. See *Machiavelli, supra* note 18, at bk. 2, ch. 2 ("Our religion . . . has then placed the highest good in humility, abjectness, and contempt of things human; the other placed it in greatness of spirit, strength of body, and all other things capable of making men very strong. And if our religion asks that you have strength in yourself, it wishes you to be capable more of suffering than of doing something strong. This mode of life thus seems to have rendered the world weak and given it in prey to criminal men . . . .").
44. See the path-breaking essay for understanding Shylock and Antonio, *Bloom, supra* note 22. Barbara Tovey expands on these themes and adds her own. Tovey, *supra* note 5. As any reader of these essays knows, I have drawn liberally on them.
as utterly sophistic, and one wonders why Shylock does not fly into a rage about it. Yet he merely moans "Is that the law?"45 The distinction between flesh and blood makes sense in the Leviticus insistence that blood be separated from meat.46 Did Shylock then plan to eat the pound of flesh? (He had failed to observe the Jewish dietary laws in going to Antonio's party—the night of his daughter's great treachery.)47 Recall his earlier declaration, that human flesh "be not as estimable as that of muttons, sheeps, or goats."48 This ultimate act of savagery would complete his brutalization, and reveal at the same time the need for a justice higher than contract. The justice of the gang of thieves is not sufficient.49

Shylock's spiritedness, his tragic dimensions, reflect his position as the only major character in the play who is a father (the other being the humiliated elder Gobbo). We can sympathize with him—how else do we understand the bullying he undergoes from the Venetians? Shylock may really believe he has in a sense converted his enemies to Judaism, as in the Bible the rapists of Dina—the daughter of Jacob (viz. Shylock) and Leah (the name of Shylock's late wife)50—were converted. In fact the brother Venetians will wreak revenge—as Shylock should have known. Leah's daughter's rape is an occasion for terrible revenge.51 Shylock's wealth and family are gone. He does not take the money, with which he might, say, win back the now broke Jessica. After being dispossessed by the Duke, he declares that his life is over:

Nay, take my life and all, pardon not that,—
You take my house, when you do take the prop
That doth sustain my house: you take my life
When you do take the means whereby I live.52

It is difficult to see who is more pathetic, Shylock in defeat or Antonio in triumph. The tragedy of the play is made all the

45. M erchant, supra note 34, at act 4, sc. 2, l. 309.
46. L eviticus 7:26-27 (King James) ("Whatsoever soul it be that eateth any manner of blood, even that soul shall be cut off from his people.").
47. M erchant, supra note 34, at act 2, sc. 5, l. 11-15.
48. Id. at act 1, sc. 3, l. 161. Later he says that the pound of flesh can be used "to bait fish withal." Id. at act 3, sc. 1, l. 47.
49. See St. Augustine, The C ity of God bk. 4, ch. 4; P lat o, Republic bk. 1, 351a-c.
50. Genesis 34. For the reference to Leah as Shylock's wife, see M erchant, supra note 34, at act 3, sc. 1, l. 111.
52. M erchant, supra note 34, at act 4, sc. 2, ll. 370-373.
more evident by envisioning a perfect, comic ending: Antonio and Shylock as business partners, with bachelor Antonio marrying Shylock’s daughter Jessica. Antonio and Shylock could have benefited each other, while promoting the prosperity of Venice. Self-interest and the common good would have been in harmony. This would have been a true bond between the two.

But the Venetian law is a false god, for both Shylock and Antonio. Shylock has rejected his Judaism by having converted to a faith in the Venetian law. (This was a preliminary step toward his forced conversion to Christianity.) And for Antonio, as we have seen, the law is a means for him to achieve the pagan aim of glory. The natural law (recall Aquinas’s objections to forced conversions53), or a law based on modern natural rights as applied by Washington, could have rescued him. But that natural law is unknown in Venice.

For all its glittering beauty, Venice is a golden casket containing a death’s-head. Venice forgets itself and would allow the barbaric slaughter of one of its best citizens. Venice is very much on trial here. Venice is brain-dead, as Portia exposes it.54 Why this act of legal and political amnesia?

Simply put, Venice lacks a soul; it is not a regime (politeia), in the Aristotelian sense. Hence it lacks citizens, who are defined by their participation in the offices of the regime. Venice is a mere agreement on trade—an absurdity, as Aristotle warned in the Politics.55 But this emphasis on acquisition only addresses the means of life, not its ends. What conception of human virtue and happiness defines the city? At the beginning of Book III of the Politics, Aristotle asks the question what is the city? It must be the regime, the soul of a city, which in turn produces citizens of a certain character. What does Venice produce? Its only family appears to produce a faithless (almost literally) daughter who marries and spends away her father’s patrimony. (And Jessica and Lozenzo are rewarded for their insolence. Belmont does not appear to punish their wickedness.)

Lacking a principled sense of purpose, Venice falls prey to those within it who possess the strongest passions—Antonio, Shylock, or a disguised Portia. Commodity rules, where law, as reason, should. The souls of Venice’s citizens reflect the rule of

53. ST. THOMAS AQUINAS, SUMMA THEOLOGICA pt. II-II., q. 10, art. 8 (1273).
54. Bassanio forgets about Antonio and the notorious bond. Likewise, Gobbo forgets his father. Antonio “forgets” about the reckoning day for his bond.
passion, that is, the opposite of being governed by law in its profoundest sense as the rule of reason. Shakespeare’s Venice is a despotism or tyranny precisely because it is in a sense liberal—that is, it protects a form of individual freedom, albeit perversely; a kind of Hobbesian liberalism prevails here. Venice is a kind of open city—though historically a mighty naval power, the Shakespearean city’s only foreign policy concern is trade. Thus its identity is defined by whatever parties assert their primacy. Of course justice is totally conventional, a condition producing the horrific consequences we see in the play.

But is not Portia, who rules her own city of Belmont, the alternative Shakespeare would have us applaud? Portia is often taken to be the obedient daughter who becomes a near-goddess (a lawyer, nonetheless) and then an obedient wife. But Portia might also be justifiably charged as being a racist. Kelly McGillis in her Shakespeare Theater performance of Portia could not utter Portia’s closing insult to the Prince of Morocco after failing his suit: “A gentle riddance,—draw the curtains, go,—/ Let all of his complexion choose me so.” Portia has a Moorish slave who is impregnated by young Gobbo in Act III, scene 5 which is often dropped from the play.) Does the ridicule of Morocco parallel her harshness toward Shylock?

Here we must take with great seriousness her name and its connection to the ancient world and the polis. Even in the modern world erotic preferences could not properly be construed as racist. (Racism, after all, is a twentieth century term.) Portia prefers her own—the rather silly but evidently handsome Bassanio. She represents some form of ancient political understanding—the Roman Republic versus the cosmopolitanism of the Roman Empire. Thus, her contempt for Morocco, and her love of Bassanio reflects the ancient city’s emphasis on the love of one’s own. How can this be defended in the modern world? In Christian nations such discriminations should be condemned.

56. This explains the relative absence of references to nature in this play. There are only five references, the same as the number to nation. By contrast there are twenty-four references to nature in Othello. Classical political philosophy’s emphasis on the soul (which is related to nature or the cosmos) contrasts with the modern self, which is shaped by its society. Portia has a soul, the other main characters selves. Consider here the contemporary communitarian focus not on the soul but rather on the socially defined self. See, e.g., CHARLES TAYLOR, SOURCES OF THE SELF: THE MAKING OF THE MODERN IDENTITY (1989). See also MICHAEL J. SANDEL, DEMOCRACY’S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC PHILOSOPHY (1996).

57. MERCHANT, supra note 34, at act 2, sc. 7, l. 78.

58. There is no entry for “racism” in the first edition of the Oxford English Dictionary.
But this Portia is not a Christian; she is a cult goddess, who brings diverse nationalities of wooers to her and then demands they remain chaste should they fail to choose her.99

And Portia certainly has attracted a cult of admirers throughout the centuries. Can such a production be a "tragedy"? Perhaps its emphasis on beauty and its teaching that "all that glisters is not gold" is what strikes us. The beauty that transcends appearance, the spiritual gold the play alludes to but never produces, is the kalon of classical political philosophy. Indeed, the first words between Portia and Nerissa remind us of Aristotle:

Portia: By my troth Nerissa, my little body is aweary of this great world.  
Nerissa: You would be (sweet madam), if your miseries were in the same abundance as your good fortunes are: and yet for aught I see, they are as sick that surfeit with too much, as they that starve with nothing; it is no mean happiness therefore to be seated in the mean,—superfluity comes sooner by white hairs, but competency lives longer.  
Portia: Good sentences, and well pronounc'd.  
Nerissa: They would be better if well followed.  
Portia: ... I can easier teach twenty what were good to be done, than be one of the twenty to follow mine own teaching: the brain may devise laws for the blood, but a hot temper leaps o'er a cold decree. . . .60

Nerissa's standard of Aristotelian moral virtue—the doctrine of the mean—cannot contain Portia's heroic virtues and vices. Moreover, the highest Aristotelian friendships—those between the virtuous, who make each other more virtuous—are lacking. Portia's opening lines foreshadow the absence of Aristotelian prudence in the play and thus the absence of the noble as a motive of action.

99. MERCHANT, supra note 34, at act 2, sc. 9, ll. 11-13. Portia's erotic triumph over Antonio anticipates Montesquieu's argument against Locke and other early moderns, with its emphasis on rights relating to property. See DIANA SCHAUB, EROTIC LIBERALISM: WOMEN AND REVOLUTION IN MONTESSQUIEU'S PERSIAN LETTERS (1995). But any Portian letters would be more like Montesquieu's PERSIAN LETTERS, which were really Parisian Letters—criticisms of Montesquieu's own society. Shakespeare points to the solution to Portia's problem through another strong-willed woman, the nun Isabella, in Measure for Measure: Marriage to a powerful ruler, a far better Duke than the one in Venice. There would arise families, which are missing in both dark comedies. After Portia leaves Venice, we have no reason to suppose it is any better. The comedy of Belmont simply reflects the tragedy of Venice.

60. MERCHANT, supra note 34, at act 1, sc. 2, ll. 1-19 (emphasis added).
But how does the noble help secure the rule of law and help us understand its relationship to race? Is not the Aristotelian or ancient standard of excellence (arete) and the best regime in political life antithetical to modern, American standards of natural rights and limited government? The key alliance to be made here is between the American founding principles and Aristotle. Washington could have been our king, thus subverting the cause of self-government. He is instead our classical Portia, our Cato, our ancient virtue. The character of Washington becomes intelligible from the perspective of Aristotle's *Nicomachean Ethics*, as the nature of American constitutionalism becomes clearer from his *Politics*. In addition to Locke's *Second Treatise*, modern republicanism is guided by the principles set forth in Book I of Aristotle's *Politics*. Politics must blend the types of love and tame them, or else the political community will be tyrannized by them—by eroticism, by commerce, by religion, by tribal or racial strife. The political must establish its own sphere, of a higher dignity above these other endeavors, however necessary or worthy. The rule of law (contrary to liberalism) cannot be dissolved into sub-political parts, without legitimizing all manner of factions. A public interest or common good—justice—must prevail. But justice requires the nobility of the virtues to accompany it. Such a nobility surpasses ordinary appearances. And such a splendor informs the highest friendships, which teach what the best political order might resemble.

The equality brought about by the rule of law is perfected by the friendships we see in many of Shakespeare's comedies other than *The Merchant of Venice*. We always knew that "all that glitters is not gold." But the noble or kalon of moral virtue is more than an illusion, or else we are reduced to being as radical conventionalists as the characters in the *Merchant*. "There is nothing good (I see) without respect." That is, all judgments of good and evil are subjective. But the same natural right that gives dig-

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61. HARRY V. JAFFA, *THE CONDITIONS OF FREEDOM* (1975). I have attempted to follow Professor Jaffa's treatment of the theory and practice of American politics throughout this essay. Part II is particularly reliant on his studies of Lincoln and the American Founding, supra notes 27, 31; infra note 76.

62. ARISTOTLE, *NICOMACHEAN ETHICS* bk. 9, chs. 7-8, 1167b16-1169b2. A friendship between Antonio and Shylock might have begun as a friendship of utility, and it could then have been refined into a friendship of goodness, where each friend reinforced the other's virtues. Friendship perfects justice. *Id.* at 1155a23-29.

63. Consider the matched lovers in *A Midsummer Night's Dream, A Comedy of Errors*, and *Much Ado About Nothing*.

64. MERCHANT, supra note 34, at act 5, sc. 1, l. 99.
nity even to foolish fops such as the Prince of Morocco, who asks not to be judged by his appearance and yet chooses a casket based solely on its golden appearance, makes us more tolerant, more willing to be governed by the rule of consent, even as we know that liberal democracies require the splendor of moral virtue, a beauty by nature, that exists in the souls of men and women.

II. THE SUPERFLUITY OF THE "COLORBLIND" CONSTITUTION

The world of The Merchant of Venice stands between the ancient republican world of virtue and honor and an emerging cosmopolitan modern world of freedom and commerce. The very name of Portia conveys ancient Rome, as the presence in Christian Venice of Shylock the Jewish banker reflects the imperial republic's cosmopolitanism. Antonio, the dull as lead title character of the play, represents the new Antony, the new hero of the modern age, the merchant. Each arouses wonder in the audience. Though regimes located in this twilight condition enjoy some aspects of the best of the ancient and modern worlds, they do not assume the best elements of each world, which the philosophers Aristotle and Locke emphasize in their work. Portia reminds us of the need for the beautiful or noble (*kalon*) in political life. Antonio and Shylock remind us of the relationship between property and freedom in political life. None of these characters understands what each lacks, but we see their flaws. This is the tragedy of Venice that Lincoln sees: The Venetians know the new freedom while knowing old duties. The modern struggle against tribalism or nationalism and for human equality reflects this same ambiguity. Should political life aim at what is noble or what is useful? Should men be devoted to their families or their careers—making money? Should women serve the men in their lives or should they try to be "independent"? The characters have both contradictory elements in their souls, and this gives what could be a grim play its charms.

To more fully comprehend what is lacking in the Venetian republic, we turn to two sources of republican thinking who are often contrasted—Aristotle and John Locke. Here the logic of John Locke in the *Second Treatise* parallels that of Aristotle in Book I of the *Politics*: both defend republicanism, ancient and modern. For Locke the logic leads to limited, constitutional government of a republican sort, rejecting the overweening monarchy of James II; for Aristotle the logic leads to a defense of political or republican rule and of political life, as opposed to

private or tyrannical life. The body, its pleasures and passions, and its immediately obvious traits—including race or nationality—are at the heart of tyranny, classically understood. The racialization of political life (by any race or class) is one sign of this tendency: a private passion is given free rein within public space. But how dare we use two philosophers (one a slaveholder, the other author of a constitution for the Carolinas that preserved a right to own slaves) to help us better understand American law in relation to race?

Political rule (the root of republican government) occurs among equals, who share in the duty of ruling and being ruled. Equal men occupy the space between beasts and gods. "Nature indeed wishes to make the bodies of free persons and slaves different as well [as their souls] . . . yet it is not as easy to see the beauty of the soul as it is that of the body." We see from this context that Aristotle's famous argument for slavery is in fact an argument for the rule of reason—which conventional slaves and women can share in as well as men. Slavery is as clear a violation of the standard of consent as any could be. Aristotle takes pains to distinguish between types of slaves, conventional and natural, and raises the question of the use of "natural" slaves. For Locke, slavery constitutes a state of war between men, as it robs men of the just fruits of their labors and authorizes men to use their executive powers to secure their freedom. As Locke warned, "where there is no law, there is no freedom." For both Locke and Aristotle, a notion of human equality prevented the rule of monarchs. Political life must reflect that original equality to assure its continued legitimacy.

The American consciousness regarding the relationship between natural rights and republican rule, and their basis in human equality can be seen from American sources even before their comprehensive articulation in the Declaration of Independence. American agitators such as James Otis used their experi-

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70. Locke, supra note 69, at 324.
ence of self-government, their knowledge of English law, and their study of political philosophy to come to the brink of independence.\textsuperscript{71} Otis summarized the obligations of God and nature on governments:

1. To govern by stated laws.
2. Those laws should have no other end ultimately, but the good of the people.
3. Taxes are not to be laid on the people, but by their consent in person, or by deputation.
4. Their whole power is not transferable.\textsuperscript{72}

A paragraph later Otis concluded that “the colonists, black and white, born here, are free born British subjects, and entitled to all the essential civil rights of such. . . .”\textsuperscript{73} There was certainly no immediate political necessity for Otis to include blacks in his argument, but their inclusion was inevitable, given the premises he adopted.

As the colonies used economic arguments for liberty, the new democratic republic would use its natural resources and trade in support of a new universal standard for judging nations. As Hamilton argues in \textit{Federalist} 11,

\begin{quote}
Under a vigorous national government, the natural strength and resources of the country, directed to a common interest, would baffle all the combinations of European jealousy to restrain our growth. . . . An active commerce, an extensive navigation, and a flourishing marine would then be the inevitable offspring of moral and physical necessity. We might defy the little arts of little politicians to controul, or vary, the irresistible and unchangeable course of nature.\textsuperscript{74}
\end{quote}

Commerce for America is but a means to greatness of a higher sort. And Hamilton gives a hint of what that greatness consists in, when he indicates that the topics are “not proper for a Newspaper discussion”—this from the most distinguished newspaper series ever written. Hamilton sees America liberating the world.

The world may politically, as well as geographically, be divided into four parts, each having a distinct set of interests. Unhappily for the other three, Europe by her arms and by her negociations, by force and by fraud, has, in different degrees, extended her domination over them all.

\textsuperscript{72} Id. at 30.
\textsuperscript{73} Id.
\textsuperscript{74} \textit{The Federalist} No. 11, \textit{supra} note 18, at 69 (Alexander Hamilton).
Africa, Asia, and America have successively felt her domination. The superiority, she has long maintained, has tempted her to plume herself as the Mistress of the World, and to consider the rest of mankind as created for her benefit. . . . Facts have too long supported these arrogant pretensions of the European. It belongs to us to vindicate the honor of the human race, and to teach that assuming brother moderation. Union will enable us to do it. Disunion will add another victim to his triumphs.  

Establishing the American republic—with its world-wide ideals—would require a powerful government. A vital and far-flung commercial republic would supply the means for the body to flourish. But commerce served a higher end.

Proponents of American constitutionalism certainly knew both its dependence in right on the common humanity of all peoples and its obligation to the entire human race. The founding proposition of human equality would inform all the axioms of American constitutionalism: liberty, government by consent, representation, and the separation of powers. For example, the Massachusetts Bill of Rights concludes with a plea for the separation of powers "to the end it may be a government of laws, and not of men." Arbitrary power or tyranny is the great enemy; self-government under limited government the great goal. With its basis in the natural rights of individuals, American constitutionalism rejects class and caste categories. Class rule is at odds with American democracy. The Founders feared religious, not racial warfare. The rejection of religious ruling classes is made most eloquently in George Washington's letter to the Newport Synagogue:

It is now no more that toleration is spoken of as if it were the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights, for, happily, the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens in giving it on all occasions their effectual support.

75. Id. at 72-73.
This is not some flaccid pluralism, but a commitment to freedom as the source of diversity. With a mutual devotion to natural rights, sects can tolerate others.

Natural rights generate a rule of law and a rule of reason, which reinforce one another. In _Federalist_ No. 49, Madison contended: "[I]t is the reason, alone, of the public that ought to control and regulate the government." Reason—even the reason of the public—is something beyond anyone's passion (and body) and incidentally beyond one's race. Jefferson himself expressed this succinctly in his First Inaugural Address: "the will of the majority is in all cases to prevail, that will to be rightful must be reasonable. . . ." The extension of this rule of reason within the law was seen by Aristotle in Book V of the _Ethics_. "We do not allow a man to rule, but rather reason (logos)." And reason is in its essence color-blind.

As it seeks to construct a limited government, republican government must focus on citizens (as Aristotle's _Politics_ advises), and not classes—religious, ethnic or racial. In this view, race is irrelevant to citizen rights—the Constitution, incidentally, being color-blind—because factionalism of all sorts (whether of sectarians, the military, slaveholders, or nationalistic groups) is subversive of political rule. Thus Justice Harlan in his famous "color-blind Constitution" dissent could call on the Guarantee Clause to oppose racially discriminatory laws. The guarantee of republican government to the states obligated the federal government to eliminate slavery and the racial divisions it incited.

An emphasis on property rights can be a means to meliorate ethnic division. As a striking example of the logic of natural rights as a defense of property, note Lincoln's epitome of the meaning of equality: "In some respects [a black woman] certainly is not my equal; but in her natural right to eat the bread she earns with her own hands without asking leave of any one else, she is my equal, and the equal of all others." (The race-baiting

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79. _The Federalist_ No. 49, supra note 18, at 343 (James Madison).
81. Aristotle, _Nicomachean Ethics_ 1134a33 (author’s translation).
82. Aristotle, _Politics_, supra note 55, at bk. 3.
Douglas accusing Lincoln of favoring miscegenation must be kept in mind.) Thus the Lockean right of property makes equals of a white man and a black woman. And there are more rights which proceed from the right of property. Recall James Madison's summary of property rights: "As a man is said to have a right in his property, he may be equally said to have a property in his rights."85

Lincoln asked plaintively whether the "plainest print" of the Declaration of Independence could be read through a golden eagle coin, whether the Declaration's commandments would be tossed aside by the desire for slaves and the wealth they would bring.86 Would America use racial differences as a means of distorting the meaning of its founding proposition of human equality—the basis for its legitimacy? For Lincoln, America had a world-mission which involved rejecting its past as it embraced its founding principle. In affirming the truth of human equality, the Founders meant simply to declare the right, so that the enforcement of it might follow as fast as circumstances should permit. They meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere.87

The American mission roots us, however, in the rule of law. Thus Lincoln argued, against Douglas, that he was not, nor had he "ever been in favor of bringing about in any way the social and political equality of the white and black races . . . [nor] that I am not nor ever have been in favor of making voters or jurors of Negroes, nor of qualifying them to hold office, nor to intermarry with white people."88 Of course, he says nothing here about what he might say in the future, when most blacks are no longer slaves.

87. Id. at 406.
The unhappy situation Lincoln had to deal with was an Illinois that had passed a law prohibiting the entry of free blacks. To establish an anti-slavery coalition Lincoln had to appeal to whites who objected to the presence of any blacks whatsoever. Hence he was willing, to preserve the principle of consent, to take stands that would justifiably label anyone today a racist.

Thus not even Abraham Lincoln would argue that freeing someone from slavery would automatically grant him all rights of citizenship. These must be given through a process involving the consent of the governed. This is the point where racial and ethnic divisions have plagued American democracy. The very ideal of equality that requires government by consent can also halt radical reforms and seemingly permit the triumph of irrationality: Fellow citizens must persuade sufficient numbers of the correctness of their views. Hence reason must acquire political force. This is the duty of prudent statesmen, who have the happiness of their political community in mind.

In the American polity, the constitutional sign of this persuasion is the Fourteenth Amendment (as the great political sign was the Civil War); the Privileges and Immunities, Due Process, and Equal Protection Clauses complete the regime founded on the principle that all men are created equal. More recently the Civil Rights Act of 1964—passed after a lengthy filibuster—furthers and deepens a consensus that civil rights as well as basic natural rights demand equal protection. Non-democratic amendments to and interpretations of the Act have contributed to the exacerbation of race relations, as the means of giving consent, Congress, has declined to exercise its powers or been bypassed. Controversial court decisions are one means of Congress declining responsibility. Congressional passivity toward bureaucratic rule-making and implementation is another. The Civil Rights Act of 1991 may appear to be the major exception, but it too is vague in what it demands. The deference of Congress to the

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89. DON E. FEHRENBACKER, THE DRED SCOTT CASE 63, 190 (1978); DON E. FEHRENBACKER, LINCOLN IN TEXT AND CONTEXT 104 (1987) ("[Lincoln] based his antislavery philosophy squarely upon perception of the slave as a person, not as a Negro.").

90. For a fascinating study of how nineteenth-century Chinese immigrants used their constitutional, treaty, and legal rights, see CHARLES J. MCCLAIN, IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA (1994).


non-elected parts of government has resulted in exacerbated race relations, with controversies over affirmative action, racial set-asides, race-norming, busing and other practices that emphasize racial difference and promote the idea of a generalized white guilt. For anxious whites, the new equality seemed to mean getting even with innocent bystanders. For blacks, who had seen every ideal of American politics used to deny them or other minorities the opportunities of liberty, it seemed perfectly legitimate to use state power to rectify the disadvantages brought about by group denigration. Group identifications hardened, as "individual rights" became a codeword for indifference to racial discrimination, and consent decrees replaced government by consent. Despite the extraordinary progress in eliminating racial discrimination, we sense a hardening of attitudes and a sense of exasperation. And the natural rights basis for the polity faded from sight and mind.

Is it futile to think that George Washington's thinking, grounded as it was in natural rights and Christian faith, might bring about a more profound reflection on race? We should never allow current pessimism to obscure history. Early in the American Revolution, Washington had the popular tragedy Cato, written by Joseph Addison in 1713, performed for his troops at Valley Forge. In it, we see the selfless duty of Cato, as he unsuccessfully sought to rally his republican forces against the grasping Julius Caesar. But we also see Cato gladly award his daughter,

94. See Adarand Constructors, Inc. v. Pena, 115 S. Ct. 2097, 2119 (1995) (Thomas, J., concurring); Missouri v. Jenkins, 115 S. Ct. 2038, 2061 (1995) (Thomas, J., concurring); Adarand, 115 S. Ct. at 2119 (Scalia, J., concurring) ("In the eyes of the government, we are just one race here. It is American.").
95. For discussions of this view, see Shelby Steele, The Content of Our Character (1990); Glenn C. Loury, One by One from the Inside Out (1995).
97. Abraham Lincoln, Speech at Peoria, Ill. (June 26, 1857), in 2 Collected Works of Lincoln, supra note 1, at 404. Lincoln notes the fading of natural right in this speech criticizing the Dred Scott decision: "All the powers of the earth seem rapidly combining against [the Negro]. Mammon is after him; ambition follows, and philosophy follows, and the Theology of the day is fast joining the cry." See Harvey C. Mansfield, Jr., America's Constitutional Soul (1991); Ken Masugi, Natural Right and Oversight: The Use and Abuse of Natural Law in the Clarence Thomas Hearings, 9 Pol. Comm. 231 (1992).
Marcia, to his leading warrior, Juba, a “tawny” prince of Numidia, to the west of Carthage:98

Juba: I blush, and am confounded to appear
Before thy presence, Cato.
Cato: What’s thy crime?
Juba: I’m a Numidian.
Cato: And a brave one, too. Thou has a Roman soul.99

Contrast Cato and his daughter with Portia. Marcia loves Cato’s greatest warrior, who has a “Roman soul,” while Portia loves the silly Bassanio. The ridiculed and rejected Morocco appears to be a man of some integrity, at least.

The American Founders were quite aware of the implications of the loss of the ancient city and the Roman Republic of Cato. The new American republic, an Empire of Liberty, as Jefferson styled it, would have different citizens and families than the ancient city. And with Christianity how could it not?100 Whether a now older regime will continue to draw its moral and intellectual sustenance from Western Civilization, from Shakespeare and from Locke and Aristotle, as well as from Washington and Lincoln, still remains an open question. Nonetheless, the opportunity exists for us citizens to know their theory and engage in their practice. It is only with the aid of such resources that we can look beyond race and nationality to the excellence that gives our regime its character. It is not the case that only the best regime can save us from ourselves. The popularity of plays such as Cato and The Merchant of Venice and the once-standard view of Washington and Lincoln as heroes indicate that their teaching remains within the reach of a wide public. But demagogues may also command an audience. And so the liberal arts—those disci-

99. Id. at act 4, sc. 1. One must grant the ambiguity of Cato’s dying lines:

Juba loves thee, Marcia—
A senator of Rome, while Rome survived,
Would not have matched his daughter with a king—
But Caesar’s arms have thrown down all distinctions—

But any ambiguity here rests on Juba being a prince, not on his different ethnicity.
plines teaching the right and duty of living as free citizens—continue their struggle.¹⁰¹

¹⁰¹. See Leo Strauss, Liberalism Ancient and Modern 3-25 (1968). One can scarcely exaggerate the political implications of eliminating Shakespeare requirements at various universities.