

# A Melvillean Moment: Law, History, and Empire from Gibbon to Melville

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This essay situates Melville's reading of Edward Gibbon's *Decline and Fall of the Roman Empire* in a wider history of historiography and jurisprudence, stretching back into early modern narratives of antiquity and forward into the present. Melville used legal history as a way of crossing the boundaries of genre, linking historical accounts of republican law and corruption to legal transformations occurring in his own time of democratization, continental and overseas expansion, and capitalist economic development. In doing so, he tested the capacity of the novel, story, and poem to fulfill the goal of writing a critical, philosophical, and even natural history of law and legal institutions. That can be instructive for the work of literature and history today. If we feel ourselves caught in a protracted process of imperial decay, a Gibbonian moment, we can also work our way into a more hopeful and productive Melvillean moment by exploring what resources and opportunities exist to write and make new history in the time of the present and for the sake of the future.

**I**n that summer of 2017, as I walked rain or shine down from a small apartment near Exmouth Market through Bloomsbury and toward the Strand campus each day for the Melville's Crossings conference, I made a point of walking down Chancery Lane, past the Royal Courts of Justice, and within sight of the ancient law schools surrounding the Temple Church. Here you could "adroitly turn a mystic corner," and head down a "dim, monastic way," where "struck by Time's enchanted wand, the Templar is to-day a Lawyer," although thankfully no longer in a paradise for bachelors alone (*Piazza Tales* 316). Melville's famous evocation of the "Coke-upon-Littleton of the Fist" in *Moby-Dick* seemed as mischievously irreverent as ever (*Moby-Dick* 396). How useful, I thought, to situating and presenting an argument that Melville was a careful student of these images and narratives of law and authority, their construction, and their legacies in modern thought.

But that sense of academic correctness—an analysis well placed and well played—was fleeting. Only weeks after the Grenfell Tower fire and respective

terrorist attacks on pedestrians around London, in the midst of an ongoing refugee crisis in the Mediterranean evoked by Paul Gilroy in his talk, less than six months after the inauguration of Donald Trump as the President of the United States, and one year after the Brexit vote, ongoing histories of violence, struggle, contested sovereignties—histories of law, power, justice and injustice—were all present in the conference and its theme of Atlantic crossings of oceans and genres, and this was not lost on anybody. The weight of the combined histories of power, conquest, slavery, and resistance that scholars continue to see in Melville's work—and work on Melville—was more than merely evident. It was striking.

Questions of what resources scholars can draw from the history of law, literature, and politics to respond to the present abound in contemporary discussions, as do questions of what the appropriate methods of that drawing might be. What is the use of the traditional humanist work of critique and contextualization for political life in the present? One rather extreme answer to such questions is historian J.G.A. Pocock's *Barbarism and Religion*. Published between 1999 and 2015, the project is a six-volume study of the first three volumes of Edward Gibbon's *Decline and Fall of the Roman Empire*, published between 1776 and 1781. This is context with a vengeance. Pocock ties Gibbon to his own career of writing the histories of the idea of the ancient constitution in early modern England, of the persistent fear of corruption and so the Machiavellian moment in the life cycle of republics, of the politics of history and historiography, and more recently of the importance of the Antipodes and of the oceanic in the formation and study of British history (Pocock 1975, 2005, 1999–2015). Pocock's dedicated insistence on Gibbon's contemporary importance implies that we are living in a Gibbonian moment of extended crisis in political values and historical self-understanding. The historically constructed, symbolic weight of civic ritual and iconography crumbles perhaps but persists in appearance, and even the image of a free constitution seems harder and harder to maintain under closer inspection. The appeal of a tough, civic and historical pessimism about the inevitably corrupting forces that subsume the constitutions of republics and commonwealths is both understandable and unmistakable in contemporary political discourse.

Drawn from Gibbon, this pessimism had a strong impact on Melville, but the nature of Gibbon's influence and Melville's creative use of him troubles the comforts and certainties as well as the judgments of the intellectual traditions Pocock narrates in his own work. Michael Paul Rogin recognized in his still-urgent book on Melville that the author's work could be read as

an interpretation of history; although given the allegorical and even mystical depth of so much of that work, he admitted, the appeal or utility of such an interpretive tack was hardly obvious (Rogin 22–23). In the face of that historical challenge and in the context of the present, Melville can be read in light of what his narrator sees in the office of the roving sailor attached to Polynesian rulers in *Omoo*: a historiographer. The job involved giving his native hosts and royal audience “some account of distant countries,” identifying and narrating the histories with which they were coming into contact or which circulated more widely in the world of oceanic voyaging, settlement, and empire (247). Melville both auditioned for the role himself in the story and played that role for his readership through his book. In this way, Melville takes up the history of civic humanism and legal learning, and his work makes available a redemptive reading of the materials of that history, the very stuff with which so much of the histories of scholarship, law, and politics in the early modern and modern Atlantic world has been made.

That Melville identifies this task as one for a historiographer and not a historian, explorer, or diplomat is telling. Historiography as it had come to be understood at the time originated in the claims of early modern humanists to erudition and the claims of Enlightenment philosophers to history and criticism. These textual practices, as Pocock and Donald Kelley have demonstrated, were rooted in the growth of historical, critical, and politically charged studies of law and constitutionalism in historically self-conscious early modern polities (Kelley 1990; Pocock 2009). These included the Enlightenment philosophical histories of Montesquieu, Hume, Smith, and Gibbon, who in distinctive ways wrote theoretically inflected histories of customs, laws, and commerce aimed at framing a modern world where violence and cycles of destructive collapse would hopefully give way to mutually beneficial contract, exploration, and exchange.

Gibbon could confidently assert, with only a hint of his great capacity for doubt and appreciation for irony, that “no people, unless the face of nature is changed, will relapse into their original barbarism . . . The benefits of law and policy, of trade and manufactures, of arts and sciences” are too great in the present age of commerce and discovery” (Gibbon 3: 515; see McKitterick and Quinault). “What separates the enlightened man from the savage?” asks the narrator in *Israel Potter*: “Is civilization a thing distinct, or is it an advanced stage of barbarism?” (130). Melville saw the confident narratives of modern philosophical histories of law and social change wrecked in a variety of contexts, and he went about tending to the fragments of these narratives as they splintered and swirled around him. In doing so, he was testing the capacities of fiction and poetry to take different account

of a pluralistic world of distinctive laws and customs than the early modern genre of the philosophical history of law had attempted. Edward Gibbon's *Decline and Fall of the Roman Empire* proves to be an important and useful text for understanding Melville's intellectual world and the radicalism of his self-conscious placement in the intellectual culture of historical writing—indeed, of his historiography of law, equity, and justice. To use Jeffrey Insko's recent formulation, Melville's historical mindedness was one that began with a productive awareness of how ideas, images, and texts “echo and reverberate across decades or centuries” (Insko 11). This awareness was a product of his reading of history.

Melville was clearly familiar with Gibbon's work later in life, and if it cannot be proved that he knew of Gibbon before publishing his first books, at the very least he was primed by his own experience and reading to identify with and put to good use certain elements of Gibbon's analytical framework. The “Affidavit” Melville files on behalf of sperm whales, after all, concludes with the case of a whale named Porphyrio, the target of a decades-long hunt by order of the Emperor Justinian himself. Melville cites the sixth-century Christian writer Procopius who “wrote the history of his own times” and is considered by “the best authorities” to be “a trustworthy and unexaggerating historian, except in some one or two particulars, not at all affecting” this particular question of the whale. It is very likely that Melville is relying here on Gibbon, playfully, for Gibbon cites Procopius on precisely this particular question of the whale, and in a footnote attempts to explain that Porphyrio was “most probably a stranger and a wanderer,” a lone bull, like Moby Dick, and a noted affront to human empire (*Moby-Dick* 209–210; Gibbon 2: 599).

We know volumes of *Decline and Fall* were at Arrowhead, and in a journal entry of 1857, Melville references Gibbon's reflections on watching Vespers sung through the classical ruins of Rome and the subsequent decision to turn from his project of writing a history of the city to an extended history of the empire. Across six volumes that history would take readers from the close of the first century of the Common Era to the rise of the Ottoman Empire in the eastern Mediterranean world of the fourteenth and fifteenth centuries, events whose theological and geopolitical implications reverberate in Melville's *Clarel*, and beyond (*Journals* 110; see Sealts, *Melville's Reading* 102–4, 135, 178). This was a timely narrative for a historian living in the midst of imperial crisis and revolt himself. Both Gibbon and Melville come to terms with living, thinking, and writing in an imperial culture by narrating the history of a free polity that became increasingly dependent on, and indeed only identifiable in reference to, its empire. Melville likely understood the relevance of Gibbon's reflection on seeing in a single scene the overlaying of modern and medieval history on

classical ruins as clearly as J. M. W. Turner, whose *Forum Romanum, for Mr. Soane's Museum* depicts a strikingly similar image and which hung in Sir John Soane's Museum in London from 1826.<sup>1</sup>

The most direct connection from Gibbon to Melville is Melville's poem, "Age of the Antonines," which he sent to John Hoadley in 1877 and published in *Timoleon* in 1891, along with other poems with classical themes. "Age of the Antonines" borrows directly from the opening passage of Gibbon's first volume of 1776 (*Correspondence*, 451–54). There, Gibbon begins his history with the consolidation of Roman monarchy in the reigns of Antonius Pius (138–161 CE) and his son the philosopher Marcus Aurelius (161–180 CE). The murder of his heir, Commodus, at the hands of the Praetorian Guard in 192 CE would bring an end to the Antonine dynasty and with it the scrupulously maintained image of a republican constitution that had survived the transformations of the Caesars. Gibbon introduces the second century of "the Christian era" as a period where the Roman Empire was at relative peace, enjoying the gentle and pleasurable rule of law and luxury, with "the image of a free constitution preserved with decent reverence," and the Senate appearing to possess the sovereign authority, with merely executive governance delegated to the relatively new office of emperor (Gibbon 1: 31). And indeed, Gibbon would bring his sixth and final volume of 1788 to a close by observing "the artful policy" of the Caesars, "who long maintained the name and image of a free republic" (Gibbon 3: 1084). Of course, in this early period a fundamental transformation was already under way that by Gibbon's lights would illuminate the symbolic universe of a healthy republic as the costume displayed by an empire without the civic or martial strength to defend itself. The modern west emerges in the ruins of this narrative, with distinct political cultures using the uncertain inheritance of a haunted language and imagery to situate themselves in time.

Following Edward Gibbon and anticipating Walter Benjamin, Herman Melville attends to these images of the past and their life in modern law and politics. "We sham, we shuffle, while faith declines— / They were frank in the Age of the Antonines," Melville intones, capturing in poetry the ironic and even tragic portrayal of republican rhetoric Gibbon had established in his opening passage. "No lawmaker took the lawless one's fee / in the Age of the Antonines / Under law made will the world reposed" the poem continues, presenting nostalgia for the age when "the heavens elected the emperor" and so guaranteed "the foremost of men the best." The poem's speaker invites readers to consider

how effective democracy had been in ensuring that a president was somehow different than an emperor in an era when the United States, then in its first Gilded Age, entered a new stage of its own imperial development. “Ah might we read in America’s signs / The Age restored of the Antonines” (*Published Poems* 286–7). Again, Melville singles out the imagery of the timeless republic in its intractably imperial context, where solemn incantations of republican mores are an important part of the way an imperial intellectual culture works. Melville’s poem plays on all of this imagery as imagery, and in doing so the poem builds on Melville’s long history of paying careful attention to the images of law and custom constructed and preserved by particular populations, and by visitors to those populations. Melville dramatizes the constructions of these images and their historical life in the communities that use them. This involved a peculiar sensitivity to the ways in which historical narratives and politics interact, and it suggests an appreciation for historiography, for the recovery and use of histories in the present, as a kind of critical indicator of the health of human polities in time. Gibbon put on the table for Melville a sense of how the historical imagery of a polity’s constitution interacts with a contemporary scene of challenging historical and political realities.

This attention to images of law as constructed by variant practices of historical narrative and representation makes Melville’s writing resonant with Gibbon’s. Melville’s lecturing on Roman art and architecture derided social theory and the muddled maturation of American jurisprudence in the nineteenth century, comparing it with the magisterial image of legal authority represented in Justinian’s Code (*Piazza Tales* 398–409; *Sealts, Melville as Lecturer* 128–54). In comparing early German collections of their own laws with the contemporaneous codifications of Roman law, Gibbon would observe that “in the Salic laws, and the Pandects of Justinian, we may compare the first rudiments, and the full maturity, of civil wisdom,” and however we might long for the simple virtues of the former, Gibbon intones, we will undoubtedly find the Romans to have possessed the better claim to “humanity and justice” (Gibbon 2: 473). Yet even so, the Barbarian laws like proper tools were fitted to their needs and ways of life—the usages they had made of the materials of their own history and experience. The men of the American whale fishery, Melville wrote in *Moby-Dick*, “have been their own legislators and lawyers.” In developing the custom of the loose fish and fast fish distinction as a way of settling disputes over whales on the open sea, they “have provided a system which for terse comprehensiveness surpasses Justinian’s Pandects and the By-laws of the Chinese Society for the Suppression of Meddling with other People’s Business” (*Moby-Dick* 432). Here, Melville mocks the pretensions of legislators to tame

the seas of global commerce and empire by properly studied reverence for law's authority. "The vain titles of the victories of Justinian are crumbled into dust," Gibbon had written, "but the name of the legislator is inscribed on a fair and everlasting monument" (Gibbon 2: 778). The organization of history, and not the life of the man of action, gets remembered and celebrated. Small consolation to the emperor, a little more maybe for his historians, but what stands out here is Gibbon's foregrounding of the intellectual processes involved in the construction of authoritative, sovereign history.

Melville's early Pacific novels suggest a strong resonance with Gibbon as well in their attention to the symbolic universe of power and the ways different depictions of lawfully constructed authority are in fact part of the construction of categories of savagery, barbarism, and civilization. In *Typee*, there are monuments and ruins overlaid with other histories of reconstruction, migration, and natural decay: "These remains naturally suggest many interesting reflections," Melville writes. "They establish the great age of the island, an opinion which the builders of theories concerning the creation of the various groups of the South Seas are not always inclined to admit" (155). As Martin Thom demonstrates, discussions of indigenous peoples among theorists and historians of early modern European empires often occurred through the lens of what could be generalized about ancient Greece and Rome, and in early ethnographies Polynesian societies in particular were often marked out as lacking a developed sense of historical consciousness beyond the alleged timelessness of ancient and largely static custom (also see Anderson). Across the early Pacific novels, Melville is attuned to the interpretive stakes of historiography and ethnography, as Bryan Short suggests, muddying the waters by crossing genres and in doing so, crossing categories of historical explanation.

In distinctive ways, both Gibbon and Melville see the ocean as at once a medium and a challenge to conventional frameworks of law, history, and politics. The concluding pages of Gibbon's third volume contemplate the voyages of ancient and modern European navigators and their contact with the figure of the "human savage, naked both in mind and body, and destitute of laws, of arts, of ideas, and almost of language." Gibbon assures himself as much as his readers that no slippage back into the days of barbarism or savagery is possible in the present, with all of Europe coming to constitute "one great republic," and with commerce facilitating processes of civilization and introducing "into the islands of the South Sea, the vegetables and animals most useful to human life" (Gibbon 2: 512, 515–6). Again, writing in the wake of those modern navigators, and knowing their history, Melville is contending with ruins. The building blocks of Enlightenment and the self-assured modern and civilizing world could appear tangled up in older histories as the United States pushed the

violent reach of republican empire across the North American continent and into the islands of the central and south Pacific.

Melville's often playful—but at the same time careful and materialist—attention to law and equity, to jurisprudence and its history, has clear precedent in Gibbon's work. In the forty-fourth chapter of his narrative, in the fourth volume, Gibbon stopped his story of the sixth century and the late imperial codifications of Roman law to go back and narrate the history of Roman jurisprudence from its beginnings. Pausing his history of a declining monarchy, he writes, "I shall embrace the occasion to breathe the free and invigorating air of the republic" (Gibbon 2: 779). Gibbon reads a good deal of his own early modern context back into earlier history, tracing the dissolution of what for him was royal prerogative into various offices such as the consuls, praetorians, and tribunes, each in their turn exercising a distinctive and discretionary judicial authority over normal legal procedure: that of Roman equity. Equity, in theory, provided relief "from the precise rigour of ancient statutes," but was undeniably "a principle of discretion more congenial to monarchy" that was tragically, in Gibbon's view, introduced into a republic. Over time, a "jurisdiction thus vague and arbitrary was exposed to the most dangerous abuse: the substance, as well as the form of justice, were often sacrificed to the prejudices of virtue, the bias of laudable affection, and the grosser seductions of interest or resentment" (Gibbon 2: 786). This distinction between substance and form of justice plays an enormously important role in Gibbon's analysis of law and of the overall story he set out to tell about decline and fall. What Gibbon narrates here is a growing corruption of law, and not in the simple sense that greed threatened the public interest and the rule of law, but in a more troubling sense that the lived idea of the rule of law was changing underneath the continued use of the polished symbolic universe of a republican constitution. Discretionary authority that had been intended to allow natural justice and conscience to correct some of the cruelties of the legal system had become merely an instrument of consolidating sovereignty over a republican constitutional order.

Melville's work can be read as a similar inquiry into the practices and processes that allow law to become the vehicle for justice or corruption and injustice. Equally as important, for Gibbon and for Melville, this was an inquiry into law's constructive role in the symbolic universe in which politics and history get made and contested, and how that role is at once the source of its power and its susceptibility to being captured by corrupting forces, all while the image of its authority continues, held onto ever more desperately by judges,



senators, and citizens alike. Melville could see another chapter of this history in the ascendancy of white settler-colonial democracy as the benchmark of his own republic's historical understanding of its unique place in the world. In that context, part of the implication of the narrative at work was that in getting rid of the arbitrary power of royal prerogative and its legal arm in judicial discretion, and replacing these with written constitutions, elections, and trials by juries of one's peers, law had been made safe in a way that it supposedly had not been for Rome or Britain. Every representation of law in Melville's work seems calculated to play on the ideologically potent idea that discretion, equitable or not, has been somehow made a thing of the past or discovered to be an accident rather than a fundamental shaping force of law and history.

In *Mardi*, for example, Media laughs and scorns the petition for an assembly of judges, giving his assurance that judgment and justice are better served by one than by many, in a deliberate mirroring of the history of modern equity and its ruins. "Now," says the narrator of Melville's most extended but least appreciated consideration of the practices and procedures of rule, "for all the rant of your democrats, a fine king on a throne is a very fine sight to behold" (182). Chapter 60, "Belshazzar on the Bench," serves up an extensive meditation on equity jurisdiction when King Media rebuffs a petition to introduce juries to the settlement of legal disputes: "'This be your judge,' he cried, swaying his scepter. 'What! are twelve wise men more wise than one?' . . . As unerring justice dwells in unity, and as one judge will at last judge the world beyond all appeal; so—though often here below justice be hard to attain—does man come nearest the mark, when he imitates that model divine" (*Mardi* 184–5). The passage picks up on the constitutional status of the Roman emperor in late antiquity and the royal prerogative in the early modern British empire not simply as a marker of an abstract and disembodied concept of sovereignty, but as taking form in a number of specific jurisdictional authorities, offices, and discretionary powers. It also registers yet another allusion to Thomas Hobbes's *Leviathan*, in which Hobbes critiques the disputations of civic and customary legal discourse as tending toward chaos and uncertainty without a sovereign authority to discipline the meaning and use of words (Hobbes 100–110, 165–8). Media decrees that any further "gibberish of bulwarks and bulkheads" of liberty be outlawed, that he will rule alone, and ultimately that he will judge alone (*Mardi* 185).

In his own consideration of the political and intellectual history of jurisprudence, Gibbon paid particular attention to corruption of law as a gradual disjunction of the appearance or image of law and its reality, of form and substance. This was all the more powerful an image, and so all the more glaring a disjuncture to the observant historian, given the success of Roman jurists in

ensuring that Roman law from an early stage obtained what Gibbon labeled “that blind and partial reverence which the lawyers of every country delight to bestow on their municipal institutions” (Gibbon 3: 783). A clear dramatic reconstitution of the power of lawyers in a society of citizen consumers, debtors, and litigants might be seen in the Isle of Minda in the Mardi Archipelago of Melville’s imagination: here, sorcerers employ their tricks on behalf of their aggrieved clients against allegedly responsible parties, who have their own sorcerers of roughly equal skill, and so the entire island is caught up in endlessly destructive disputations for which the sorcerers charged their clients until the unfortunate souls went broke (*Mardi* 461–4). For Gibbon and for Melville, a sanctified and mysterious image of law and legal process as part of a culture of undue reverence and respect, even fear, was critical to histories of how law works, or does not work, in a nominally lawful republic. Again, possibly prompted by Gibbon as much as by Hobbes, Melville investigated and dramatized the practices of making sheer power look like duly constituted, equitable, regular, and legitimate authority.

The equity of the laws in modern history, for Gibbon, for Adam Smith, and decades later for American jurists such as Melville’s father-in-law, Lemuel Shaw, was guaranteed by the growing facilitation of relations of contractual exchange. On this point, Gibbon highlights the apparently contractual nature of Roman marriage, but he bemoans the loss of a matrimonial law “directed by earthly motives of justice, policy, and the natural freedom of both sexes.” First he faults the loosening morals of the aristocracy, and then he laments the opening this gave to Christianity, which restores dignity to marriage while changing it irrevocably. Blackstone’s *Commentaries on the Laws of England*, a crucial text for Gibbon and for Melville, celebrated the gradual shift in modern history toward understanding marriage as a contract, although not between two fully equal parties, at least in practice (Blackstone 421–33). And as courts of equity, or chancery courts, in the antebellum period showed increasing deference to the formality of contract, judges did so with increasing jurisdictional authority over marriage, inheritance, and property disputes. As historian Amy Dru Stanley has shown, this passage from bondage to contract was inherently racialized in the context of slavery, but it also set the stage after the Civil War for the use of contract in marriage and labor law as a way of pulling judicial power back from its discretionary authority to enforce the actual equity of contractual relationships. Among the “Typee,” it was difficult to discern the particularities of the “marriage contract,” but it was a simple contract, and one that could be dissolved amicably when necessary, largely because no party was “obliged to file a bill in Chancery to obtain a divorce” (*Typee* 192). Melville dedicates *Typee* to his newly acquired father-in-law, who as the chief justice of

the Supreme Judicial Court in Massachusetts would have exercised alongside his counterparts in New York one of the remaining outposts of independent state-level chancery power in the United States. In a passage struck from the revised edition, Melville relates that “to all appearances there were no courts of law or equity” and that the islanders had managed to achieve “that social order which is the greatest blessing and highest pride of the social state” (200).

In broad strokes, Melville was picking up on a transformation in the concept of equity from the discretionary intervention of natural justice into legal relationships to the balance achieved by a commercial legal culture of contract. And like Gibbon, Melville’s work documents an inherent political tension between republican government and discretionary judicial power, a tension that would lead in New York to the termination of the office of the Chancellor and the closure of the chancery courts in 1846, a closure which sets the stage for the narrator’s recounting of the story in *Bartleby*. Unlike Gibbon, Melville cannot afford the conceit that modern law and society had successfully translated the power and office of equitable discretion safely into the hands of lower courts, legislative assemblies, or civil society itself, which was theorized increasingly as an expanding network of contracts between consenting agents formally equal before the law. Literature’s capacity to document the failures of the liberal promise of contract has of course been established by Brook Thomas, and Melville’s piece of that story pushes it further back into an early modern and imperial context. In both Spanish and English colonies, empires in the Americas justified themselves in part by the conquering sovereign’s claim of responsibility to exercise equity in adjudicating cases and determining the legal status of conquered non-Christian peoples (Yirush; Herzog). The embrace of contract, social, private, or both, as a practical ideal and as a metaphor for politics, was an attempt to rid the modern polity of a discretionary power felt to be imperial, and to relocate the power to define and ensure justice safely and securely across constituted social space.

**M**elville, like Gibbon, is a kind of historian, or more accurately, a critical and creative historiographer of the ways in which such promises fall short, and of all the ways in which old problems and questions—prerogative, abuse, slavery, hate, religion, investiture, casuistry, to name a few—not only persist but reappear and intensify as they are transformed in the name of democracy, equality, choice, commerce, and progress. Melville’s narrators of the early Pacific novels declare themselves in so many ways beyond law and equity, but in reality, his white Pacific voyagers try to escape law only to find more law. Melville appreciated that equity in particular was historically

a fraught concept, registering as it did both the legal arm of raw discretionary power and the basic sense of equity, of justice, that it was the responsibility of that power to guarantee to the polity it governed. Both Gibbon and Melville can be read as narrating the failure of that responsibility in ancient and modern history, respectively, for their own time, as it was increasingly assumed that modern constitutions and commercial society had superseded the necessity of such power in the first place.

Melville's representation of the corruptions of law and equity and the returns of history in his early work are profoundly resonant with Gibbon's careful narration of the gradual disjuncture between law and justice. More broadly, these representations suggest the gap between the images with which rulers and ruled alike represented their history to themselves and the present historical realities they were acting in. In *Typee* and *Omoo*, the activities of the missionaries spreading Christianity and the policies of colonial outposts protecting commercial interests and labor discipline in the Pacific are repeatedly set in this tension between the form and substance of law, legal procedure, and legal language, illuminating discretionary cruelty and injustice. The banality of inequity is everywhere apparent, as is the absurdity that in getting rid of monarchy a political community gets rid of the abuse of power, of privilege, or of the uncertainties and risks of discretion and judgment. In point of fact, it seems that this responsibility is only more necessary and urgent once the figurehead, or point in the constitution in which that responsibility had been symbolically invested, is abolished. Fleeing Hautia's island, as the title of the last chapter of *Mardi* would have it, "Mardi behind, an Ocean Before," Yoomy is cut off from his home and his king: "I am my own soul's emperor; and my first act is abdication!" (654). At its most hellishly dystopian, the future that awaits Yoomy is the world of Melville's *Confidence-Man* and its masquerades; where everyone has inherited the sovereignty of themselves and the need to mask that power's clay feet; where everyone—not just Ahab—loses themselves in the anxiously judicial evaluation of self and others; where everyone is nervously judging and judged; where everyone is dragged before the bar of everyone else (*Moby-Dick* 545).

Law and literature give us an historical, critical purchase on modern subjectivity and the present political moment. The dialectical analysis of form and substance of law Gibbon develops in his narrative provided Melville with material for his own historically inflected narratives and critiques. But for Melville, it is not just older forms or images of rule that resurface and are recovered in time but those of action, too. The Round Robin of *Omoo*, when the rebelling sailors have had enough and put their names and lives in each other's hands, is a clear indication of Melville's attention to the possibilities of revolutionary

moments in law and politics (77). If there is a Gibbonian moment, there can be a Melvillean one, too, one in which we find ourselves alert to the histories and potentialities to be found in the texts and contexts we come across, and that we collect and recollect. On a scale quite a bit smaller than the literary ambitions of either Gibbon or Melville, I hope one little piece of that recollection can be the work of the historian in the field of literature, who in this case, in his own retracing search after something missing in the writing of history, found another historiographer.

## Notes

<sup>1</sup> Today, the painting is in the Turner wing at the Tate Museum; it is unlikely although not impossible that Melville saw the image, but if he did there is no known record of it (see Wallace).

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