Narratives of Blood*

Justice, Empire, and *Billy Budd, Sailor*

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Today I would like to speak about the myth of law. I do not use the word "myth" to cast the law as an illusion. Neither do I wish to move in the opposite direction, however, and render the law eternal, affording it 'ontological' status; instead, I would like to approach the law 'phenomenologically,' which is to say, to treat it as phenomenally real in practice, insofar as practice is historically conditioned, presently borne out, and futurally inclined. Further more, though the law weighs heavily upon the individual, as we will see that it does in *Billy Budd, Sailor,* in practice it is always socially mediated, and so today I will be treating the law as, first and foremost, a *social* phenomenon.

As a social phenomenon, law is a given, but not from some Platonic realm of ideal forms. Law emerges from history and from relation, from the material conditions of human existence. The law is multiple and ambivalent. As Stefano Harney and Fred Moten write in their study *The Undercommons*,[1] in an interview with Stevphen Shukaitis, to understand such an abstract phenomenon as an actual "thing"[2] is to turn that thing into a monolith, what Shukaitis describes as an "accidental fetish" that appears to be "whole and coordinated" but is in fact a loosely organized assemblage of bodies, relations, processes, and exertions.[3] The *symbolic force* of the myth works in and through this material apparatus, from which too it derives its vital energy.

Over and above the material apparatus of the law, however, it is myth's temporal character that is key to our understanding here. To draw from the work of Claude Lévi-Strauss, a myth is a "sequence of past happenings, a non-revertible series of events the remote consequences of which may still be felt at present." A myth is simultaneously "a sequence belonging to the past ... and an everlasting pattern"—it is a "double structure, altogether historical and anhistorical."[4] Through its

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[1] Stefano Harney and Fred Moten, *The Undercommons: Fugitive Planning & Black Study* (New York, NY: Autonomedia, 2013).

[2] Ibid., 142.

[3] Ibid., 144.

[4] Claude Lévi-Strauss, "The Structural Study of Myth," *Journal of American Folklore* 68, no. 270 (1955): 430.

temporal mediation the myth introduces to the social the *futural* dimension of language, functioning as a symbolic vehicle for future action, iterating meanings and propagating practices through time. As Hayden White would put it, the *form* of myth is invested with a *content* of its own, independent of the content of the narrative conveyed.[5] This formal content unites a disparate set of concepts, practices, and 'happenings' into a 'pattern' that can be projected into the future, and to which the projects of human beings and their societies can be directed. The law is one such pattern, and it cannot be understood without an awareness of the temporal, projective form of myth.

Turning now to Herman Melville, I would like to argue that *Billy Budd, Sailor (An Inside Narrative),*[6] Melville's final work, operates as such a mythic projection. Written between 1885 and Melville's death in 1891, *Billy Budd* is a tragic, troubling portrayal of the law in crisis. Billy Budd, a young man impressed into the British Navy, is falsely accused of mutiny by a commanding officer, and unintentionally lashes out and kills the man in response. Billy is tried and executed. Readers are frequently troubled by this conclusion—the justice Melville depicts does not seem just. Indeed, for decades scholars have debated whether Melville himself accepted or resisted the outcome of Billy's trial. But, as Barbara Johnson makes clear in her seminal paper on Melville's novella,[7] the question of intent is undermined by the text itself. The "sense of Melville's ending" is central to the debate, and yet *Billy Budd* "ends not once, but no less than four times," complicating any "sense" that might have been gleaned from the conclusion.[8] Each of Melville's endings projects a different piece of the future, or perhaps even a different future entirely. This is deliberate: as Melville writes, in one of his most oft quoted passages, "Truth uncompromisingly told will always have its ragged edges."[9] Johnson contends that Melville's aim, rather than outright acceptance or resistance, is to draw the "position of the judge"[10] into the light, and so by extension, I argue, to highlight the mythic force that makes judgment possible, that flows through the material conditions of his characters. The contestation and fraying of the truth that Melville depicts—Captain Vere's torment over his decision, the twisted revision of events by the naval chronicle, and the revolutionary spirit of the sailor's song—draws attention to the material practice of the law, and so to its complexities as an assemblage iterated through time.

With Harney and Moten, we can say that the apparatus of law, propagated in mythic form, instantiates a "call to order."[11] The "call" of law is an "initiation"—

[5] Hayden White, *The Content of the Form* (Baltimore, ML: Johns Hopkins University Press, 1987).

[6] Herman Melville, *Billy Budd, Sailor (An Inside Narrative),* eds. Harrison Hayford and Merton M. Sealts, Jr. (Chicago, IL: University of Chicago Press, 1962).

[7] Barbara Johnson, "Melville's Fist: The Execution of *Billy Budd.*" *Studies in Romanticism* 18, no. 4 (1979): 567-599.

[8] Ibid., 568.

[9] Melville, 128.

[10] Johnson, 597.

[11] Harney and Moten, 125.

in both the sense of *beginning* and of *induction into something*—that views the one called as "genuine and authentic" only insofar as she is "recognizable within the terms of order."[12] The call ascribes a "position" to the called, a "certain point" at which she "become[s] an instrument of governance."[13] And yet, the call is not a true beginning, but rather imposes a beginning on that which was already *going on*: "the response is already there before the call goes out." The "call and response" is always already active, always already moving.[14]

For the late legal theorist Robert Cover, this idea of a law found within the space of the call and response is what he refers to as *paideia*, a term derived from the Greek concept in the sense of mutual education and participation in society. In his paper "*Nomos* and Narrative,"[15] Cover describes *paideia* as the "world-creating" impulse. The contrary force, the myth that seeks to "call to order," is the *imperial* or "world-maintaining" impulse.[16] These two forces are expressions of the law as myth or "mythos"[17] (Cover's term), both operating within the frame of the "*nomos*"—the meaningful social world "of right and wrong, of lawful and unlawful, of valid and void."[18] Both mythic patterns offer a projection of the future which, as law, can be mapped onto the material reality of the nomos, but the visions of society therein are different and competing, just as the multiple endings of *Billy Budd* present the reader with different and competing visions of the aftermath of Billy's execution. The disconnect between these two forms of law is, for Cover, the tragic crux of the legal mythos, and for us here today, it is the tragic crux of *Billy Budd.* The paideic impulse, in the participation and commitment of the call and response, is the birthplace of social meaning—in Moten and Harney's terms, it is a "relay of breath that comes from somewhere else, that seems like it comes out of nowhere"[19]; the imperial impulse, on the contrary, is a "univocal"[20] call that treats the "general" and "generative" space of paideia as a "disorder" to be quelled.[21] The slippage here between the paideic and the imperial is at the heart of Melville's narrative.

With the "ragged" conclusion of Melville's novella (which remained unpublished for thirty years after his death), we see the slippage between these two mythic forms drawn out, and an emphasis placed on the complex and horrendous logic of empire. Barbara Johnson describes the complex system of imperial law as a "structure of exchange,"[22] which is to say, as an economy. As such, we can talk about the imperial myth in Marx's terms as a field of "social production,"

[12] Ibid.
[13] Ibid., 126.
[14] Ibid., 134.
[15] Robert M. Cover, "The Supreme Court, 1982 Term – Forward: *Nomos* and Narrative," *Harvard Law Review* 97, no. 1 (1983): 4-68.
[16] Ibid., 13
[17] Ibid., 9.
[18] Ibid., 4.
[19] Moten and Harney, 133.
[20] Ibid., 135.
[21] Ibid., 137.
[22] Johnson, 597.

constituted by "definite relations that are indispensable and independent of [the] will." On this base or "foundation" there "arises a legal and political superstructure ... to which correspond definite forms of social consciousness."[23] The superstructure, as a mythic form, is derived from the conditions of material existence, which in turn shapes the actions, desires, behaviours, and projects of the persons who constitute the nomos.

To say that the law is economic, however, is not to say that every legal economy is of a kind. Indeed, just as Cover presents us with two general forms of law, we can say that there are two economic forms that correspond to the imperial and paideic "superstructures." For Cover, the paideic economy is the ideal. In paideia, the social world is generated through the commitment of persons to each other. The world-creating force that produces legal meaning is allowed to flourish through cooperation, collaboration, and what Harney and Moten refer to as "study." The nomos, as defined by Cover, consists of "corpus," "discourse," and "commitment,"[24] and it is this active participation of persons therein that constitutes the meaning-generating, paideic practice of "study." The imperial economy, however, is primarily concerned with the *maintenance* of a world, and not creation. The 'breath from nowhere' of which Harney and Moten write is destabilizing; the creative domain of study proliferates too much; paideia cannot be allowed to persist. Order must be preserved. The imperial impulse reroutes the production of social meaning through the state, and through the law the state ensures each individual's commitment to the whole. The "normative world" of the nomos is formed through prescription, rather than through mutual agreement and cooperative education. Corpus and discourse are institutionalized. The "collective improvisational practice[],"[25] which Harney and Moten see as essential to sociality, is stamped out. The imperial myth is disseminated and discourse is regulated so that legal meaning remains stable—the monolith is erected, and the people are told that it has always been so. The futural dimension of myth, the fantastic imagining of otherwise, which Harney and Moten describe as the "double-sense" and "double-capacity" of the "prophetic," the "already-existing enrichment of being"[26] that inheres in paideic relation, is twisted to the service of an ossified present in which every individual is set in their *proper place*.

Empire and the force of imperial law is an enormous presence in *Billy Budd*. Opening in the summer of 1797, *Billy Budd* is set against a backdrop of imperial conflict. England is at war with the French Directory. The Revolution has collapsed, and a new French empire is soon to rise with Napoleon at its head. Just months before, two mutinies, one at Spithead and the other at the Nore, traumatize the British Navy. The fleet is still on edge at the time of Billy Budd's impressment, and, when John Claggart, the master-at-arms, accuses him of

[23] Karl Marx, "Preface (to *A Contribution to the Critique of Political Economy*)," in *Early Writings,* translated by Rodney Livingstone and Gregor Benton (London, UK: Penguin Classics, 1992 [1859]): 425.

[24] Cover, 12.

[25] Harney and Moten, 136.

[26] Ibid., 130.

mutiny and Billy (illiterate and afflicted with a stutter from birth that renders him speechless) strikes Claggart and kills him, the stakes are understandably high. Captain Edward Fairfax Vere must make a judgment—the imperial myth demands it. Fearing a revolt in the crew while on a combat mission, Vere convenes a drumhead court, which finds Billy guilty of homicide and mutiny under the Articles of War and sentences him to death. Billy is hanged at dawn.

As a mythic superstructure founded on an economic base, empire, like any economy, depends on production. Labour, "muscle alone,"[27] as Melville tells us, drives the economy forward. When Billy is impressed the navy is "insatiate in demand for men," in part because it is "multiplying its ships of all grades against contingencies present and to come."[28] Naval production is increasing, but where other industries produce textiles or sugar or cotton (which are, it should be noted, commodities of colonialism and empire), the navy produces war. France has created a demand, which England sees fit to supply. The paradox of the system is that the labour that fuels the economy is also the product that the economy produces. Such labour is no better than slavery, and certainly, for those impressed into service like Billy Budd, slavery is an accurate descriptor. The condition of Billy and the other impressed sailors can be likened to what Harney and Moten refer to as the condition of the "shipped," the condition of those "commodities ... that [can] speak," [29] "hollow[ed]" out and "exiled" from themselves.[30] The shipped, the slave, the impressed sailor, has no "standpoint" in the system, but is "located at every point"—the product of the shipped is his own "circulation."[31] As Melville makes clear through his narrative, *human life* is the currency and commodity of empire spent and consumed on the field of battle. Billy's life is simply a necessary expense.

The imperial economy is ravenous and insatiable—in it, there can be no true exchange, only consumption; gain is measured in terms of enemy loss. As war escalates, production increases, but an increase in production in such an economy entails an increase in expenditure, and thus, increased loss. New currency—new sailors—must be minted to stay ahead of the enemy and, as Melville writes, "the deficient quota, in lack of any other way of making it good, [is] eked out by drafts culled direct from the jails."[32] The proportion of impressed men, of the shipped, to volunteers increases, and, as conditions worsen, sailors begin to mutter. At Spithead and the Nore, sailors mutinied against the structure of exchange that so frivolously spent their lives. In response, the state invoked its right to violence: in Melville's words, "[f]inal suppression" made possible by the firepower of the marine corps stationed aboard naval vessels for the express purpose of putting down seditious crews.[33] If the shipped will not pay, empire

[27] Melville, 59.
[28] Ibid.
[29] Harney and Moten, 92.
[30] Ibid., 90.
[31] Ibid., 93.
[32] Melville, 66.
[33] Ibid., 55.

will collect by force.

For Cover this is "law as power."[34] Billy, typified as the "Handsome Sailor,"[35] embodies the opposite force, "law as meaning,"[36] the world-creating, paideic ideal. Billy is not opposed to law, but is instead representative of a *different form of law,* a different myth. Billy's effect on the other sailors is like a "Catholic priest striking peace in an Irish shindy,"[37] uniting the crew in a paideic nomos of shared "interpretive commitments,"[38] in the call and response of a relationship found to be already *going on*. The community Billy creates needs no state. Yet such a community threatens the very state to which he, and every other sailor of the warship *Bellipotent*, is subject. At sea, the Articles of War—the legal code of the British Navy—is law, not Billy's paideia. When Billy is impressed Melville sets the handsome sailor's former ship, the *Rights-of-Man* (named after Thomas Paine's book), against the *Bellipotent* (literally: "mighty in war"), constructing a narrative microcosm of the imperial economy in which Billy's freedom is converted into human capital. Billy's parting salute—" 'good-bye to you too, old *Rights-of-Man*' "[39]—though innocent, is taken by the lieutenant of the *Bellipotent* as "a covert sally on [Billy's] part, a sly slur at impressment in general, and that of himself in especial."[40] Billy inadvertently draws attention to his forced subjection to imperial law and the paradox of labour, production, and exchange in the imperial economy, effectively challenging the foundations of the British Empire. Empire, law as power, as codified by the Articles of War, cannot tolerate the force of the paideic myth, the "generativity without reserve,"[41] in Harney and Moten's words, that Billy unwittingly champions.

Melville uses the structure of his narrative to force a crisis of imperial law. As Cover argues, and we clearly see in *Billy Budd,* empire's only resort in such a situation is to a "jurispathic" act,[42] a deliberate limiting of legal meaning through the "institutional privilege of force."[43] This privilege is codified in "texts of jurisdiction"[44]: literally, textual declarations or dictations of the law. When Billy salutes the *Rights-of-Man* and the lieutenant commands him, " 'Down, sir!' "[45] empire verbally exerts its right to violence. Because Billy immediately complies there is no need for escalation. More flagrant violations, however, are subject to more forceful jurispathic acts, such as "gangway punishment"[46]—the naval jargon for flogging—or, in capital cases, what Cover terms a "naked jurispathic

[34] Cover, 18.
[35] Melville, 43.
[36] Cover, 16.
[37] Melville, 47.
[38] Cover, 7.
[39] Melville, 48.
[40] Ibid.
[41] Harney and Moten, 90.
[42] Cover, 40.
[43] Ibid., 54.
[44] Ibid.
[45] Melville, 49.
[46] Ibid., 68.

act"[47]: execution. Cover calls these acts as a whole "security measures," and the jurisdictive text—the Articles of War—stands as an "apolog[y] for the state itself and for its violence."[48] The monolithic character of the imperial myth obscures the artifice of its composition. Empire, Cover suggests, can interpret neither narratives nor persons through the lens of shared meaning, but only through the lens of force.

For this reason, imperial jurisdiction is always coercive. The call of empire permits no response, no deviation, and even Vere, though superficially positioned as judge, is hollowed of real agency and bound within the structure of exchange by what Barbara Johnson describes as the same "lines of force" that project the economy forward.[49] Before the drumhead court is even called, Vere prejudges Billy's guilt: Claggart was "[s]truck dead by an angel of God!" Vere proclaims, "Yet the angel must hang!"[50] Though readers hardly think Billy responsible for his actions, nor is he in fact guilty of the crimes of which Claggart accuses him, killing a commanding officer is a capital crime, warranting a commensurate jurispathic penalty. Vere merely voices the ruling that the law has already demanded. As Johnson argues, imperial jurisdiction "define[s] and limit[s] the frame of reference within which [Vere's] decision is to be made possible."[51] The imperial frame "reduce[s] the situation to a binary opposition," turning an "ambiguous situation into a decidable one."[52] Vere is already positioned, located, *placed* within the field of empire, the mantle of judge lain upon his shoulders. He does not need to think—his deliberation is an awful mutilation, a self-hollowing that allows him to act as a servant of empire. Vere becomes the "automatic subject" which Harney and Moten argue is the ultimate form of the capitalized and coerced social being. As Vere states, the law dictates that he look only to "the frontage."[53] The "clash of military duty with moral scruple" is resolved for him by the forced exile of his scruples: Billy's case is a "case practical, and under martial law practically to be dealt with."[54]

As Brook Thomas has argued,[55] however, to criticize Vere as an individual is misplaced, and indeed, does nothing but support the empire in which Vere was formed. Judgment does not happen in a vacuum. The law, as I have attempted to show here, is never absolute, isolated, or ideal—its symbolic force is always materially rooted and socially generated. The injustice of Vere's ruling against Billy Budd is, therefore, an injustice born of a system that demands the blood of its constituents for the sake of its own perpetuation. Billy threatens the order of empire; Vere is called to act, to become, as Harney and Moten write, an

[47] Cover, "*Nomos* and Narrative," 54.
[48] Ibid.
[49] Johnson, 597.
[50] Melville, 101.
[51] Johnson, 593.
[52] Ibid., 596.
[53] Melville, 112.
[54] Melville, 110.
[55] Brook Thomas, "Measured Forms," *Cross-Examinations of Law and Literature: Cooper, Hawthorne, Stowe, and Melville (*Cambridge, UK: Cambridge University Press, 1987).

"instrument of governance."[56]

This call is what Louis Althusser refers to as *interpellation.*[57] The myth, which functions in the same way as ideology for Althusser, is an "apparatus" of state domination, tied to the "repressive" apparatus of state-sponsored violence.[58] The state is a nexus of power relations, and as such it is invested with the unique force of what Foucault has referred to as the "dividing,"[59] "objectivizing,"[60] and "individualiz[ing]" [61] practice of *subjection*, in the double sense of the word, which Althusser also employs—that of both agency and submission. Social beings are forcefully shaped into a form recognizable to power: the individual subject. For Vere, his place in empire is marked by the "buttons that [he] wear[s],"[62] bearing the sigil of the crown. He is, as Althusser would say, always already a subject of empire and the king. Billy, too, is subject, interpellated, called, by the imperial myth of law. To ensure the continued social production of society, empire must authorize its right to perpetuate violence in the name of order. It does so through subjection, converting the creativity of the free person into the capital of legal agency, an agency that automatically "reproduce[s] and realize[s] itself" within the imperial economy.[63] And so, in perhaps the most troubling scene of Melville's narrative, just before he is hanged, Billy cries out, " 'God bless Captain Vere¡'[64] Althusser's interpellated subject, Billy"makes the gesture[] and action[] of his subjection 'all by himself.' "[65] The only response he is permitted by the state is the authorization of his own execution.

The culmination of Melville's narrative is, for many, overwhelming. So compact, so skeletal, the brutality of *Billy Budd, Sailor* is, in comparison to such bombastic earlier works as *Moby-Dick,* almost unbearably stark. Billy's death is predetermined—"[f]ated,"[66] as Vere says; there seems little room for alternatives. And yet, the ambivalence of Melville's ending remains. There is an openness, an *otherwise* present in his text, a space created by the nature of myth itself. I want to emphasize: the myth of law is never singular; the paideic impulse is always already at work, always already *there*—as Harney and Moten say, we are all "already in something."[67] The subject of empire is a post-hoc construction, a strategic attempt to "banish human time"[68] from the social, to coerce that

[56]Harney and Moten, 126.

[57]Louis Althusser, "Ideology and Ideological State Apparatuses (Notes Towards an Investigation)," in *Critcal Theory,* ed. Robert Dale Parker (Oxford, UK: Oxford University Press, 2012).

[58]Althusser, 449.

[59]Michel Foucault, "The Subject and Power," in *Critical Theory and its Critics,* eds. David Ingram and Julia Simon-Ingram (St. Paul, MN: Paragon House, 1992): 303.

[60]Ibid., 304.

[61]Ibid., 306.

[62]Ibid., 503.

[63]Harney and Moten, 93.

[64]Melville, 123.

[65]Althusser, 460.

[66]Melville, 99.

[67]Harney and Moten, 134.

[68]Ibid., 91.

"something that was already resisting it,"[69] a something that, in its fecund, generative, creative ambivalence, has always opposed, is always opposing, and will always oppose the powers that seek to control social beings. Billy's salute could not have been anticipated, and could not truly be contained. Like the soloist of Harney and Moten's study, Billy "is already less and more than one,"[70] rejecting his subjection, disowning his execution, refusing to hollow out the "interiority of sentiment" that holds every person as a friend.[71] Indeed, in his innocence, Billy abnegates any agency in the matter whatsoever—he is not poised to attack, to undermine, to critique. Unknowing and illiterate, he circumvents the jurisdictive apparatus of empire entirely, and even when empire kills him, the force of his presence remains. As he hangs from the yardarm an "inarticulate" hum, like a "freshet-wave of a torrent suddenly swelled by pouring showers," emanates unbidden from his crewmates, an "ominous low sound" silenced only by the "shriek" of the boatswain whistle.[72] But the "relay of breath" cannot be stopped—it is always *going on.* The illusion of the singular subject, that instrument of state subjugation, trembles. Again, after Harney and Moten, "the one who is said to have given the call is really an effect of a response that had anticipated him."[73] Billy embodies that response, the "jurisgenerative"[74] impulse, of which Cover, and Harney and Moten, write. In Billy the prophetic is manifested, that futural quality of myth that "see[s] what's right in front of you and ... see[s] through that to what's up ahead,"[75] that goes "all the way to the end" of the world and beyond, to the "world in the world," the "joyful noise"[76] of the sailor's mutter become a song. It is the "consent not to be one,"[77] the practice of being in "every standpoint and none," of "being with others" in love.[78] Within this narrative of blood, within Melville's inscription of empire, there is smuggled the movement of a resistance, the movement of a myth which, to quote Harney and Moten one final time, is an "ecstatic existence beyond beginning and end,"[79] an existence beyond even death.

[69] Ibid., 92.
[70] Harney and Moten, 132.
[71] Ibid., 98.
[72] Melville, 172.
[73] Harney and Moten, 98.
[74] Cover, 15; Harney and Moten, 141.
[75] Harney and Moten, 131.
[76] Ibid., 118.
[77] Ibid., 146.
[78] Ibid., 130.
[79] Ibid., 95.

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