

Suspension(s) of *Habeas Corpus*: *White-Jacket*, *Billy Budd* and Guantánamo

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『白いジャケット』と『ビリー・バッド』における人権を読む

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If there are any three things opposed to the genius of the American Constitution, they are these: irresponsibility in a judge, unlimited discretionary authority in an executive, and the union of an irresponsible judge and an unlimited executive in one person.

—Herman Melville, *White-Jacket* (143)

Introduction

As the above quotation demonstrates, Herman Melville's *White-Jacket, or the World in a Man-of-War* (1850) has provided attentive readers with a chillingly prescient portrait of several aspects of the "man-o'-war"-like "world" that American society has in many ways become since 9/11. Written as an earnest polemic against the institution of flogging as a means of punishment in the US Navy (outlawed just as the novel was going to print, in fact), which Melville had witnessed firsthand while serving as an ordinary seaman aboard the American frigate *United States* (from August 1843 to October 1844), the scenes of despotism, or the violation of what we would today call "human rights," will be all-too-familiar to anyone aware of the sordid histories of Abu Ghraib or Guantánamo. In the following essay, I would like to consider how we might attempt to retrieve Melville's untimely reflections, repeated in *Billy Budd, Sailor* (published posthumously, in 1924), in a time of profound crisis in both American history and in the field of American studies.

In her 2003 American Studies Association (hereafter ASA) Presidential Address (hereafter PA)ⁱ, Amy Kaplan drew attention to the importance for scholars to engage the "legal no-man's land" and veritable "floating colony" that the US maintains at Guantánamo Bay, Cuba, a notorious symbol of the George W. Bush regime's blatant disregard for the rule of law that has now, sadly, become an embarrassment to the Obama administration. While undeniably part of a larger history of expansionism and Empire, the penal colony at Guantánamo is also the most egregious recent example of what theorist Giorgio Agamben has called "the state of exception," a "grey zone" of

i "Violent Belongings and the Question of Empire Today," *American Quarterly*, Vol. 56, No. 1 (March 2004): 1-18.

“indistinction” where what he refers to as “sovereign violence” meets and blurs with the figure of *homo sacer*, or “bare life.” The prisoners that were (and still are) languishing at Guantánamo, “illegal” or “enemy combatants” merely suspected of terrorist activities, have unsuccessfully filed hundreds of petitions for writs of *habeas corpus*, which would allow them to challenge the basis of their confinement, yet they still find themselves without clear juridical status.

Questions concerning sovereignty, the inextricable relation between violence and the law, and the concept of “human rights” all meet at Guantánamo, in the abject body of the “extrajudicial detainee.” In this essay, I argue that Herman Melville anticipated many of the issues at stake in the on-going struggle over Guantánamo, particularly as dramatized in *White-Jacket* and *Billy Budd*, and in what follows, I will focus upon three: the spectacle of punishment, “exclusions from personhood and humanity,” and the arbitrary nature and suspension of law. My essay is organized into three sections: first, I briefly discuss the place of Guantánamo in the field of American Studies, by drawing upon the work of Kaplan and other “New Americanists”; second, I engage Agamben’s writing on “bare life” and the “state of exception”; third, I closely read Melville’s texts, considering how they might be retrieved in order to better understand and address the present situation.

Guantánamo and the Crisis in American Studies

How does one “respond” to Kaplan’s (un)timely call to rethink the field of “American Studies,” or the various crises it faces today? For that matter, how does one “respond” to the atrocities committed at the prisons at Abu Ghraib or Guantánamo? Responding to these multiple “calls”—compounded by Donald Pease’s insistence on addressing the “extraterritorial” nature not only of “American” literature but of literature in general in our present (“globalized”) eraⁱⁱ, as well as Laura Ann Stoler’s assertion that we are dealing less with the US as an “exceptional” Empire than with a constellation of what she terms “imperial formations” (defined as “macropolities whose technologies of rule thrive on the production of exceptions... building on territorial ambiguity... [and] geographic and demographic zones of *partially* suspended rights,” 128, emphasis in original)ⁱⁱⁱ—can productively involve, as William V. Spanos has aptly demonstrated^{iv}, recognizing the importance of Herman Melville, surely one of the most insightful critics of 19th century American society (among its professional writers), and repositioning his work at the very center of

ii “The Extraterritoriality of the Literature of Our Planet,” available online at <<http://www.unibg.it/dati/corsi/57002/15045-Planetary%20Literature.pdf>>; revised and published as “From American Literary Studies to Planetary Literature: The Emergence of Literary Extraterritoriality” in *Transnational American Studies*. Eds. W. Fluck, S. Brandt and I. Thaler. Special issue of *REAL: Yearbook of Research in English and American Literature*, 23 (Tübingen: Gunter Narr, 2007): 9–35. See, also, his earlier essay, “The Global Homeland State: Bush’s Biopolitical Settlement,” *boundary 2*, Vol. 30, No. 3 (Fall 2003): 1–18.

iii “On Degrees of Imperial Sovereignty,” *Public Culture*, Vol. 18, No. 1 (Winter 2006): 125–146.

iv *The Errant Art of Moby-Dick: the Canon, the Cold War, and the Struggle for American Studies* (Durham: Duke UP, 1995), *Herman Melville and the American Calling: the Fiction after Moby-Dick, 1851–1857*. (Albany: SUNY Press, 2008), as well as the more recent *The Exceptionalist State and the State of Exception: Herman Melville’s Billy Budd, Sailor* (Baltimore: The Johns Hopkins UP, 2010).

this ongoing debate.

All of the aforementioned “New Americanists”—Kaplan, Pease, Stoler, Spanos—agree that we are facing a crisis, but the question remains as to how to understand and address this sense of crisis. American Studies, itself, seems in many ways to be an academic discipline in crisis—in terms of what constitutes the “field,” its boundaries and limits, which have become as blurred as those of the nation-state and of the concept and discourse concerning “identity” upon which it was founded; in terms of its object, as well as its methodology in approaching this “object” of study; and in terms of its ethics, which brings me back to the initial question posed, at the outset of this study: how to respond, how to teach or even think about what Kaplan and others have called the “Guantánamo gulag?” The first two senses of crisis reach far beyond the scope of the present study; however, the third allows me an opportunity to begin.

This ethical crisis, in other words, opens onto several important questions raised by the abject figure of the “extrajudicial detainees” imprisoned in the “Guantánamo gulag” and the tortured bodies of the Abu Ghraib penal colony. How do we, as Americanists, teach about or otherwise critically engage with this topic? Kaplan’s work may be seen as exemplary in this regard. She has continuously interrogated what she calls “the buried [and often disavowed] history of imperialism” (PA, 6) within the field of American studies from, at the very latest, her groundbreaking 1993 essay, “Left Alone with America: The Absence of Empire in the Study of American Culture,” through her monograph *The Anarchy of Empire in the Making of U.S. Culture* (2002), before continuing with the aforementioned ASA Presidential Address, and culminating in more recent interventions, such as “Where is Guantánamo?” (2005)^v, in which she argues for the understanding of how “the legal space” of Guantánamo must be seen in light of how it “has been shaped and remains haunted by its imperial history” (833). In that essay, she provocatively called for an engagement with the legal “no-man’s land” of Guantánamo and an examination of what made such a lawless space possible in the first place. Most of all, however, Kaplan has consistently written with passion and a sense of “urgency,” calling on Americanists to speak to these “critical times” in which we live, times marked by, in her words, “crisis as the United States occupies Iraq and marshals violent force around the world and [as] the government increases its authoritarian incursions against civil liberties, the rights of immigrants, and the provision for basic human needs” (PA, 1–2).

These last words are taken directly from her 2003 ASA Presidential Address, yet they remain as relevant as ever—perhaps even more so as we pause to reflect upon the disastrous legacy of the Bush Administration, the unprecedented destruction caused by Hurricane Katrina (compounded by the woefully inadequate response by state and federal agencies), the ongoing “Great Recession” and its corrosive effect upon the very fabric of American society, as well as more recent, regionally based anti-immigrant legislation, passed in Arizona and elsewhere. For that reason, let us recall Kaplan’s urgent exhortation from that inspirational address:

v “Left Alone With America: The Absence of Empire in the Study of American Culture,” in *Cultures of United States Imperialism*, Eds. Amy Kaplan and Donald E. Pease (Durham: Duke UP, 1993): 3–21; “Where is Guantánamo?” *American Quarterly*, Vol. 57, No. 3 (September 2005): 831–858.

As scholars of American studies, we should bring to the present crisis our knowledge from juridical, literary, and visual representations about the way such *exclusions from personhood and humanity* [as in the case of the Patriot Act] have been made throughout history, from the treatment of Indians and slaves to the internment of Japanese Americans during World War II. (7; emphasis added)

In the present study, I wish to respond to that call, however belatedly and insufficiently, by focusing precisely upon these “exclusions from personhood and humanity,” as vividly depicted in Melville’s work, first in *White-Jacket* and then, years later, repeated in *Billy Budd*. The title of my essay comes from a chapter of the former called “Flogging Not Lawful” (Chapter XXXV), in which the author astutely notes how “[i]n the American Navy there is an everlasting suspension of the Habeas Corpus,” a situation where the ordinary sailor “shares none of our civil immunities; the law of our soil in no respect accompanies the national floating timbers grown thereon, and to which he clings as his home. For him our Revolution was in vain; to him our Declaration of Independence is a lie” (144). Though admittedly quite different from the situation facing the “extrajudicial detainees” currently languishing in Guantánamo, the lives of common sailors in a man-o-war, as Melville describes them (“stripped like a slave; scourged worse than a hound,” 139), bear more than just a passing resemblance to one another. To better understand that situation, I would like to introduce two concepts from the work of Agamben—“bare life” and the “state of exception.”

Agamben: On Bare Life and the State of Exception

How are we to understand the indefinite detention of the prisoners at Guantánamo? In order to do so, many commentators have turned to the work of Agamben, a political philosopher and scholar who draws heavily upon the work of Martin Heidegger, Michel Foucault and Walter Benjamin. I will do the same, in order to frame my discussion of Melville’s texts, mainly because Agamben’s work sets out to articulate a theory of state power centered upon the relationship between the sovereign and his (its/their) subjects or citizens. The first key concept from Agamben that must be addressed is “bare life,” which he claims is the “protagonist” of his book *Homo Sacer* (first published in 1995, in Italian; the English translation was published in 1998). For Agamben, “bare life” (*la nuda vita*, which was Agamben’s translation of a term first used by Benjamin) is an integral part of his larger effort to understand why the Greeks had two different words for “life” (*zōē*, which designated life in its most general sense, and *bios*, which meant the form or way of living proper to an individual or group), whereas we, today, do not. This distinction had a political dimension: *zōē*, simple, natural life, was not an affair of the city (*polis*), but, instead, was one of the home (*oikos*), while *bios* was the life (or form-of-life) that concerned the *polis*, or, in other words, that was deemed “political.” Today, Agamben argues—and few observers of the rise of the militant Christian Right in the US, with their campaign to politicize both beginning- and end-of-life issues, while at the same time expanding capital punishment, would disagree—these two senses of “life” have become indistinguishable, and “bare life” (life reduced or stripped to *zōē*) is his means of understanding the political implications of that conflation.

Homo sacer, literally “sacred man,” is “a juridical term from archaic Roman law designating an

individual who has been stripped of all political rights or status and has quite literally been cast out of the polis. From the moment of his ritual pronouncement as a *homo sacer*, he can be killed with impunity by anyone but cannot be employed in sacrificial rituals that require the taking of a life. This 'sacred man' is thereby removed from the continuum of social activity and communal legislation; the only law that still applies to him" is in fact the one that excludes him from the community (de la Durantaye 206). In other words, *homo sacer* is (like the sovereign, in fact) both inside and, at the same time, outside the law. This, as we shall see, is what is being dramatized in Melville's fiction, particularly in *Billy Budd*.

Returning to Agamben, we can see that he is here, in his work on *homo sacer*, developing Foucault's thesis concerning "bioplotics," yet modifying it substantially in that he attempts to show that the "biopower" which Foucault saw as "most distinctive of the modern age [...]" is actually as old as Western politics itself" (210); for Agamben, "what characterizes modern politics is not so much the inclusion of *zoē* in the *polis*—which is, in itself, absolutely ancient—nor simply the fact that life as such has become an object of the projections and calculations of state power," but instead the "state of exception" in which *bios* and *zoē* are no longer distinguishable, in which they enter into a "zone of irreducible indistinction" (210). This "zone of indistinction" characterized by the state of exception—a term I will discuss in the next section of my essay—is one in which *homo sacer* plays a fundamental role, supplying Agamben with what he calls a "paradigm of political space" (213): the concentration camp. Throughout *Homo Sacer* Agamben refers to concentration camps as "exemplary places," and what he sees as exemplary is the legal no-man's-land in which its prisoners were imprisoned. Though far removed from the world of Auschwitz, to be sure, Guantánamo does in fact share this aspect with the camp—it is a zone of "juridical indistinction." The prisoners have no legal status: they are "illegal combatants" or "extrajudicial detainees" not covered by international law or the Geneva Convention. To better understand this, we must look at another concept drawn from Agamben's work: the "state of exception," in which the sovereign transcends the law in order to "preserve" it—in other words, "suspends the juridical order itself."

State of Exception (2003 in Italian; 2005 in English translation) takes its title from the definition of sovereignty given by the controversial German legal theorist Carl Schmitt, who began his book, *Political Theology* (1922) by defining the sovereign as "he who decides on the state of exception," in which the rule of law is suspended. One of the first points that Agamben wants to make clear is that in the life of the state such exceptional instances are in fact not so exceptional. To this end, he sketches a genealogy of states of exception from their origins in Roman law to more modern cases such as the states of exception declared by France's revolutionary governments, Abraham Lincoln's authorization in 1862 of the summary arrest and detention of persons suspected of "disloyal and treasonable practices," and the "unlimited" national emergency declared following the bombing of Pearl Harbor that led to the expulsion or detention of Americans of Japanese descent—an example also cited by Kaplan.

Agamben is here attempting to show how the conditions that allowed for the extreme case of the death camps of Nazi Germany had in fact existed for a long time—and continue into our own day. To this end, he "isolates not only historic states of exception but also contemporary ones," such as

the military order issued by President George W. Bush on November 13, 2001, which called for the “indefinite detention’ of noncitizens suspected of terrorist activities.” Agamben notes how “[w]hat is new about President Bush’s order is that it radically erases any legal status of the individual, thus producing a legally unnamable and unclassifiable being. Not only do the Taliban captured in Afghanistan not enjoy the status of POWs as defined by the Geneva Convention, they do not even have the status of people charged with a crime according to American laws” (3).

Guantánamo, itself, is a unique space in that it is a military “detention camp” (essentially a prison) administered by the US, located in a sovereign nation (Cuba) to which it has no diplomatic relations (since 1961) and is, in fact, bitterly hostile (and vice-versa). It is essentially an anomalous space, an “accident of geography” as more than one commentator has phrased it (albeit with extremely worrying implications for those concerned with human rights), locked in a permanent state of siege, that is both extra-juridical (outside both US and Cuban law—and, if the Bush Administration and its apologists are to be believed, outside international law) and extra-territorial (in that it is physically outside American sovereign territory proper), although, paradoxically, its inmates have been deemed a serious threat to American domestic safety, while at the same time (it is argued) possessing no rights to *Habeas Corpus* or other means of legal redress, including the Geneva Convention (governing military prisoners) and the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. It is, therefore, a de-territorialization of domestic jurisdiction, both inside and outside the law at the same time, occupying a space in which war and the biopolitical functions of the state coincide to an absolutely terrifying degree. In what remains, I want to specifically connect Agamben’s work to Melville’s fiction. As we shall see, Melville dramatized these very concepts in texts that dealt most directly with war and martial law: *White-Jacket* and *Billy Budd*.

Melville: Rereading *White-Jacket* and *Billy Budd*

Melville, himself, experienced military life firsthand, as mentioned above. Returning from the Pacific in 1843, he signed on to the frigate *United States* as a common sailor, and though he was not new to life at sea, he was new to naval life, particularly naval discipline, and the shock of this experience is duly registered in *White-Jacket*. Its subtitle is “The World in a Man-of-War,” and it is chiefly documentary and descriptive, a veritable anatomy of an American warship. Melville’s declared intention was “to give some idea of the interior life in a man-of-war” and “to paint general life in the Navy,” and, perhaps most importantly, to correct what he termed “high-raised, romantic notions” of naval life. Naturally, this de-romanticized account centers upon a detailed exposure of the institution of corporal punishment (in this case, flogging) in the US Navy, a subject that will come up again, later, in *Billy Budd*, where it is not only repeated but in fact intensified when Captain Vere orders the execution of Billy. In *Billy Budd*, the title character is impressed, more or less kidnapped, into military service, and falsely accused of plotting mutiny. During interrogation, he strikes his accuser dead and is tried for this crime and sentenced to hang.

C.B. Ives pointed out long ago the significance of returning to the Articles of War and the Mutiny

Act (or, more broadly, martial law) in order to better understand the context of both *White-Jacket* and *Billy Budd*. The latter text, in fact, returns most directly, even literally, to the origin of the Articles, through an act of displacement: “[I]n place of an American ship in a time of peace, [Melville] chose for his setting [in *Billy Budd*] a British ship in circumstances of extraordinary pressure: Britain was at war with Revolutionary France; the French Republic’s Reign of Terror had recently horrified and frightened even liberal Englishmen; within the previous few months the great naval mutinies at Spithead and the Nore had threatened to destroy Britain’s defenses” (32). Ives points out how the Articles of War did, indeed, proscribe the punishment of death for Billy’s offense, for striking his superior officer (Claggart); however, Ives makes it clear that the Articles state that the punishment of death be bestowed only upon conviction by (general) “Court Martial,” which would have to be called by the commander of the fleet (not of an individual vessel, such as Vere). “The Articles of War,” then, as Ives points out, “provided nowhere for such summary court-martial as was held by Captain Vere” (33); however, “[i]n an emergency” and “in the event of a mutiny, a captain might hang the mutineers as a matter of necessity, in disregard of the Articles of War.” This should bring to mind what Agamben has shown us to be the “state of exception,” an emergency situation in which the law is suspended.

And yet, Billy Budd was not in fact a “mutineer,” nor was he hanged for “mutiny” or murder (since Vere agreed that “intent to kill” was lacking). As Ives makes clear, “Vere’s stated reasons for the hanging were that Billy had struck his superior and that there was *danger* of mutiny by some other members of the crew” (Ibid.; emphasis in original). After showing how commanders like Vere often counted upon “customs that allowed latitude toward a captain’s authority even in defiance of statute” (Ibid.), Ives concludes that “[i]n short, a captain of a man-of-war was godlike and might exercise his disciplinary discretion or even his disciplinary whims freely with little expectation of reproof,” citing a popular account of the time which may have influenced Melville: “...they [ship’s captains] are legislators, they are judges, they are juries, and they are very often [...] executioners” (34–35). This line should bring to mind not only the words with which I began this essay, concerning Melville’s warning of an “unlimited executive,” but also the expansion of the Executive Branch’s authority under the George W. Bush administration.

Following Ives’ pioneering work only gets us so far, however. Among more contemporary Melvillians, H. Bruce Franklin has proven to be the most consistently radical in his comparative readings of the two novels, and may therefore provide us with a way to link Melville’s fiction to Agamben’s theory (and our current historical and political moment). In an earlier assessment, Franklin argued against conservative readings of *Billy Budd* by citing how Captain Vere “explicitly repudiates the Rights of Man, the dictates of conscience, nature, and any law or truth higher than the most ruthless code of military justice, a code denounced systematically by Melville in chapter after chapter of *White-Jacket* as ‘bloodthirsty’ and ‘tyrannical.’ For example, in Chapter 71 he brands the American Articles of War a detestable importation ‘even from Britain, whose laws we Americans hurled off as tyrannical, and yet retained the most tyrannical of all’” (203). Indeed, Franklin, along with Joyce Adler in her study, *War in Melville’s Imagination* (1981), has shown how many of the scenes and images in *White-Jacket* are repeated in *Billy Budd*, scenes which unmistakably reveal

Melville's vehement opposition to martial law and, as Franklin argues in a more recent essay, to capital punishment, which was being passionately debated during the time of *Budd's* composition (1886–1891).

In this more recent essay, "*Billy Budd* and Capital Punishment," Franklin once again argues against conservative readings of *Billy Budd* and asks, "Do not military circumstances, especially during war, demand the kind of martial law under which Vere proceeds[...]? A book published in 1850 presented in chapter after chapter a detailed refutation of this position." "That book," Franklin reveals, "was *White-Jacket*, a volume [Melville] consulted frequently while composing *Billy Budd*." Franklin concludes by asserting that, "[l]ike many of his contemporaries, [Melville] saw that the essence of capital punishment is the state's power over life and death, a power boundlessly expanded in war," dramatizing its "deadly meaning" in the story of Billy Budd's "kidnapping from the *Rights of Man* and his execution on the aptly named *Bellipotent*." Is this not, then, the exact same power ("over life and death") that is on display in what Agamben refers to as the "state of exception"? Is it not the power laid bare in the shameful drama that we have witnessed in Abu Ghraib and Guantánamo? Let us now briefly look at several examples taken from Melville's texts where this power is most conspicuously revealed.

First, we have examples of what I will call "the spectacle of punishment," largely consisting of the gruesome flogging scenes, which abound in *White-Jacket* but also reappear in a crucial scene in *Billy Budd*. The center of the earlier novel, in fact, consists of Chapters 33 to 36, which discuss flogging in detail. The sailors are assembled and forced to witness this "formal gangway punishment" (as it is phrased in *Billy Budd*, in Chapter 9, when Billy sees his first flogging, which frightens him half to death). In Chapter 35 of *White-Jacket*, "A Flogging," the command, "All hand witness punishment, ahoy!" is in fact repeated no less than three times. One thing to note in these scenes, which leads me to my next two points, is how the men are reduced to the condition of "beasts"—or, to put it differently, treated as less than human—and, also, the arbitrary nature of the sovereign's decision, both of which are mentioned in the following passage:

[S]ome captains in the Navy say, that the thing of all others most repulsive to them, in the routine of what they consider their duty, is the administration of corporal punishment upon the crew; for, surely, not to be scarified to the quick at these scenes would argue a man but a beast. You see a human being, stripped like a slave; scourged worse than a hound. And for what? For things not essentially criminal, but only made so by arbitrary laws. (139)

Next, we have what Kaplan calls "exclusions from personhood and humanity." As we can see from the above quotation, such exclusions occur at moments when the line between the human and the inhuman is blurred. This line is likewise made indistinct when the when the sailors are "impressed" into—essentially kidnapped and forced into—military service, in both *White-Jacket* (in Chapters 36, 70, and, especially, 90) and *Billy Budd* (Chapters 1, 18, and, especially, 21). "That was a period," Melville had written in Chapter 36 of *White-Jacket*, "when the uttermost resources of England were taxed to the quick; [...] when British press-gangs [...] boarded their own merchantmen at the mouth of the Thames." He revisits this practice in Chapter 70, while

recounting stories of Americans impressed during the War of 1812 (and we should also remember how this is treated in the novel *Israel Potter*, 1854, where the protagonist is “kidnapped” in this same way, repeatedly). Subsequently discussing “The Manning of Navies” in Chapter 90, Melville describes impressment in some detail, citing several historical references. In this manner, the sailors are stripped of what we would today call “human rights” and made subject to my third and final point taken from Melville’s texts: the arbitrary and often violent law of the sovereign. This leads me to the final category of scenes where Melville reveals the power over life and death in our “man-o-war world.”

What I have termed the “arbitrary nature of the law” can perhaps best be seen at moments of “sovereign decision”—in other words, when the commander of the vessel invokes and then suspends the law, a phenomenon that occurs in both novels. In the earlier novel, *White-Jacket*, we have the following description of the commander:

Captain Claret was a large, portly man, a Harry the Eight afloat [...]; and as kingly in his cabin as Harry is on his throne. For the ship is a bit of terra-firma cut off from the main; it is a state in itself; and the captain is its king. It is no limited monarchy, where the sturdy Commons have a right to petition, and snarl if they please; but almost a despotism, like the Grand Turk’s. The captain’s word is law; he never speaks but in the imperative mood. When he stands on his quarter-deck at sea, he absolutely commands as far as the eye can reach. Only the moon and stars are beyond his jurisdiction. He is lord and master of the sun. (35)

This last phrase, “lord and master of the sun,” should remind readers of *Moby-Dick* of the famous scene wherein Captain Ahab, another absolute despot, threatens to “strike the sun.” But perhaps the most compelling example of this power occurs in the later novel. The “duty” of the captain, to inflict corporal punishment on his crew, and the arbitrariness of the sovereign’s law, is in fact the central drama of *Billy Budd*, which is more a psychological study than the earlier, polemical *White-Jacket*. Let us now focus upon how this “state of exception” is reached aboard ship in the earlier work. In other words, how can Captain Vere justify taking the law into his own hands, basically suspending it, calling for a drumhead court that he later overrules?

In order to understand this, we must look at his attempt to reason with the dissenting members of that drumhead court. First, we must note how Vere feels compelled to act due to fear of his own crew: “Feeling that unless quick action was taken on it, the deed of the foretopman [Billy Budd, killing Claggart, his accuser], so soon as it should be known on the gun decks, would tend to awaken any slumbering embers of the Nore among the crew, a sense of the urgency of the case overruled in Captain Vere every other consideration.” (104) Vere’s argument depends upon martial law, which he invokes in the following quotation:

When war is declared are we the commissioned fighters previously consulted? We fight at command. If our judgments approve the war, that is but coincidence. So in other particulars. So now. For suppose condemnation to follow these present proceedings. Would it be so much we ourselves that would condemn as it would be martial law operating through us? For that 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. (110–11)

Here, Vere is describing “martial law.” Like war itself, the Mutiny Act (or other instances of martial law) is in fact a suspension of the rule of law, both international and moral, as Vere readily admits: “We proceed under the law of the Mutiny Act. In feature no child can resemble his father more than that Act resembles in spirit the thing from which it derives—War. [...] War but looks to the frontage, the appearance [or, necessity]. And the Mutiny Act, War’s child, takes after the father” (112). In other words, Billy’s execution, much like the floggings to which Melville has drawn the reader’s attention (as well as several aspects of the Patriot Act or attempts to “justify” the indefinite detention of prisoners in Guantánamo), is an example of the sovereign’s power over life and death: a power exercised most blatantly in times of imperial expansion, as Kaplan and many others have shown. Allow me to conclude by returning to Kaplan’s work, which may provide us with some ideas as to the possibility of resistance.

Conclusion

I began this study by invoking Amy Kaplan, so perhaps it is most appropriate to end with her work. She points out, in an essay that appeared in a recent issue of a journal dedicated to Melville studies (*Leviathan*), how Melville in fact provides us with an alternative means of imagining the circulation of power and knowledge, in a time before the nation-state was “the dominant unit for the geopolitical organization of the world” (43). She discusses *White-Jacket*, *Moby-Dick* and *Israel Potter* to some extent, but her remarks on *Billy Budd* are most relevant to the present study. They are as follows:

To know the ‘inside narrative’ of a single event means to go beyond imperial histories and national libraries to conversations with unnamed sailors of unspecified national origins[...] After Billy is hanged, his story is retold twice, once in a naval chronicle of the time, ‘News from the Mediterranean,’ a story based ‘partly on rumor’ in a ‘publication now long ago[...] forgotten.’ [...] The entry, told from an imperial perspective, is the inverse of Melville’s [with Billy a criminal and Claggart his innocent victim]; [...] But this long forgotten account is followed by a more memorable one [...] ‘circulating among the shipboard crews for a while, [before] finally [being] rudely printed at Portsmouth as a ballad. This ballad, ‘Billy in the Darbies,’ is the final word of the story [...] [and it goes on to] circulate beneath the decks and around the world, throughout the oceanic routes of empire. (49-50)

Such songs, stories, and legends often circulated among the sailors—or, it should be remembered, “the people” (as Melville tells us they referred to themselves)—and it is only fitting that Melville closes his haunting novella on this democratic note, with a song that circulated “beneath the decks and around the world, throughout the oceanic routes of empire,” as Kaplan put it. The sailors, the people, knew that the “official history” was a fabrication, so in order to counter it, and the unjust decision by their sovereign, Captain Vere and his “drumhead court,” they created their own “counternarrative.” Perhaps this is ultimately what Melville meant by the phrase, “an inside narrative,” which was the subtitle of *Billy-Budd, Sailor*, and what Kaplan means when she writes of “transnational circuits of knowledge” circulating “beneath deck,” stories which the multinational crews of such sailing vessels told one another—a clandestine act of resistance, to be sure, and one

that we perhaps could attempt to emulate in the age not only of Abu Ghraib and the Guantánamo gulag, but also of instantaneous communication and the Internet. I will end on that same note, in the hopes that we, as Americanists, may expose the truth about “black sites” like Guantánamo, in order to combat them and make them a thing of the past. The final words, however, should belong to Melville, himself, taken from one of the most impressive chapters of *White-Jacket* (Chapter 36, “Flogging Not Necessary):

The world has arrived at a period which renders it the part of Wisdom to pay homage to the prospective precedents of the Future in preference to those of the Past. The Past is dead, and has no resurrection; but the Future is endowed with such a life, that it lives to us even in anticipation. The Past is, in many things, the foe of mankind; the Future is, in all things, our friend. In the Past is no hope; the Future is both hope and fruition. The Past is the text-book of tyrants; the Future the Bible of the Free. (150)

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[Received September 26, 2013]