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LUDOVICO ISOLDO

“Bartleby, the Scrivener”: An *excusatio non petita* in the “Court of Conscience”

*Consciousness of an internal court in man
(before which his thoughts accuse or excuse one another) is conscience.
(Immanuel Kant, The Metaphysics of Morals)*

*Adler and Taylor came into my room...
We had an extraordinary time & did not break up till after two in the morning...
We talked metaphysics continually, & Hegel, Schlegel, Kant, &c
were discussed under the influence of whiskey.
(Herman Melville, Journal, 1849-1850)*

From the very first pages of the lawyer’s narrative in Herman Melville’s “Bartleby, the Scrivener” (1853), his setting out the facts, one cannot fail to sense the presence of a sort of *excusatio non petita*. It is as if he were seeking, *a priori*, to justify his behavior toward his former employee. The attorney, who by the nature of his office had never pleaded a case, finds himself in the paradoxical position of taking on his own defense, as Thomas Dilworth has noted (50), and he does so by appealing, to use Kant’s expression, to “the court of conscience” (*The Metaphysics of Morals* 27). However, in doing so, with his irrepressible need to rehash his past without ever being able to come to terms with it, he gives the reader the feeling that he is seeking refuge, self-redemption, even though he never actually manages to find some peace of mind. In other words, it is as if he would like to purify himself, lighten his sense of guilt, blunting the pricks of his restless conscience.¹ His testimony arises out of an inner unease and, together with an understandable need to defend himself, a sincere spiritual suffering. It is as if the attorney, strangely enough, felt himself to be

“under investigation,” increasingly convinced that an inscrutable design of Providence had assigned the scrivener to test his moral integrity, which he in his advanced age cherishes and, with some difficulty, is determined to defend tenaciously. Following this lead, the present essay seeks to read “Bartleby” in the light of Kantian ethics and its categories, which Melville was familiar with,² convinced as we are that the tale is built around questions of moral judgment and on the fulfillment of moral obligations. Basically the ethical dimension of the tale consists in a conflict between “*jus* and *lex*,” i.e., the juridical norm and moral law, which in fact is a salient part of Kantian ethics.³ Appealing to “the court of conscience,” with his “defensive memorial,” his meticulously prepared self-justification, the attorney, with doubtful legitimacy, sets himself before the reader as an interested ethical interpreter of his brief, troubling encounter with Bartleby.⁴ Consequently, he of course reports his experience from his own point of view, with many highly self-referential meta-narrative reflections,⁵ aimed at strengthening the trustworthiness of his testimony, but above all at signaling his concern to present himself to his reader with a high ethical profile. This aim is reinforced rather than gainsaid by his occasional pathetic, opportunistic self-criticisms, suspended between *ethos* and *pathos*.

This subtle, persuasive, and at times rhetorical strategy is propped up with consensus-seeking sophisms, and supported by a *captatio benevolentiae* and hence by a never explicitly formulated request by the author for the reader’s solidarity. In other words, he asks the reader to empathize with his discomfort⁶ and his sense of frustration at having to deal with his scrivener’s disconcerting emotional indifference, his robot-like otherness.⁷ The lawyer also likes to present himself as a man obsessed by the fear of making a mistake, who interrogates his conscience ceaselessly, one who, before taking any action towards his eccentric employee, scrupulously weighs the emotional impact it might have upon him, as well as its compatibility with his own religious principles and, finally, the ethical legitimacy of his behavior, never fully convinced that his course of action is right. This is why every time he screws up his resolve to free himself of the scrivener, he never fails to stress the fact that he has undergone a crisis of conscience, a painful moral conflict. This is often set forth with a quotation from the Gospels as a further support, if need be, to his rhetoric.

The lawyer's chief concern, although apparently he never unlinks his own destiny from that of his employee, is to convince the reader that he is inspired both by Christian ethics, which requires him to shoulder moral responsibility towards his employee, and by ethics deriving from his juridical duty. But if in Christian ethics free will has a determining role due to the importance of the *libera voluntas* of the believer, the ethics of juridical duty imposes an objective and categorical "external constraint" (Kant, *The Metaphysics of Morals* 148), the obligation to abide by the inexorability of the *dura lex*, to the observance of which the lawyer summons Bartleby and, in a self-serving fashion, himself as well. Admittedly the lawyer's behavior is not consistent with what he himself considers to be a dutiful assumption of responsibility.

One can note that the lawyer's rhetoric often rests clearly on a sort of juridical logic; in other words, he appeals to law or what he emphatically refers to as common understanding and universally accepted behavior. On several occasions he feels justified by morality and law to demand that the scrivener do his job. From the lawyer's standpoint, in a relationship of subordination, disobedience is unimaginable. In other words, his reasoning is substantially this: *do ut facies*. Thus, from his point of view, to demand obedience in this context is tantamount to claiming a natural and legal right. This is why he is so grievously stupefied and mortified the first time the scrivener responds to an order with his polite but unfathomable refusal. The lawyer's disorientation is due above all to the fact that his employee is unwilling to adhere to a reality that the lawyer holds to be incontrovertible. On the other hand, the lawyer has no understanding of the fact that his demand that the scrivener conform, almost always uttered in an admonitory tone, could be taken by his dependant as a form of coercion, and that Bartleby's mental horizon ranges far beyond those limits of common sense to which the lawyer continually makes his appeal. On the other hand, on several occasions he expresses his conviction that he will be able to establish a normal dialectical relationship with the scrivener, aimed however only at understanding and above all influencing his behavior. It is for this reason that he is so patient in waiting for his employee to yield sooner or later and to accommodate himself to the *pactum subiectionis*, given that the lawyer cannot give up what he considers a universally shared

rationality that legitimates hierarchies, roles, duties, and above all the sacredness of property rights. One recalls that Bartleby, in the last analysis, can get away with refusing to check copy, although it is a normal practice that is part of his official duties, benefiting from his employer's tolerance, but when the latter "invites" him to vacate his premises, and the scrivener responds with his usual mantra, the lawyer answers back for the first time in an absolutely peremptory tone: "You *must*" (Melville, "Bartleby" 85). In this instance the lawyer is obviously acting within a legal framework; the scrivener is being required to conform to a categorical imperative, a duty he must not shirk. But the employee remains completely impervious to his employer's logic, perhaps not even sharing his postulates.⁸ The tale, moreover, hangs on this juridical conflict between those who, like the lawyer, claim categorically the legitimacy of dependence in labor relations, and those, like Bartleby who do not acknowledge that legitimacy, but instead lay claim to a discretionary "principle" of "preference" which, in the case in point, is not contemplated by the law. Thus the scrivener refuses, or rather "prefers" not to conform to the logic of his patient but increasingly dismayed interlocutor.

The lawyer, from his point of view, is convinced that his dependant, in so doing, places himself outside the social covenant. With his refusal, it is as if the scrivener were assaulting the fabric of society, bringing it back to a "state of nature," whereas the lawyer supports the "civil state." It may be that the lawful reasons that legitimize and protect private property which the lawyer cites are not shared by the scrivener, who sets himself outside the law; he is *contra legem* in that he has a *nomos* of his own that sets him at odds with the *nomos* of his interlocutor, the lawyer, who, like Creon in *Antigone*, in any case legitimately – but also self-servingly – appeals to the "rule of law," a concept going back to Aristotle (*Politics* 1287a).⁹ But, as Kant prescribes, in order for an action to attain full justification, it must "contain morality and not merely legality" (*Critique of Practical Reason* 126). This principle, which we come back to repeatedly, and which the lawyer does not in the least conform to, is valid for both ethical and legal duties – "ethical duties, duties of right" (Kant, *The Metaphysics of Morals* 156). If the lawyer's actions are read in the light of Kantian ethics, one can note that at certain moments his behavior "might chance to be such as the

law prescribes, yet as it does not proceed from duty, the intention [...] is not moral” (Kant, *Critique of Practical Reason* 87).¹⁰

The lawyer, ever more firmly convinced that his own conduct is legitimized by legal norms and apodictic ethics, feels therefore that Bartleby’s stubborn refusal to obey orders could be due to some kind of mental disorder, a feeling that has often moved critics to subject Bartleby to a neuro-psychiatric examination. The request the lawyer makes to his employee consists explicitly in an ordinary “linguistic act” that falls within universally accepted social conventions. Indeed, the order, although almost always given in a mild tone, contains an “act” that linguists call “directive” or “imperative”; it is a legitimate act on the lawyer’s part – and not only because its legitimacy is universally acknowledged – because it is performed in a suitable context and justified by what he considers to be a normal hierarchical relationship. Hence arises his bewilderment and the conviction that the scrivener’s behavior can only be explained, and in a sense justified, by some sort of mental disorder. But Bartleby is by no means “a demented man” (Melville, “Bartleby” 84) and certainly not a “ghost” (91). He shows himself capable of discernment, and is quite attuned to reality. The lawyer seeks to reconcile Bartleby to his present circumstances, prisoner in the Tombs: “It is not so sad a place as one might think. Look, there is the sky, and here is the grass” – “I know where I am” (96), the scrivener retorts, reacting against the lawyer’s hypocritical attempt to play down the grimness of his incarceration. So Bartleby can hardly be seen as alienated and emotionless, abiding in a perennial condition of *apònos* and ataraxy. In any case, he is not our “other.” Unlike what his employer thinks of him, he is no “ghost”; his “humanity” is our own. In the rare moments when he does not shield himself with his disorienting phrase, the scrivener, with no less dignity than any other tragic hero, shows that he is fully aware of the devastating force of his refusal. Like Antigone, he knows that his transgression – which is not just his refusal to write but above all his disinclination, after repeated injunctions, to dislodge from premises he has illegally occupied – will have grave consequences.

According to Deleuze, who is paraphrasing Aristotle, the lawyer allows the cold reasons of legality to prevail. In so doing, he becomes the immovable guardian of the law, “garden des lois divines et humaines”: he cannot spare

his dependent, “l’innocent, l’irresponsable”; instead he sacrifices him “au nom de la loi” (189). Contrary to what one might think, Deleuze is not pronouncing a moral condemnation of the lawyer here, but simply taking note of the fact that he is appealing to what Kant defines as “external laws” (*The Metaphysics of Morals* 17), i.e. civil law,¹¹ laying claim to what is juridically his undeniable right. Besides, finding himself unable to force his employee to obey him *de facto*, the lawyer seeks to do so *de jure*; after all, who could deny the justness of his claim? In the relationship between the lawyer and his dependant an “ethics of reciprocity” ought to prevail; the duty of one side should correspond to the right of the other, and vice versa. Strangely, however, if the reader is drawn to read the lawyer’s behavior from an ethical standpoint, making a moral judgment, it is precisely because the narrator himself, or rather Melville himself, invites him to do so.¹² The man of law wants to show that he has always been faithful to both religious and legal principles. Hence the obsessive need, albeit never openly stated, to prove that he had acted according to ethical as well as theological and cardinal virtues: Prudence, “my first grand point,”¹³ (66) Faith, Hope, Temperance, Liberality, Justice and in the end the greatest of the three theological virtues, Charity, the one Augustine defines as the *ordo amoris*. Still, as we shall see, he ignores the teaching that Prudence “only advises; the love of morality commands” (*Critique of Practical Reason* 38). One thing is clear: a virtue he could never lay claim to is Fortitude, one of the seven gifts of the Holy Ghost, the lack of which marks his main ethical shortcoming.¹⁴ In any case, the lawyer spontaneously lays himself open to judgment, to an examination of conscience, presenting himself before his “inner judge,” the *forum poli* (Kant, *The Metaphysics of Morals* 161, 27). Perhaps the narrator’s “inner judge” will ultimately exonerate him, but this is not enough for him; he seeks exoneration from his reader as well, who is free to concede it or not, according to his ethical sensitivity.

The “trial” the lawyer subjects himself to, and in which he hopes his moral fiber will not be judged wanting, does not call for a jury, the hearing of witnesses, or a true examination and debate; indeed, it takes place without the presence of Bartleby. The lawyer’s detailed self-defense is not followed by any deuterology; in other words, there can be no presentation of the case by the other party: Bartleby has no lawyer to plead

his case. Paradoxically, the lawyer takes on Bartleby's defense at times, but at other times acts as his prosecutor.¹⁵ In his former role, he vehemently accuses the scrivener, forgetting the Christian resolutions his conscience had moved him to make. In his second role, with a patently hypocritical admonishment from within, a severe remonstrance from his conscience, he defends him, going so far as to assert that the accusations that would lead to a condemnation of Bartleby's behavior would be inconsistent, "too absurd" (Melville, "Bartleby" 91).

It is to be noted that paradoxically, in his pseudo-defence of the scrivener, the lawyer cites ethical and legal arguments that might persuade almost anyone not to file a charge. In any case, as usual, in the narrator's view Bartleby is a figure suspended between two opposite moral poles. Now he is a defenseless, innocent creature to be pitied; now instead he is a homeless wastrel with no visible means of support who could be easily gotten rid of. But when the lawyer is peremptorily required to take responsibility, i.e., when he is summoned by a colleague in his profession to fulfill his legal duty, "duty of right" ("you are responsible for the man you left there"; 92), he forgets all his good resolutions and religious principles and quickly denies any connection with the scrivener.¹⁶ Now, more than ever, the narrator is concerned only to safeguard his moral status, stressing that he had acted in compliance with the ethics of Christianity – he had taken care of Bartleby – and the ethics of right, having collaborated with his lawyer colleague to safeguard property rights. In sum, he is at peace with his conscience: "I now strove to be entirely care-free and quiescent; and my conscience justified me" (94-95). Bartleby's incarceration does indeed prove to be the final solution, although the narrator awkwardly dissociates himself from it, even though he ends up by tacitly accepting that this measure, however severe, "seemed the only plan" (95).

Persistently defending his moral status, the lawyer would also like to demonstrate to the reader that he has always accepted the moral and juridical responsibilities that come with his role, which is the *argumentum crucis* of his rhetoric. It is rather Bartleby, according to the lawyer, who has fallen short of the ethics of duty because of his insubordination and ingratitude, where the accusation of ingratitude is tantamount to a moral condemnation. This is why the lawyer does not put only himself on trial,

but his employee as well; he does so by making use of a contradictory, self-serving rhetorical strategy. In effect, as is inevitable when one is tried in the “court of conscience,” “he finds that the advocate who speaks in his favour can by no means silence the accuser within” (Kant, *Critique of Practical Reason* 104). By the same token, in accusing the scrivener he occasionally gives him the benefit of attenuating circumstances. As always, the lawyer dearly wants to persuade the reader that his spirit is in conflict, torn between compassion and firmness. Perhaps it is this contradiction that causes a schizophrenic switching back and forth between his opposed feelings towards Bartleby. Indeed his repeated accusations and threats of dismissal are usually followed by a hypocritical rhetoric of compensation, a sort of repentance, a false compassion that inevitably implies an unwitting negation of Christian ethics.¹⁷ And this is perhaps the reason why the whole second part of the tale is marked by this recurrent clash of sentiments, apparently heart-rending, which, as in a medieval morality play, brings out the narrator’s “vices” and “virtues”, ultimately allowing his true moral identity to emerge, in spite of the hypocritical strategy of contrition he adopts that paradoxically justifies his repeated betrayals of Christian ethics.

In this regard, one may note what an egregiously utilitarian use the narrator makes of the Augustinian “ethics of Charity” the quintessence of theological virtue, which clearly forms his attitudes throughout the course of events – and also how paroxysmal the lawyer’s natural instinct for utilitarianism is: his benevolence toward the scrivener is not exactly finalized to the remission of sins, but is seen as an advantageous ethical investment, expressed in a figuratively cynical language that clearly brings out how the unfortunate Bartleby is being used. Taking responsibility for the scrivener might well turn out to be “a sweet morsel for my conscience” (Melville, “Bartleby” 76), and therefore “a valuable acquisition” (78).

To so blatantly turn Bartleby into an instrument for his own ends, the lawyer clearly trespasses the sacrality of a fundamental, Kantian, moral law which is universally acknowledged: “man [...] exists as an end in himself, not merely as a means to be arbitrarily used by this or that will [...]. So act as to treat humanity [...] in every case as an end withal, never as a means only” (Kant, *The Metaphysical Elements of Ethics* 60).¹⁸ As we have already seen and will see again below, one senses how the ethics of Christianity are

being turned into an instrument for attaining the lawyer's own ends. "Mere self-interest, then, if no better motive can be enlisted, should [...] prompt all beings to charity and philanthropy" (89).

From this state of mind come the many promises and resolutions in favor of Bartleby that the lawyer makes to assuage his conscience. The lawyer cannot help but know that these promises, although prompted only by his conscience, and uttered only to himself, are still morally binding, "a law of duty, of moral constraint" (Kant, *Critique of Practical Reason* 87). Instead, he rather basely shuffles out of these obligations, incompatible with the dignity of his role and such as to expose him to the criticism of his colleagues.

Given these considerations, it would seem almost rhetorical to ask whether the lawyer acts in a moral fashion or not. With his paltry excuse he prefers, or it might be more accurate to say that he finds it to his advantage, to assume what might be called a heteronomous position, one intellectually dependent on others, thus bringing out his inability to live up autonomously not only to his moral responsibilities but to his civil responsibilities as well. Paradoxically, though, with this flawed strategy the narrator would like to defend his moral high ground and unhesitatingly challenge that of his employee.

This is not to say that his remorse and anguish over Bartleby's cruel incarceration are not heartfelt. Indeed it is his remorse about his own behavior that justifies the narrator's concern to at least alleviate the scrivener's suffering, to arrange for him the best prison conditions possible. Bartleby's imprisonment signals the climax of the whole affair. He was turned over to the judiciary, and the one who reported him, along with the lawyer, who morally went along with this act, abided only by civil law. The latter shielded his action behind the law; in so doing, he followed the ethics of duty. This is a lay principle considered fundamental by the lawyer, from which therefore he cannot swerve since it goes beyond his will and is even stronger than his repeated, although never sincere, adherence to the spirit of the Gospels. Ultimately, he appeals, not disinterestedly, to his own robust "sense of duty" (Melville, "Bartleby" 95), the principle which, he says, has inspired his behavior and which his employee, on the contrary, has totally disregarded.¹⁹

As the lawyer himself points out, the ethics of duty requires honoring

an obligation that is binding on both parties, the employer and the employee. But although the lawyer's action may be judicially legitimate, is it morally right? This is Melville's core question, as we have stressed above, and one that the reader cannot but ask himself, especially if enlightened by the Kantian ethics on which it is founded. Of course, no one can deny the importance of legal duties, but "human morality" cannot be reduced to the mere strict observance of these duties; if it could, "a great moral adornment, benevolence, would then be missing from the world. This is, accordingly, required by itself, in order to present the world as a beautiful moral whole in its full perfection" (Kant, *The Metaphysics of Morals* 205-06). On the other hand, is the lawyer quite sure that he has not in some measure compromised his moral identity by consenting to his colleague's recourse to "external law"? The procedure, which actually bears out that "the law is reason unaffected by passion" (Aristotle 1287a-b), or rather without compassion, betrays the very essence of Christian ethics, the essence of *pietas*, that virtue the narrator would like the reader to believe he possesses. Was it not the lawyer himself who reminded us that Bartleby was no criminal, not socially dangerous, but, as he later states, "a perfectly honest man," a person deserving "to be compassionated"? (Melville, "Bartleby" 95).²⁰ Besides, we can hardly ignore the fact that the lawyer himself had earlier stressed the moral rectitude of his dependent. Neither can the reader, in this circumstance, ignore the echo of the solemn moral obligations the narrator had earlier taken upon himself, nor forget the forceful appeal to the Gospels, which he makes while he is engaged in betraying the very foundations of Christian ethics, viz., *pietas* and *caritas*.²¹

In the lawyer's behavior, still keeping Kantian ethics in mind, a "lack of moral strength (*defectus moralis*)" (Kant, *The Metaphysics of Morals* 153), of the courage of one's convictions, can be detected. This is shown by his behavior from the outset, but especially towards the end when he makes a last, pathetically abject and inadequate self-defense, declining responsibility for Bartleby's arrest and incarceration. Apart from this embarrassing attempt the lawyer makes to justify himself as if to pass off the prison sentence, that he himself had in any case brought about, as a sort of "heterogenesis of ends," an unintended consequence, the narrator may find it hard to persuade his reader that the recourse to positive law is anything other than a tactic

that he has always kept up his sleeve, an option to be used when the time is right, and that only his lack of mettle kept him from using it from the start. Hence, his action, as has already been noted, respects "legality but not morality" (Kant, *Critique of Practical Reason* 76): the lawyer refuses to acknowledge Bartleby's diversity, his "strange wilfulness" (Melville, "Bartleby" 76).²² The lawyer's religious qualms, far from expressing any *caritas socialis*, are only a screen behind which to hide an inexorable and opportunistic secular logic; he has a basically Senecan conception of power; he is willing to show *clementia* but can never countenance protracted insubordination nor a manifest transgression against property rights. The lawyer heatedly complains that he has been deprived of certain inalienable rights for having allowed his employer too much freedom, "to dictate to him, and order him away from his own premises" (Melville, "Bartleby" 79).

Besides betraying Christian ethics and turning it to his own ends, the lawyer acts against lay moral principles that could be universally shared, whatever one's religious persuasion. This is one of the many limits that Melville brings out in the lawyer's ethical profile. In accord with Kant, already in *Typee* Melville develops the idea that rightful moral conduct is not necessarily tied to revealed religion (it is conscience, according to Kant, that dictates morality to the individual, independently of cultural prescriptions). Hence, correct behavior is based on a "tacit common-sense law" (Melville, *Typee* 294), a "natural religion," unequivocally connected to Kant's rational practical reason, which is supposed to be universally acknowledged and instinctively perceived, apart from one's faith, education, or culture.

In *Typee* Melville so describes the social and political organization in the Marquesan Islands:

The grand principles of virtue and honour, however they may be distorted by arbitrary codes, are the same all the world over: and where these principles are concerned, the right or wrong of any action appears the same to the uncultivated as to the enlightened mind. It is to this indwelling, this universally diffused perception of what is just and noble, that the integrity of the Marquesans in their intercourse with each other, is to be attributed. (294)

Here we may note a significant adhesion to Kant's natural religion

and religious rationalism, and indirectly to those original natural laws that Plato and Aristotle refer to. In following both religious and juridical precepts, the lawyer accepts a heteronomous ethics, as if he did not want to make use of the option of free will. In other words, whether he conforms to Christian morals or to the secular ethics of juridical duty, his will is conditioned from “outside.” His decisions, contrary to what he would have us believe, are never dictated by his conscience (the seat where true morality is safeguarded so that it can never be displaced or conditioned, according to Kant, by any religious principle). From this point of view, the lawyer is far from Kantian practical reason. At the crucial moment of this story, when he has to make up his mind about the scrivener’s destiny, he relies upon the rule of law.²³ But is a juridical rule always in compliance with moral law? Melville, with Kant and Augustine, is unconvinced. It is possible to act in full observance of the law but to fall short of moral behavior. With “Bartleby the Scrivener” Melville confirms that a conflict between *jus* and *lex* can arise, and this conflict between ethics and law is at the heart of Melville’s text. In fact, correct moral behavior can well be conditioned by those “arbitrary codes” Melville refers to in *Typee*. In “Bartleby, the Scrivener” Melville confirms his mistrust, as he will also do in *Billy Budd*, of any legal system. On the other hand the Marquesans, doing without a juridical system, as their social and political organization does not provide for “established law and courts of law or equity,” have an innate “ethical code” – that very moral code, based on the “principle of honesty and charity,” which according to Kant is present in each of us, if one only applies it. They have their natural laws, or in other words a “natural religion” they refer to. Even though it is a colleague of his who reports Bartleby to the police, the lawyer too acts in accordance with a merely juridical obligation, and therefore his action is clearly in compliance with the law and hence in compliance with the will of a legislator. However, he acts “by the choice of another,” only on the basis of an “external law.” Instead, he should have taken moral law into account and relied on pure reason. He should perhaps have emulated Antigone who followed that primordial instinct that guides her to naturally adhere to immutable and universal “unwritten laws.”

Moral law, according to Kant, unlike “external laws,” has a subjective

element, "an incentive," that determines the will, and hence the action, of an individual. In the lawyer's behavior there is an ethical deficit: he acts in perfect conformity to an "external law" and "irrespective of the incentive to it" (*The Metaphysics of Morals* 20). He follows mere lawfulness. Morality is quite a different matter for Kant, and Melville too believes that law is only fulfilled when "the idea of duty arising from the law is also the incentive to the action" (20). In moral law there is a perfect harmony between "duty" and "incentive," while in civil law these two elements are not at all convergent. The lawyer, contrary to what he says, never sincerely questions his conscience; he seems to conform to Hobbes more than to Kant, since he is convinced that an "external law," a juridical duty, is a moral obligation in itself. It is for this reason that it will be a utilitarian and consequentialist logic to decide the scrivener's destiny. In other words, between Augustine and Bentham, the latter will prevail.

Kantian ethics is fundamentally secular and always refers to correct moral behavior. Whilst not in contradiction with Christian principles, it can act independently of them. The scrivener's destiny could have been different if the lawyer had adhered, like the Marquesan natives, to that "tacit common-sense law," that kind of "natural law or religion" that has "its precepts graven on every breast" (Melville, *Typee* 294), a clearly Kantian concept. This is undoubtedly the most severe criticism Melville makes of his character. Beyond Christian ethics and revealed religion, to which he partly keeps faith if only to exploit them in order to obtain some kind of moral leverage, the lawyer should have relied upon the universally acknowledged principles of "natural religion," to follow the categorical dictates of the "duty law" that comes from conscience, all the more so since in his working years he had been a member of the Court of Equity.²⁴

He claims that his behavior follows divine commandments, imposed upon him by faith and conscience but, as William Bysshe Stein rightly stresses, "the voice of conscience in the story is silenced, with the laws of man superseding the laws of God" (111). In any case correct moral behavior or ethical duty should first be recognized as such and carried out even without reference to religion, before considering it as a divine injunction. Thus Kant in *Religion Within the Limits of Reason Alone* specifies

the difference, which Melville knew well, between a divine commandment and an ethical duty, between revealed religion and natural religion:

Religion is (subjectively regarded) the recognition of all duties as divine commands. That religion in which I must know in advance that something is a divine command in order to recognize it as my duty, is the *revealed* religion (or the one standing in need of a revelation); in contrast, that religion in which I must first know that something is my duty before I can accept it as a divine injunction is the *natural* religion. (142-43)

This is the Kantian thesis, the one Melville adheres to, as we have seen in *Typee*, according to which religion depends on morality and not the other way around. But if Kant seeks in any case to reconcile Christian morals with natural religion, the lawyer is opportunistically angling for a sort of compromise between Christian ethics and the ethics of juridical duty in a utilitarian and Machiavellian sense.

This weighty judicial provision lacks any moral or juridical foundation at all: “And upon what ground could you procure such a thing to be done?” (Melville, “Bartleby” 91) – if, as the lawyer himself asserts, Bartleby “[is] under no disgraceful charge” (95). In any case it is evident that the scrivener has been a victim of injustice and has been offended in his dignity. This is something the lawyer knows all too well. *Alterum non ledere* is of course a fundamentally juridical principle which has in turn a moral basis that the lawyer can scarcely be unaware of. Going beyond this question, which each reader will decide according to his ethical views (and this is perhaps the essence of the writerly game Melville is playing with us), it remains to be stressed that the lawyer’s worst moral limitation lies in his incapacity to act responsibly, his pusillanimity, the sin of “those who lived without infamy or praise” (Dante, *Inferno*, l. 36),²⁵ those who are eternally undecided and passive, concerned only with looking out for their own interests,²⁶ always involved in preserving their peace and quiet, basically reluctant to take sides because he is evidently unwilling to take up a stand. In the last analysis, this is the narrator’s true moral profile. As Thomas Dilworth maintains, basically the lawyer is “morally and psychologically weak” (72). John the Divine is hard on the *ignavi*: “So then because thou art lukewarm, and neither hot nor cold, I will spue thee out of my mouth” (Apostles 3:16). It is undeniable that

even years later the lawyer hears ringing in his ears that terrible litany, "I would prefer not to," which continually sends him back to the past to which he is enchained, his only remaining temporal dimension. The lawyer almost never speaks of the present and never of the future.

He has tried in every way to free himself from an obsessive memory but "an agony constantly 'burns' within his heart" (Forst 269) that acts on him like a sort of *contrappasso* and weighs heavily on his conscience, frustrating his every attempt to get beyond it and free himself at last from the feeling of guilt that torments him and never abandons him. He fails to reach, to quote Cicero, that "tranquillitas animi et securitas" (*De Officiis* 1:69) to which he aspires. In fact, although years have passed, the lawyer still has to live with the phantom of that weird, cadaverous presence, which had become "a fixture in my chamber" (Melville, "Bartleby" 85). As he put it earlier: "I can see that figure now – pallidly neat, pitiably respectable, incurably forlorn!" (71). This is a terrible, terrifyingly Dantesque vision.²⁷ The image of the scrivener "sentenced" to stand in the lawyer's room year after year, clearly a metaphor for conscience, recalls a tragic purgatorial punishment which strangely applies to both the lawyer and Bartleby. The obsessive presence of Bartleby in the lawyer's life has to be interpreted as a kind of nemesis. Years after the narrated events took place, the lawyer is still moodily obsessed with them, compulsively turning them over in his mind, and composing a lawyerly brief in his defense. His solitude is not unlike that of his long-dead scrivener, and the reader understands that he, like his former employee, probably does not have a family: however if one knows very little about Bartleby's life, one knows just as little about the lawyer's. Is the punishment inflicted upon the lawyer too severe? Possibly. To partially justify him one should recognize that he, as he himself claims, was summoned by Providence for a test that was arduous and full of snares. To test his moral principles, he was assigned a difficult and unexpected interlocutor, who came out of nowhere and ended ignominiously, an oxymoronic figure: devil (tempter) and angel wrapped up in one. And maybe this is how he is seen by the lawyer and the reader. However, he is a crystal silhouette, a ghost, inert and helpless, fragile and strong at the same time. Bolstered by the inexorable strength of his "preferences," yet helplessly fragile.

This can be weighed on one plate of a hypothetical scale of justice. It is only right to take the “extenuating circumstances” of the lawyer’s behavior into account. However, there is much that weighs on the other plate of the scale. He fails the test of Kantian ethics and solves none of his lacerating internal conflicts. If it is spiritual redemption he is after, a forgiveness of sins, it is clear that he does not achieve his goal. In the end, as with the Protestant Pierre and the Catholic slave-driver Benito Cereno, there is neither catharsis nor redemption. According to William Bysshe Stein the lawyer “is incapable of a moral regeneration” (105). If we are right in seeing the lawyer’s tale as a brief, a petition for justification and salvation, the reader is left with no certainty that he will ever be so graced. He knows that Bartleby’s particular condition required an act of mercy, a sincere sharing of pain, in the words of Schopenhauer (*The World as Will and Representation*), hence an act of true Christian solidarity, that very lofty moral value which, opportunistically, he has evoked from the outset, “my fellow-feeling” (Melville, “Bartleby” 68), but which unfortunately he withheld from the scrivener. Here the declaration of friendship towards his employee the lawyer had made at the beginning sounds still more Pharisaic: “I feel friendly towards you” (82). Therefore the *excusatio non petita* ultimately becomes an *accusatio manifesta*, a self-incrimination which is perhaps the most obvious evidence of his false conscience.

Notes

¹ That the lawyer feels the need to redeem himself, purify his soul, all the more so now that his advanced age brings him close to death, is brought out by John Matteson (22).

² Traces of Kantian philosophy are not only present in “Bartleby”: what Bruce Rosenstock writes of Pierre (“Pierre is suffused with Kantian transcendental themes,” 28) is certainly valid for other Melville novels. Not unlike Rosenstock, Hiroki Yoshikuni argues that the characterization of Bartleby is inspired by the “Kantian idea of freedom,” which “plays critical roles in Melville’s writings” (45, 62).

³ The moral implications of “Bartleby the Scrivener” have been discussed by a number of critics, but none has sought to subject the attorney’s behavior to “verification” according to Kantian morality. Such a “test” is all the more timely considering that over the years two factions, so to speak, have formed: one of these, very numerous, tends to stigmatize the lawyer’s behavior, whereas the other would justify it. In addition to the two

articles by Bruce Rosenstock and Hiroki Yoshikuni mentioned above, there are, of course, many references to Kant in Melville criticism. Among these is Fritz Oehlschlaeger, who reaches some interesting conclusions; working mainly from a theological hermeneutic viewpoint, the author elaborates "a Christian ethical reflection," locating "Melville in a variety of appropriate historical, literary, and ethical contexts" in order to utilize "his insight to suggest the consequences of Kant's means-end distinction" (59). There is also a discerning reference to the *Critique of Pure Reason* by Todd F. Davis (188). Interesting references to Kantian philosophy are to be found also in Pochmann (436-40; 755-60), and L. Ra'ad (180-83). Finally, *Pursuing Melville, 1940-1980*, by Merton M. Sealts, Jr., remains a noteworthy guide for whoever wishes to continue to research the Melville-Kant connection.

⁴ On this connection, Merton M. Sealts Jr. poses a fully legitimate question: "The attorney is [...] the lens through which the reader must view everything in the story, the attorney himself included. Does he speak clearly and fairly, or must the reader make allowances for his disposition or temperament, for his point of view as a legal specialist, for his worldly success, for his age...?" (*Pursuing Melville* 17).

⁵ As Sealts rightly notes, the lawyer, in his vain attempt to get to the cause of "the scrivener's recalcitrance, manages to reveal more of his own character to the reader than he does that of Bartleby" (*Resources* 3).

⁶ Undoubtedly the attorney's rhetoric is favored by the fact that the confrontation between himself and his fractious employee, marked by insurmountable difficulties, turns out to be an unequal struggle, given that one of the two has no trouble in making his feelings known, revealing his subjectivity, giving utterance to his anxieties, worries, and moral uncertainties, while the other, who can do no more than express his polite refusal to obey any order given to him, does not expose himself and hides his private self – an obscure, unreachable inner world. It is precisely in Bartleby's imperceptibility, his "unaccountableness," that Hiroki Yoshikuni perceives that "Kantian idea of freedom" (62), mentioned above, that in his opinion connotes the scrivener's character.

⁷ Gilles Deleuze suggests that the same definition Melville gave for Ahab, "une 'coquille vide'" (191), might fit the scrivener. Michael Hardt and Antonio Negri also tend to frame ontologically their interpretation of Bartleby: he "appears completely blank, a man without qualities or, as Renaissance philosophers would say, *homo tantum*, mere man and nothing more" (203). Considerations like those of Deleuze and Hardt and Negri would reinforce the critical orientation of those who see in Bartleby's bizarre behavior the expression of an empty conscience, incapable of introspection, devoid of sensitivity. As Richard Chase wrote long ago, "Bartleby has no will" (144).

⁸ It takes the lawyer some time to realize that Bartleby, as Deleuze maintains, is not guided by "une *logique des présupposés*" – according to which it would go without saying that an employee cannot shirk the duties attendant upon the role assigned to him by his employer – but rather by a "une nouvelle *logique de la préférence*," of his own invention, "qui suffit à miner le présupposés du langage" (179). Several scholars have dealt with

the scrivener's disorienting use of language. To stay with recent years, Jacques Derrida advances the notion that Bartleby, like Abraham, speaks in a different language; like the Biblical patriarch, who "speaks in tongues or in a language that is foreign to every other human language," the scrivener produces an enigmatic refrain which would seem to belong to "a nonlanguage or a secret language" (*The Gift of Death* 75). In an earlier publication Derrida had discussed Bartleby as well (*Resistances of Psychoanalysis* 24).

⁹ On Bartleby's non-acceptance of ordinary law, Giorgio Agamben states: "Bartleby is a 'law-copist,' a scribe in the evangelical sense of the term, and his renunciation of copying is also a renunciation of Law, a liberation from the 'oldness of the letter'" (270).

¹⁰ Kant insists on the same concept in *The Metaphysics of Morals*: "An action in conformity with duty must also be done from duty" (148).

¹¹ On this issue, Allan L'Etoile offers some interesting considerations: for a case like the one regarding Bartleby, the "courts of common law would be singularly unequipped to decide" (5), especially since "Melville did [...] model 'Bartleby' after the Master's Report" (3).

¹² Allan L'Etoile maintains that, by "writing 'Bartleby' as a Master's Report, Melville puts us in the position of judge. We must decide if the narrator did all he could for Bartleby" (6).

¹³ According to John Matteson "the story exposes the lawyer's prudence as a failed moral principle that impairs his ability to understand and practice charity" ("A New Race Has Sprung Up": 'Bartleby' and the Prudent Person Standard", 15). Matteson comes back to prudence as a value in "A New Race Has Sprung Up": Prudence, Social Consensus and the Law in 'Bartleby the Scrivener.'"

¹⁴ In William Bysshe Stein's words: "And when in retrospect, the lawyer's practice of prudence, justice, fortitude, and temperance is remembered, the moral law of Christianity based on the seven virtues is found to have no authority. In short, Christ is dead in the human conscience" (112).

¹⁵ In *Billy Budd, Sailor* Captain Vere too takes on the double role; in fact he is judge and witness for the prosecution, rendering his case anomalous. On the analogies between Captain Vere and the lawyer, Maurice Friedman holds interestingly that "both men stand in a kind, fatherly relationship to the young men whom they cut off, and both find it necessary to sacrifice the heart to impersonal duty or business respectability" (74).

¹⁶ The lawyer's denial of the scrivener, along with other clues, has moved several critics to see Bartleby as a sort of *alter Christus*. H. Bruce Franklin argues this hypothesis quite effectively (127-28). It is certainly undeniable that Bartleby's final sufferings are a sort of calvary. Like Christ, the scrivener is not of this world, the laws and norms of which he does not acknowledge; his anomalous behavior is, as we have already noted, *extra lege*.

¹⁷ H. Bruce Franklin asks: "Can the narrator [...] act in terms of Christ's ethics?" – and offers this answer: "the answer is yes and no"; if it is true that in some circumstances he "fulfills the letter of Christ's injunction point by point," it is no less true that in others

"he hardly fulfills the spirit of Christ's message" (127-28).

¹⁸ Allan L'Etoile points out as well that the lawyer, however fond he may be of his employees, "values them primarily insofar as they are 'useful' to him" (3). A systematic analysis of this Kantian dictum in relation to *Bartleby* is in Fritz Oehlschlaeger (74-75; 79-80).

¹⁹ What ultimately prevails over the scrivener is the force of law. It is his inexplicable preference not to, says Derrida, "that will lead him to death, a death given by the law"; and this act, he adds, is perpetrated "by a society that doesn't even know why it is acting the way it does" (*The Gift of Death* 76).

²⁰ Unfortunately, the lawyer lacks the spirit of the Good Samaritan: "We see that what he lacks is the Samaritan's compassionate initiative, his spontaneously active and unqualified expression of love for his 'neighbor'" (Doloff 359).

²¹ In these statements by the lawyer, according to William Bysshe Stein, there is clear evidence "of a diseased conscience"; in effect, here and elsewhere he shows himself incapable of translating this feeling of solidarity towards the scrivener "into a moral action – into an appropriate response of conscience" (107).

²² In this regard I am intrigued by the connection Peter Norberg makes between the scrivener's peculiar attitude and the brand of "traditional liberal pluralism" advanced by Emerson and Thoreau. The latter, according to Norberg, "directs individualism to the proliferation of possible modes of being" and argues for the possibility of legitimizing alternative individual behavior, albeit out of line with majority opinion: "I desire that there may be as many persons in the world as possible; but I would have each one be very careful to find out and pursue his own way, and not his father's or his mother's or his neighbor's instead" (93). Indeed, may one not sense, in Thoreau's remarks, an ideological justification of the ethics of dissent or, perhaps, of *Bartleby's* preference? Might *Bartleby's* refusal be seen as ethical, in some way linked to the lawyer's activity, his office in the High Court of Chancery? At least one of the documents he is called upon to copy would fall within the activities of this office, viz., a "foreclosure to which *Bartleby* morally objects"; in other words, "*Bartleby* may be declining further complicity in the suffering of those losing homes and property" (Dilworth 73). Michael Hardt and Tony Negri see instead the scrivener's persistent refusal as an extension of Etienne de La Boétie's "politics of the refusal of voluntary servitude, carrying it to the absolute" (204). As a matter of fact, Hardt and Negri, like Slavoj Žižek (*In Defense of Lost Causes* 353; *The Parallax View* 381-83), seize on *Bartleby's* enigmatic mantra as a pretext to develop political considerations which, interesting as they may be, are extraneous to Melville's tale. Maurice Blanchot (17) offers further interesting considerations on the scrivener's refusal, bringing out the complex ontological dimension of this character.

²³ According to Todd F. Davis the lawyer "seems to be caught in the very dilemma that the narrator of *Pierre* speaks of [...] the dilemma between earthly law and heavenly law," and it can "have no clear resolution" (184, 189).

²⁴ In effect in his role as Master in Chancery, the lawyer would be concerned only abiding by the laws attendant on his office, not by morality. One recalls that the lawyer is called to a greater moral responsibility, an exemplary ethical behavior, precisely on account of his having served in the Court of Equity, an institution which, by its nature, as William Bysshe Stein has brought out, “seeks to temper the law with mercy and justice,” since it is a tribunal where “conscience and equity are supposed to prevail over abstract legalism” (105). Indeed, according to Thomas Dilworth, the lawyer actually betrays both the moral and the judicial principles of this tribunal by having favored the land speculations of John Jacob Astor, whose friendship he so highly prizes: “the lawyer narrator had been instrumental in dispossessing people and transferring to Astor the land on which they lived or had done business and the buildings they had erected on that land” (66-67).

²⁵ Henry Wadsworth Longfellow’s translation (1867). “Without or praise or blame” is Henry Francis Cary’s translation (1814), which is the one Melville used.

²⁶ The lawyer himself unguardedly confesses that nothing can take priority over his profession and interests: “At length, necessities connected with my business tyrannized over all other considerations” (Melville, “Bartleby” 85). Indeed, “before the appearance of Bartleby, by the narrator’s own admission, he has not struggled with the ethics of justice, of good and evil; rather, he makes his way in this world comfortable by dealing with the physical, the tangible, that which he can know” (Davis 185-86). Moreover, as regards the role he had at the Court of Equity, the lawyer stressed its economic advantages rather than any question of prestige – “It was not a very arduous office, but very pleasantly remunerative” – and is bitter over having lost this income: “I had counted upon a life-lease of the profits, whereas I only received those of a few short years” (66). On this aspect see also Stein (105).

²⁷ Dante’s influence on some of Melville’s works (specifically *Mardi*, *Clarel*, *Pierre* and *Moby-Dick*) was recently studied by Dennis Berthold.

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