

## THE DEVIL'S ADVOCATE: GOETHE'S MEPHISTOPHELES AS LAWYER

“It is not that the devil is the lawyer... it is rather that his characteristics strikingly resemble those that are attributed to the breed.”

*- W Wolfgang Holdheim*

**Catherine Harwood**

**300071769**

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## ***I INTRODUCTION***

Johann Wolfgang Von Goethe has been referred to as “the supreme genius of modern German literature”,<sup>1</sup> and is perhaps most famous in the West for his tragic play *Faust*. One translator of *Faust*, David Constantine, referred to the dialogue between protagonist Faust and his fiendish companion Mephistopheles as “the struggle in one mind between scepticism and idealism.”<sup>2</sup>

This paper will examine how the author, also trained as a lawyer, explored tensions in the ideals and reality of law throughout *Faust*. The themes, plotlines and characterisations will be considered through the lens of jurisprudential critique, with particular examinations into the role of the law as an institution and instrument, and Goethe’s portrayal of the lawyer.

## ***II A BRIEF BIOGRAPHY***

Goethe was born in Frankfurt in 1749, in a time of great social upheaval in Germany. The 1700s were a technologically and politically shifting age, with Enlightenment ideals of humanism, intellectualism and secularism pervading traditional thought. The French Revolution drew a dividing line between the previous feudal order and modern democratic ideals.

Goethe trained as a lawyer, and later devoted his time to writing, poetry and other forms of intellectual inquiry, completing many works of literature. His epic *Faust* was written over the period 1773 – 1831, with the first part of *Faust* only performed in 1829

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<sup>1</sup> Johann Wolfgang Von Goethe *Faust Part One* Nicholas Boyle (ed) (Cambridge University Press, Cambridge, 1987) p 1.

<sup>2</sup> Johann Wolfgang Von Goethe *Faust Part I* (1808) David Constantine (ed & trans) (Penguin Books Ltd, London, 2005) (hereafter, *Faust*).

to celebrate Goethe's 80<sup>th</sup> birthday.<sup>3</sup> He died in 1832, and *Faust Part II* was published a year after his death.

### ***III GOETHE'S CONTACT WITH THE LAW***

Goethe grew up in a lawyer's home. His father was a lawyer, and so Goethe followed in his parent's footsteps by also deciding law to be his profession. He completed legal training at Strasbourg in Roman law, which was then the legal system in the area. This involved studying monumental texts of laws and the memorisation of rules for practical use.<sup>4</sup> It was at this time that Goethe became disillusioned in the law. He discovered that he had to master a "juristic catechism"<sup>5</sup> with no evaluation, discussion or appeal to reason. Law was a service to clients, not an academic pursuit, and was not therefore a suitable outlet for debate or intellectual challenge. Termed by one biographer as rote learning of "insultingly arbitrary black-letter rules", the study of law had the effect of a "frigid shower"<sup>6</sup> upon Goethe's young mind. This disillusionment with formalistic, outcome-centred study meant that "he was never again to be infected with the fever of the law."<sup>7</sup>

Goethe however did not end his legal career at that stage. He practiced for a time and became a privy councillor at the court of the Duke of Weimar, a role which lasted ten years. This involved attending sessions of the imperial court of appeals, which Goethe observed did not effect justice in individual cases due to disinterest from the empire in

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<sup>3</sup> A full timeline of this work can be located in the preface of Johann Wolfgang Von Goethe, above n 1.

<sup>4</sup> Orrin K McMurray "Changing Conceptions of Law and Legal Institutions" (1915) 6 California Law Review no 6 441, 441.

<sup>5</sup> Edmond N Cahn "Goethe's View of Law – With a Gloss out of Plato" (1949) 49 Columbia Law Review no 7 904, 906.

<sup>6</sup> Ibid, p 906.

<sup>7</sup> Ibid.

enforcing private rights and the extensive delays which occurred at the Court.<sup>8</sup> His role was apparently largely social, and no record of any legal activity was made in his diaries during this time.<sup>9</sup> After Goethe ended his appointment at the Court, writing became his profession.

Goethe lived during an age of legal transformation. During his life Napoleonic reforms took place across Europe, including in the Germanic states. Goethe was thus exposed to two very different kinds of law; the relatively stable feudal order of the Holy Roman Empire which he had studied under and the Napoleonic codification of the law. These two diverse legal systems must have influenced Goethe's view of the law.

### **III THE CRITIQUE OF LAW IN FAUST**

#### **A The law as institution**

Goethe's views of the purpose and role of the law permeate his *Faust*. Law extends to all realms of the cosmos, regulating and defining all encounters between characters in the play. For instance, the devil Mephistopheles (hereafter 'Mephisto') is bound by certain rules: "It is a law on devils and ghosts that where / they slipped in there they must slip out"<sup>10</sup> and leads Faust to question "So even hell is a regulated state? That pleases me. A man might enter into a pact with you and yours in some security?"<sup>11</sup> Law goes beyond the mortal realm into heaven and hell; it is inescapable and eternal. The law is therefore presented as a total institution, defining relationships first between God and Mephisto<sup>12</sup> and secondly between Mephisto and Faust.<sup>13</sup> The latter encompasses the

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<sup>8</sup> Johann Wolfgang Von Goethe *The Autobiography of Johann Wolfgang Von Goethe* (John Oxenford trans, 1974) p 149 in Michael H Hoffheimer "Law and Legal Education as a Hotbed for the Novel: The Case of Goethe" (1998) 44 Wayne L Rev 1, 9.

<sup>9</sup> Ibid, p 9.

<sup>10</sup> *Faust* lines 1410-1411.

<sup>11</sup> Ibid, lines 1413-1415.

<sup>12</sup> Ibid, lines 312-321.

remainder of the play. This makes all characters part of a wager – even almighty God. The characters are instruments or objects of the pacts rather than subjects in themselves, with law defining their positions and influencing their actions. The law can be seen therefore to fetishise persons as legal objects.

Goethe does not consider law to be a satisfying intellectual pursuit, as evident from Faust in the first scene appearing disillusioned with all the study he has undertaken thus far, which includes law. Faust does not see that any of his learning can “mend the minds and manners of humankind”,<sup>14</sup> inferring that knowledge should have this as its goal. He decides to “quit the wordy trade”<sup>15</sup> early on in the play due to its lack of enlightenment – rather like Goethe did in his professional life. Perhaps Goethe saw the state of Faust in his old age as that which could have been his own: “And these high walls here closing in on me / Their hundred sorted subjects, is that not dust? / All dust, the junk, the thousand kinds of vanity / In a world of moths by which I am oppressed?”<sup>16</sup> The metaphors of dust and moths for death reveal Goethe’s revulsion for purposeless learning, some of which he experienced firsthand when training in law. This is also evident in Faust’s rejection of the “word” as the beginning of all things in the New Testament, substituting instead “deed”.<sup>17</sup> Law therefore is not part of the quest for ‘truth’.

Law is dealt with harshly by Goethe speaking through Mephisto, in his summary of it as “an eternal malady”<sup>18</sup> where laws and rights are perpetuated even when they become nonsense. Their essence is not rationality; laws endure, crawling “from

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<sup>13</sup> *Faust* line 1697.

<sup>14</sup> *Ibid*, lines 372-373.

<sup>15</sup> *Ibid*, line 385.

<sup>16</sup> *Ibid*, lines 656-660.

<sup>17</sup> *Ibid*, lines 1223-1237.

<sup>18</sup> *Ibid* line 1972.

generation to generation.”<sup>19</sup> People are constrained and alienated, and there is a gap between law and justice. This lack of connection is illustrated through the story of Gretchen in *Faust*. Gretchen meets the condemnation of the law for killing her infant even though she was seduced and then left unmarried and deserted by Faust, who faces no consequences for his actions. The plot for this is thought to be based on the case of Susanna Margaretha Brandt who was beheaded for infanticide in 1772. She was from Goethe’s home town of Frankfurt, and so is likely to have influenced the character and fate of Gretchen. This could have also been influenced by the lack of justice Goethe saw being exercised at the court of the Duke of Weimar; there, the law was rather detached from common ideas of fairness.

This is a pertinent social commentary on law; however Goethe does not suggest that there is any alternative to the events as they unfold. It seems that he was resigned to the fact that the law could not be changed and that it had to be endured, rather than reformed. This is shown in the dialogue between Faust and Mephisto, when Faust learns about Gretchen’s fate. Faust, in despair, exclaims that Gretchen is “given over to evil demons and unfeeling human beings,”<sup>20</sup> alluding to the condemnation of Gretchen by the merciless public under the validation of law. Mephisto retorts “She’s not the first.” This quick – and callously true – rejoinder is detested by Faust, who is blinded by his personal connection to what would otherwise be an everyday and unnoticed event. This reaction is also mirrored in the scene between Gretchen and Lieschen, who is gossiping about an unmarried woman who has fallen pregnant. Gretchen’s newfound sympathy for the woman is scorned by Lieschen, who expresses that she is looking forward to publicly shaming her.<sup>21</sup> Unjust law – and unquestioning adherence to it – is shown to punish without acknowledging social realities, and therefore does not reflect justice.

Law is also explored in terms of the tension between its character as a formulaic structure and its powerful effect on human relationships. The pact between Mephisto and

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<sup>19</sup> *Faust* line 1973.

<sup>20</sup> *Ibid*, Black Day Field scene.

<sup>21</sup> *Ibid* line 3576.

Faust is orchestrated through a written contract signed in blood, “a quite particular juice.”<sup>22</sup> Mephisto insists that the wager must be executed according to strict procedure, the “old rigmarole and ceremony”,<sup>23</sup> while Faust is impatient to agree to the spirit of the pact without regard to form. This difference can be viewed as adherence to ‘black letter law’ that Goethe was trained in and found wanting, and a more modern purposive treatment. An alternative contrast can be seen in the character Faust as idealist, with his promises counting as a guarantee, and Mephisto as realist, insisting on concrete proof of the agreement.<sup>24</sup> There is an intersection here between words and practical consequences, and it is noteworthy that Mephisto – a supernatural being – must still use legal apparatus to bind Faust. This links back to the view of law as an omnipresent force that must be complied with.

### ***B The law as instrument***

The use of the law as a tool is derided by Goethe first in the Prologue in Heaven, where Mephisto scorns the way humans use rationality for their own ends; “He calls it reason and uses it / To be more bestial than any beast.”<sup>25</sup> Later, Mephisto explains to a student that the words are useful for manipulation. Words, says Mephisto, are “eminently believable, / Not one jot of a word can be abated.”<sup>26</sup> He advises the student to “stick – all in all – to words”<sup>27</sup> in order to be successful. As the law entirely consists of words, it is a natural consequence that the law can be a tool of manipulation.

This theme continues early in the play. Faust is emotional, turbulent, impatient and driven by an insatiable urge for knowledge as a way to achieve spiritual satisfaction.

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<sup>22</sup> *Faust*, line 1740.

<sup>23</sup> David Constantine ‘Introduction’ in Johann Wolfgang Von Goethe *Faust Part I*, above n 2, p xxxiii.

<sup>24</sup> Jane K Brown *Goethe’s Faust The German Tragedy* (Cornell University Press, London, 1986) p 68.

<sup>25</sup> *Faust* lines 285-286.

<sup>26</sup> *Ibid*, lines 1999-2000.

<sup>27</sup> *Ibid*, line 1990.

The character Wagner, conversely, is a barren scholar, sober and rational with an emphasis on pedantry and rhetoric, driven by material ends. He sees knowledge not as for the benefit of human kind, but for particular, material goals. When he first enters the scene, he remarks that Greek tragedy is worth pursuing “For nowadays it opens many a door.”<sup>28</sup> Likewise, law is another route to material gain rather than intellectual enlightenment. Faust himself, although expressly rejecting the use of knowledge for worldly ends, uses the law in his wager with Mephisto to gain selfish pleasures of the flesh.

The use of the law to gain wealth and power is highlighted by the comparison *Goethe* draws with institutionalised religion. The analogy was drawn out by Orrin McMurray:<sup>29</sup>

A theory of law which regards it[self] as a sort of semi-inspired revelation contained in certain sacred books and not to be found outside of the covers of these books, which rejects reason and common sense in a blind worship of authority... must fail of respect.

This ‘blind worship’ is derided by Goethe in the speech by Mephisto about the Holy Trinity that “total nonsense mystifies / Alike the foolish and the wise.”<sup>30</sup> While this is primarily about religion, it relates also to law in the later lines “and people hearing words mostly suppose / There must be thinking going on as well.”<sup>31</sup> The law is seen as equally mystifying, with the lawyer using words to confuse so that people do not question its authority.<sup>32</sup> Goethe also hints that the presentation of law as unquestionable aids the powerful. Mephisto, scorning the Church for taking land and money,<sup>33</sup> is answered by

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<sup>28</sup> *Faust* line 525.

<sup>29</sup> McMurray, above n 4, 442.

<sup>30</sup> *Faust*, lines 2557-2559.

<sup>31</sup> *Ibid*, lines 2565-2566.

<sup>32</sup> W Wolfgang Holdheim “Review: The Ways of Mephistopheles” (1989) 1 *Cardozo Studies in Law and Literature* no 2 211, 214.

<sup>33</sup> *Faust* lines 2835-2840.



Faust “It is a very common game / Jews and kings do the same.”<sup>34</sup> Thus secular means of attaining wealth and power – that is, through law – are equally corrupt.

### *C The Devil as the Lawyer*

Mephisto can be viewed as the archetypal lawyer, being a charming sophist with little moral direction. In acting directions for the play, Goethe reportedly coached the actor who played Mephisto to appear as an “elegant, worldly baron” rather than a monster.<sup>35</sup> Thus Mephisto is an ambiguous lovable rogue, rather than a simplistic malevolence. While it is Faust who offers the wager regarding his happiness, the protagonist also moves to protect himself, asking “And what’s the quid pro quo?”<sup>36</sup> before finalising the deal. When Mephisto attempts to brush this off, Faust remarks “No, no, the devil is an egoist / Not likely gratis, for rewards in heaven, to do / A thing in anyone else’s interest.”<sup>37</sup> Faust’s wariness of Mephisto and his summary of him as “a liar, a sophist”<sup>38</sup> are strikingly familiar to the view many people hold of the motivations of lawyers. While useful in achieving the client’s aims, lawyers are also perceived as needing to be scrutinised as to why they are willing to help, for nothing comes for free.

The lawyer has been described as one who “sees man in all his weakness and imperfection, but since he has no compensatory consolations, this leads him to disillusionment, cynicism and contempt.”<sup>39</sup> A study completed by Professor Martin Seligman, Fox Professor of Leadership at the University of Pennsylvania found that out

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<sup>34</sup> Ibid, lines 2841-2482.

<sup>35</sup> Brown, above n 24, p 75.

<sup>36</sup> *Faust*, line 1649.

<sup>37</sup> Ibid, lines 1651-1653.

<sup>38</sup> Ibid, line 3050.

<sup>39</sup> Holdheim, above n 31, p 214.

of 104 careers, lawyers predictably score the highest in pessimism.<sup>40</sup> In Caliper Personality Profile testing, the average score on scepticism is 50 but lawyers average a score of 90.<sup>41</sup> This is certainly true of Mephisto, who at times displays scornful condescension at human behaviour. He likens himself to a cat and humans as mice with which he toys.<sup>42</sup> He steps away from his charming personality and becomes quite sinister and unsettlingly astute in his observation of Faust's hypocrisy that "Chaste ears must never hear about / Things chaste hearts cannot do without,"<sup>43</sup> and is similarly unmoved when Gretchen is condemned. He is also exceedingly pessimistic regarding the ability of people to improve themselves, instead believing that no matter how one tries to change, one's true character will always prevail: "You are in the end the thing you are."<sup>44</sup>

Mephisto is the neutral tool by which consequences occur, but takes no responsibility for them or holds personal values as to what should be done. The lack of liability is similar to the 'hired gun' metaphor of the lawyer, who enables but does not take responsibility for what occurs. This is seen in the fight between Faust and Valentin, where Mephisto prevents Valentin from being able to retaliate, and so enables his death.<sup>45</sup> The only time in the play that Mephisto shows the audience that he has some kind of personal opinion of the events is when he responds to Faust that "Nothing disgusts me more than a devil in despair." He is unmoved when Faust laments the consequences of his actions and exclaims "did we force ourselves on you or you on us? ... Who thrust her into ruin, you or me?"<sup>46</sup> thereby pinning the blame on the one who wishes the acts, rather

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<sup>40</sup> Stephanie West Allen "The Profession of Half-Empty Glasses: The Unique Personalities of Lawyers and an Antidote" (15 January 2007) <[westallen.typepad.com/idealawg/2007/01/halfempty\\_glass.html#more](http://westallen.typepad.com/idealawg/2007/01/halfempty_glass.html#more)> last accessed 19 April 2007.

<sup>41</sup> Ibid.

<sup>42</sup> "Like any cat, I like my mice alive." *Faust*, line 322.

<sup>43</sup> *Faust*, lines 3294- 3299.

<sup>44</sup> Ibid, line 1806.

<sup>45</sup> Ibid, line 3711.

<sup>46</sup> Ibid, Black Day Field scene.

than he who executes them. As a natural consequence of the lawyer taking no responsibility, evil events are shown to occur.

It is Faust himself who reveals the ugly nature of law when he is able to sell his soul to the devil. He has no concern regarding the consequences of his agreement; “over there [heaven and hell] is small concern of mine.”<sup>47</sup> This could be due to his eagerness to partake in worldly pleasures or casual disregard of them as disappointing; however, whatever Faust’s motivations, for Mephisto they are irrelevant.<sup>48</sup> In a world where law reflects justice, the lawyer would not be able to facilitate such a deal. There is thus tension here between the ideal role of the lawyer and practical reality.

#### ***IV CONCLUSIONS***

*Faust* can be read in a myriad of ways, one of which is as a critique of the law. Goethe presents law as an imperfect human institution, as a system vulnerable to plays for power and as a body containing servants who are charming, yet inhumane, dispassionate and pessimistic. There is a tension throughout the play between what the law should idealistically be, and a reflection on what it is in actuality. Goethe presents Faust as the idealist searching for truth, yet blindly using the law for his own selfish ends, and Mephisto as the sceptic who does not shy away from the ugly reality and consequences of his earthly companion’s wishes. Goethe’s own experiences and disillusionment in the law permeates through the work clearly with a rejection of law as a route to intellectual stimulation or insight. *Faust* shows law to be a tool and institution which merely enables despair; the real tragedy is the lack of connection between law and justice.

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<sup>47</sup> Ibid, line 1660.

<sup>48</sup> John R Williams *Goethe’s Faust* (Allen & Unwin Inc, London, 1987) p 88.

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