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“It sticks like the shadow”: Comity in *Aves v. Commonwealth* and *Benito Cereno*

I. Contested Wills

Imprisonment and fugitive escape are recurrent topoi in antebellum U.S. texts that track a slave’s journey into freedom. In her autobiographical narrative, *Incidents in the Life of a Slave Girl* (1861), Harriet Jacobs describes her four years’ suffocating—and self-imposed—imprisonment in a small crawlspace in order to make her former master believe that she has escaped to the northern states before she actually makes her move. In his *Narrative of the Life of Henry Box Brown* (1851), the author’s imprisonment-for-freedom involved stowing away in a dry-goods container that was shipped from Richmond to Philadelphia by a network of friends and abolitionists. William and Ellen Craft co-authored a narrative, *Running a Thousand Miles for Freedom* (1860), featuring an escape plot in which the husband and wife manipulate both gender and racial codes to reach the free North. Ellen, a light-skinned woman, poses as an elderly and infirm Southern gentleman with her darker-skinned husband acting the part of her enslaved valet. Both poles of this movement spectrum—confinement and fugitive flight—vest the will towards freedom in the slave herself. Either through self-monitored stillness or self-authorized disguise, the enslaved person moves herself into freedom.

At the opposite end of the spectrum, the antebellum U.S. legal canon, especially The Fugitive Slave Act of 1850 and the Supreme Court ruling in *Dred Scott v. Sandford* (1857), divests the slave of any viable potential to take action for her own freedom. The Fugitive Slave Act necessitates the participation of all U.S. states to assist in the capture and return of fugitives

to their masters. The law aimed to impose a nationwide moratorium on a slave's ability to move freely throughout the nation. According to its logic, even if the slave could reach Massachusetts, her movements were always essentially futile for the motion towards freedom would always also (according to the Fugitive Slave Law) be a motion towards eventual recapture and re-enslavement. Similarly, the Supreme Court ruling in *Dred Scott v. Sandford* (1857) invalidated African-American movement between free and slave states with Justice Taney's infamous declaration that, "a Negro has no rights that a white man is bound to respect." In denying African-Americans the rights of citizenship—and thus the right to appear before any of the nation's courts as a legally recognized full citizen—the Taney court delegitimized the capacities of any African-American to move throughout the nation at will and for her own interests.

Yet, the law's strident *disavowal* of African Americans' ability to move freely (both philosophically and literally) implies that the law did, in fact, recognize the existence of the will towards freedom so often delineated in slave narratives mentioned above. For the concept of disavowal necessitates the *a priori* presence of a thing cognized as possible and probable—the ability of the slave to transport herself to freedom—as that which must be negated. As Sibylle Fischer points out, "disavowal exists alongside recognition...the disavowal is always supplemented by an acknowledgment" (38). It is precisely this "acknowledgment," whether tacit or explicit, of a slave's capacity to engage in freeing movement that links the liberative storylines of the aforementioned slave narratives with the prohibitory legal statutes of the antebellum years. African American movement was legislated against because it was happening; the will toward freedom was cognizable and therefore curtailed.

What we see in the two brief histories provided of literary slave narratives and antebellum slave law is a contest over will: where who can will certain people into freedom, and how they can do so, was a crucial philosophical battleground of the antebellum slave system. The *Dred Scott* decision, for example, lays bare the fact that in a contest pitting Dred Scott's individual will to freedom versus state-sponsored legal will in support of second-class humanity for blacks, legal will resolutely claims a victory. The individual's will is not enough, in Dred Scott's case, to protect him from re-enslavement. The state's legal will toward maintaining black unfreedom is monolithic and excessive, extending not just to the category of black citizenship in Missouri and Illinois, but to the category of personhood in the nation: Taney devastatingly pronounces that African Americans never have been and never will be, in the eyes of the law, fully recognized human beings anywhere in the U.S.¹ The *Dred Scott* decision is a legal ruling, but it extends its boundaries beyond the strict disciplinary parameters of law as the maintenance of social order to include valuations of personhood. The *Dred Scott* decision is, in other words, a legal text that reaches beyond the discipline of law in its effects: it is extralegal in its implications.

Of course, slave narratives provide abundant examples of slaves resisting, reworking, and subverting legal will in their passages to freedom. It is clear from these texts that one can outwit

¹ Another example of legal will contradicting a collectivity's claim for sovereignty was the earlier ruling in *Cherokee Nation v. State of Georgia* (1831), in which Chief Justice Marshall issued a crushing injunction that effectively constituted Native Americans as legal non-entities in the view of U.S. law from time immemorial and for time eternal. In the final paragraph of the majority opinion, he writes:

If it be true that the Cherokee nation have rights, this is not the tribunal in which those rights are to be asserted. If it be true that wrongs have been inflicted, and that still greater wrongs are to be apprehended, this is not the tribunal which can redress the past or prevent the future (12).

and escape the law from the ‘outsider’ position of one who is legislated against by the law. The authors and subjects of slave narratives can also be considered extralegal, in that they inhabited a liminal realm only punitively recognized by law.

But the anomaly that this essay will focus on is a third valence of extralegality, wherein legal will is unable to make itself effective in decreeing freedom *or* enslavement for certain subjects. I am interested in a phenomenon wherein the U.S. legal system gets too big for itself, a paradoxical situation in which the cultural institution—law— that is fundamentally about social control somehow finds itself controlled by a cultural structure residing in domineering extra-relation to itself. By way of parsing the operations of this paradox, I analyze one example of U.S. law’s *extralegal mechanisms* and its relation to freedom in the antebellum U.S. period. While I will define extralegal mechanisms in more detail later on, at this point it is sufficient to say that I view them as entities that remain linked to but fundamentally supersede the law’s ability to determine a subject’s legal personality. As I see it, the extralegal is a category “removed from the purview of the law but residually connected to it and possibly at odds with it” (Dimock, *Residues* 24).

My analysis, which traces the presence of extralegality in both legal and literary cases of slave movement, takes some recently posed critical questions as its guideposts. In the introduction of *Modernity Disavowed*, Sibylle Fischer frames her project by asking, “How is it that modernity’s dream of human emancipation turns into its opposite? How is it that the promise of freedom comes to mean a radical loss off autonomy and a ruthless instrumentalization of human life?” (33). This paper is in dialogue with Fischer’s questions, for it interrogates instances when modernity’s dream of emancipation does not “turn into” its opposite at a decisive moment, but in fact always *exists as* a “radical loss of autonomy and a ruthless

instrumentalization of human life.”

From a literary studies viewpoint, this essay seeks to shift the critical hermeneutics applied to studies of 19th-century freedom and slavery from the narrative of perverse development which Fischer’s project outlines (the dream of emancipation “turns into” enslavement) towards a recognition that modernity’s freedom inherently exists as a “coeval violence of affirmation and forgetting,” in which both freedom (affirmative of a subject’s existence) and slavery (a forgetting of the subject) exist under a comprehensive umbrella of repression and suspended movement (Lowe 208).² Scholars like Henry Louis Gates Jr. and William Andrews³, among others, have indeed done vital critical work in emphasizing the ability of the slave to will herself into freedom. Some of the work left to be done, however, is an analysis of the insufficiency of will to enact or retract a subject’s freedom, even if that will is vested with all of the power of law. In that vein, this essay concentrates on an extralegal mechanism that prevents the law from revising itself, even when revision would re-designate slaves as free people.

II. Courtesy, or, Boundary Blindness

Specifically, the extralegal mechanism traced out in the following finds a flashpoint in the principle of international law known as “comity.” Comity pertains to conflict of law cases between sovereign states. Comity is applicable in a case when the “relevant facts [of a case]

² These are obviously very coarse designations, but an uncritically optimistic link between freedom and affirmation is nicely tempered by Lowe’s insistence that violence encapsulates and constitutes the affirmative moment.

³ In her article *Freedom With A Vengeance*, Edlie Wong queries William Andrews’ assertion that “‘freedom as a theme and goal of life’ uniquely characterizes the slave narrative,” by asking, “What kinds of critical lacunae have such hermeneutic assumptions created in terms of identifying other texts of resistance and agency?” (9). While my analysis will focus less on unexplored forms of slave agency and more on the theoretical implications surrounding issues of law and freedom, both Wong and I share an interest in respecting but thinking beyond some widely accepted critical assumptions about antebellum literature and law.

have a connection to another legal system...[the presence of dual legal systems in a case] raises problems as to which law is to be applied, that of the territory in which the issue is raised, or that of the other jurisdiction” (Watson 1). “Comity” derives from the Latin *comitas*, meaning “courtesy” (*OED*). When applied to conflict of laws cases, comity is the name attributable to the circumstance in which the governing body of a given state (State A) cedes authority to the legal system of another state (State B) in their (State A’s) jurisdiction. In other words, the application of comity in a case grants extraterritoriality to a foreign government—the right to have its laws apply outside of the literal boundaries of that government. As such, comity is an instance where State B’s legal system experiences a *legalized immunity* from the authority of State A when State B’s citizens enter into A’s sovereign territory. As Teemu Ruskola notes in his discussion of extraterritorial jurisdiction in the U.S.-China Treaty of Wanghia (1844):

...legally we incline to think of nations as defined by their territorial borders. However, in China among other places, American law did not attach to American territory but to the *bodies* of American citizens—each one of them representing a floating island of American sovereignty (881).

Like extraterritorial jurisdiction, comity creates citizen bodies that are ineluctably attached to the operations of their homeland’s law, regardless of their movements between and among various discrete governments.

Derived from the writings of seventeenth-century Dutch jurist Ulrich Huber’s *Lectures on Roman and Contemporary Law* (vol 2, 1689), the Western concept of comity was formulated as an international recognition of the *jus gentium*, or law of nations.⁴ Alan Watson traces Huber’s conception of the *jus gentium* to Justinian’s *Institutes* and a modern formulation drawn

⁴ *Jus gentium* or “law of nations” originally derives from the Roman legal system’s method of handling cases involving foreigners. It came to refer to common laws governing Western nations that envisioned themselves as participating in a general human society based in natural law, governing things like national borders and international relations. See also Samuel Pufendorf’s *The Law of Nature and Nations* (1674).

from the work of Arnold Vinnius, a 17th century Dutch jurist.⁵ Vinnius explains that, “The *jus gentium* is not to be judged from the institutions of peoples, but from what natural reason pronounces to be just, that is the knowledge inherent in the minds of men” (trans. from Latin in Watson n19, p103). Accordingly, nations act out this principle of inherent or natural law by acting courteously, by acknowledging Huber’s claim that “the rights of each people exercised within its own boundaries should [by nature of their universal foundation] retain their force everywhere, insofar as they do not prejudice the power or rights of another state or its citizens” (qtd Watson 4). Comity is something of a courteous cession of individual state authority to the universal tenets of the *jus gentium* which ought to, Huber claims, hold sway everywhere due to their basis in “the benefit and tacit agreement of peoples...[for] nothing could be more inconvenient than that what is valid by the law of a certain place be rendered invalid by a difference in law in another place” (trans. in Watson 7). In order to avoid a conflict of laws, nations ought to maintain the rule of the *jus gentium* in a place of primacy over the *jus civile*, which Huber dismisses as merely “the uncompounded civil law.”

The doctrine of comity underwent some revision in its most influential 19th -century articulation, Joseph Story’s *Commentaries on the Conflict of Laws* (1834). Although Story relied quite heavily on Huber’s work to promulgate his theory of comity, Alan Watson points out various realms of disagreement between the two along with some purported misreading of Huber on Story’s part while writing his *Commentaries*.⁶ For the purposes of this essay, Story’s largest departure from Huber is his shift away from the *jus gentium* (or natural law) as the foundation of comity and towards a theory of comity as a legal tactic applicable in the case of a conflict between sovereign states with particularized justice systems. Story insists that

⁵ The full title of the Vinnius work: *In quattuor libros Institutionum Imperialium Commentarius* (1642)

⁶ See Watson, chapters 1-3 *Joseph Story and the Comity of Errors: A Case Study in Conflict of Laws*.

“every nation must judge for itself, what is its true duty in the administration of justice. It is not to be taken for granted, that the rule of the foreign nation is wrong and its own is right” (33f).

Story also explicitly tags his theorization of comity as pertaining to the realm of international law. He writes:

The true foundation on which the administration of international law must rest, is, that the rules, which are to govern, are those, which arise from mutual interest and utility, from a sense of the inconveniencies, which would result from a contrary doctrine, and from a sort of moral necessity to do justice, in order that justice may be done to us in return (33f).

Story shifts direction from Huber’s view of the *jus gentium* as the natural, implicitly agreed upon bedrock of comity to a vision of reciprocal relations developed in time between nations. The law of nations has not been ever present, but instead “*arises* from mutual interest and utility.” Story holds that comity arises out of potential international conflict (not, as Huber holds, international-rational concurrence). In Story’s theory, comity is a strategic deployment of extraterritorial immunity meant to produce an understanding of reciprocity between certain nations that will mutually benefit from an association with one another.

In his *Commentaries*, Story is also adamant that comity is an issue of “imperfect obligation,” in which “every nation must be the final judge for itself, not only of the nature and extent of the duty, but of the occasions, on which its exercise may be justly *demand*ed” (33f my emphasis). The language of international animosity surfaces in Story’s use of the word “demand” to characterize a nation’s request for comity from another. This essay’s case studies—one legal and one literary—will interrogate the supposed sovereignty of a nation’s legal system in the face of *demands* for comity or, more specifically, the demands that comity makes upon a legal system. E.M. Meijers explains that expressions of *de comitate* (by courtesy) are consistently set up in opposition to expressions of *de jure* (by law) (664 n1, qtd in Watson

12). Comity resides in a realm that is fundamentally connected to but, crucially, supersedes the realm of law. It is an excess, a non-obligatory courtesy bestowed on a nation above or apart from the regulations of law. As such, comity has a spectral quality in that it is connected to a more material realm of codified law, but it also hovers over and has the potential to trump the workings of formalized legal systems.

Huber's formulation of comity as an entity with vital relations to some form of extralegal universality is applicable to issues of conflict of law cases that arose in antebellum courtrooms and literary imaginations. It is precisely the specter of comity of as a domineering extralegal, informal mechanism that Story seeks to dismantle in his *Commentaries* by insisting that nations *can* choose when to apply the doctrine. Story's anxiety proves to be well-founded in the cases that this paper examines in which comity proves itself to possess the ability to disrupt and disregard the operations of particular legal systems with strange consequences for projects of freedom in the period. In both an early antebellum U.S. legal case involving slave mobility and Herman Melville's 1855 novella, *Benito Cereno*, the theoretical implications of the doctrine of comity play a vital role in hindering legal functionaries' ability to authorize the freedoms of certain subjects. Comity does indeed retain connections to the law, but its power to hamper the law's ability to bring subjects into freedom points to comity as a warning critique of an Enlightenment-inflected Western legal tradition—a critique embedded in and authorized by that system itself.

III. “No Lawful Settlement”: *Aves v. Commonwealth of Massachusetts*

The emergence of the antebellum U.S. concept of comity is most notable because of the almost immediate adoption of this principle of international law for the purposes of elucidating the legal contours of slave mobility within the individual states. In 1836, the case of *Aves v.*

Commonwealth of Massachusetts was brought before the Supreme Court of that state. The case focused on an enslaved five-year-old child, Med, who was brought with her mistress, Mary Slater, from her home in New Orleans to Boston. Mary Slater travelled to Boston to visit her father, Thomas Aves. Edlie Wong notes that Mary and Med's arrival in Boston coincided with the increasing efforts of the Boston Female Anti-Slavery Society (BFASS) to protest against a master's right of free transit with their slave property in Northern states.⁷ In conjunction with male supporters, the BFASS successfully procured an order for Aves to appear in court on charges of illegally detaining Med. The petition for the writ of habeas corpus asserts that Med is "free by the law of Massachusetts," and voices its anxiety that Mary Slater will illegally "carry her, the said Med, back to New Orleans, as a slave" (Knapp 425).⁸ Going further to argue for Med's well-being and basic human rights, the document alleges that Thomas Aves is withholding Med's inalienable rights, keeping the child "unlawfully restrained of her liberty" (Knapp 425). The document's confident assertion of Med's right to liberty and her unlawful

⁷ Paul Finkelman points out that free state courts generally analyzed the masters right to travel with slaves by fitting the master's residential status into a four-category taxonomy of: transient, visitor, sojourner, or resident (9). State courts applied different rules to each category, with some states, like New York and Pennsylvania, passing laws that slaves accompanying their masters became free after a six months' residency in the state. However, Wong clarifies that these states also offered traveling slaveholders the protection of sojourner and transit laws until 1841 (New York) and 1847 (Pennsylvania).

Before the postbellum passage of the Fourteenth Amendment and the modern development of the Commerce Clause, masters generally relied on the Privileges and Immunities clause for constitutional protection of slave property (10). Finkelman cites Justice Bushrod Washington's decision in *Corfield v. Coryell* (1823) as emblematic of the master's right to retain slave property in free states. The decision reads that the clause protects, "the right to acquire and possess property *of every kind*, subject nevertheless to such restraints as the government may justly prescribe for the good of the whole. The right of the citizens of one state to pass through or reside in any other state...and to take, hold, and dispose of property, either real or personal" (qtd Finkelman 10).

⁸ All subsequent quotations from court documents are drawn from Isaac Knapp's pamphlet, *Case of the Slave-Child Med. Report of the Arguments of Counsel, and of the Opinion of the Court, in the Case of Commonwealth vs. Aves; Tried and Determined in the Supreme Judicial Court of Massachusetts* (Knapp 1836). The pamphlet is reprinted in *Southern Slaves in Free State Courts*, vol. 1 (ed. Paul Finkelman). Page numbers in parenthetical citations correspond to this volume.

restraint from it implies that both the BFASS and the court have subsumed Med's (potential) will towards freedom as their own.

At first glance, it seems unclear why the BFASS claims are at all problematic. Slavery was unlawful restraint that denied people their ostensibly inalienable right to liberty. However, further examination shows that the BFASS's declaration claim about Aves restraining Med's liberty is a highly suspect assertion made by the group who strategically engineered this lawsuit to draw increased public attention to their abolitionist cause. Further, the suit implicates the BFASS group in the same racist disavowals of black kinship that undergirded the chattel slavery system. Prior to the initiation of the lawsuit, members of the BFASS disguised themselves as Sunday school teachers and visited the Aves household seeking an interview with Med (Chapman 67).⁹ During the meeting, the women learned that Med's mother was alive and also enslaved in the New Orleans Slater household. However, the petition for the writ of habeas corpus presents Med as an orphan. Levin Harris (the man representing the BFASS) asserts in the writ that Med has no known relatives (Chapman 103). In its conviction that it must speak against a "violation of the rights of the child" who it dishonestly positions as an orphan, the BFASS enacts the logic of slavery in refusing to countenance African American kinship ties as valid. The BFASS's lie about Med's orphanhood lays bare their reliance on the dehumanizing logic of chattel slavery, for Med's mother is written out of the (legal) story. This portion of the text marks parental rights as unthinkable for the BFASS, when those ostensibly natural rights¹⁰ are vested in a slave. The BFASS's "adoption" of Med as a figure for their cause delegitimizes

⁹ This information provided in BFASS member Maria Weston Chapman's pamphlet, *Right and Wrong in Boston, in 1836. Annual Report of the Boston Female Anti-Slavery Society; Being a Concise History of the Cases of the Slave Child, Med, and of the Women Demanded as Slaves of the Supreme Judicial Court of Mass. with All the Other Proceedings of the Society* (BFASS, 1836).

¹⁰ John Locke's *Second Treatise* (1689) and *Some Thoughts Concerning Education* (1692) were foundational sources grounding parental governance of children in natural law.

Med's mother's relationship with her daughter¹¹ and effectively transfers Med's illegally usurped "will" from its residence in the body of her master(s) into itself (Chapman 64). It is a change in degree, but not in kind.

In the context of this freedom suit, the traditional hermeneutic of an individual slave's will to freedom encounters serious complications in the fact that "will" itself is an aspect of identity liable to seizure and manipulation by others. There is no indication in the documents that Med's opinions about her situation and her preferences were solicited from the interviewers, or later, from the court.¹² Instead, Med's will was cited as the property of the various people who petitioned either for her freedom or her continued slavery. Indeed, Med does not even appear as a plaintiff in her own case, *Aves v. Commonwealth of Massachusetts*. Instead, the Massachusetts state polity incorporates Med into itself, leaving her the absent center of the suit. Her vanishing by way of incorporation in the name of the suit is only the beginning of the "coeval violence of affirmation and forgetting" underpinning the court's attempt to usher Med into freedom (Lowe 33).

Med's case poses even stranger problems to the model of a purely will-driven model of freedom, as divergent views on the power of a state's legal will surface in the arguments of counsel. Much of the legal rhetoric comprising *Aves* presents the case as a matter of interstate comity between Louisiana and Massachusetts, the North and the South. From their opening arguments, Thomas Aves' lawyers, Benjamin R. Curtis and Charles P. Curtis, seek to foreground

¹¹ See Edlie Wong's article, "Freedom with A Vengeance: Choosing Kin in Anti-Slavery Law and Literature" for a further critique of the racialized limits of the BFASS's adherence to the notion of a sacred bond between a biological mother and child.

¹² Lemuel Shaw, the Chief Justice of the Massachusetts Supreme Court who presided over *Aves*, did, in fact, solicit opinions from plaintiffs in an 1832 freedom suit—one curiously unreported in the antebellum media. In that case, Shaw allowed an enslaved boy, Francisco, who was brought from Cuba to Boston, to voice his preferences about his place of residence. Francisco expressed a wish to return to Cuba, and Shaw's ruling upheld his choice (Finkelman 101-02).

that the case is, in fact, a chance for the Massachusetts court to perform its courteous relationship towards the South by allowing Mary Slater and Thomas Aves to transfer Louisiana law into Massachusetts territory. Benjamin Curtis opens his defense by citing Joseph Story's *Commentaries*, quoting his assertion that, "the general principle" of comity derives from the "*jus gentium privatum*," and that the application of comity indicates that a court possesses "a wise and manly liberality" (Knapp 428). Curtis then seeks to situate the Massachusetts Supreme Court within this historical framework of rational liberality by asserting that "it cannot be denied, that the general principles of international law are broad enough to cover this case," adding that "the application of this principle [‘the great principle of the law of nations’] to the citizens of one of our sister states is, to say the least, quite as just and politic, as to the citizens of a foreign country" (Knapp 428-29).

In these opening statements, Benjamin Curtis attempts to convince the court that what is at stake in this apparently mono-national case is the U.S.'s global reputation regarding the nation's adherence to "the great principle of the law of nations."¹³ Curtis effectively moves the spatial coordinates of the argument from a relatively local sphere to a remapped vision of the U.S. as a world unto itself, where sovereign state-nations must act courteously towards one another in order to maintain peace. Curtis partners this spatial slippage of the U.S. out of a national and into a global framework with another rhetorical slippage from the language of international law to the language of international courtesies. A few paragraphs later in the argument, Curtis launches into a paean about the positive affective results deriving from an act of international courtesy. A ruling in favor of Aves would "promote harmony and good feeling,

¹³ The "law of nations" evokes the concept of a "family of nations," which was and still is a Western imperial imaginary that historically foreclosed the participation of many African, Asian, and Middle Eastern nations.

where it is extremely desirable to promote it, encourage frequent intercourse, and soften prejudices by increasing acquaintance, and tend to peace and union and good will.” Curtis ends the feel-good list by uttering the rhetorical question, “why should *not* the foreign law be allowed to have this useful and just operation in our territory?” (Knapp 430). In this moment, Curtis positions “harmony” and “good feeling” in a realm that transcends concerns of justice and law. While the exercise of comity certainly retains a connection to the law (Massachusetts would, after all, be allowing Louisiana slave law to operate within its jurisdiction), Curtis insists upon its higher ranking and comprehensive character that tends towards “union.”

Through this resolutely positive catalogue that recites the virtues of international comity, Curtis once again shifts the focus of the case from an interstate/intranational dispute to a transcendent enticement for Massachusetts to let the universal, “wise and manly liberality” exemplified by comity shine through in its decision. By allowing the foreign law of Louisiana to hold some sway in Massachusetts, Curtis avers that Massachusetts would exhibit “no bad example,” and would, in fact, become exemplary in its exercise of comity—the preeminent position of the example implying its supersession of petty particularities existing between conflicting systems of law. Benjamin Curtis’s initial reading of the case attempts to prove that *Aves v. Commonwealth* is not a strictly legal issue at all, but an issue of courteous, extralegal relations that can blend discrete states into a unified whole.

However, Curtis’s invocation of a harmonious system of relation between a “global” U.S. does depend upon the incorporation and denigration of a certain type of subject—a subject whose internal exclusion as illicit, enemy, and alien cements the bonds between valid travelers between the North and South. Here, Curtis slips back into the language of law to make distinctions between the sorts of entities that cannot sever their body’s relation to the laws of

their domicile, repressive though that relationship may be. Curtis puts forth a hypothetical situation in which Canada's government abolishes capital punishment on grounds of immorality. He then suggests that if a person commits murder in the state of Vermont and flees to Canada, "The public policy of Canada in respect to capital punishment, within its own territory, would hardly furnish a sufficient reason for refusing to deliver up the murderer to the authorities of Vermont" (Knapp 431). In the context of the case, Knapp's anecdote about the fugitive Vermont murderer undoubtedly aims to imbue the court's image of Med with connotations of black violence and fugitivity. Further, the story successfully delineates an illicit type of person whose legal status in one state adheres to them, even though they move into another state. The Vermont fugitive who flees to Canada remains a fundamentally executable subject who carries the lethal legislation of Vermont on her person at all times. In Curtis's anecdote, the merged figures of a Southern slave in the North (Med) and a fugitive murderer represent a dangerous "alien enemy," whose attainment of freedom the exercise of comity will prevent (Knapp 431).

The concept of comity contains both the immunity of lawful "strangers" from a "sister state" and these "alien enemies" attempting to take advantage of a foreign court system. Though Curtis opposes these figures to one another, the extralegal doctrine of comity envelopes both of them. The atmosphere of comity in which both the valid stranger and fugitive enemy move is calculated to ensure the positive immunity of the former (she is free to enact the laws of her native state extraterritorially) and the negative susceptibility of the latter (she can never be free from the law of her native state). In Curtis's imaginary of the legally valid southern "strangers" and enslaved "alien enemies," citizen immunity and slave law stick to subjects like skin. Comity is an extralegal structure of justice carefully calibrated to assure the integration of both of these

figures into a realm of determined subjectivity that is beyond the law's capacity to revise or appeal.

The representatives of the Commonwealth, the BFASS, and (tacitly) Med did, of course, try to resist the sway of comity. In fact, Ellis Gray Loring—the lawyer representing the state—successfully petitioned the court for Med's freedom. However, Loring's argument and Chief Justice Lemuel Shaw's final ruling actually reveal the depth of comity's influence and the state's inability to prevent its universalizing capacities from remaining in effect. In his argument, Ellis Gray Loring attempts to dismantle Curtis's invocations of comity by reinstating a strict hermeneutics of constitutional interpretation that adheres to the text only. Loring strives to recontain the case within the parameters of codified constitutional law. In the opening paragraphs of his speech, he invokes the U.S. Constitution as the document that explicitly marks the spread and limit of the operations of comity between states. Characterizing it as a "carefully penned" product of "mutual concessions, [made] after long dispute and difficulty" which resulted in "a 'compromise' ... a written compact," Loring insists that any and all guidelines for the application of extralegal notions like comity would have been, if they were valid, fully contained in the text's discussion of slavery (Knapp 439). Loring continues to say that because the question of slavery among the states is "expressly regulated" by the Constitution in the form of the 1793 Fugitive Slave Act¹⁴, masters are granted only the right to reclaim escaped slaves but not those that they willingly bring onto free territory. He describes the 1793 Fugitive Slave Act as the North's "surrender of rights, interests, or prejudices" in the service of attaining national union, and asserts that, "we are not to be told that some of our principles were yielded up by

¹⁴ The law arose from a dispute between Pennsylvania and Virginia regarding what Pennsylvania regarded as the illegal rendition of an escaped former slave, John Davis, back to Virginia. President George Washington signed the act into law on February 12, 1793 in hopes of making explicit the obligations of all states regarding interstate movements of slaves.

compromise, and the rest are to be sacrificed for comity” (439). Loring ends this section of the argument with an exclamatory reinstatement of state boundaries, declaring that “each party said to the other, ‘Thus far shalt thou come and no further!’” (439). Loring’s invocation of the U.S. Constitution as a preeminently stable legal authority for the case seeks to reign in Curtis’s inducements for the court to courteously rely on measures outside of or above the law for resolution.

Despite Loring’s attempts to warn against the dangers of trafficking in the extralegal arena of courtesy/comity, his argumentation and the final decision rendered by the court in favor of the BFASS are blind to the ways in which the logic of slave law has already bypassed and infiltrated the boundaries of their own Northern courts. In a curious aside lodged between Curtis’s arguments for the defense and Loring’s official statement for the plaintiffs, the figure and fate of Med as a freed inhabitant of Massachusetts flickers into view. Loring assumes rhetorical power over Med’s will, voicing proslavery doctrine about the slave’s mental incapacities by stating that, “*If she were able to form an intelligent wish, we are bound to presume she would prefer to freedom to slavery*” (Knapp 436 emphasis mine).¹⁵ Attendant upon Loring and the BFASS’s presumptuous will to bring Med into freedom is the relegation of her personhood to a liminal status within the Massachusetts polity. In a telling moment in which Loring envisions Med’s prospective career as a free person, he concedes that the court will likely “commit her to the Overseers of the Poor, who are bound to ‘relieve, support and employ all poor persons residing in or found in their towns, *having no lawful settlement within this state*” (Knapp 438). At the very moment when Loring seeks to prove that freedom is the best state for

¹⁵ While Med’s minor status undoubtedly plays into Loring’s ability to speak about her inability to cognize her situation, I contend that her age is a convenient screen for the racialized assumptions inherent in the BFASS’s carefully chosen figureheads for the freedom suits. Edlie Wong points out several other instances in which freedom suits focus on slave children.

Med, he appeals to a government institution that merely transmutes her slave status into the figure of the indigent vagrant.

After the court ruled in her ostensible favor, Med was, in fact, sent to live at the Boston Samaritan Asylum for Indigent Colored Children, recently founded by members of the BFASS.¹⁶ Med's transmutation from slave child to indigent orphan fractures the progressive arc of abolition's envisioned trajectory of slavery to freedom. Indeed, "transmutation" is not an apt descriptor for Med's situation, as the term implies a fundamental change of state. While Med's body certainly travelled from state to state, her ontological status as an entity invalid in the eyes of the law—incapable of possessing lawful property in the state of Massachusetts and implicitly only capable of being seen as the lawful property of a master or state asylum—remained fundamentally unchanged. Even though Justice Shaw validated Loring's argument against the operations of comity in Med's case, the mechanism proves its ability to turn a blind eye to the boundaries of the law's attempt at revising Med's legal personhood.

In his closing statement to the court, Ellis Gray Loring attempts to invalidate the defendant's plea for comity one last time. He does so by evoking the nightmare of slavery's spread into Massachusetts. He actively concurs with Benjamin Curtis's claim that the master's right to his slave "sticks like the shadow—'*sicut umbra sequitur*,'" and insists that this shadow will, if permitted entrance by the courts, cast its pall over the North. (Knapp 450) A critical reading of the case, however, proves that Loring's attempt at distancing Massachusetts from

¹⁶ Upon entering the asylum, Med's name was changed to "Maria Somerset," to reflect the influence of both Maria Weston Chapman and King's Bench Justice Mansfield's widely heralded (and deeply misunderstood) ruling in 1772. See Cheryl Harris, "'Too Pure an Air'" for a critique of the common understanding of the *Somerset* decision. Med's forced re-naming again reworks and problematizes the classical trope of an escaped slave re-assembling herself through the assumption of a new name. It also, of course, reinscribes her body with the marks of a freedom that has remade her into an indigent orphan with "no lawful settlement within this state."

Southern slave law is too little, too late. What his statements and the outcome of the case actually reveals is the courteous proximity of Northern and Southern law to one another. The interpretation of comity as a *jus gentium*-derived set of universalized and extralegal principles that antebellum jurists like Story, Loring, and Shaw attempt to resist resurfaces even in their disavowal of its operation.

Either by honoring slave law through a legally endorsed application of comity or disavowing the validity of slave law in Massachusetts, Med's status of fundamental invalidity leaves irrefutable traces. Both parties' calculated re-presentations of her person as fugitive, criminal, orphaned, and indigent ensure that the residue of slavery "sticks like the shadow."

IV. *Benito Cereno* and (In)valid Attempts

Herman Melville's 1855 novella, *Benito Cereno*, evokes the shadow of "the Negro" to explain its titular character's inability to be brought back into the fold of freedom after having been overpowered as captain during a shipboard slave revolt (*Budd* 257).¹⁷ Benito Cereno's self-proclaimed oppression by "the Negro" persists even after legal authorities attempt to rejuvenate his status as a white, rights-bearing deponent in the legal briefs that Melville composed for the text's conclusion. Yet, Cereno's is not the only story offered up in tracing the amorphous dividing lines between enslaved and free subjectivities. Melville's text doubly traces out the inability of the law to revise itself in order to place subjects into proper, racially-coded legal categories of personhood. Babo, the African leader of the shipboard slave revolt, is tried, executed and has his head spectacularly impaled in the Plaza of Lima as a re-assertion of his life's utter expendability and a terrifying warning to other potential rebels. Yet, the final line of Melville's text insists upon the unrelinquished mastery and subversive power of Babo's "hive of

¹⁷ All subsequent citations of the text come from *Billy Budd and Other Stories*, ed. Frederick Busch (New York: Penguin, 1986).

subtlety.” In the novel’s concluding line, the narrator remarks that the death of Benito Cereno (which follows Babo’s execution) marks Cereno’s final act of obeisance towards Babo, for Cereno, “borne on the bier, did, indeed, follow his leader” (*Budd* 258).¹⁸

Through the death scenes of each character, Melville describes law’s failure to make the white man back into a free person or to make the black man back into a slave. Instead, both are uneasily suspended within an extralegal realm, which cannot distinguish clear boundaries between enslavement and freedom nor fix these characters in one of those subjective positions. In this respect, *Benito Cereno* resonates with *Aves v. Commonwealth* in that both register the violences of a freedom that looks a good deal like its ostensible opposite. For both texts, the concept of comity acts as the flashpoint for understanding the significant power of the abstract universals favored in Enlightenment-derived legal liberalism, and the ways they lead to a static and repressive ontological environment for all involved. Yet, Melville’s text and its engagement with the theoretical implications of comity differ from a legal document like *Aves v. Commonwealth* in crucial ways.

Although it is based on real events¹⁹ and mimics the legal format of the deposition in its final pages, a non-fictional source and legal-formal mimesis do not mean that *Benito Cereno* is an official case record like the transcript of *Aves v. Commonwealth*. Because of this, it cannot be read in the same register as the genre of the court case.²⁰ Yet, the text is instructive for my

¹⁸ It is possible to read the “leader” whom Cereno follows as the murdered captain of the ship, Jose Aranda, whose skeleton the African rebels display as the ironic figurehead of the *San Dominick* along with the epigraph, “Follow Your Leader.” However, as my reading will make clear, Babo’s assumption of the master’s role implies that he also casts himself as the ship’s captain—a figure who can merge with and, perhaps, usurp the ship’s two other figureheads, Christopher Columbus and Aranda.

¹⁹ Melville drew the rudiments of the story from a Chapter XVIII in Amasa Delano’s autobiographical *Narrative of Voyages and Travels in the Northern and Southern Hemispheres* (1817).

²⁰ There are several moments where my reading of extralegal comity in *Aves* does not cleanly map onto *Benito Cereno*. Spain, Peru, and Senegal (the ground locales invoked in the story) were not understood as

reading precisely because it does something besides put forth the legal particulars of an event. Told through various narrative points of view—the American ship’s captain Amasa Delano, a third-person narrator, and the legal voice of the deposition documents—*Benito Cereno* offers something akin to Fredric Jameson’s definition of phenomenology as it operates through literature, which he defines as “...the attempt to tell not what a thought is, so much as what it feels like. It aims not at making statements about content...but at describing the mental operations which correspond to the content...” (*Marxism and Form* 306). *Benito Cereno* gives us a sort of phenomenology of the extralegal mechanism through description instead of prescription. Via the text’s various narrative devices, Melville depicts ever-fluctuating subject positions that all nevertheless inhabit a “dead zone”²¹ of law’s ineffectivity in matters of slavery and freedom. By getting readers to see freedom as a dead zone, the text reveals the oppressive power of social affects—like harmony, unity, or courtesy—to tap into and overpower legal designations of personhood.

From the opening lines of the novella, it is clear that this story, whatever it may be, occurs in a space and time of a comprehensive and homogeneous suspension, for “everything was mute and calm; everything gray.” The sea, although in motion, “seemed fixed, and was sleeked at the surface like waved lead that has cooled and set in the smelter’s mould.” The demarcation between elements of water and air dissolves in this “peculiar” morning, as the leaden gray sea melds with the sky that “seemed a gray surtout” (*Budd* 161). From within this

part of the “family of nations.” Spain and Peru especially were considered relics of the Old World that Western legal liberalism strove to define itself against during the early 19th-century setting of the novella. Yet, the fact that the American Delano serves as the reader’s narrative anchor through most of the text certainly indicates a U.S. desire to expand its version of liberalistic legal system throughout South America.

²¹ The contemporary sense of the term as an area where communication is impossible, and the marine definition of “dead zone” as a low-oxygen area of the ocean unable to sustain life both resonate for this text.

homogenous haze, Captain Amasa Delano first spies the ship that harbors Benito Cereno and Babo, the aptly named *San Dominick*.²² The atmosphere of arrest and uniformity—the set, leaden waves and elemental grayness—that herald the ship’s textual appearance holds implications for the plot. The “gray surtout,” the space of indefinitely suspended motion, is the container for all of the plot’s action. The “gray” paragraph concludes by hinting that the “shadows present” at the outset of the story only “foreshadow deeper shadows to come.” The insistent repetition of the “shadow” in this sentence reveals that the plot movement of *Benito Cereno* will partake less of progressive motion and will instead lean towards a painstaking exploration of the ubiquitous static quality enveloping this story of revolution.

Melville’s motor for ensuring the propagation of homogeneity or “grayness” throughout the tale is the American Captain Amasa Delano who boards the *San Dominick* and witnesses Babo’s masterful performance of servility—a performance that successfully disguises the event of the previous shipboard slave revolt. Delano is a master of disavowing any and all of his suspicions which indicate that something is amiss onboard the *San Dominick*. Throughout the text, the “blunt-thinking American” possesses the ability to suppress rather than examine his intuitive attacks of “fidgety panic” regarding his interactions with the ship’s inhabitants (176, 179). In the context of my own argument, Delano is a manifestation Western law as a system bent on maintaining or restoring order to a polity. Delano’s policy of disavowing his own suspicious thoughts indicates that he, like the Massachusetts Supreme Court in *Med’s* case, displays law’s inability to recognize the pervasive violences and repressions that attend a subject’s experience of freedom. Instead, he becomes a mechanism for perpetuating the

²² The name of the ship, coupled with Melville’s decision to set the story in 1799 (the actual *Tryal* slave revolt, on which *Benito Cereno* is based, occurred in 1804) unequivocally gestures towards the Haitian Revolution (1791-1804). Within the context of the story, the date change deliberately evokes white revolutionaries’ fears about Afro-diasporic seizures of the “Rights of Man.”

violences experienced by both Babo and Cereno. In the same way that Justice Lemuel Shaw²³, in ruling for Med's freedom in the *Aves* case actually endorsed comity and enshrined Med's status as a perpetually illegitimate and unfree person, Amasa Delano's unwitting allegiance to the universalizing machinations of the extralegal mechanism of comity ensures that Cereno and Babo remain shrouded in a freedom that seems like slavery and a slavery that seems like freedom.

Delano is ineffective²⁴ in recognizing the mutinous truth of Babo's performance because he is an unconscious operative of a universalizing concept of justice incapable of processing what Wai-Chee Dimock calls the "residues" of the Western justice system. That system, she explains, is "a figure of thought...with attendant assumptions about the generalizability, proportionality, and commensurability of the world" (1-2). She adds that these assumptions "underwrite the self-image of justice as a supreme instance of adequation, a 'fitness' at once immanent and without residue, one that perfectly matches burdens and benefits, action and reaction, resolving all conflicting terms into a weighable equivalence" (2). Twice in the text, Cereno responds to Delano's obtuse misapprehensions of his situation with the rejoinder, "Doubtless, doubtless" (179). This response puzzles Delano, but simultaneously indicates to the reader that Delano's suppression of suspicion positions him as a "doubtless" fool, unwilling to recognize what is literally happening in front of him. His insistence on remaining "doubtless"

²³ Lemuel Shaw was Herman Melville's father-in-law. However, other than their family connection, I have found no explicit evidence that Melville thought or wrote about *Aves v. Commonwealth*. For more on Melville and Shaw, see Robert K. Wallace's essay, "Fugitive Justice: Douglass, Shaw, Melville" in *Frederick Douglass and Herman Melville: Essays in Relation*, eds. Robert S. Levine and Samuel Otter (Chapel Hill: UNC Press, 2008).

²⁴ My description of Delano as an "ineffective" policeman of the revolt is not an ideological endorsement of a white right to suppress the revolutionary activities of people of color, but a reflection of Delano's desire to set things right onboard the ship, which would include the maintenance of a strict racial hierarchy.

about the shipboard activities is but the symptom of the “ultimately generalizable” system of justice to which he adheres.

Delano’s self-congratulatory confidence in his Enlightened world-view surfaces throughout the text. He boasts of his “republican impartiality as to this republican element,” when distributing casks of water to both African and Spanish inhabitants of the *San Dominick*, and feels “not a little pleased” at Don Benito’s “disinterestedness” in feeding the white sailors before the black “slaves” (207-208). During the text’s infamous “shaving scene” in which Babo brandishes a sharpened razor around Cereno’s prone head, Delano once again proves his ability to banish thoughts of Western political brutality—he initially compares the shaving basin to an “inquisitor’s rack,” an executioner’s block, or another “grotesque engine of torment”—by pacifying himself through engaging in generalization (211). For when Babo pulls the Spanish flag from the locker to use as an apron for Cereno, Delano comments on the “African love of bright colors and fine shows,” further comforting himself by downplaying the impropriety of using a flag as an apron with the sentiment that, “it’s all one, I suppose, so the colors be gay” (214). Delano’s reveals his investment in a worldview that valorizes ultimate generalizability, immanent wholes, a sense that “it’s all one.”

To read, as I do, Delano as a figure who spreads the legal-theoretical universalism implied by *comity* is to read him as a figure with a committed allegiance to “resolving the world into a residueless language” of justice, “a syntax of uncompromising and all-liquidating absolutes” (Dimock 190). Through his inability to cognize the “residues” that cling to any apparently orderly whole, Delano perpetuates the ongoing chain of abuses, violences, and repressions at work onboard the ship. For instance, in the crucially important relation between Benito Cereno and Babo, Delano cannot divorce himself from an epistemology of courtesy that

allows him to think of Babo's constant surveillance and manipulation of Cereno as a manifestation of the slave's lovably excessive affections for his master. Delano approvingly witnesses Babo's displays of servility as an unbounded affective relationship between the two that exists beyond the duty to serve codified in slave law.

In other words, the enchanting potency of Babo's display comes from Delano's interpretation of events through the lens of extralegal courtesy. Delano approvingly remarks upon the affective bond between master and slave that supersedes slave-law regulation, noting that Babo fully lives up to the "negro's repute of making the most pleasing body-servant in the world; one, too, whom a master need be on no stiffly superior terms with, but may treat with a familiar trust; less a servant than a devoted companion" (169). Delano's glowing praise of the warm familiarity existing between master and slave echoes Curtis's vision of transnational courtesy in the *Aves* defense, in which one relies upon comity to "promote harmony and good feeling...and soften prejudices by increasing acquaintance, and tend to peace and union and good will" (Knapp 430). Both discourses encourage the development of a worldview in which particular conflicts—between nations, between races—sublate themselves into a harmonious totality.

Delano's rosy view of courteous racist relations onboard the ship consistently blinds him to the rebellious realities of life onboard the *San Dominick*. To return to the moment of "republican impartiality" in which Delano doles out water to all, his reliance on courtesy leads him into a laughable misreading of the situation. Noticing that the "thirsting" Cereno will not take a drink before the Africans, Delano chalks this restraint up to his love of formal hierarchy—Cereno makes "several grave bows and salutes" of decline when Delano offers him the first cup—and Delano delights in witnessing "the sight-loving Africans" who hail the "reciprocation

of courtesies” with a boisterous “clapping of hands” (*Budd* 208). Once again, the “sight-loving” Amasa Delano’s infatuation with courtesy allows him to construct a fantasy vision of the ship in which racial hierarchy remains in place and all rejoice in the functioning of the well-ordered system.

At the end of the novella, Melville shifts the consciousness of the narrative from Delano’s perspective into the genre of the legal document. However, the generic change only disguises the continued presence of the doctrine of extralegal courtesy in the legally sanctioned resolution of the *San Dominick* revolt. In Benito Cereno’s official deposition, we learn that he did, in fact, draw up and sign a “paper” in which he contracts for his own life by agreeing to “formally make over the ship with the cargo” to the Africans and promising to deliver them to Senegal—Babo’s native country (246). The contract, “signed by the deponent and the sailors who could write, and also by the negro Babo, for himself and all the blacks,” lends an air of ratification to the reversed subject positions of both men onboard the ship. Standard Enlightenment contract theory would likely deem such a contract invalid. A slave, to use Lockean contract theory as the example, has no ability to enter into any sort of agreement with his master because he has, by nature of being a slave, “forfeited his own life,” including his “freedom from absolute, arbitrary power” to the master (*2nd Treatise*, 23.1&10). Further, Locke implies that Benito Cereno cannot possibly have enslaved himself, as he avers that “a man, not having the power of his own life, *cannot*, by compact, or his own consent, *enslave himself* to any one” (*2T* 23.4-5). Regardless of the non-legality of Cereno and Babo’s contract in Western liberal jurisprudence, however, Melville’s story insists that the compromise initiated by the two men to resolve their own “conflict of laws” holds ultimate precedence, even in the face of the court’s attempt to invalidate that agreement.

In a recent article, Jeannine Marie Lombard claims that *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” (36). The deposition that Melville includes as part of the text of the story marks precisely this aporia in the law, even though the law claims the ability to demarcate where the subjectivities of slave and citizen begin and end. The deposition that closes the text serves as a marker of the law’s attempt to reaffirm the boundaries between enslavement and freedom, and rehabilitate Benito Cereno back into viable legal personhood by granting him the official title of a deponent. The deposition is ostensibly the place for Cereno to reclaim his own position of racial superiority in Spanish colonial society—the textual space for him to tell the “true” story of the rebellion.

In this respect, the document fails miserably. What it *does* do, however, is disclose the extent to which Benito Cereno’s testimony is permeated by and dependent upon his captors for any validity. Cereno, described as thoroughly “broken in body and mind,” and his deponents are forced to derive the truth of most of his statements from the fact that “the negroes have said it” and corroborated the “invalid”²⁵ Don Benito’s in-valid testimony (*Budd* 251, 252, 255). In the deposition’s failure either to restore Cereno to his status of white freedom or to divest Babo and the rebels of their assumed legal personhood, we see—in a manner akin to *Aves v.*

Commonwealth—the law’s inability to move subjects into clearly delineated subject positions of slave and free.

Even after the brief generic interlude of the deposition, Cereno insists that the racialized shadow of his shipboard enslavement accompanies him even when an attempt is made to transfer his legal persona back onto viable ground of the colonial courts in Peru. Delano’s repeated

²⁵ Melville uses the word “invalid” at least seven times in relation to Benito Cereno, each time with a double-valence connoting both chronic illness and his status as a legal non-entity.

insistence to Cereno that “You are saved...you are saved,” followed by the question, “what has cast such a shadow upon you?” begets Cereno’s terse response, “The negro” (*Budd* 257). In his response, Cereno recognizes the extent to which his status of enslavement sticks to him regardless of any legal-national territorial boundaries that he crosses. Here, the text reveals the perverse machinations of the doctrine of comity. Though, as Teemu Ruskola points out, extraterritoriality can be an exercise in a nation’s *immunity* to other states’ legal systems, the “boundary blindness” of the doctrine also prepares the ground for localized instances of oppression to experience an unchecked spread across boundaries.

Cereno’s insistence that his shipboard-status inescapably accompanies him carries global connotations. Immediately after Cereno marks the presence of the omnipresent shadow, Delano attempts to convince Cereno of his salvaged legal status by attempting to reincorporate him into a Western colonial “family of nations” connected by avenues of New World trade. Delano encourages Cereno to feel in “the mild trades that now fan your cheek,” a “human-like healing...warm friends, steadfast friends are the trades” (*Budd* 257). Following up on his tendency to read all relations of potential conflict (like the Babo-Cereno relationship) as instances of extralegal courtesy and affection, Delano attempts to evoke positive implications of a Western global colonial system by describing the trade-winds as caring friends who only want to buoy Cereno back up into his properly racialized legal position. Cereno, however, just as quickly punctures Delano’s optimistic view of the consistent trades by countering that, “with their steadfastness they but waft me to my tomb.” Cereno’s response reveals that Delano’s concept of the trades as a universally circulating system of positive affect and uplift function for him as a death-driven totalitarian propulsion. Like the resolutely gray atmosphere of the story’s

opening, Cereno remains suspended in an atmosphere of unfreedom that wears any proffered liberative guises like a shroud.

Of course, Benito Cereno's suspension within the unrevisable space of the extralegal is but one half of Melville's interrogation of international law and universalism. Babo, the Senegalese slave-rebel, is Cereno's counterpart in the text. Babo experiences a continuation of his shipboard status as master once he is brought back into the realm of legally-enforced slave law. Once Delano realizes the import of Babo's plans and restrains him, Babo maintains his civil agency in an exercise of will when, "Seeing that all was over, he uttered no sound and could not be forced to" (*Budd* 258). Even though the court attempts to curtail Babo's movements of freedom through legal conviction and execution, Melville's text indicates that the emblem of Babo's impaled head signifies the maintenance of his brain's subversive agency, for "the head, that hive of subtlety, met, unabashed, the gaze of the whites" while also training its gaze on the monastery where Benito Cereno eventually "follows his leader" (*Budd* 258).

Although Melville's ending indicates that the courts are unable to repeal the mastery that Babo has assumed, Babo's ontological existence in something like a state of freedom is fraught with all of the same oppressive universalist impulses that Cereno believes waft him to his death. Freedom, alongside and along with slavery, "sticks like the shadow" in Babo's case. Russ Castronovo coins the term "necro-citizenship" to name the phenomenon by which, he claims, Enlightenment Western political theory possesses "a necrophilic desire for somnolent bodies whose subjectivities have been laid to rest... [this] attraction stems not from the corpse's decomposition but from...the ideological allure of the body's hold on eternity and stasis" (18). According to Castronovo, "corpsed" political subjects are attractive to and therefore validated by the state because they exist in a state of extralegal suspension. They are, to quote another

Melville text, “in this world, without being of it” (*Moby Dick* 444). The display of Babo’s “hive of subtlety” is engineered by the colonial government as a terrifying spectacle to guard against further slave unrest. Babo’s head is a pliable object, sundered from the world but still maintaining a relationship to it—it bears an extralegal or spectral relationship to the legal system that allows it to appear useful to the state as an emblem of the necro-citizen.

I do not mean, at this point, to contradict my earlier statement about the revolutionary potential that Melville grants to Babo’s impaled head. At the same time that Babo’s head is used by the state as a repressive instrument, Melville elucidates the seditious residues that remain attached to the object—the agency that law cannot repeal though it wants to. My claim is that, whether one considers Babo’s head as the insignia of a brutalized slave or an unbroken rebel, he nevertheless exists within a zone of violent coercion in which the boundaries between slave and free are difficult, if not impossible, to delineate. Babo’s head, impaled on a pike in Lima’s plaza, dismembered but still rife with subversive potential, suspended between the brutal instrumentalization of bodies necessitated by slave law and the violences inherent in seizing freedom through revolution, occupies a space that fundamentally shares theoretical implications with international comity. Babo’s head, emblem of the free/slave, and the doctrine of comity are both theoretical objects that trouble boundaries between different rules of law and between states of being.

V. Out of Bounds

The law’s inability to bring Med into freedom, or to bring Benito Cereno back into legal personhood, or to clearly delineate Babo as either slave or free, stems directly from literal or tacit endorsement of notions like comity. Comity’s power to transcend boundaries stems directly from its genesis in a Western legal system that thrives on images of comprehensive unity.

Concepts like a “family of nations” bonded by fundamentally shared ideological commitments, or a “global community” that vows to protect the resolute equality of all people under a rubric of human rights and humanitarian aid are but two other examples of this unitary impulse.²⁶ By invoking comity, a nation’s judiciary shows that it is amenable to the incursion of other legal systems onto its own territory. However, this consensual transgression also expresses a nation’s desire to participate in a unified transnational totality like the two mentioned above.

While increased cooperation among states can certainly facilitate improved international relations, a state’s consent to the (in)formal, affective operations like those of comity can also spread repressive measures which ensure that certain people will always be subjected to a legal status of negligible personhood. Especially in cases of humanitarian aid or intervention, such as the BFASS’s crusade to free slave children brought into Massachusetts, the law “articulates a yearning for oneness” that generates “narratives of protection and intervention conducted by the free in the name of the bound” (Downes 483). All too often, the subjects of humanitarian interventions for freedom remain in a position of stasis where the bound generally stay bound. As Babo’s impaled head attests, the movements across slavery and freedom frequently leave the traveler in uncomfortably familiar territory.

²⁶ Of course, numerous critics have revealed the inequalities, silences, and violences that are constitutive of such universalist concepts. Lisa Lowe elegantly summarizes the conscription of the (racialized) particular in the service of Enlightenment rhetoric of the “Rights of Man,” stating that “colonial labor relations on the plantations in the Americas were *the* conditions of possibility for European philosophy to think the universality of human freedom” (193). In a trenchant critique of Western philosophies of humanitarian aid, Paul Downes notes that, “the ideal subject of human rights intervention...has always functioned in one way or another to protect the ideology of human rights from its own relationship to violence” (469). This is, I think, an eerily perfect formulation of the BFASS’s careful choice of subjects for their freedom suits.

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