Ambiguity and Polysemy of Justice: Herman Melville's *Billy Budd* as an Account of the (Im) Possibility of Justice through Law

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Abstract

In order to shed light on the ambiguity and polysemy of justice and the complex interconnections between law, ethics and justice, the paper attempts a close conceptual analysis of Herman Melville's novella, *Billy Budd.* The text reflects on how the idea of crime, punishment and justice get transformed when a system survives through a time of socio-political turmoil and unrest. The 'persona' of the criminal being the very embodiment of innocence and virtue poses an irony in the novella since Billy Budd, provoked, commits a 'murder' that according to the law should lead to capital punishment. Billy Budd is compared to an angel of god who carries out the divine will by ending the life of an evil man. Yet the angel must accept the plight of being hanged to death by the human law. By unravelling this paradox, Melville points out how the idea and practices concerning justice can be ineffable and inconclusive. The novel can be read as an account of the disconnect between law and justice in that the former does not necessarily ensure the latter.

Keywords: Crime and Punishment; Divine and Human Justice; Ethics and Fairness; Irony of Victimhood; Paradoxes of Justice.

The idea of justice in western thought is inextricably interwoven with ethics and morality, hence bringing diverse strands of law, politics, history, philosophy and religion into the texture of the discourse on justice as an abstract concept and a tangible experience. Herman Melville's *Billy Budd* may be read as an ironic treatise on justice and fairness and how law fails to ensure both. The novella is also a shocking indictment on the decadence and abuse of justice in a state of exception created by martial law and a mutiny act. Melville tries to depict through his final novella the polysemic

irresolution and uncertainty of justice by capturing the nuanced variance between divine and human justice. The conflict between human-made law and divine justice that exists independently of legal procedures and conventions is deftly represented in the narrative. Melville emphasizes the glaring contrast between institutionally ratified norms that equates justice with law and the concept of a timeless moral force that societies or individuals believe in and adhere to. Natural and divine justice in Melville's works occupy a plane beyond human rationality, intelligence and perception.

Instances of interconnectedness and rupture between law and justice introduce a new perspective into the understanding of justice. In common parlance, justice is used in reference to a standard of rightness sanctioned by the legal mechanisms and processes in a state. This interpretation is too simplistic and one-dimensional when one analyzes the versatile performative dynamics of justice. *Billy Budd* illustrates that principles of fairness and justice are not necessarily universalizable in a Kantian sense. Fairness has an air of specificity as it is a just decision arrived in a particular context. Any effort towards codifying the law in terms of each specific instance, and interpretation and comprehension of justice by taking into consideration this bewildering variety of contexts is bound to create many hurdles when law is implemented as a means to the elusive end, justice. At the same time, universalizations and generalizations that neglect singularity and uniqueness of an instance might lead to an equally grave crisis with justice smothered by a monolithic authority of law, custom and norm.

While being looked at through the lens of justice, Billy, the protagonist, appears to be a murderer, saint, angel and a Christ-like martyr from different angles. These depictions unravel the dilemmas and play of perspectives implicit in the conception and practices of justice. The novella, like many other texts of Melville, shows how certain socio-cultural and political scenarios (such as war and mutiny) restructure the existing notions of innocence and culpability. Melville affirms that these ephemeral notions of justice cannot be conflated with the idea of divine justice, an intuitive moral force pertaining to a people and humanity in general. The irreconcilability of the natural and the social is a persistent theme in Melville's novella. His idea of natural law is theistic and transcendent. His perspectives are similar to the views of William Blackstone who delineates the qualities of natural law as "coeval with mankind, dictated by God himself, superior in obligation to any other, and no human laws are of any validity if contrary to this" (27). Laws of nature also imply that every person

should be rendered his due.

In an earlier novel, *Pierre: The Ambiguities*, which is an exposition of the ambiguities embedded in truth, virtue and justice, Melville introduces a short treatise by Plotinus Plinlimmon. The reader may also share the moral dilemma of Pierre, the 19-year-old protagonist, on reading this treatise titled "Chronometricals and Horologicals" in which Plinlimmon contemplates on the differences between absolute and relative virtues. This clear demarcation in the domain of virtue intensifies Pierre's own confusion concerning the right and the wrong in a moral decision he should take. Plinlimmon's view implies that life is provisional, so too is wisdom and rationality which lead an individual or a people to their understanding of "True" justice. Wisdom close to "Heaven's own Truth," is a rare gift. Hence the perception of truth held by human beings, based on worldly and ephemeral wisdom, is not absolute. Human wisdom is conditioned and relative and therefore all aspects of human knowledge and understanding, including the idea of justice, are relative because they germinated from and are rooted in wisdom. A conflict is bound to take place between unconditional and ethereal justice and conditional and conditioned ideas of justice. This philosophy runs through all major works of Melville.

Reading *Billy Budd* as an Allegory

Billy Budd may be read as an allegory with a tragic plot. Billy's recruitment from a ship, *Rights of Man* into the regimented realm of a warship, named the *H.S.S Bellipotent* represents a metaphoric transition from a state of nature to the rule of law. Budd, the peacemaker on *Rights of Man* becomes a suspect, murderer and eventually a martyr on the *H.S.S. Bellipotent* while defending his right to prove his innocence. Allegorically leaving a world of rights and liberty, Billy enters the highly regulated domain of institutional control. On *H.S.S Bellipotent,* order and discipline, established by the sovereign monarch and his extension - the navy, are more important than individual rights and liberty. The captain of the *Rights of Man* speaks of Billy in laudatory terms:

"Before I shipped that young fellow, my forecastle was a rat-pit of quarrels. It was black times, I tell you, aboard the *Rights* here….But Billy came; and it was like a Catholic priest striking peace in an Irish shindy. Not that he preached to them or said or did anything in particular; but a virtue went out of him, sugaring the sour ones. They took to him like hornets to treacle" (5).

Dansker, an old and experienced seaman who befriends Billy exclaims, expressing his apprehension over Billy's innocence amounting to total ignorance:

"What might eventually befall a nature like that, dropped into a world not without some man traps and against whose subtleties simple courage lacking experience and address and without any touch of defensive ugliness is of little avail (26-27)."

Dansker fondly addresses William Budd as Baby Budd, indicating his immaturity and bud like purity and beauty.

The rich suggestiveness of the names of the warship in two consecutive drafts of the novella is noteworthy. In an early published version, the name of the ship is *Indomitable* and in a later one *H.S.S Belliptotent*; Melville has used these two names in his first and final drafts of the manuscript respectively. The polysemic implications of these names refer to a fatalistic view of justice on the one hand (*Indomitable*) and the decisive role of the context in arriving at moral decisions on the other (*Bellipotent,* indicating the contexts of war and martial law). In the case of Billy, the war between England and France, the aftershocks of the Nore Mutiny and rumours of an impending mutiny on the *Bellipotent* influenced the verdict pronounced by Captain Vere.

The subtle influence of the tragic vision of Greek literature and the Christian ideals of martyrdom may be traced in Melville's conceptualization of justice and fairness. *Billy Budd* is a tragic allegory with two protagonists with virtues of Greek tragic heroes marred by flaws leading to their downfall and death. Billy Budd is endowed with qualities that endear him to his shipmates and even to the Captain. Yet his common sense and good judgment are still in a budding stage, not yet fully mellowed to see into the deviousness of others. This tragic flaw, combined with a speech disability, spells doom for Billy. In a tongue-tied state of helpless emotional turmoil and desperation, Billy strikes Claggart, the Master-at-Arms who dies instantly. His predicament is comparable to the plights of Adam and Christ, the sufferer and the martyr who perish for the sins of others.

The conflict between absolute and relative truth is a major theme in Melville concerning matters of justice. The name Vere in Latin is suggestive of truth and its myriad roles in administering justice. Vere is entrusted with the onus of making a just decision in the case involving Billy. Despite his compassion and wisdom, Vere, a figure of authority administers justice

on behalf of the monarchical power that has entrusted him with his legal authority. Thinking from within this institutional framework, his decision is just and right from a strict legal perspective. The question remains whether Vere is morally right, and righteous. The death of Vere at the end following a combat with the crew of the French vessel, 'Athee' (suggestive of chaos in the absence of god) is an irony, considering the temporal order he wanted to maintain by challenging natural fairness and divine justice. The name of the French ship indicates disruption and the absence of order in contrast to the orderliness of law devoid of emotional and humane aspects Vere had always wanted to maintain. Vere's preference to the king's will rather than the voice of his conscience is portentous. He utters the name of Billy, the victim of his rigid observance of the norm, as he dies.

Melville, in his critique of legal procedures, posits the polytonality of justice against the restrictive stringency of law. Law attempts to bring order to chaos by systematizing and formulating the conditions for justice, but paradoxically law may become a channel for injustice. The unquestionable authority of law as the will of the monarch and his officials in the case of Billy makes him vulnerable and prey to an unfair verdict. Crucifixion of Jesus Christ was also done in the name of justice and after a trial. Derrida argues that plurality in the very concept of justice is inevitable and even desirable since rigidity of justice as law only results in inhuman adherence to legitimized norms. The embedded existence of the idea of justice in religious, political and legal discourses and the operational networks of power influencing its application destabilize the validity of decisions taken in the name of justice. Derrida observes:

> [F]or a decision to be just and responsible, it must . . . be both regulated and without regulation: it must conserve the law and also destroy it or suspend it enough to have to reinvent it in each case, rejustify it, at least reinvent it in the reaffirmation and the new and free confirmation of its principle. Each case is other, each decision is different and requires an absolutely unique interpretation, which no existing, coded rule can or ought to guarantee absolutely. ("The Force of Law: The Mystical Foundation of Authority," in *Deconstruction and the Possibility of Justice,* 23*)*

Derrida's apprehension is about the presumed certainties and absolutisms of justice looked at solely through the lens of inviolable law. In the interpretation of social reality, existing formulations of concepts such as right and wrong, truth and untruth used in absolutist language often lead to thinking of justice in black and white terms without considering its de-

grees and nuances. Melville discusses the problematics of such binaries and rigid categories that confine thinking to the comfort of a deceptive certainty. The novella forces readers into the discomfiture and uncertainty of grey zones as one reflects on the phenomenon and process of justice.

Melville uses elements of morality plays in dramatizing the conflict between good and evil and its ironic resolution. The Biblical subtext of the novella reinforces its underlying debate on ethics and justice. Melville presents Billy's character with shades of immaculate white suggesting that he is naively prelapsarian in his virtues and his mind is blank in its wariness of evil, while Claggart is darkly postlapsarian. Clagggart is jealous and downright evil, hence portrayed in dark, brutal and even melancholic shades. His scheming against Billy does not have any reason and motive. Captain Vere is drawn with mixed shades of good and evil. He is a grey character in many ways. He acts and takes decisions in a particular manner with an underlying intent to protect his reputation and career by never going against the prescribed norm.

Claggart represents the archetypal fallen angel, who has forsaken his virtue for ego. He is also compared to Ananias, the archetypal liar in the Biblical tradition. He succeeds in tempting Vere to turn a deaf ear to the voice of conscience and let the dictates of law guide his actions, which ultimately leads to the annihilation of Billy, an epitome of innocence, like the lamb or Biblical Christ. Claggart is a satanic figure instrumental in the fall of Adam and also an arch opponent of Christ. Like Satan who resents Adam and God due to their goodness, Claggart hates Billy because of his goodness rather than in spite of it; his jealousy stings his own self, likened in the novel to a scorpion. Claggart is an embodiment of evil with a "depravity according to nature," a phrase Melville borrows from Plato:

> Now something such an one was Claggart, in whom was the mania of an evil nature, not engendered by vicious training or corrupting books or licentious living, but born with him and innate, in short 'a depravity according to nature' (32) .

We can also read the novella as an allegory unravelling the nature and purpose of law in a political community and the rift between justice and legal system. In this allegory, Budd symbolizes primal humanity and Vere, civilization. Claggart is the lurking danger of corruption and capricious authority inevitable in the establishment of government and rule of law that are believed to bring order into the state of nature. The character of Billy Budd also represents the unconditional and unformulated rights

and liberty of an individual inevitably sacrificed on the altar of political order. Political order defines the limits of the person as s/he enters into a state of regulated community existence through a social contract.

Vere is a good man lacking courage or faith in his own righteousness, and hence susceptible to evil and abuse of power. The episode of Claggart accusing Billy of treason and the consequent execution of the latter reminds one of the Biblical episode of Judas betraying Christ. The act of turning over a blameless man to the authorities and making him appear a traitor is implied in the kiss on the cheek of Billy given by the priest before he is hanged. The allusion of this kiss brings out a comparison also between the priest and Judas. The priest is in a way responsible for the betrayal of Billy through cowardly inaction and failure to prevent the injustice of the monarch. The roles of temporal authority represented by King George III and Captain Vere and spiritual authority vested in the priest in the administering of justice is replete with ironic implications. Vere is as powerful and yet helpless like Pontius Pilate who tries in vain to pass the blame to the temporal authority whose commands he cannot disobey. Pilate cannot escape the responsibility of crucifying Jesus Christ, even though he performs the symbolic act of washing his hands. Vere, like Pilate, is a conflicted character, piteously torn between his concern for Billy Budd and his martial allegiance to the king's authority. Vere thinks that he can wash away his sins in the stream of a verbose legal rhetoric. He argues to convince the other judges of his powerlessness and lack of agency under the Mutiny Act during the war with France:

> "As regards the enemy's naval conscripts, some of whom may even share our own abhorrence of the regicidal French Directory; it is the same on our side. War looks but to the frontage, the appearance. And the Mutiny Act, War's child, takes after the father. Budd's intent or non-intent is nothing to the purpose." (65)

Billy Budd also triggers discussions about fundamental questions regarding jurisprudence and poetic justice. Billy, like Adam in the paradise, is in a state of unadulterated innocence and naiveté preceding the fall. The narrator observes: "Billy in many respects was little more than a sort of upright barbarian, much such perhaps as Adam presumably might have been ere the urbane Serpent wriggled himself into his company" (10). Adam represents the human being in a pre-political state of nature who has not tasted the apple of knowledge. There is a raw aloofness to the ruses and strategies of civilization in Billy's character reflected by repetitive animalistic allusions. He is compared to a Saint Bernard dog for his com-

passion and self assurance and an illiterate nightingale for his singing. A young horse from the pasture suddenly inhaling a vile whiff from a chemical factory and a goldfish popped into a cage are the similes used to describe Billy's sudden loss of freedom on entering *Bellipotent.* Towards the end of the novella, Billy is transformed into a Christ figure, symbolically depicted as a lamb. Billy for whom "innocence was blinder" (49) understands things only at their face value. Melville's portrayal of Billy is full of implications about his gullibility. On the other hand, Claggart is cunning and malicious, in appearance resembling Titius Oates, who played a major role in fabricating the myth of the Papish Plot, or a Catholic conspiracy to kill Charles II. Claggart also turns out to be a perjurer like Oates. Melville hints that Claggart does not have an unblemished reputation:

> Among certain grizzled sea-gossips of the gun decks and forecastle went a rumor perdue that the Master-at-arms was a *chevalier* who had volunteered into the King's Navy by way of compounding for some mysterious swindle whereof he had been arraigned at the King's Bench. (22)

Dansker warns Baby Budd regarding the possible conspiracy against him being planned by Claggart. The following exchange between Dansker and Billy illustrates the latter's unwariness and lack of observation:

> "Baby Budd, *Jimmy Legs"* (meaning the Master- at-arms) "is down on you."
>
> "*Jimmy Legs!"* ejaculated Billy, his welkin eyes expanding; "what for? Why he calls me the sweet and pleasant fellow, they tell me."
>
> "Does he so?" grinned the grizzled one; then said, "Ay, Baby Lad, a sweet voice has Jimmy Legs."
>
> "No, not always. But to me he has. I seldom pass him, but there comes a pleasant word."
>
> "And that's because he's down upon you, Baby Budd." (27-28)

When Claggart asks an accomplice to convince Billy to join a mutiny fabricated to test the young sailor, Billy doesn't report the incident to the authorities. Although Billy does not agree to support the mutineers, his slackness in reporting the conspiracy is a breach of duty and serious offence in wartime. This inaction prompts Claggart to doubt whether there is a 'man trap under the ruddy tipped daisies' (49), creating in him a

consternation that under the unblemished demeanour of Billy, a scheming and plotting mind lurks. He genuinely doubts whether there is a discrepancy between appearance and reality in Billy. Yet, his initial misgiving that Billy is a mutineer reveals Claggarts's paranoid and evil mind. Claggart is a victim of his credulity and prejudices.

Events take place in an inexorable manner. On receiving a verbal complaint from Claggart, Captain Vere asks him to voice his accusations in Budd's presence. Billy, unable to speak under stress, becomes frustrated and exasperated, and strikes Claggart. The blow results in Claggart's death and inadvertently Billy becomes a murderer. Vere believes that the allegation against Billy of conspiring for a mutiny is baseless. He could also see that Billy no motive or intent to kill Claggart. Being the Captain, Vere had to quickly arrange for a trial to assuage the sailors' concerns about justice. In the ensuing trial, the dilemma of the judges is based on the question whether an act of homicide may be justified on the grounds of self-defence as it is not a premeditated murder. Melville alludes to the "intricacies involved in the question of moral responsibility; whether in a given case, say the crime proceeded from the mania in the brain or rabies in the heart" (48).

The testimonials of Dansker and Squeak convince Vere that Billy is not a mutineer. That makes Claggart guilty of wrongly accusing Billy and creating a false alarm during the war time. The court conveniently overlooks the fact that Claggart's perjury deserves capital punishment under the Mutiny Act. Since Billy had proved his innocence against the charges of inciting mutiny, Claggart would have been hanged. During the trial everyone is convinced of the former's innocence and the latter's culpability and so anyway a death sentence was awaiting Claggart. Yet Billy could not be acquitted because of the fatal deathblow that eliminated the superior officer before his legally sanctioned hanging. Billy Budd is convicted and hanged to death.

The novella turns things upside down when it comes to the conceptualization and practice of justice and fairness. We can see a reversal of positions in the interpretations of a case while using legal terms. Despite being a peacemaker, the innocent Billy involuntarily commits a violent act of murder and hence becomes the *criminal*. Claggart despite being evil, perverted, and guilty of perjury becomes the *victim*. Vere's pronouncement on finding that Claggart is dead, "Struck dead by an angel of God! Yet the angel must hang" (55) indicates this irony in victimhood. Vere realizes that like Ananias, Claggart deserved his death for falsehood: he exclaims:

"It is the divine judgement on Ananias" (55). The judges of the court, Vere, Shaw, and Parson, are sincere men concerned with their function as the safeguards of justice; yet they strike at the very moral foundation of justice they claim to guard. Vere convinces the judges to take into consideration nothing other than the plain facts of the case; Billy is guilty of homicide by causing the death of Claggart, a superior officer. Since Billy is unable due to a speech disability to defend himself verbally after being accused of inciting mutiny, he "responds to pure nature, and the dictates of necessity" by striking Claggart. Sensing the confusion of the Judges, Vere argues: "It is Nature. But do these buttons that we wear attest that our allegiance is to Nature? No, to the King" (64). Here one sees how the rule of law turns into an effective political weapon owing to its ability to offer a sense of assurance though it contributes to tyranny.

Vere represents the concern for common good pitted against the rights, liberty and welfare of the citizen, Billy Budd. Precisely for this reason, Vere disagrees firmly when the court suggests the possibility of reducing the intensity of Budd's sentence. Under these crucial circumstances, Vere does not want to consider any alternatives other than the legally authenticated capital punishment for Billy for the fear of setting a potentially dangerous bad precedence in wartime. Vere makes a crucial statement:

> "Quite aside from any conceivable motive actuating the Master-at-arms, and irrespective of the provocation to the blow, a martial court must needs in the present case confine its attention to the blow's consequence, which consequence justly is to be deemed not otherwise than as the striker's deed." (61)

During the trial Vere fulfils multiple functions: he is the witness, prosecutor, and most importantly, commander of the jury. The jury suffer moral pangs while analyzing the case. The decision to hang Billy is arrived at after validating and constant questioning of their convictions. One may read the agonizing tension between his own private beliefs and conscience and public duty in the long speech of Captain Vere. By not allowing his private/personal conscience to interfere with duty, he saves his spotless image from getting tarnished by any allegations of partiality and leniency. Still Vere knows that his decision is morally flawed. The fact that Budd is morally free of guilt does not make any difference to the process of administering legally sanctioned justice. Vere becomes an agent of the much condemned Bloody Code of George III who made capital punishment a spectacle and carnival during his reign. Vere indirectly demands that he and his officers must act merely as puppets and the agents implementing

the code of law. He repeatedly affirms:

> "For the law and the rigor of it, we are not responsible. Our vowed responsibility is in this: That however pitilessly that law may operate in any instances, we nevertheless adhere to it and administer it" (64).

Vere also insists that the death sentence cannot be delayed as any delay may be interpreted as laxity. Vere's justice is similar to Pascal's notion of justice as something to be enforced. Power and even a certain kind of violence, is involved in law. Force without justice is tyranny, which Vere cleverly avoids by making a show of a just trial. At the same time he understands that justice and authority have to be brought together.

Vere seeks the help of a self-deceiving oratory during the trial, disparaging natural justice as part of the murky domain of the heart, and irrelevant in the orderly regime of martial code of conduct. He reminds the members of the jury that "let not warm hearts betray heads that should be cool (64)." Vere's extended argument is that the officers have ethical commitment not to their sincere emotions, personal convictions or moral conscience, but entirely to King George III and his "code under which alone we officially proceed (65)." The author, through the character of Vere, a personification of temporal authority and the rule of law shows how the monarchical state conveniently ignores moral and ethical nuances of innocence and justice by inhumanly adhering to the code of law. In theory, laws are made to ensure justice and safeguard individuals. Each crime has unique circumstances; in order to guarantee fair retributive justice, one may argue that a verdict should be pronounced considering the circumstances leading to a crime. Captain Vere also agrees that "This case is an exceptional one" (59). If we think of the consequences of the punishment, by sentencing Billy to death, the drumhead Court could only eliminate a kind and hard-working young man from the ship.

In *A Theory of Justice*, Rawls' analysis of the legal system as "a coercive order of public rules addressed to rational persons for the purpose of regulating their conduct and providing the framework for social cooperation" (207) sheds light on the paradox that laws are deemed to be just because they have authority. Because of his 'enforcement factor' there is an interpretative and performative violence implicit in the legal process of administering justice. The very idea of justice rests on social stability, interdependence, and equal dignity. John Rawls argues that the stability of a society is determined by how much its members are convinced of

being treated justly. If they have a feeling of being treated unjustly and unequally, situations of social unrest and conflict may arise. This view indirectly justifies the need for Institutions that ensure just treatment. He begins his work, *A Theory of Justice* with an observation that "Justice is the first virtue of social institutions, as truth is of systems of thought (3)" affirming that people maintain their social unity only to the extent that their institutions are just. Yet often in practice, the Institutions in their attempts to safeguard social stability and order do great injustice to certain individuals. Instances of individual interest and welfare getting subsumed by collective interest and social welfare are not rare in human history. John Searle argues that people accept institutions including the legal ones often without understanding what is going on. His observation, though subtly sarcastic interprets a possible reason for unquestioning acceptance of many unjust practices of the legal institution by people:

> They tend to think of them as part of the natural order of things, to be taken for granted in the same way they take for granted the weather or the force of gravity. Sometimes, indeed they believe Institutions to be consequence of Divine Will. (*Making the Social World* 107)

Another reason for accepting the institutions and institutional facts, in the opinion of Searle is the human urge to conform, which gives rise to a collective intentionality (*Ibid* 108). There are two vital aspects of this argument. First, whether there is a way to understand and interpret intentionality, collective or individual; and secondly collective intentionality is not simply reducible to individual intentionality. Institutions direct human intentions and actions in such a way that provides a kind of binding that makes social life possible. The question is how these institutions affect and organize individual lives and destinies.

The Indomitable Institutions: Temporal Authority and Justice

As Melville was writing *Billy Budd*, the rise of imperialism and its aide militarism were posing a menace to democratic values. Melville critiques the unquestionable idiom used by the law to justify its interventions in people's lives and democratic rights. He seems to suggest that innocence and justice are abstrusely conceptualized, polyphonic and subjective terms, open to multiple interpretations. He distinguishes between the artificial, institutionalized formulations of justice to which the military tribunal is confined and is in conformity, and the instinctive, natural ethical force disparate from this institutionalized ideal of justice and innocence. In Mel-

ville's idea of natural justice, several similarities to Rawls' conceptualization of 'an original position as perceived through a veil of ignorance' can be observed. Rawls' 20th century version of social contract theory springs from the hypothetical original position behind a veil of ignorance, which becomes a condition for arriving at fair principles. In this condition one is not controlled by a concern for consequences as one does not know whether you would suffer or benefit from the operative mechanisms of any institutions. Melville, in the case of Billy suggests that his innocence can be proven if one comes out of the framework of the institution of the naval court. Vere and others, despite their conviction of Billy's innocence, do not acquit him because of their fear of the consequences of such a humanely lenient verdict during 1797 wherein war, menace of mutiny and King George III's rule make a fair decision practically impossible.

It was implied that on failing to prove his innocence, capital punishment awaited Billy. This predicament makes the question of innocence and justice formidably significant. Melville illustrates that power vested in the State has to offer and sustain a convincing assurance of justice, even if it is illusive and a mere show. Innocence is reinterpreted to accomplish this assurance and a deceptive rhetoric is employed for the purpose. In other words, a culture revisions notions of innocence and justice for achieving desired social goals and meeting collective needs.

The fact that the textuality of legal codes is polysemic and may be interpreted from different perspectives which often lead to manipulative mechanisms cannot be denied. The heteroglossic and polyphonic nature of legal statements makes impossible the ideal of an objective, disinterested and neutral interpretation of the code of law. Sometimes the interpretation amounts to a reversal of facts. The novella reaffirms that natural justice cannot prevail over the legal system of the State. With war, mutiny and imperial aspirations in the backdrop, the naval authority only examines the criminal act and its outcome, conveniently ignoring the extenuating situations.

Melville illustrates how the conflict between authorised and subjective notions of justice and innocence often give rise to an intense ethical dilemma for the officers of law. The fact that in most legal situations, 'justice' demands only that the law must be applied in accordance with its recommended and established principles in the 'book' frees an officer from personal accountability or answerability. The official assumes the role of a mere instrument through which law operates, hence discounting any kind of subjective agency. John Searle's argument, that institutional facts are

constituted by a language the functionality which is hard to comprehend, suggests the surreptitious nature of institutional power accomplished through a strategic use of language and rhetoric. We are often complacently oblivious of the role of language in constituting social reality. Searle warns us that "the constitutive role of language in the power relations in which we are immersed in is, for the most part, invisible to us" (*Making the Social World* 90). Legal rhetoric can be manipulated by officers of law to influence the public sentiments and collective consciousness. Judges who represent the state and jurisprudence exonerate themselves from the guilt of an unjust judgement that goes against their conscience with a clever deployment of legal vocabulary that asserts the lawfulness of their verdicts. Derrida's view, "we can be sure that law may find itself accounted for, but certainly not justice.

Law is not justice, law is the element of calculation, and it is just that there be law, but justice is incalculable, it requires us to calculate with the incalculable; and aporetic experiences are the experiences, as improbable as they are necessary, of justice, that is to say of moments in which the decision between just and unjust is never insured by a rule" (*Deconstruction and the Possibility of Justice,* 16) makes us analyze the problems of equating law and justice in theory and for all practical purposes. This gives rise to a vital dilemma. Justice as law appears to expect the generality and universality of a rule. How can we negotiate between an act of justice that must affirm singularity and this kind of generalization implied in law? Derrida emphasizes the need for interpreting each of the singular idioms in the language of justice and also considering the uniqueness of context. More importantly, he advocates for allotting spaces within the legal system for a critique against convenient universalizations.

Billy Budd is also a compelling study of the condition of justice in a state of exception. The state of exception not only binds a living being to the law, but practically abandons one to the mercy of law. The state of exception which endows one person or governing body with the command and voice of authority over the rest always justifies itself with an argument of inevitable crisis or emergency. The deadly combination of war and threat of mutiny under the bloody regime of George III gave rise to a state of exception in the form of martial law. Lurking fears in the time of war and mutiny are cleverly utilized to reinforce and unleash the power of the monarch extending through the naval court. In a state of exception the power of decision over life and death is invested in a person or governing body such as the drumhead court comprising Vere and other officials. Agamben's observation, "In every case, the state of exception marks

a threshold at which logic and praxis blur with each other and a pure violence without logos claims to realize an enunciation without any real reference" (*State of Exception* 40) points to the nature of the verdict arrived at in Billy's case. This verdict is characterized by a total absence of a need for answerability on the part of the monarch and the navy who wield total authority over subjects. In *Billy Budd*, logos itself becomes a justification of violence as is evident in Vere's long trial speech in the drumhead court.

Even from a legal point of view, Vere's judgement is flawed. During the trial, Billy's inability to speak under duress which totally agonizes and frustrates him to a maddening frenzy had to be taken into account. In a situation where any other person would be able to defend oneself verbally, Billy fails miserably. He defended himself by striking Claggart across the head which turned into a fatal blow. The murderous blow is an act of obedience to Captain Vere's entreaty, "Defend yourself"! Billy laments, "If I had found my tongue I would not have struck him" (55). If anyone should be blamed for Claggart's death, it is Claggart himself and to some extent Vere who provokes the stammering Billy. The narrative voice of the novella admits that Billy was pushed beyond endurance. The surgeon who testifies at the death of Claggart opines that his unusually fragile skull is fractured by the mild blow. In this case Billy cannot be held guilty of Claggart's murder. Claggart was unable to withstand even a mild assault that a person with normal thickness of skull would have easily resisted. Claggart's physical condition seems to be more culpable for his death than Billy's blow. This is yet another aspect which makes this case unique.

Even before the trial, Vere reaches the verdict that the angel (Billy Budd) must hang. During the trial, he asserts repeatedly that the jury has to follow the letter of the Mutiny Act and the Articles of War. Under Article Four, It was Billy's responsibility to alert the authorities about an enemy or mutineer within twelve hours. He violated it. However, Vere is more concerned with Article Twenty-two which forbids conflict with a superior officer and Article Twenty-eight which mandates capital punishment for any murderer irrespective of the circumstances leading to it. The culpability of Claggart who deserves the death penalty for the crime of perjury is not even considered in the trial. The martial court, an extension of the monarchy, becomes instrumental in a worse form of violence by sentencing Billy to death ignoring humane concerns of justice and fairness. Vere is painfully aware of the rigidity of law in that particular juncture of history and is hence is not brave enough to consider even the possibility of clemency.

Billy was hanged from the ship's yardarm at dawn in the full sight of the crew. Ironically the last words of Billy, "God bless Captain Vere" is repeated by the crew in a "resonant and sympathetic echo" leaving an impression that the desired docility had been achieved through a public display of the death penalty. At the scaffold, the State and the Church are symbolically represented by the hangman and the priest. Melville indicates the irony of the State committing acts of violence and killing in the name of law with the assent and approval of religion. He also draws attention to the fact that the chaplain, though he knows Billy and his virtues, is not able to raise "a finger to avert the doom of such a martyr to martial discipline (74)." If the spiritual authority under those circumstances challenges the temporal authority of the naval court, it would be considered a reckless transgression of the limits of its function. Melville sarcastically points out that the function of the priest is prescribed by military law in the same fashion as it decides the functions of boatswain or any other naval officer. The temporal authority here intimidates and appropriates the spiritual authority by tactics of intimidation.

Ironically, discipline is breached after Billy's public hanging and subsequent burial. In Billy's case, the death sentence transformed him into a victim and a godlike hero, a la Christ the martyr. The sailors felt that Billy was incapable of mutiny and wilful murder. Billy's innocence is established by the vision that accompanies his death. His hanging is followed by a miraculous spectacle distinguishing Billy from lesser mortals. Melville uses this perhaps to signify that there is a greater justice than that of the king, the priest, the navy or the officers like Vere:

> At the same moment it chanced that the vapory fleece hanging low in the East was shot through with a soft glory as of the fleece of the Lamb of God seen in mystical vision, and simultaneously therewith, watched by the wedged mass of upturned faces, Billy ascended; and ascending, took the full rose of the dawn. (*81*)

It is through the suggestions of a supernatural occurrence that Melville makes a case for divine justice which will ultimately triumph. Billy is transformed into a saint or god who ascends to the heavenly abode. The narrator vividly illustrates the paradoxical situation after the ascendance: The very spar from which he was hanged metamorphoses into an object of veneration for the crew: "To them a chip of it was as a piece of the Cross" (83-84).

***Billy Budd* and its Contemporary Dilemmas of Justice**

Melville's biographer Leon Howard justifies the sub-title of the novel, *Billy Budd: An Inside Story.* Captain Vere may have been modelled after Chief Justice Lemuel Shaw of the Massachusetts Supreme Judicial who was Melville's father-in-law. Shaw was known for strict adherence to fugitive slave laws in his decisions despite being an abolitionist and a strong critic of slavery. Before Herman Melville began writing his final novella, *Billy Budd, Sailor: An Inside Narrative*, sometime between 1885 and 1891, he wrote a poem, "Billy in the Darbies," about a young sailor who had been tried and put to death for his involvement in a mutinous plot. The impact of reading an article published in 1888 titled "The Mutiny on the Somers," which is a poignant account of the tragedy of three sailors convicted of mutiny on the U.S. naval ship *Somers* in 1842 may be traced in *Billy Budd*. Melville's cousin, Lieutenant Guert Gansevoort was among the officers involved in the trial and it is through him that Melville came to know the details of the case kept secret from the public. According to Howard, the discrepancy between the actual proceedings and the historical record inspired Melville to expand his poem into a novella. However, Melville passed away six months after finishing the work. After the death of the author in September 1891, *Billy Budd* remained unpublished till it was discovered among Melville's papers in 1924.

The customary argument in favour of capital punishment is that it deters homicide. Vere's argument is that hanging Billy Budd before the crew will serve to intimidate them and reinforce discipline. If he is not hanged, the crew will be encouraged to mutiny. Vere thinks that the men in the crew do not have any discerning intellect and would believe that Billy has committed the act of mutiny. If Billy is not punished, others would be tempted to imitate Billy. One may doubt Vere's apprehension that any sign of laxity and weakness in the process of law enforcement might incite the already troubled waters of mutiny throughout the British fleet.

Law that punishes violence depends on violence. The language of law provides a justification for law's violence. Capital punishment and physical torture blatantly depict the violence implicated in law; yet there is a clever discourse justifying capital punishment. Punitive or corrective justice incorporates the aspect of punishments or even annihilation of the criminal through capital punishment. In general, punishments are considered just if they take into account relevant criteria such as the gravity and repercussions of the crime and the objective of the criminal. To some extent, fear of punishment is a deterrent to crime. The argument that just punish-

ment is retributive has little practical evidence. Foucault's insightful critique of the state's use of rhetoric in order to justify, silence the scandal and contradiction implicit in capital punishment although its (i.e. state's) most important duty is to safeguard life unravels the hollowness of the myth of the 'retributive' function of punishment. Capital punishment appears in the guise of protecting and safeguarding the lives of the innocent by annihilating the monstrous criminal. Foucault elaborates further, "Hence capital punishment could not be maintained except by invoking less the enormity of the crime itself than the monstrosity of the criminal, his incorrigibility, and the safeguard of society. One had the right to kill those who represented a kind of biological danger to others" (*History of Sexuality* vol. I, 138). Penal practices operate in accordance to an economy of power. When the cruelty of punishment surpasses the crime itself, the judges and executioners appear to be criminals and killers. This dilemma in the minds of spectators of capital punishment is powerfully portrayed in Billy Budd's death scene. The crew watched the procedures with pity and veneration to Billy. They have unresolved moral qualms about the decision taken by Vere and the drumhead court. Instead of condemning Billy, who is guilty of murder, they start worshipping him like a martyr.

Melville was exposed to an ongoing debate on capital punishment and physical torture. It is said that his novel, *The White Jacket*, was influential in abolishing flogging in the U.S. Navy because Harper & Brothers, the publisher ensured that the book reached every member of the Congress. During the same years that Melville was writing *Billy Budd*, America and Europe were witnessing the culmination of a century-long battle over capital punishment. Living in New York State, Melville was touched by the uncanny outcome of the debate during the years 1886 to 1891. *Billy Budd* features the major arguments of that movement and brings into focus the key issues of the movement against capital punishment. In his article "The Gallows in America" Edmund Clarence Stedman portrays vividly the horrors of hanging to convince the public of its brutality with a hope to abolish the death penalty by arousing public sympathy.

Stedman became Melville's enthusiastic patron while *Billy Budd* was being written. Melville seems to raise many questions which figure in the debate on capital punishment through the medium of narrative fiction: Does capital punishment serve as a deterrent to homicide? What are the impacts of public executions? Is hanging appropriate to a civilized society? Is capital punishment essentially a manifestation of the power of the state that could annihilate its citizens? Does capital punishment substitute ritual sacrifices,

or promote a culture of militarism? Is it an instrument of class oppression? Melville (1819-1891) grew up in the background saturate with the after-effects of the most appalling moment in the history of capital punishment during the reign of George III (1738-1820) in England.

Melville intensified the horrors of death by hanging through a suggestion that Billy's heart must have stopped even before his hanging was carried out. The surgeon who oversaw the procedures admits that the inevitable muscular spasm was conspicuously absent in Billy's case. The narrative voice states: "Even should we assume the hypothesis that at the first touch of the halyards the action of Budd's heart, intensified by extraordinary emotion at its climax, abruptly stopped - much like a watch when in carelessly winding it up you strain at the finish, thus snapping the chain - even under that hypothesis how account for the phenomenon that followed?" (77-78).

Through the debate on various kinds of physical torture and the death penalty, Melville compels the readers to consider the danger of equating law with justice; in doing so one must grapple with whether heinous punishments sanctioned by law are just. Melville's views capital punishment as a stratagem affirming the power of the State over the life and death of citizens even in a democratic environment. He also understood how this power uncontrollably and limitlessly expands during wartime. The novella dramatically highlights the implications of capital punishment in an interface between history and artistic reflection.

The notions of justice constructed by human beings through intricate historical and political processes are manifested through laws, rules, social norms, codes of conduct and other factors. Justice is inextricably intertwined with rights, duty, equality, truth and morality. However, Melville does not deny that the projected idea of justice, divine or man-made, is an outcome of complex cultural processes. He seems to suggest that divine justice cannot be implemented through firm legal protocols. On many occasions, an epistemological tension exists between two interpretative planes of justice: as a product of culture and as something intrinsic to human nature. The novella suggests that this tension will remain unresolved.

Note

[1]Published in Putnam Magazine in February 1869 (pp. 225-36), cited by Philip E. Mackey, p 23.

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