

Inspecting and transcribing the legal documents in Amasa Delano's *Narrative of Voyages and Travels in the Northern and Southern Hemispheres* (1817) as he prepared *Benito Cereno* (1855) for serial publication in *Putnam's Monthly Magazine*, Herman Melville found himself in a position not unlike that of Bartleby the scrivener. For their part, readers of the novella, which dramatizes the role reversals arising from a slave ship insurrection and its legal aftermath, find themselves echoing *Moby-Dick's* Ishmael: "Who aint a slave?"¹ But a careful rereading of the novella alongside chapter 18 of Delano's *Narrative*, with attention to all those copied legal documents, suggests that for Melville the more timely question may have become: "When ain't one a slave?"

Melville wrote and published his only sustained literary engagement with slavery at a pressing historical moment, when the Fugitive Slave Law, part of the Compromise of 1850, was triggering protests in Northern streets and courtrooms (including that of Melville's father-in-law and dedicatee, Massachusetts Supreme Court Chief Justice Lemuel Shaw).² Melville further heightened the story's relevance by redating the uprising from 1805 to 1799, a pivotal year in the Haitian Revolution.³ Thus, whereas "Bartleby" foregrounds law's archival tendencies, *Benito Cereno* encourages us to consider not only law's creation of a historical record in the present but also its relationship to the past.⁴ Although produced for a Spanish vice-regal court, the translated depositions in Delano's *Narrative* and Melville's novella serve as reminders that for law, as Robert Gordon puts it, "the past is primarily

a source of authority,” especially in precedent-oriented Anglo-U.S. law where “[h]istory is not only a source of authority but of legitimacy.”⁵

Under the Fugitive Slave Law, the slave’s legal outsidership was evinced by his or her peculiar vulnerability to the juridically reconstructed past. Like other African Americans, fugitives were denied the rights and responsibilities of full citizens; nevertheless, they too entered into formal and informal contracts for marriage, wage labor, and property. In a reversal of its usual function in law, the past threatened to deauthorize such civil agency by exposing the fugitive’s illegitimate legal personhood. Escaped slaves such as Frederick Douglass and Harriet Jacobs dreaded encountering anyone who knew their histories; the summary hearings conducted under the law revolved around efforts to prove the fugitive’s previous Southern bondage.⁶ Revelation of fugitives’ histories could transport them back to the South not only geographically, but temporally—back to their prior status as property capable of only criminal agency. And, although the goal of the abolitionist-sponsored slave narrative was the inverse of the hearings’—to transform those legally defined as chattel into legal persons—the genre nevertheless entailed its subjects’ figurative return to captivity through retrospective personal narrative.

In *Benito Cereno*, Melville investigates the temporal dimensions of unfreedom with a plot whose logic—and dramatic tension—centers on characters who move in and out of various states of captivity, rebellion, and fugitiveness. Imagining through these characters what Joan Dayan has termed “retractable personhood” (the enslaved subject’s “instrumental alternation between person and thing” under the legal fiction of double character), *Benito Cereno* probes the limits of legal personhood by demonstrating the impossibility of pinpointing the moment of transformation from subjection to the will of another to liberated, responsible autonomy.⁷

As illustrated by both Melville’s story and the nation’s recent history at the time of publication, part of the difficulty lay in the fact that neither rebellion nor escape automatically conferred independence—much less an autonomous voice with which to affirm and enact that independence.⁸ In antebellum America, this dilemma was as evident to fugitive slave lecturers and authors like Douglass, Jacobs, and William Wells Brown as to literary nationalists like Ralph Waldo Emerson or *Putnam’s* founders Charles Briggs and George Palmer Putnam.⁹ If, as in *Benito Cereno*, the involuntary human faculty of memory impedes

one's full liberation from subjection to another by casting a shadow over any attempt to assert civil agency, how can unfreedom possibly terminate in acts of violence or flight? And if, as *Benito Cereno* implies, only historical and cultural amnesia can separate the liberated self from the previously captive self, the question of temporality as opposed to instrumentality reasserts itself: When, exactly, ain't one a slave?¹⁰

Narrative is the literary and often legal means by which we understand, order, and assign authority to the past. Accordingly, scholars have emphasized narrative's centrality to the construction of selfhood in the mutually constitutive realms of law and culture.¹¹ But returning to that lawless and lonely spot off the coast of Chile in 1799 (or was it 1805?) urges us to consider how, through its dependence on temporality, narrative may also disaggregate subjectivity in legal and literary contexts. Although Melville's abrupt interpolation of "dreary" legal documents into his story has troubled readers since G. W. Curtis vetted the manuscript for *Putnam's*, Cereno's deposition is particularly relevant to our inquiry in that it seeks to authorize and order the "criminal cause" against the slave rebels through an officially sanctioned retrospective narrative.¹² At the same time, the deposition forms the basis for Delano's and Melville's retellings of the American's encounter with the Spanish ship and its occupants. Like the plot it discloses, the deposition collapses history, law, and literature, illustrating how, rather than supporting the construction of human subjects, the narrative structure upon which both legal and literary discourses depend may be more likely to dismantle them.

Contracts and testimony pile up within and between Delano's *Narrative* and Melville's *Benito Cereno*, but instead of corroborating the legal personhood of their agents, these amassed textual assertions of civil agency cumulatively deauthorize text and author alike. Far from affirming autonomous selfhood, legal and extralegal acts of testifying and contract making document its absence. Together these seafaring tales suggest that, rather than anchoring the subject in the bedrock of accumulated precedent, the seismic accretion of legal and literary texts unmoor their putative agents, casting them, Pip-like, adrift in a sea of legal personlessness. More specifically, in *Benito Cereno* the interplay of testimony and contract making marks the conundrum of a legal personhood gained at the expense of memory. Paradoxically, memory generates narratives it can only authorize through recourse

to amnesia; only by forgetting one's own unfreedom—and that of others—can one attain sufficient authority and autonomy to tell one's story publicly, affirming civil agency through an assertion of civic presence.

Published in the cultural nationalist magazine *Putnam's*, one installment of *Benito Cereno* appeared alongside a favorable review of Douglass's *My Bondage and My Freedom* (1855).¹³ As this concurrence suggests, the disintegrating effects of legal and literary attempts to activate an autonomous self could pose a particular threat to the independence of a polity that denied legal personhood to those whose print self-fashioning was contributing to a distinctive national literature.¹⁴ If Melville's novella speaks to the relationship among slavery, law, and literary production in antebellum America, it may do so not just through the haunting final image of Babo as silent posthumous witness but, rather, in the excessive, contradictory verbosity of its assembled legal and literary texts.¹⁵



As Melville's literary salvage of Delano's *Narrative* demonstrates, the captain's encounter with the distressed Spanish ship left the American with a marketable yarn.¹⁶ But as Delano's account also indicates, the tale's real interest lay in the slave ship and its cargo—not as literary subjects, but as property. In contrast to Melville's novella, where the outcome of Cereno's offer of salvage rights to his ship remains unspecified, the primary purpose of the *Narrative's* chapter 18 is to document the Spaniard's breach of contract with the Yankee captain.

The fictional Delano comes across the *San Dominick* whilst “commanding a large sealer and general trader” laden “with a valuable cargo” (*BC*, 46); the historical Delano meets the errant slave ship under far less auspicious circumstances. If the fictional Delano evinces “no small interest” in Cereno's craft (*BC*, 47), the historical Delano all but acknowledged that economic incentive, not idle curiosity, formed the basis for such interest: the embattled slave ship promised a potentially lucrative salvage for the down-at-the-heels captain and his rebellious crew.¹⁷

Dispassionately summarizing the plot culminating in the battle between the white sailors and the black rebels, Delano's *Narrative* energetically recounts the struggle between the Spaniard and the American over property rights to the vessel and its cargo. Although

the reproduced “*Declaration of first Witness, DON BENITO CERENO*” is silent regarding any pecuniary commitment by the Spaniard to the American in exchange for his ship’s recapture, the “*Declaration of DON AMASA DELANO*” attests that after his frantic “jump on board his boat . . . the Spanish captain told him that if he took her [the *Tryal*], one half of her value would be his, and the other half would remain to the real owners; that thereupon he ordered . . . his crew . . . to pursue her, and board her” (*NVT*, 343–44). Delano’s account stresses Cereno’s contractual obligations, having offered consideration (half the ship’s value) in exchange for services rendered (retaking the ship).¹⁸

Outside these “Official Documents,” Delano admits that he supplemented the financial incentive to his men with a more coercive one: “I told them, never to see my face again, if they did not take her” (*NVT*, 327). “[T]hese were . . . pretty powerful stimulants,” given that, in addition to a regimen of “good wholesome floggings,” the captain had just summarily “set five men,” all mutinous transported convicts, “on shore” at desolate St. Maria island (*NVT*, 327, 320, 321). Even as its account of the “strict discipline” by which Delano “managed” his crew appears to justify Ishmael’s query, however, the *Narrative* registers the transitoriness of both liberty and captivity. Upon arrival in Conception, Delano “was mortified” to find Cereno taking “the depositions of five of my Botany bay convicts, who had left us at St. Maria, and were now in prison” in order “to injure my character, so that he might not be obliged to make us any compensation for what we had done for him” (*NVT*, 329). In keeping with their syntactic reclassification from passive objects to active agents, the convicts testify that “[a]mongst other atrocities,” their erstwhile captain “was a pirate” (*NVT*, 329). Threatening Delano’s own liberty, the convicts’ depositions assert the speakers’ legal personhood. No longer subject to the American captain’s tyranny, the sailor-convicts cannot go free either. When ain’t one a slave?

Rejecting the depositions as “false representations” in light of Delano’s exemplary “conduct,” the Viceroy of Lima orders “part payment for services rendered” (*NVT*, 329–30). Facing Cereno’s appeal of this extrajudicial order, Delano again invokes executive authority to circumvent legal scrutiny of the alleged contract. Delano claims Cereno paid him only when offered yet another verbal covenant, this one with a clause similar to that the American captain offered his own recalcitrant men: the Viceroy threatened to compensate Delano him-

self and, in exchange, to imprison Cereno (*NVT*, 330).¹⁹ Notwithstanding Delano's subsequent grasp for redemptive cultural capital through claims of humanitarianism, chapter 18 leaves little doubt that the man repeatedly referred to in Cereno's "Declaration" as "the *generous captain Amasa Delano*" preferred relations mediated by contractual exchange rather than sympathetic benevolence (*NVT*, 337, 338).²⁰

Although *Benito Cereno* omits the legal wrangling over salvage rights in favor of the slave insurrection's more dramatic criminal proceedings, the fictional Delano shares his historical counterpart's attentiveness to contractual commitments (see *NVT*, 325–26). Conscious that "he was strictly accountable to his owners," Melville's Delano repeatedly attempts to broach "the pecuniary part of the business" with the Spaniard, only to be met by "indifference and apathy" (*BC*, 90, 91).²¹ Exposure of Babo's plot reveals that Cereno's seeming reluctance to grant Delano the privacy to discuss finances results from his inability to free himself of Babo's coercive presence. But Don Benito's captive state, along with this incapacity for autonomy, urges another reading, not just of this scene, but of the work as a whole, posing the question of exactly when legal personhood commences and ceases. For, even if Cereno could find time alone to conduct business with the American captain, would his word be binding? Enthralled by another, Melville's Cereno lacks the legal personhood to ensure that his words—whether contractual or testimonial—have the requisite authority to activate these verbal assertions of civil agency.



Scholars intrigued by *Benito Cereno*'s legal and literary discourses have focused on the court proceedings, particularly the Spaniard's interpolated deposition. Surprisingly few have devoted attention to the written contract into which Cereno enters with his captors.²² The third of five compacts initiated by the Spanish captain over the course of Melville's story, this contract merits critical scrutiny. In his fictional deposition, Cereno (varying only slightly from the *Narrative*'s "Declaration") recounts how

the deponent, endeavoring not to omit any means to preserve the lives of the remaining whites, spoke to the negroes peace and tranquility, and agreed to draw up a paper, signed by the deponent and the sailors who could write, as also by the negro Babo, for himself

and all the blacks, in which the deponent obliged himself to carry them to Senegal, and they not to kill any more, and he formally to make over to them the ship, with the cargo, with which they were for that time satisfied and quieted. (*BC*, 108; see *NVT*, 337)

In both accounts, this is the first and last we learn of this contract, which is broken by Cereno's leap into Delano's boat.

Given the *Narrative's* focus on Cereno's apparent breach of contract over Delano's salvage rights to the ship, the omission of any reference to this earlier broken contract is significant, although not surprising. (Suggestively, Melville retains the deposition's account of this contract even as he excises the dispute over the Delano-Cereno verbal contract.) One might assume that Cereno, Delano, and Delano's readers (including that most attentive reader, Herman Melville) would perceive a contract with slave rebels as unworthy of being honored, a clever textual trick to gain the gullible blacks' trust through a talismanic legal form. Such a reading would take for granted blacks' legal outsidership, specifically their civil death under slave law.²³ But a brief review of Anglo-American contract theory as it pertains to slave law encourages an alternate reading in which contracts, like depositions, inflect characters' shifting states of unfreedom and autonomy. For if the blacks' liberal contract making appears a more reliable assertion of their independence than republican revolution, the fugitive Cereno's disregard for his contract with his former captors jeopardizes—in both accounts, but especially in the novella—his ability to regain the requisite legal personhood to enter into subsequent contractual relations with whites, or, for that matter, to be deposed in a criminal cause.

In her study of African Americans' postbellum transition "from Status to Contract" (in Sir Henry Maine's classic formulation), Amy Dru Stanley describes how contractualism's emphasis shifted from the early modern covenant between ruler and ruled ("security of person and property" in exchange for "obedience"), to the republican social contract ("a voluntary association created by citizens equal under the law, a compact guaranteeing inalienable individual rights"), to the liberal commercial contract (a Blackstonian "agreement, upon sufficient consideration, to do or not do a particular thing").²⁴ Although earlier views continued to influence antebellum thinking, especially regarding slavery, Stanley notes that the "market concept of contract" implicitly rejected "reciprocity among unequals as a justifica-

tion for relations of authority and obedience” in favor of “sharp bargaining, liberty, and formal equality among individuals” (*FBC*, 13).²⁵ As Maine’s formula suggests, the new contract regime was to extinguish not only hereditary status but the coercion, sentimentalism, and paternalism that accompanied it, introducing in its place transitory exchange relationships characterized by volition, consent, and, above all, self-ownership.²⁶

Under slavery, millions of African Americans were excluded from officially entering into contractual relations. Just as self-possessed individuals could not, in Locke’s still influential view, contractually bind themselves into slavery, “the slave, being dispossessed of self,” could not “enter into binding contracts” (*FBC*, 17).²⁷ “[I]n the eyes of most Americans,” Stanley explains, “[e]mancipation apocalyptically achieved the transition from status to contract” (*FBC*, 4). Introducing a new contractualism into African American social and economic relationships, especially through marriage and labor contracts, the Freedman’s Bureau assumed that “fidelity to contract would demonstrate that ex-slaves were fit for freedom” (*FBC*, 37). Breach of contract would confirm the popular perception that “freedpeople were racially unfit for relations of voluntary exchange” (*FBC*, 41–42).²⁸

Published before the Civil War, *Benito Cereno* was nevertheless composed in a rhetorical climate where the antislavery movement had “infused the principles of self ownership, consent, and exchange with new ideological urgency,” simultaneously drawing on and contributing to the broader antebellum concept of contract as “the boundary between slavery and freedom” (*FBC*, 17).²⁹ These assumptions received juridical reinforcement when in *Commonwealth v. Fitzgerald* (1844) Melville’s father-in-law, Chief Justice Shaw, ruled that enslaved seaman Robert Lucas was free from not only his Virginia master, a purser in the Navy, but from any obligation to the Navy itself (in which his master had enlisted him). As Shaw explains in a well-circulated ruling, “[T]he enlistment is a contract, and none but a free person can enter into a contract. Slaves can make no contract. Lucas’s going voluntarily on board the ship, did not alter the case, for he was still a slave, and therefore under the control of his master. In the eye of the law he could have no will of his own.”³⁰ Notwithstanding his apparent physical autonomy, the enslaved Lucas lacked civil “will of his own” and was thus excluded from contractual relations—as well as from the Constitution’s fugitive slave clause. Melville’s portrayal of Lucas

as “Guinea” in *White-Jacket* (1850) ironically glosses Shaw’s logic: “[T]hough a bondman, liable to be saddled with a mortgage, like a horse—Guinea, in india-rubber manacles, enjoyed the liberties of the world.”³¹ Like his literary counterparts in *Benito Cereno* and like the real-life Lucas, Guinea’s apparent civil agency is belied by his lack of legal personhood—and vice versa.

This popular legal consciousness regarding slavery and contract theory enjoins us to heed more closely the contractual relations among Babo, Cereno, and Delano in the *Narrative* and *Benito Cereno*; for if, from an antebellum perspective, contract stood for a measurable advance forward in historical time (“the movement of the progressive societies has hitherto been a movement *from Status to Contract*”), authorized entry into contractual relations would appear to mark the moment when bondage ended.³² Depicting captivity beyond the inaugural slavery of Babo and the other shipboard blacks, both texts detach legal personhood from race and, in the process, interrogate how a previous state of unfreedom might impinge upon civil agency by blurring the lines between dependency and autonomy—for blacks and whites alike.³³

That legal personhood’s instability may be a by-product of the commercial contract’s celebrated formal symmetry is suggested by the seesawing of subjectivity that occurs throughout chapter 18 of the *Narrative* and in *Benito Cereno*. This oscillation is typical of the larger antebellum literary “crisis of subjectivity” that culminated in the post-bellum incorporation of contractualism into constitutional law through the doctrine of substantive jurisprudence.³⁴ Reassessing Morton Horwitz’s classic account of the nineteenth-century “triumph of contract,” Wai Chee Dimock finds that “subjectivity is a reversible category” (*RJ*, 205).³⁵ The “selective endorsement” of subjectivity that occurs in “contractual processes” is part of the larger adversarial grammar of rights discourse due to “the proprietary conception of rights . . . its imagined status not only as something owned but as something owned in defiance of others and to the exclusion of others” (*RJ*, 207, 196). In postbellum constitutional law, notably *Plessy v. Ferguson* (1896), the commercial contract’s formal equality had become a binary which opposed “the figure of a right holder” to that of a “nonentity” (*RJ*, 218).

In both Delano’s and Melville’s accounts, parties to a contract resemble two people who have tentatively mounted a teeter-totter,

knowing that one's abrupt withdrawal will bring the other crashing down. The two maintain an uneasy equilibrium of inversely proportionate subject positions: the lower one descends on the scale of legal personhood, the higher his counterpart ascends. We have seen this tense reciprocity in the *Narrative*, where Delano's civil agency and autonomy inversely correlate with those of his convict crew. His relationship with Cereno is similarly antipodal: when rescuing him, Delano attributes the Spaniard's fear of "his own shadow" to "his having been effectually conquered and his spirits broken" (*NVT*, 326), but upon finding Cereno restored to legal personhood and busily collecting depositions against him, it is the American captain who, "mortified," approximates civil death. For his part, Melville stresses the impossible coexistence of Babo and Cereno as rights-bearing individuals. At the novella's end, the civil agency represented (however dubiously) by the Spaniard's deposition is counterbalanced by Babo's silence in court; conversely, "[w]hen pressed by the judges" to identify Babo "[b]efore the tribunal," Cereno "fainted," ceding legal personhood to his subordinates and his former captor: "On the testimony of the sailors alone rested the legal identity of Babo" (*BC*, 116). Recounting the aftermath of an uprising by evidently "tractable" slaves, *Benito Cereno* neither endorses the right to revolution nor cautions against slaveholding, but instead presents a disturbingly comprehensive realization of the "retractable personhood" imagined by U.S. slave law, in which the "alternation between person and thing" occurs not just within but across individuals and races in a kind of reciprocal contractual exchange run amok (*BC*, 104).

In light of this conjunction of contractualism and rights discourse, the written agreement between Babo and Cereno solicits attention in that it appears to represent the commercial contract's triumph over other compacts. After "the negroes revolted suddenly," killing many of the Spaniards, "the deponent" approached Babo and Atufal and "exhorted them to cease committing such atrocities, asking them, at the same time, what they wanted and intended to do, offering, himself, to obey their commands; . . . notwithstanding this, they threw, in his presence, three men, alive and tied, overboard" (*BC*, 105). This first disastrous attempt at covenant making (Cereno offers obedience to his new rulers in exchange for their protection) is followed by a verbal contract that, while premised on exchange, is explicitly involuntary on the Spaniard's part. This second compact occurs just after Babo's

inquiry as to “whether there were in those seas any negro countries where they might be carried”³⁶ is answered in the negative and his subsequent order to transport them to West Africa is checked by Cereno’s assessment of the considerable obstacles to such a journey:

[T]he negro Babo replied to him he must carry them in any way; that they would do and conform themselves to everything the deponent should require as to eating and drinking; . . . after a long conference, being absolutely compelled to please them, for they threatened him to kill all the whites if they were not, at all events, carried to Senegal, he [Cereno] told them . . . they would proceed on their course; . . . the negro Babo agreed to it. . . . (*BC*, 105)

Far from ending the Spaniards’ captivity, this involuntary compact in which the captives’ lives are protected in exchange for their obedience to their captors merely establishes the terms of their unfreedom.

Yet even as this second compact demonstrates the blacks’ ability (recalling Captain Delano and the Viceroy of Lima) to use force to extract temporary obedience and a term of labor from their subordinates, it does not establish their independence: both versions of the deposition record that, upon Don Benito’s failure to commence the journey in a timely fashion, “the negroes” became “restless and mutinous” (*BC*, 105; *NVT*, 335). Cereno’s word choice indexes the blacks’ ambiguous condition. If the former captain has been made captive by the slaves’ insurrection, against what authority are the slaves rebelling? How could the blacks who, soon after their uprising, “made themselves masters of the hatchway” and, seemingly, of the ship itself, be “mutinous”? (*BC*, 105; *NVT*, 334). Cereno’s description of his “mutinous” black captors highlights the legal dilemma, which, as his deposition indicates, the blacks themselves also discerned. Absent any jurisdiction willing to recognize their revolution (any nearby “negro countries where they might be carried”), Babo and the other blacks remained legally the property of “Don Alexandro Aranda, gentleman” (*BC*, 104). Hence Babo’s decision “to kill his master,” in part as a “warning” to the surviving Spaniards, but primarily “because he and his companions could not otherwise be sure of their liberty” (*BC*, 106; see *NVT*, 336).

Both Cereno’s incongruously authoritative diction and the blacks’ drastic resolution suggest that rebellion, however successful, may not usher those who had formerly been subjugated into the bright light

of liberty. Not while there is still a gentleman—captive though he may be—who continues to hold a property right in the blacks. Here the nineteenth-century shift to contract as a commercial instrument rather than a political bond is crucial. It is insufficient for the *San Dominick* slaves to declare their independence and take military action to break their symbolic chains. As noble and heroic as such republican sentiments and revolutionary acts may have been, the ascendancy of a new contractual regime (recall, the actual uprising occurred not in the Santo Domingo hour of 1799, but in 1805) makes it impossible for the blacks relying upon such measures to “be sure of their liberty.” As objects of, rather than parties to, the contracts by which the self-possessed Spanish gentleman had freely consented to acquire them in exchange for an unspecified consideration, the blacks lack the legal personhood necessary to intervene in—much less to nullify—such contracts.³⁷

Indeed, the disparity between Aranda and the black insurrectionists is nowhere more evident than in the fact that, whereas their revolutionary action is inadequate to secure their liberty, his legal personhood survives his own mortality. In death Aranda continues to exert legal control over his human property; his murder will merely occasion the transfer of his slaves (and their progeny, who inherit only the taint of unfreedom) to any heirs.³⁸ Aranda’s tenacious necro citizenship guarantees that even his murder will not endow the blacks with liberty.³⁹ Not coincidentally, then, it is *after* Aranda’s death that the blacks enter into the third, more formal compact with Cereno; only by entering into such contractual relations themselves do they seem to have the possibility of ensuring (underwriting as well as securing) their release.

This written compact is distinguished from its predecessors less by its materiality than by its formal resemblance to the liberal commercial contract. Agreed to under at least discursive “peace and tranquility,” the new contract seemingly replaces explicit coercion with the voluntary consent of both parties. Whereas under the previous compact Cereno, “threatened” with execution of the whites, was “absolutely compelled to please” his captors by sailing to Senegal, in this new written contract, “the deponent *obliged himself*” to make the journey and “formally to make over to them the ship, with the cargo” (*BC*, 108; emphasis added). Absent any legal oversight, the instrument’s adherence to the commercial contract’s terms putatively confers on both

parties the transitory formal equality that was the hallmark of such exchanges. Further, “[c]onsidering the lawlessness and loneliness” of the novella’s ocean setting, the contract between Babo and Cereno acquires its force not by being enacted within a particular jurisdiction but, instead, by occurring in what Alexis de Tocqueville calls “the shadow of the law” (*BC*, 35).⁴⁰ (Tocqueville’s figure designates the process by which, outside of any official legal institutions or their recognized representatives, lay people draw on popular notions of legal norms and procedures to structure and authorize their relationships with each other.⁴¹) In keeping with the story’s somber seascape—“Shadows present, foreshadowing deeper shadows to come”—ship-board relationships established in law’s shadow threaten to overshadow subsequent attempts to reorder those relationships through recourse to law itself (*BC*, 46).

Of course, aboard the *San Dominick*, as in the Reconstruction South, “the liberty of contract merely acted as the vehicle of involuntary servitude. Consent cloaked coercion, and relations of domination and exploitation were masked by the designation ‘free will.’”⁴² In exchange for Cereno having “obliged himself” to sail to Senegal, the blacks enter into a typically Blackstonian agreement not to do a particular thing. That the thing they agree not to do is “to kill any more,” along with Cereno’s own need “to preserve the lives of the remaining whites,” reveals the contract’s coercive conditions, undermining its legality. However much these conditions recall those of nineteenth-century labor contracts, under the prevailing “will theory of contract” such coercion ultimately excuses Cereno’s eventual breach.⁴³

It is essential that part of the consideration to be received by the blacks is “the ship, with its cargo.” Through a typically dizzying Melvillean convolution, the blacks—still legally part of the ship’s “cargo” after the uprising (as the later offer of salvage confirms)—acquire the legal personhood necessary to enter into the contract as self-possessed individuals by that contract’s projected “mak[ing] over to them” themselves as “cargo.” Combined with its strained legalism, the contract’s excessively literal evocation of self-ownership reveals the conceptual cracks in a legal system that recognized some human beings as self-possessed individuals while treating others as objects of property. Rebellion alone is inadequate to guarantee the blacks’ independence in a legal regime where they are civilly dead; as *Narrative* and novella alike intimate, physical coercion must supplement legality

in order for enslaved blacks to lay claim to the formal equality and self-ownership necessary to enter into contractual relations. The kind of “sharp bargaining” through which ex-slaves access contractualism is portrayed in the shaving scene Melville added to Delano’s *Narrative*: there Babo’s “Now, master . . . now, master” offers not a deferential appeal to his pretended owner but a declaration of his timely accession to a self-possessed individualism buttressed by the violent subjection of others (*BC*, 85).

Affirmation of Babo’s self-ownership occurs when Delano offers to buy him from Cereno, inquiring, “Would fifty doubloons be any object?” (*BC*, 70). Having previously contracted for the ship’s cargo (of which he is a part), Babo is no longer himself an “object” of property available for purchase. This contractual exchange of his property status for self-ownership is ratified by the fact that Babo, not Cereno, responds to Delano’s offer: “Master wouldn’t part with Babo for a thousand doubloons” (*BC*, 70). Only apparently speaking on Cereno’s behalf, Babo in fact affirms his own self-mastery. His intervention certifies Babo’s transformed relationship to contractualism and thus to legal personhood: no longer the “object” of consideration in an exchange between two white slaveholders, Babo confirms his civil agency by decisively (albeit indirectly) rejecting a contract for his possession by another.

That Cereno can only respond to Delano’s proposed transaction with “some broken reply” not only acknowledges his lack of a property right in Babo but also indicates his own lack of self-possession—the formalities of his contract with Babo notwithstanding (*BC*, 71). For even as Delano’s offer affirms Cereno and Babo’s masque of bygone sentimental master-slave status relations, it also exposes the fictive nature of their formal contractual equality. As Babo’s response reminds us—and, indeed, as Delano’s entire visit to the *San Dominick* reveals—Cereno can no longer speak for himself.

If its coerciveness ultimately excuses Cereno’s breach of the contract with Babo—the agreement was involuntary and therefore void—the Spaniard’s release from contractual obligation comes at the expense of his legal personhood: captive to another, he cannot voluntarily enter into contracts and therefore cannot be held liable to uphold them. How then can the man, persistently figured as “the deponent” in both Delano’s and Melville’s accounts of contract making, muster the civil agency to testify in a court of law against his former captors? If

the contract with Babo, like Cereno's captivity itself, terminates with the Spaniard's leap into Delano's boat, then why, the *Narrative* would seem to ask, isn't Cereno liable for his ensuing verbal contract with the American? Although Melville doesn't reproduce the legal battle over salvage rights, his novella poses similar questions in its depiction of Cereno's dubious competency as a witness.



Initially prompted by colonial courts' doubts about Africans' appreciation for the Judeo-Christian oath, procedural restrictions on slave testimony became identified with racial inferiority.⁴⁴ Ideology aside, a more practical legal concern arose from slaves' condition of bound servitude quite apart from their cultural difference or racial status. As with their contracts, slaves' testimony was undermined by their complete subjugation to their masters, which officially deprived them of free will.⁴⁵

Both Delano's *Narrative* and Melville's *Benito Cereno* dramatize the dangers of authorizing the speech of an incompetent witness subject to another's will. The story that Cereno tells to Delano, "acting . . . the part of principal owner, and a free captain of the ship," does not simply shield the insurrectionists from discovery and recapture; it forms the basis for their criminal conspiracy to take over Delano's vessel (*BC*, 109; *NVT*, 337–38). Although Cereno's role-playing has the potential to actualize its fictive premise by making him captain of the *Bachelor's Delight*, his very performance as "free captain" derives from his status as captive. Upon encountering the American ship, the Spaniard and his captors strike a fourth compact, in which Cereno agrees to tell "the fictitious story dictated to the deponent by Babo, and through the deponent imposed upon Captain Delano" (*BC*, 110). As in the earlier compacts, Cereno's words and actions are coerced—he is "warned . . . that if he varied in the least, or uttered any word, or gave any look that should give the least intimation of the past events or present state, [Babo] would instantly kill him, with all his companions"; accordingly, "in every particular [Babo] informed the deponent what part he was expected to enact in every device, and what story he was to tell on every occasion, always threatening him with instant death if he varied in the least" (*BC*, 109; see *NVT*, 337).

Upholding his part of the compact, Cereno epitomizes the incompetent slave witness: lacking civil agency and subject to constant super-

vision, the Spaniard speaks the words supplied by his captor. Rather than fulfilling the witness's role of presenting a truthful firsthand narrative of the crimes he has observed, Cereno does the opposite, telling Delano "of his pretended misfortunes, under the fore-mentioned principles, without having had it in his power to tell a single word, or give him the least hint, that he might know the truth and the state of things" (*BC*, 110; see *NVT*, 338). Throughout, Melville accentuates the dependency that deprives "the half-lunatic Don Benito" of competency: characterized by a "debility . . . too obvious to be overlooked," the Spanish captain's "mind appeared unstrung, if not more seriously affected" (*BC*, 52); "like some somnambulist," he suffers "momentary absence of mind" (*BC*, 55), wearing "an involuntary expression" and mooning around like one in a "trance" (*BC*, 86, 61). Of course, Cereno's all-too-evident "incompetence" (*BC*, 58) springs from neither "innocent lunacy, [n]or wicked imposture" (*BC*, 64), as Delano speculates, but from being "the manipulated subject" of his captors (*BC*, 83).

Melville's foregrounding of the qualities that render Cereno an incompetent witness, combined with Cereno's own testimony regarding his false statements to Delano, further destabilizes the story's "questionable legal documents."⁴⁶ How can the Lima court be sure that "the deponent" will fulfill his "promis[e] to tell the truth of whatever he should know" (*BC*, 104), especially given that much of the deposition documents his recent history of contract breaking and false testimony? If the Spaniard's dependency while captive releases him from legal responsibility for such acts, at what point does he resume legal personhood? Cereno's acknowledged unreliability as a witness "broken in body and mind" raises concerns, well beyond the scope of this particular case or story, about the viability of legal personhood in the wake of captivity (*BC*, 114).⁴⁷

Those concerns are sparked by the unexpectedly combustive interaction of narrative with subjectivity and law. As the legal documents' insertion into both Delano's and Melville's accounts reminds us, law must access the past to reestablish order through juridical distribution of property and punishment. Thus, as Cereno's fourth compact with Babo registers, the greatest threat to the former captive's present liberty is the past. History is what the Lima court must reconstruct; history is what Babo must suppress. Ironically, the court and the former slave adopt the same method in their respective efforts to excavate and to bury history: both summon personal narratives that purport

to retrieve the past through the medium of human memory. Melville intensifies the irony of this shared strategy by making Cereno's deposition, which recounts his fraudulent representations to Delano, the novella's sole legal document. (Delano's *Narrative* includes depositions by the American captain and his midshipman [NVT, 332–51].) If the false testimony by which the slave rebels seek to suppress their incriminating history and the truthful testimony by which the law seeks to reconstruct the unlawful rebellion both come from the same speaking subject (as attested in a single legal document), when does the dependent, irresponsible captive metamorphose into the independent, autonomous legal person?

Like his captors, the fictional Cereno finds that neither flight nor violence ensures his independence. En route to the deposition—a middle passage between captivity and legal personhood—Cereno embodies the ostensibly liberated subject's instability and continued dependency: "Though, midway on the passage, the ill-fated Spaniard, relaxed from constraint, showed some signs of regaining health with free-will . . . he relapsed, finally becoming so reduced as to be carried ashore in arms" (BC, 103). Cereno's relapse belies Delano's hope that although, "for the present, the man was not to be entrusted with the ship," he would, "by the end of the passage, be . . . restored to health, and with that he should also be restored to authority" (BC, 69). Like the "speechless faint" that overcomes the escaped captive after "falling at the feet of Captain Delano," Cereno's relapse confirms that his free-fall into the American's boat is no fall back into a healthful "free-will" that will restore his authority, but a further regression from self-possession (BC, 99, 98).

The elusiveness of autonomous legal personhood is most evident in the novella's best known passage, when, on the same voyage to Lima, Delano exhorts Cereno:

"But the past is passed; why moralize upon it? Forget it. See, yon bright sun has forgotten it all, and the blue sea, and the blue sky; these have turned over new leaves."

"Because they have no memory," [Cereno] dejectedly replied; "because they are not human."

"But these mild trades that now fan your cheek, do they not come with a human-like healing to you? Warm friends, steadfast friends are the trades."

“With their steadfastness they but waft me to my tomb, señor,” was the foreboding response.

“You are saved,” cried Captain Delano . . . ; “you are saved; what has cast such a shadow upon you?”

“The negro.” (*BC*, 116)

Understood to refer not collectively to the black race or to the larger problem of slavery but in the singular to the Spaniard’s former captor, Babo, this passage’s concluding lines offer, in the “shadow” cast by that particular “negro,” a temporal figure for the virtual impossibility of asserting independence after one has occupied a state of unfreedom. Shadowed by Babo in his ostensible liberty as much as during his shipboard captivity, Melville’s Cereno identifies memory, the faculty indispensable to the production of personal narrative and thus legal testimony, as that which constrains the former captive’s autonomy by allowing the past to obtrude upon the present.

In a story where the escape from captivity has the effect not of a radical break from the past but, instead, of making “past, present, and future seem[] one” (*BC*, 98), Cereno’s appearance as a witness in the criminal cause against the blacks blurs the temporal boundaries between captivity and legal personhood, subordination and autonomy, incompetence and authority. The deposition’s language poses the conundrum: eschewing autobiographical discourse’s first-person “I,” Cereno’s declaration refers to its narrator as “the deponent.” The very form that should inscribe Don Benito’s legal personhood threatens to invalidate it by establishing equivalence in its retrospective account between the witness whose testimony has been admitted by the court and the subject of that testimony—a subject who recounts false autobiographical narratives and repeatedly enters into (and then breaks) faulty contracts. As official recognition of the Spanish captain’s legal personhood, the sworn deposition provides one possible point of demarcation from his previous captivity; at the same time, however, the written narrative that documents this civil agency belies such legal boundary marking by maintaining a nominative identity between “the deponent” and the will-less captive. Cereno’s shady civil acts at sea, in the shadow of both the law and “the negro,” threaten to eclipse any subsequent attempt to articulate a new, distinct legal personhood.

Complicating current critical assumptions about the ways in which legal and literary discourses constitute their human subjects, *Benito*

Cereno shows how, far from consolidating subjectivity, countervailing acts of civil agency such as contract making and testimony (whether written or verbal, legal or extralegal) work in and through narrative to break down the subject. The incoherence introduced into Melville's novella by the interpolated legal documents can therefore be read as a metatextual gloss on the story's dramatization of the potential for narrative and law to work at cross-purposes, disintegrating legal personhood through the narrative continuity that renders "the deponent" simultaneously a captive and a legal person.⁴⁸

The formerly captive witness's dilemma is articulated in Cereno's enigmatic response to Delano's increasingly pointed questioning regarding the journey's history:

"Did you sail from port without boats, Don Benito?"

"They were stove in the gales, Señor."

"That was bad. Many men too, you lost then. Boats and men.— Those must have been hard gales, Don Benito."

"Past all speech," cringed the Spaniard.

"Tell me, Don Benito," continued his companion with increased interest, "tell me . . ." (*BC*, 81)

If what Cereno has seen is "past all speech," either in its ineffable horror or its continued repression by another's supervisory will, the liberated subject can never be sure of his autonomy when the retrospective narrative through which he asserts his civil agency inevitably grounds "all speech" in the "past."

Similarly, Delano's failure to convince Cereno of his freedom from the past lies in the historical embeddedness of the American's own speech. Opposing nature's restorative powers to the "malign machinations and deceptions" haunting Don Benito, Delano includes in his hackneyed Romantic appeal not just "yon bright sun," "the blue sea, and the blue sky," but also "these mild trades that now fan your cheek." Originally named for their steady course or "trade," trade winds became identified with that other trade, the transatlantic traffic in slaves which relied on consistent air currents for an expeditious middle passage from Africa to the Americas. Like human memory in their deadly "steadfastness," these winds not only carry European and U.S. ships and their human cargo across the ocean; they also waft the history of the slave trade itself. The "trades" have touched Cereno, not with a "human-like healing" but with the infectious violence that

they represent—violence that has deprived the Spaniard of his actual “warm friends” and replaced them with the white bones revealed when the slave ship comes “heavily round to the wind” (*BC*, 102).



However unresponsive Melville’s Spaniard may be to the “human-like healing” of the “mild trades,” the recaptured slave rebels’ fate in both versions of the story offers a grimly ironic illustration of trade’s restorative powers. As we have seen, with his fall into Delano’s boat Cereno simultaneously foils the rebels’ plot and breaks his written contract with his captors; almost immediately, he initiates a fifth compact, a verbal agreement with the American for salvage rights to the “fugitive ship” and “her cargo” (valued at “more than a thousand doubloons”—the sum Babo rejects for his own sale [*BC*, 100, 101]). Whereas Cereno’s abrupt departure terminates the transitory formal equality the blacks had achieved by entering into their written contract with the Spanish captain and crew, this new verbal contract completes their dispossession by once again making them objects of—instead of parties to—trade. Their loss is their white pursuers’ gain: “to kill or maim the negroes was not the object. To take them, with the ship, was the object” (*BC*, 101). Deprived of legal personhood, returned once again to “object” status, the recaptured slaves, evacuated anew of civil agency, must be preserved so as to protect the economic (and racial) “interest” that originally propelled the voyage. Literally precipitating the blacks’ recapture, Cereno’s jump makes “past, present, and future [seem] one” by restoring the slaves to their captive status and thereby denying them the right, as legal persons, to secure their liberty through progressive contractual relations. (Contracts, by definition, seek to guarantee a future state of affairs through a present agreement: the slave, denied access to contractual relations, is thus in Douglass’s words a “creature of the *present* and the *past* . . . shut up entirely in the past and the present.”)⁴⁹

No longer insurrectionists nor parties to a contract, those now designated “[t]he fugitives” lack the legal personhood that would render their speech intelligible: hurling “taunting cries toward the whites,” they evoke “cawing crows escaped from the hand of the fowler” (*BC*, 101, 100). Like incompetent slave witnesses treated “[b]y the slave code . . . as though they were indeed a part of the brute creation,” the blacks become radically inarticulate.⁵⁰ This particular instance of

the novella's pervasive animal imagery illustrates how thoroughly the commercial contract had superseded the social compact in antebellum America. Instead of representing the state of nature, crows here are defined exclusively by their recent history of captivity, with any assertion of autonomy redefined accordingly as transgression rather than retrocession.⁵¹

This redefinition of crows' natural (and naturally free) behavior—flight—as “escape,” when read alongside Cereno's written contract with his captors, suggests how the commercial contract's definitive “transitory” quality can be made to reveal law's selective relationship to the past as a source of authority and legitimacy. The blacks, like the crows, are literally in transit: the uprising occurs on a slave ship en route “from the port of Valparaiso, bound to that of Callao” (*BC*, 104), and the contract that Babo and his cosignatories enter into with Cereno and the surviving literate whites is a contract for their carriage, unbound, “to Senegal.” Due to the purported absence of “any negro countries” nearby, the slave rebels contract to be carried not just anywhere, but, crucially, back to Africa—and thus, in the opposite trajectory of the remanded Southern fugitive, not simply back to a particular place but to their previous condition of self-ownership. Effectively promising to turn back the clock on these particular blacks' history of transatlantic enslavement, the contract is their best hope for liberating themselves from the tenacious death grip of legal bondage to the self-possessed Euro-American Aranda. Unlike the illusory independence offered by physical acts of rebellion and escape or even by civil gestures of contract making and testimony, the contractually agreed-upon return to Africa promises to yield the blacks a more lasting return in the form of self-ownership. Returning them to the autonomy they experienced previous to their enslavement, the contracted voyage would accomplish for them what proves impossible for Cereno—to “be restored to authority.” Implicitly rejecting both the commercial contract's transitory orientation to the present and future and law's highly selective construction of the past, this particular contract reconfigures what it means to be a “creature of the present and the past” by locating a prehistory of freedom prior to the limited “past” accessible through “recovered” legal “documents” such as white-authored bills of sale and slave ship manifests (*BC*, 104). Invoking that prehistory—a time and a place before forcible dispossession of the black self—the contract recodes the insurrectionists' use of force in their negotiations

with their former captors as merely another instance of contractual reciprocity.

The crows do not, however, escape the hand of the fowler. Consistent with law's selective construction of the past, the blacks are restored not to authority but to captivity; the novella's fifth compact, the verbal contract between the two white captains, resets the clock not to the blacks' original African freedom but to their inaugural New World enslavement. Just before their recapture, pursued by the Americans and "[h]aving no bullets to return, the negroes sent their yells" (*BC*, 101). With their incoherent verbal assault, Melville's fugitives offer another literalization of the perverse legal logic of antebellum Southern slavery, which credited slaves with criminal but not civil agency. Following that logic, the Lima court apportioned the surviving slaves in accordance with their double character as either civilly dead property or culpable criminals: Cereno's deposition offers "*a partial remuneration of the negroes, making record of their individual part in the past events, with a view to furnishing, according to command of the court, the data whereon to found the criminal sentences to be pronounced*" (*BC*, 111). Generally treated as undifferentiated property—cargo—the "negroes" are recounted (in both senses of the word) as individuals in the court documents only to the extent that they have displayed criminal agency.⁵² Neither as property nor as criminals can the recaptured blacks lay claim to the self-ownership that they formally—if fleetingly—asserted through their shipboard written contract with Cereno. As with the Spaniard's deposition, this single act of civil agency is overwhelmed in the welter of contracts and testimony, with legal personhood effectively cast overboard. Whether dispersed through the trade(s) as cargo or impaled on poles as criminals, the former slave rebels meet their "voiceless end" (*BC*, 116).



How, then, to salvage legal personhood? The historical Delano's original dispute with Cereno, like the fictional Delano's repeated exhortation, "You are saved," illuminates the legal and figurative implications of salvage. Salvage is the authorized acquisition of property by one party after control has been relinquished by the current owner (typically through death, incapacity, or abandonment). In both Delano's and Melville's versions, Cereno offers his ship as salvage; but whereas Delano's *Narrative* depicts him recuperating his legal personhood with

a vengeance, Melville's novella engages salvage to investigate a parallel transfer of property in the self during and after periods of unfreedom. Like his ship, Melville's Cereno recalls the "superannuated Italian palaces" which "still, under a decline of masters, preserved signs of former state," in that he continues to observe the forms of legal personhood by entering into (faulty) contracts and making (false) statements; yet, also like his ship, he has been taken over by Babo and his fellow insurrectionists, ceding (self-)ownership, and must therefore be saved by the American (*BC*, 48).

Here again, the discrepancies between novella and source text are instructive. Unprincipled and opportunistic, the historical Cereno's rejection of the Yankee captain's salvage claim can be also read as a retroactive refusal to be saved by another. Given that salvage occurs when the captain (or owner) has lost legal authority over his ship, the Spaniard's rejection of Delano's salvage rights amounts simultaneously to a refusal to acknowledge such incapacity and a reassertion of legal personhood as (in the court's phrasing) "the captain of the ship *Tryal*" (*NVT*, 333). What prevents the fictional Cereno from similarly regaining his authority is that, in the American's words, he is "saved." For the captain of a derelict ship, to be saved is to be lost—or at least to have lost one's civil agency. At the moment he appears to liberate himself from captivity, Cereno seemingly affirms his restoration to legal personhood through his verbal contract with Delano for the ship's recapture. But by entering into a contract impossibly dependent upon the civil agency whose absence necessitates (and legitimates) salvage in the first place, Cereno merely certifies the continued lack of his legal personhood. Seeking once more to bargain in the shadow of the law, Cereno finds his legal personhood obscured by the lengthening shadow of his former captor, "the negro."



Like his faulty contracts and his false shipboard storytelling, Cereno's compromised deposition articulates a legal personhood that, once lost, cannot be salvaged by escape, violence, or even contractualism. This possibility held unsettling implications for a nation that, originating in emigration and founded in revolutionary violence, was now redefining individual autonomy in economic terms through liberal market capitalism. Within that nation, Melville's troubling insight was particularly relevant for an abolitionist movement whose propaganda

not only celebrated contract as the antithesis of bondage, but drew much of its rhetorical power from testimonial narratives of fugitive slaves—who, especially after 1850, could at any time be remanded to forced servitude. If both his past captivity and his “negro” captor continue to cast a shadow over Cereno well after he seemingly recovers his liberty—a shadow that eclipses his capacity for civil agency as a legal person—then who was to say that the same shadow of unfreedom and dependency didn’t fall on African Americans as a collective (hindering any possibility of full civic participation once emancipation had been achieved), as well as on the nation as a whole (hampering the creation of an autonomous U.S. culture free from British influence)?⁵³

How, then, to step out of the shadow of captivity into the light of legal personhood? How, when the human faculty of memory refuses to limit itself to officially designated temporal distinctions between captivity and autonomy? How, when acts of neither physical agency (flight and rebellion) nor civil agency (testimony and contract making) can distinguish independence from unfreedom? As repeated antebellum calls for U.S. literary nationalism demonstrated, neither transatlantic migration and revolution nor the Declaration of Independence and the Constitution were adequate to sever Americans’ profound cultural dependence on England for everything from their language and their literature to their law.⁵⁴ And while lexicographers like Noah Webster, intellectuals like Ralph Waldo Emerson, and legal reformers like William Sampson struggled to emerge from England’s looming transatlantic shadow, fugitive slaves found themselves in a strikingly similar predicament.⁵⁵

At a time when physical rebellion and flight (Douglass had tried both) did not guarantee one’s liberty and the contract that established one’s emancipation was often a bill of sale in which one was the designated object of property, how could one definitively assert one’s accession to legal personhood? Intensifying the dilemma for those fugitives actively contributing to U.S. public culture was the fact that one of the most powerful expressions of civic presence—political intervention in the slavery debate through the narrative retelling of one’s bondage—threatened to undermine one’s liberty and autonomy through the very operation of the memory on which it depended. Well before Douglass’s print “revelation of facts [such] as could not be made by any other than a genuine fugitive” seriously “endangered his liberty,”

the Maryland fugitive told his story in abolitionist meetings where he was “generally introduced as a ‘*chattel*’—a ‘*thing*’—a piece of southern ‘*property*’—the chairman assuring the audience that *it* could speak.”⁵⁶ Slave narratives document the temporal elusiveness of freedom in a land shadowed by slavery. In *Incidents in the Life of a Slave Girl* (1861), Linda Brent’s initial escape is followed by seven years of captivity in her grandmother’s attic; in the “free” North the Fugitive Slave Law further defers liberty. Even the “bill of sale” enabling her legal manumission by her employer, Mrs. Bruce, is inadequate: although her “story ends with freedom,” Brent finds that “[l]ove, duty, [and] gratitude . . . bind [her]” to the white woman’s side.⁵⁷

Melville’s Delano, “the American,” seems to offer a solution. As Ishmael would point out, the Yankee captain is anything but an untrammelled free agent. In addition to his financial responsibility to “his owners,” Delano had himself been Babo’s captive, however unwittingly: aboard the *San Dominick* he too is “becharmed,” gazing out on “the tranced waters,” and he, too, must be “saved,” albeit “against [his] knowledge and will” (*BC*, 74, 78, 115). Yet the blithe captain steps easily out of the shadow of unfreedom, bearing, like the sunny sky he glibly invokes, no trace of his previous state. Unlike the plotting, dissembling, and finally silent African and the ventriloquized, unstable, and haunted Spaniard, “the American” seems to have preserved, or at least regained, the civil agency requisite to tell this story of captivity and freedom in a way that neither of the former captives can. Why, then, does Melville omit Delano’s testimonial voice from his novella not once, but twice? For, along with replacing the first-person narration of his source text for the ambiguous perspective and anonymous third-person voice that has attracted so much critical attention, Melville also jettisons the “*Declaration of DON AMASA DELANO*.” Why is this “American”—so attuned to the duties of contract and still so self-possessed, so competent to tell an admissible story—deprived a narrative voice every bit as much as Babo himself?

Delano is, quite simply, disqualified by his cultural amnesia: “Tell it not when you get home, sappy Amasa,” he chides himself at a vulnerable moment, intuiting (not unlike Babo?) that only repression can ultimately ensure his liberty (*BC*, 86). If Cereno’s all-too-human memory prohibits him from stepping out of his black captor’s shadow back into the sunshine of individual autonomy, the willed absence of that faculty in the fictional Delano also renders him incapable of the

narrative production indispensable to legal, literary, and historical discourse. In striking contrast to the cultural nationalists and fugitive slave authors who peopled America's literary marketplace, Delano, in his autonomous legal personhood, his lack of any trace of residual unfreedom, is the *least* qualified to tell an epic story of insurgent freedom and lingering captivity, of formal independence gained and individual autonomy lost—in short, to tell the story of his nation, from its Revolutionary founding to its fugitive present.

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Notes

- 1 Herman Melville, *Moby-Dick* (1852; reprint, Evanston, Ill.: Northwestern Univ. Press and the Newberry Library, 1988), 6. Amasa Delano, *A Narrative of Voyages and Travels in the Northern and Southern Hemispheres* (1817; reprint, New York: Praeger, 1970), 332–53. Further references are to this edition and will be cited parenthetically in the text as *NVT*. See Harold H. Scudder, "Melville's *Benito Cereno* and Captain Delano's Voyages," *PMLA* 43 (June 1928): 503–32; Michael Paul Rogin, *Subversive Genealogy: The Politics and Art of Herman Melville* (New York: Knopf, 1983), 211–20; Susan Weiner, *Law in Art: Melville's Major Fiction and Nineteenth-Century American Law* (New York: Peter Lang, 1992), 113–38; and Maggie Montesinos Sale, *The Slumbering Volcano: American Slave Ship Revolts and the Production of Rebellious Masculinity* (Durham, N.C.: Duke Univ. Press, 1997), 161–72.
- 2 Jean Fagan Yellin, "Black Masks: Melville's 'Benito Cereno,'" *American Quarterly* 22 (autumn 1970): 678–89; Rogin, *Subversive*, 211–14; Brook Thomas, *Cross-Examinations of Law and Literature: Cooper, Hawthorne, Stowe, and Melville* (Cambridge, Eng.: Cambridge Univ. Press, 1997), 93–112; Sale, *Slumbering*; Robert A. Ferguson, "Untold Stories in the Law," in *Law's Stories: Narrative and Rhetoric in the Law*, ed. Peter Brooks and Paul Gewirtz (New Haven: Yale Univ. Press, 1996), 84–98; Alfred S. Konefsky, "The Accidental Legal Historian: Herman Melville and the History of American Law," *Buffalo Law Review* 52 (fall 2004): 1179–276; Weiner, *Law*, 113–38. On Shaw, see Leonard W. Levy, *The Law of the Commonwealth and Chief Justice Shaw* (Cambridge: Harvard Univ. Press, 1957); and Robert K. Wallace, "Fugitive Justice: Douglass, Shaw, Melville," in *Frederick Douglass and Herman Melville: Essays in Relation*, ed. Robert S. Levine and Samuel Otter (Chapel Hill: Univ. of North Carolina Press, 2008).
- 3 See H. Bruce Franklin, *The Wake of the Gods: Melville's Mythology* (Stanford, Calif.: Stanford Univ. Press, 1963), 136–52; Dana Nelson, *National*

- Manhood: Capitalist Citizenship and the Imagined Fraternity of White Men* (Durham, N.C.: Duke Univ. Press, 1998), 199, 239 n. 1; Eric J. Sundquist, *To Wake the Nations: Race in the Making of American Literature* (Cambridge: Belknap Press of Harvard Univ. Press, 1993), 135–82; and Thomas, *Cross-Examinations*, 105–6. See also Anna Brickhouse, *Trans-american Literary Relations and the Nineteenth-Century Public Sphere* (Cambridge, Eng.: Cambridge Univ. Press, 2004), 221–50.
- 4 See Austin Sarat and Thomas R. Kearns, “Writing History and Registering Memory in Legal Decisions and Legal Practices: An Introduction,” in *History, Memory, and the Law*, ed. Austin Sarat and Thomas R. Kearns (Ann Arbor: Univ. of Michigan Press, 1999), 13; and Roberto González Echevarría, *Myth and Archive: A Theory of Latin American Narrative* (Durham, N.C.: Duke Univ. Press, 1998), 1–92.
 - 5 Robert W. Gordon, “Foreword: The Arrival of Critical Historicism,” *Stanford Law Review* 49 (May 1997): 1023. See Konefsky, “Accidental,” 1216; and Sundquist, *To Wake*, 175–82.
 - 6 Charles Emery Stevens, *Anthony Burns: A History* (1856; reprint, Williamstown, Mass.: Corner House, 1973), 85–90, 92–95, 109–12; Harriet Jacobs, *Incidents in the Life of a Slave Girl, Written by Herself* (1860; reprint, Cambridge: Harvard Univ. Press, 1987), 178–80; Frederick Douglass, *Narrative of the Life of Frederick Douglass, an American Slave* (1845; reprint, New York: Penguin, 1982), 143–44.
 - 7 Joan Dayan, “Legal Slaves and Civil Bodies,” in *Materializing Democracy: Toward a Revitalized Cultural Politics*, ed. Russ Castronovo and Dana D. Nelson (Durham, N.C.: Duke Univ. Press, 2002), 80. See Thomas R. R. Cobb, *An Inquiry into the Law of Negro Slavery in the United States of America* (1858; reprint, Athens: Univ. of Georgia Press, 1999), 83.
 - 8 François Furstenberg, *In the Name of the Father: Washington’s Legacy, Slavery, and the Making of a Nation* (New York: Penguin, 2006).
 - 9 Houston A. Baker Jr., “Autobiographical Acts and the Voice of the Southern Slave,” in *The Slave’s Narrative*, ed. Charles T. Davis and Henry Louis Gates Jr. (Oxford, Eng.: Oxford Univ. Press, 1985), 242–61; Sarah Robbins, “Gendering the History of the Antislavery Narrative: Juxtaposing *Uncle Tom’s Cabin* and *Benito Cereno*, *Beloved*, and *Middle Passage*,” *American Quarterly* 49 (September 1997): 531–73.
 - 10 See Russ Castronovo, *Necro Citizenship: Death, Eroticism, and the Public Sphere in the Nineteenth-Century United States* (Durham, N.C.: Duke Univ. Press, 2001), 25–61.
 - 11 Peter Brooks and Paul Gewirtz, eds., *Law’s Stories: Narrative and Rhetoric in the Law* (New Haven: Yale Univ. Press, 1996); Guyora Binder and Robert Weisberg, *Literary Criticisms of Law* (Princeton, N.J.: Princeton Univ. Press, 2000), 201–91.
 - 12 G. W. Curtis to J. H. Dix, 19 April 1855, in Jay Leyda, *The Melville Log: A Documentary Life of Herman Melville, 1819–1891*, 2 vols. (New York: Har-

- court, Brace, 1969), 2:500; Herman Melville, *Benito Cereno*, in *The Piazza Tales* (1856; reprint, Evanston, Ill.: Northwestern Univ. Press, 2000), 103. Further references are to this edition and will be cited parenthetically in the text as *BC*. See Newton Arvin, *Herman Melville* (New York: William Sloane, 1950), 238–39; and Maurice S. Lee, *Slavery, Philosophy, and American Literature, 1830–1860* (Cambridge, Eng.: Cambridge Univ. Press, 2005), 145–46.
- 13 Robbins, “Gendering,” 547–53.
 - 14 Ephraim Peabody, “Narratives of Fugitive Slaves,” *Christian Examiner* 47 (September 1849): 61–93.
 - 15 On Babo, see Yellin, “Black Masks,” 687–89; Carolyn L. Karcher, *Shadow over the Promised Land: Slavery, Race, and Violence in Melville’s America* (Baton Rouge: Louisiana State Univ. Press, 1980), 139–41; Rogin, *Subversive*, 217; Thomas, *Cross-Examinations*, 99, 111–12; Ferguson, “Untold”; Sale, *Slumbering*, 159–61, 170–72; Dana D. Nelson, *The Word in Black and White: Reading “Race” in American Literature 1638–1867* (New York: Oxford Univ. Press, 1993), 127–30; and Sundquist, *To Wake*, 181–82.
 - 16 C. Hartley Grattan, introduction to *NVT*, vii. See Sheila Post-Lauria, *Correspondent Colorings: Melville in the Marketplace* (Amherst: Univ. of Massachusetts Press, 1996).
 - 17 Paul Downes, “Meville’s *Benito Cereno* and the Politics of Humanitarian Intervention,” *South Atlantic Quarterly* 103 (spring/summer 2004): 474–75; Thomas, *Cross-Examinations*, 93–112.
 - 18 Compare *BC*, 101; see J. H. Kavanaugh, “That Hive of Subtlety: ‘Benito Cereno’ and the Liberal Hero,” in *Ideology and Classic American Literature*, ed. Sacvan Bercovitch and Myra Jehlen (Cambridge, Eng.: Cambridge Univ. Press, 1986), 372.
 - 19 Joshua Leslie and Sterling Stuckey, “Avoiding the Tragedy of Benito Cereno: The Official Response to Babo’s Revolt,” trans. Maria del Valle, in *Criminal Justice History: An International Annual* 3 (1982): 125–32.
 - 20 Susan M. Ryan, *The Grammar of Good Intentions: Race and the Antebellum Culture of Benevolence* (Ithaca, N.Y.: Cornell Univ. Press, 2003), 69–77.
 - 21 See Nelson, *Word*, 117–18.
 - 22 Lee, *Slavery*, 148–49. See also Nelson, *Word*, 123.
 - 23 Mark S. Weiner, *Black Trials: Citizenship from the Beginnings of Slavery to the End of Caste* (New York: Knopf, 2004), 3–23.
 - 24 Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (Cambridge, Eng.: Cambridge Univ. Press, 1998), 5, 7; Maine quoted at 2, William Blackstone quoted at 15. Further references are to this edition and will be cited parenthetically in the text as *FBC*.
 - 25 See also Morton J. Horwitz, *The Transformation of American Law, 1780–1860* (Cambridge: Harvard Univ. Press, 1977), 160–210.

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- 27 David Brion Davis, *The Problem of Slavery in Western Culture* (New York: Oxford Univ. Press, 1966), 400–421.
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- 29 See also Jonathan A. Glickstein, “‘Poverty Is Not Slavery’: American Abolitionists and the Competitive Labor Market,” in *Antislavery Reconsidered: New Perspectives on the Abolitionists*, ed. Lewis Perry and Michael Fellman (Baton Rouge: Louisiana State Univ. Press, 1979), 195–218; Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (1970; reprint, Oxford, Eng.: Oxford Univ. Press, 1995), ix–xxxix.
- 30 Quoted in Keith Huntress, “‘Guinea’ of *White-Jacket* and Chief Justice Shaw,” *American Literature* 43 (January 1972): 640; see also Levy, *Law of the Commonwealth*, 69–71; and Thomas, *Cross-Examinations*, 94–95.
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- 32 Sir Henry Sumner Maine, *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas*, 10th ed. (1861; reprint, London: J. Murray, 1920), 174.
- 33 See Konefsky, “Accidental,” 1181–219.
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- 38 Dayan, “Legal Slaves,” 53–66.
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- 42 Hartman, *Scenes*, 147; see also Horwitz, *Transformation*, 201.
- 43 Horwitz, *Transformation*, 180–88.
- 44 John Codman Hurd, *The Law of Freedom and Bondage in the United States*,

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- 45 Morris, *Southern*, 236–37.
- 46 Sundquist, *To Wake*, 179; see also Wiener, *Law in Art*, 130–34.
- 47 Space limitations prohibit discussion here of the rise of nineteenth-century civil capacity litigation; see Susanna L. Blumenthal, “The Default Legal Person,” *UCLA Law Review* 54 (June 2007): 1157–265.
- 48 But see Weiner, *Law in Art*, 113–38.
- 49 Frederick Douglass, *My Bondage and My Freedom*, in *Autobiographies* (1855; reprint, New York: Library of America, 1994), 305. See Lloyd Presley Pratt, “Progress, Labor, Revolution: The Modern Times of Antebellum African American Life Writing,” *NOVEL: A Forum on Fiction*, 34 (autumn 2000): 63.
- 50 William Lloyd Garrison, preface to Douglass, *Narrative*, 41.
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