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*Billy Budd* and Capital Punishment: A Tale of Three Centuries

Has any work of American literature generated more antithetical and mutually hostile interpretation than Herman Melville’s *Billy Budd, Sailor?* And all the battles about the moral and political vision at the heart of the tale swirl around one question: Are we supposed to admire or condemn Captain Vere for his decision to sentence Billy Budd to death by public hanging?¹ Somehow, astonishingly enough, nobody seems to have noticed that central to the story is the subject of capital punishment and its history.

This is true even in the ten essays constituting the first number of *Cardozo Studies in Law and Literature*, which was devoted to *Billy Budd* because—in the words of law professor Richard H. Weisberg—it is “the text that has come to ‘mean’ Law and Literature.”² The closest encounter with the issue of capital punishment in these essays or elsewhere comes from Weisberg’s antagonist, Judge Richard A. Posner of the United States Court of Appeals for the Seventh Circuit (and a self-styled “new critic”), who condemns those who “condemn Vere’s conduct” as mere “liberals” who are “uncomfortable with authority, including military authority, and hate capital punishment” (“most literary critics are liberals,” adds Posner). According to the judge, “we must not read modern compunctions about capital punishment into a story written a century ago.”³

Yet during the very years that Melville was composing the story—1886 to 1891—national and international attention was focused on the climax of a century-long battle over capital punishment unfolding in the very place where Melville was living—New York State. Why have we overlooked something so obvious? Is it because we ignore the

history of capital punishment in the nineteenth century, including its profound influence on American culture? Or have we, who have been scrutinizing this story within the post–World War II culture of the second half of the twentieth century, become desensitized to the implications of the issue that were so manifest to nineteenth-century Americans? In any case, if we do contextualize *Billy Budd* within the American history of capital punishment and its bizarre outcome in New York State during the years 1886 to 1891, the story transforms before our eyes.

If *Billy Budd* had been published in 1891, when Melville wrote “End of Book” on the last leaf of the manuscript, few readers at the time could have failed to understand that the debate then raging about capital punishment was central to the story, and to these readers the story’s position in that debate would have appeared unequivocal and unambiguous. *Billy Budd* derives in part from the American movement against capital punishment. It dramatizes each of the crucial arguments and concepts of that movement. And it brings into vivid focus the key issues of the contemporaneous debate: Which offenses, if any, should carry the death penalty? Does capital punishment serve as a deterrent to killing or as an exemplary model for killing? What are the effects of public executions? Is hanging a method of execution appropriate to a civilized society? Is an impulsive act of killing by an individual more—or less—reprehensible than the apparently calmly reasoned act of judicial killing? Is capital punishment essentially a manifestation of the power of the state? A ritual sacrifice? An instrument of class oppression? A key component of the culture of militarism? Participants on all sides of the debate seemed to agree on only one thing: that the most appalling moment in the history of capital punishment within modern civilization was the reign of George III in England.

When the officers whom Captain Vere has handpicked for his drumhead court appear reluctant to convict Billy and sentence him to death, Vere forcefully reminds these subordinates that they owe their “‘allegiance’” not to “‘Nature,’” their “‘hearts,’” or their “‘private conscience,’” but entirely to “‘the King’” and his “‘imperial [conscience] formulated in the code under which alone we officially proceed.’” The time is 1797, the king is George III, and the code to which Vere refers was known in the nineteenth century as the “Bloody Code.”
During the reigns of the Tudors and Stuarts, fifty crimes had carried the death penalty, and more were slowly added. The most spectacular increase came later, during the reign of George III, when sixty offenses were appended to the death-penalty statutes.\(^6\) By the last third of the nineteenth century, George III’s Bloody Code had been universally repudiated and condemned, both in England and America.\(^7\) As the battle against capital punishment raged while Melville was composing *Billy Budd*, partisans on both sides agreed that eliminating most of the code’s capital offenses constituted one of the century's notable achievements in human progress. Not surprisingly, opponents of the death penalty cited the Georgian code as barbaric and anachronistic, even for the eighteenth century. For example, a widely reprinted 1889 article referred to “Georgian justice” as “a scandal to the rest of the civilized world,” and agreed with Mirabeau’s verdict at the time that “The English nation is the most merciless of any that I have heard or read of.”\(^8\) Even advocates of capital punishment celebrated the progress away from the Bloody Code, pointing out that by the early 1880s capital offenses in England had been reduced to “three classes” of deliberate murder, none of which included “crimes committed under circumstances of great excitement, sudden passion, or provocation.”\(^9\) Articles favoring capital punishment published during the late 1880s argued that the death penalty should certainly “be restricted to murder committed with malice prepense, by a sane person, in resisting arrest, or in the commission of another felony.”\(^10\) Billy Budd, remember, is charged not with murder but with striking “his superior in grade”; “Apart from its effect the blow itself is,” as Captain Vere states, “a capital crime” under the Articles of War of the Georgian code (272). Nobody on the ship believes the sailor acted with premeditation or malicious—much less murderous—intent, but Vere instructs the court that they must disregard all questions of intent (274).

In the midst of the American Revolution against George III’s imperial regime there were some attempts to abolish capital punishment for all crimes except murder and treason. For example, Thomas Jefferson and four other Virginia legislators drafted such a law in early 1777, but it was not considered until 1785, when it was defeated by a one-vote margin in the House of Delegates.\(^11\)

The most influential legal act came in 1794, three years before the action of *Billy Budd*, when the state of Pennsylvania became the first
to codify into law the innovative concept of "degrees" of murder. Capital punishment was restricted to murder in the "first degree," defined as "wilful, deliberate and premeditated killing." Two years later, New York State reduced the number of capital crimes from thirteen to two—murder and treason—while also abolishing whipping as a punishment for any crime. In the ensuing decades, state after state in the North and West followed the lead of Pennsylvania and New York in reducing capital offenses, and the movement for complete abolition of the death penalty steadily gained momentum into the 1850s. Maine in 1837 and New Hampshire in 1849 passed moratoria on all executions; Massachusetts limited the death penalty to first degree murder in 1852; and one house of the state legislature voted to abolish the death penalty in Ohio (1850), Iowa (1851), and Connecticut (1853). Capital punishment was abolished altogether in Michigan (1846), Rhode Island (1852), and Wisconsin (1853). Among the champions of the surging campaign for abolition were many of the republic's cultural leaders, such as Henry Wadsworth Longfellow, John Greenleaf Whittier, John Quincy Adams, Lydia Maria Child, Theodore Parker, Margaret Fuller, and Henry Ward Beecher. The two great newspapers of New York City were for decades edited by prominent opponents of capital punishment, William Cullen Bryant of the New York Evening Post (1829–1878) and Horace Greeley of the New York Tribune (1841–1872). In the slave South, however, George III's Bloody Code had its distinctively American counterpart in the myriad of offenses defined as capital if committed by slaves. Capital punishment as an instrument of class oppression has never been demonstrated more blatantly, an argument made frequently in the anti-death-penalty literature. For example, in 1844 Universalist minister Charles Spear of Massachusetts cited the laws of the South as examples of the class content of capital punishment and reasons for its total abolition. Georgia had a mandatory death sentence for the following crimes: "Rape on a free white female, if a slave. Assaulting free white female with intent to murder, if a slave. Burglary or arson of any description contained in penal code of state, if a slave. Murder of a slave or free person of color, if a slave." On the other hand, a white man in Georgia convicted of raping a slave woman or free woman of color faced a fine and/or imprisonment, at the discretion of the court. In Alabama, Spear noted,
it was not a capital crime to kill a black, but there was a mandatory
death penalty for these offenses: “Murder, or attempt to kill any white
person. Rape, or attempt to commit, if a slave, free negro or mulatto.
Insurrection or rebellion against the white inhabitants. Burglary. Ar-
son. Accessory [sic] to any of the above crimes.” Missouri provided
that any “negro, mulatto, or free colored person” committing rape
would be executed by means of castration. Virginia had seventy-one
offenses for slaves but not for whites. These included burglary, forgery,
stealing a horse or harboring a horse thief, “wilfully setting fire to any stack or cock of wheat,” theft of money or
goods “of the value of four dollars,” and of course raping or attempting
to rape a white woman. In 1848, Virginia passed a new statute requir-
ing the death penalty for blacks for any offense that was punishable
by three or more years imprisonment if committed by whites.

The political content of capital punishment was also manifest in the
legal codes that supported the institution of slavery. Pre–Civil War
North Carolina had a mandatory sentence of death for any person
guilty of concealing a slave with intent to free him or for “circulating
sedition publications among slaves, second offence.” Georgia
imposed a mandatory death penalty for “Circulating insurrectionary
papers, either by a white, a negro, mustizzo, or free person.” Missouri
law required mandatory execution for “Exciting insurrection
among slaves, free blacks, or mulattoes.” Louisiana had a mandatory
death penalty for anyone guilty of “writings of a seditious nature.”

From the mid-1850s through the Civil War, the movement to abol-
ish the death penalty was overwhelmed by the movement against
slavery. When revived in the late 1860s, the anti-capital-punishment
movement often seemed to its adherents to be part of inexorable
global progress. By 1889 they could cite the abolition of the death
penalty, by law or in practice, in Holland, Finland, Belgium, Prus-
sia, Portugal, Tuscany, and Rumania. To maximize shock value, they
often focused on what many regarded as the most barbaric aspects of
capital punishment as practiced: public execution and hanging.

Public execution and hanging, which are integral to Captain Vere’s
arguments for the necessity of killing Billy Budd, played a complex
role in the debates of the last third of the nineteenth century. As abo-
litionists emphasized the grotesque and sordid spectacles of public
hangings, they often played into the hands of retentionists, who saw
that their best strategy for preserving the death penalty lay in cleansing it of the features almost universally condemned as loathsome remnants of a savage past.26

Between 1833 and 1849, fifteen states abolished public executions,27 and the movement to banish the practice altogether was unstoppable in the postwar decades. From the late 1860s through the end of the century, hanging became the focal point of abolitionist and reformist arguments, and New York State became the pivotal battleground. In his 1869 Putnam’s article “The Gallows in America,” Edmund Clarence Stedman (who was to become Melville’s most enthusiastic patron during the period of Billy Budd’s composition) dwells on the horrors of hanging to convince readers, especially in New York, to abolish the death penalty entirely. “Let the Empire State” join Michigan in ending capital punishment, Stedman declares, “and within ten years thereafter the gallows will be banished from every State in the Union.”28 Although he acknowledges that through “new scientific knowledge” some “painless mode of killing may be discovered,—as by an electric shock,” the movement against the death penalty is growing “so rapidly that there is small likelihood of its modification by new forms.”29 Stedman did not foresee how one of the most bizarre chapters in nineteenth-century American technological and cultural history—the “Battle of the Currents”—would help preserve capital punishment in New York and much of the nation deep into the twentieth century.

In the early 1880s Thomas Alva Edison and his Edison Corporation dominated the emerging electrification of urban America, especially in the New York City area. Edison, however, was obsessively committed to direct current (DC), which could not be economically transmitted more than a mile or two. In 1886 George Westinghouse’s newly incorporated Westinghouse Electrical and Manufacturing Company placed into operation the first alternating current (AC) generating station and demonstrated that AC could be transmitted over great distances. Meanwhile, Civil War hero General Newton Curtis, elected to the New York Assembly in 1884, had launched a major campaign to abolish the death penalty in New York State.30 In 1885 Governor David Hill, anxious to preserve capital punishment while recognizing the prevalent revulsion against hanging as a “remnant of the dark ages,” asked the legislature to create a commission to explore ways of carrying out the death penalty “in a less barbarous manner.”31
In early 1887 Westinghouse moved into direct competition with Edison in New York City, touching off the Battle of the Currents.\textsuperscript{32} Edison's strategy was to convince the public that AC was too dangerous for domestic use. So in 1887 he began a gruesome publicity campaign, inviting reporters, particularly from the New York newspapers, to witness theatrically staged electrocutions of cats, dogs, calves, and horses. Edison even managed to get the members of the New York State Commission to Investigate and Report the Most Humane and Practical Method of Carrying into Effect the Sentence of Death to attend his AC electrocution of neighborhood dogs.\textsuperscript{33} Edison's main operative was one Harold P. Brown, who pretended to be acting independently even after the \textit{New York Sun} printed a series of forty-five letters between Brown and Edison, as well as between Brown and the companies covertly acting for Edison.\textsuperscript{34} In 1888 Brown staged at Columbia College's School of Mines an especially cruel execution of what the \textit{New York Herald} called "a large mongrel Newfoundland"; the show produced sensational accounts in the New York dailies and even a ballad.\textsuperscript{35} Meanwhile, Brown was secretly conspiring with New York State prison authorities to purchase three Westinghouse AC generators and set them up in prisons to be wired to a proposed "electric chair."\textsuperscript{36} The object was to arrange for human executions to be conducted by electrocution with AC, thus terrorizing the population about the lethal menace posed by Westinghouse's technology. From now on, according to Edison and his cohort, condemned felons would not be hanged but "Westinghoused."\textsuperscript{37} Brown concluded a self-serving 1889 article in the \textit{North American Review} with these words: "strenuous efforts have been made to befog the public mind in order to prevent the use of the alternating current for the death-penalty, lest the public should learn its deadly nature and demand that the Legislature banish it from streets and buildings, thus ending the terrible, needless slaughter of unoffending men."\textsuperscript{38}

New York City's newspapers charged into the Battle of the Currents. The \textit{New York Evening Post}, no longer edited by ardent foe of capital punishment William Cullen Bryant, favored electrocution. The \textit{New York Tribune} and \textit{New York Times} were both zealous allies of Edison and defenders of capital punishment.\textsuperscript{39} The \textit{Times} in 1887 editorialized in favor of replacing hanging—which it characterized as sheer "barbarity"—with electrocution, which it envisioned as so quick and deadly as to be a form of "euthanasia"; it urged "the State
of New York to be the first community to substitute a civilized for a barbarous method of inflicting capital punishment, and to set an example which is sure of being followed throughout the world."\textsuperscript{40} When the New York State Commission in January 1888 reported, to no one's surprise, in favor of electrocution, the \textit{Tribune} and \textit{Times} presented the recommendation as major and welcome news. Besides their news coverage, both papers had days of lengthy editorials extolling electrocution. The \textit{Tribune} declared that electrocution would be "a step toward humanity and decency."\textsuperscript{41} In another editorial the same day, the \textit{Tribune} evoked the almost universal repugnance against hanging: "The American people are practically unanimous in desiring that the present cruel and clumsy method of execution shall be relegated among the other barbarisms of punishment."\textsuperscript{42} Both newspapers also approved of the recommendation that all executions be held within the walls of a prison, with the number of witnesses—all to be selected by prison authorities—limited to twelve. The only caveats, expressed by both papers, had to do with the Commission's recommendations that the executed person's body should "in no case be delivered to any relative or other person whatsoever" and that any newspaper publishing an account of an execution other than "the statement of the fact that such convict was on the day in question duly executed according to law at the prison" would be "guilty of a misdemeanor."\textsuperscript{43} The \textit{Times} commended the intent of these prohibitions, which was to keep the executed criminal from becoming "a hero" of the masses and prevent "such a display of sympathy with crime as was furnished by the funeral of the Anarchists in Chicago." The editorialist argued, however, that to "make a mystery" of an execution such as that of "the Chicago Anarchists" would be "proceeding too much in the line of a despotic Government to be acceptable here."\textsuperscript{44}

During the next two and a half years New York was embroiled in legal suits and political maneuvering that brought national and worldwide attention to its struggles with the issue of capital punishment. Lawyers for William Kemmler, the intended victim of the first electrocution, went to court to prevent this "cruel and unusual punishment." Edison merged his company into General Electric, partly to fight the legal suits filed by Westinghouse to keep its equipment from being used to electrocute Kemmler. General Curtis submitted his second Assembly bill to outlaw capital punishment. The \textit{Tribune} and the \textit{Times} now began to impugn General Curtis's motives, im-
plying that he was acting merely as a bribed agent of Westinghouse (charges refuted by his efforts years later as a member of Congress to abolish the death penalty for the whole nation). The personal attacks on Curtis got fiercer when his bill to abolish capital punishment was passed by the New York Assembly on 1 May 1890 by a vote of 74 to 29.45

The bill was not, however, approved by the State Senate. All the recommendations of the State Commission—including criminal penalties for publishing descriptions of executions—now became the unchallenged law of New York State. So on 6 August 1890, William Kemmler became the first victim of the modern, civilized form of execution by electricity.

The spectacle was hardly the “euthanasia” earlier promised by the Times. Indeed, the front page of the Times the following day violated the very law that had mandated Kemmler’s electrocution by publishing a description of “the most revolting circumstances” that “placed to the discredit of the State of New York an execution that was a disgrace to civilization.” The witnesses, “men eminent in science and in medicine,” were so physically “nauseated” by the gory spectacle that “they almost unanimously say that this single experiment warrants the prompt repeal of the law.” The article ended by noting that the witnesses all acted “as though they felt that they had taken part in a scene that would be told to the world as a public shame, as a legal crime.”46

One of the attending physicians selected to conduct the autopsy on Kemmler published in October 1890 an impassioned appeal to abolish the death penalty, opening with an evocation of the “world-wide interest” in the execution: “When the harrowing details of the death chamber were tingled along the telegraph wires of the country, and their impulses were throbbed through the cable, the entire civilized world viewed the scene with astonished horror.”47 In an influential volume linking capital punishment to war published in January 1891, Andrew Palm noted that the Kemmler execution was “denounced as horrible, brutal, atrocious, a disgrace to humanity, etc. English editors were just as much shocked as their brethren on this side of the Atlantic, one London daily declaring that Kemmler’s execution sent a thrill of horror around the globe.”48

It was in this context that Melville composed Billy Budd, which he began in 1886 and concluded in April 1891, eight months after Kemm-
ler's execution. Although Melville's contemporaries, who almost universally abhorred hanging, might have shuddered at Captain Vere's instantaneous decision that Billy "must hang" (232), the story is carefully crafted to keep the means of execution from being a significant issue.

When he is hanged, Billy evinces none of the hideous agonies familiar to the crowds at public hangings and described with sickening detail in countless nineteenth-century essays and books. There is not even the almost invariable muscular spasm or involuntary ejaculation. Chapter 26, obtrusively inserted between Billy's transcendent death and the sailors' reaction, is devoted to a discussion of this perfect lack of motion. The purser suggests that this "singularity" must be attributed to Billy's "will power." In the surgeon's response we can hear a parody of the debate transpiring in Melville's New York about the most humane and scientific way to kill a person: "In a hanging scientifically conducted—and under special orders I myself directed how Budd's was to be effected—any movement following the complete suspension and originating in the body suspended, such movement indicates mechanical spasm in the muscular system. Then the absence of that is no more attributable to will power, as you call it, than to horsepower" (311). Admitting to the purser that this "muscular spasm" is almost "invariable," the surgeon acknowledges, "I do not, with my present knowledge, pretend to account" for its absence: "Even should we assume the hypothesis that at the first touch of the halter the action of Budd's heart, intensified by extraordinary emotion at its climax, abruptly stopped—much like a watch when in carelessly winding it up you strain at the finish, thus snapping the chain—even under that hypothesis how account for the phenomenon that followed?" (323).

The purser then asks, "was the man's death effected by the halter, or was it a species of euthanasia?" "Euthanasia," replies the surgeon, has dubious "authenticity as a scientific term" (324). Though it may outwardly resemble the "euthanasia" the New York Times had erroneously predicted for electrocution, Billy's death by hanging clearly transcends not only the surgeon's scientific understanding but also the debate about the modalities of capital punishment swirling around the composition of the story.

More profoundly relevant to Billy Budd are the terms of the debate about the fundamental issue of capital punishment itself. Indeed, the essence of the issue structures the story.
We witness two killings aboard H.M.S. *Bellipotent*. One comes from the impulsive, involuntary fatal blow Billy Budd strikes to the forehead of Claggart. The blow is partly in response to Captain Vere’s exhortation to the stammering Billy, “Defend yourself!” Vere recognizes that Claggart has been “Struck dead by an angel of God!” and he and his drumhead court all acknowledge that Billy acted without malice, forethought, or any murderous intent. The other killing is carried out under cover of law, after reasoned argumentation, and by the state acting through the agency of Captain Vere and his officers.

Which of these two acts constitutes murder? Budd is not even accused of murder. One question that underlies the twentieth-century discussion of *Vere*’s act might be framed this way: Does it conform to the 1794 Pennsylvania definition of murder in the “first degree,” that is, “wilful, deliberate and premeditated killing”?

This is precisely the way the argument against capital punishment was framed during the years Melville was writing. The fact that hangings were conducted by the state under cover of law did not, to opponents of the death penalty, absolve them from being murders. Indeed, the terms widely used for these killings were “legal murders,” “legal killing,” and “murder by law.” The following commentaries, published in 1890, could apply directly to the two killings on the *Bellipotent*:

[W]hen a criminal is judged, all the extenuating circumstances shall be taken into consideration. Were this rule observed, the victim of the law would seldom appear in so bad a light as the government that passed the sentence. Let me illustrate the thought: a man commits a murder: the government in turn sentences the man to death. Here we have two parties who have presumed to take a human life. . . . [T]he question now arises, upon the shoulders of which party rests the greatest guilt? A most solemn thought. There are many extenuating circumstances in the first instance, but what can be said in justification of the government?  

[C]apital punishment administered in any form is essentially a relic of a barbarous age. . . . [T]he State always acts with coolness and deliberation, while ninety per cent. of her children slay their fellow-men in the frenzy of passion.

Although Captain Vere has already decided that Billy “must hang” before he convenes his drumhead court, the three officers he hand-
picks are quite reluctant to convict and sentence the Handsome Sailor. In the trial, during which Vere acts as sole witness, prosecutor, and, ultimately, commander of the jury, he finds it necessary to overwhelm his three subordinates with a deluge of arguments. One is precisely that they must ‘let not warm hearts betray heads that should be cool’” (270).

Vere makes his first argument while still in his role of witness (though later he tells the officers, ‘‘Hitherto I have been but the witness, little more’’ [265]): ‘‘Quite aside from any conceivable motive actuating the master-at-arms, and irrespective of the provocation to the blow, a martial court must needs in the present case confine its attention to the blow’s consequence, which consequence justly is to be deemed not otherwise than as the striker’s deed’’ (256). By arguing, especially in such legalistic phraseology, that his court is not to consider extenuating circumstances or motive, Vere is underlining for readers in 1891 the fundamental injustice of the proceedings. The three officers, in fact, are disturbed by this manifestation of “a pre-judgment on the speaker’s part” (258). Later Vere reiterates, “‘Budd’s intent or non-intent is nothing to the purpose’” (274).

As discussed earlier, Vere’s extended argument that the officers owe their allegiance not to “‘Nature,’” their “‘hearts,’” or their “‘private conscience,’” but entirely to King George III and his “‘code under which alone we officially proceed’” would to any late-nineteenth-century audience be an emphatic reminder of the barbaric Bloody Code for which Vere is acting as agent. Vere insists, in fact, that he and his officers must act merely as agents and instruments of that law: “‘For the law and the rigor of it, we are not responsible. Our vowed responsibility is in this: That however pitilessly that law may operate in any instances, we nevertheless adhere to it and administer it’” (270). To late nineteenth-century readers, this would serve as a conspicuous reminder of the horrors of Georgian justice from which nine decades of reform had liberated both the United States and Britain. Each of Vere’s arguments, in fact, defends one or more of the most egregious features of the Georgian code, features that had been repudiated by law in those nine ensuing decades.

Immediately after insisting that his officers may not consider “‘Budd’s intent or non-intent,’” Vere claims that they are taking too much time (a blatantly specious argument, especially in light of the time later spent in the execution and burial rituals): “‘strangely
we prolong proceedings that should be summary—the enemy may be sighted and an engagement result. We must do; and one of two things must we do—condemn or let go’” (275). In response, the sailing master, the one trial officer who has not previously spoken, asks “falteringly,” “‘Can we not convict and yet mitigate the penalty?’” (275).

Insisting that this would not be “‘lawful,’” Vere highlights for readers one of the most universally condemned aspects of the code under which he operates: mandatory death penalties. Opponents of capital punishment of course focused on the inflexible brutality and cruelty thus codified into law and passing for justice. Joining them, however, were some of the most ardent defenders of capital punishment, including many judges and district attorneys, who were continually encountering juries that—like the sailing master—would rather acquit than consign a criminal to death. In the period from 1860 to 1895, eighteen states shifted from mandatory to discretionary capital punishment, with legislators usually citing the reluctance of juries to participate in capital punishment.53

At this point in the trial, Vere abruptly shifts from all his previous arguments—which were based on the premise that he and his drum-head court must, under law, sentence Billy to death—to the argument that finally convinces his officers: they should hang Billy in a public execution. “His closing appeal,” the narrator informs us, is not to their reason but “to their instinct as sea officers” (280, italics mine), and this is what makes it so convincing—at least to them.

This appeal is based solely on the doctrine of deterrence, the main argument preserving capital punishment throughout the nineteenth (as well as the twentieth) century. By the late 1880s, however, vast amounts of statistical and other evidence had demonstrated that there is little if any reasonable basis for the belief that capital punishment deters any of the crimes for which it is imposed. Nevertheless, the defenders of capital punishment, like Vere, tended more and more to abandon the argument that it was just, fair, appropriate, ordained by God, et cetera, and more and more to rely on belief in its value as a deterrent to crime. They appealed not so much to evidence as to the fear of violent crime widespread among the privileged and affluent classes, a fear which they of course encouraged.54

Like the typical nineteenth-century defender of capital punishment, Vere appeals to the fear of the fellow members of his privileged class
on the *Bellipotent*, in other words, to “their instinct as sea officers.” There is, however, one fundamental difference between the deterrence argument familiar to nineteenth-century readers and Vere’s decisive argument. The customary argument was (and is) that capital punishment deters the particular crime by making an example of the criminal. Vere’s argument—far more cynical—is that hanging Billy Budd before the crew will intimidate them and reinforce the “‘arbitrary discipline’” exerted over them by the officers, while *not* hanging him would encourage mutiny. Mutiny is the crime of which Claggart had falsely accused Billy and of which Vere and his officers know Billy is innocent. But, argues Vere, “‘the people,’” because they “‘have not that kind of intelligent responsiveness that might qualify them to comprehend and discriminate,’” will believe that Billy has committed “‘a flagrant act of mutiny’” and will therefore emulate him if he is not appropriately punished for it. For readers in 1891, Vere’s argument, so persuasive to his subordinate officers, would seem so obviously specious and illogical as to appear virtually a parody of the usual defense of capital punishment for the sake of deterrence:

“Gentlemen, were that clearly lawful for us under the circumstances, consider the consequences of such clemency. The people” (meaning the ship’s company) “have native sense; most of them are familiar with our naval usage and tradition; and how would they take it? Even could you explain to them—which our official position forbids—they, long molded by arbitrary discipline, have not that kind of intelligent responsiveness that might qualify them to comprehend and discriminate. No, to the people the foretopman’s deed, however it be worded in the announcement, will be plain homicide committed in a flagrant act of mutiny. What penalty for that should follow, they know. But it does not follow. *Why?* they will ruminate. You know what sailors are. Will they revert to the recent outbreak at the Nore? Ay. They know the well-founded alarm—the panic it struck throughout England. Your clement sentence they would account pusillanimous. They would think that we flinch, that we are afraid of them—afraid of practicing a lawful rigor singularly demanded at this juncture, lest it should provoke new troubles. What shame to us such a conjecture on their part, and how deadly to discipline. (276–78)
In other words, because “we” are afraid of “the people,” “we” have to hang Budd because otherwise “they” would think “we” are afraid of “them”!

One influential article published in January 1890, entitled “The Crime of Capital Punishment,” directly attacks Vere’s final and most effective argument—“legal killing . . . is done merely as a warning to evil-doers and for the safety of society”—as “an afterthought, an explanation which the growing humane sentiment of the people is forcing from the barbarians who defend and practise murder by law.”

The same article goes on to focus on the role of the clergy in the actual administration of capital punishment: “At every scaffold there is a strange and significant union of Church and State. The State is there in the person of the hangman. The Church is there in the person of the priest or minister. It is the old familiar scene of the State doing deeds of violence and blood in the name of law and order, and with the sanction and concurrence of religion.” Melville seems to be extrapolating from this passage, or many similar ones of the period, in his commentary on the chaplain’s inability to lift “a finger to avert the doom of such a martyr to martial discipline” and on his overall role, which links the execution to the essential purpose of the Bellipotent:

Bluntly put, a chaplain is the minister of the Prince of Peace serving in the host of the God of War—Mars. As such, he is as incongruous as a musket would be on the altar at Christmas. Why, then, is he there? Because he indirectly subserves the purpose attested by the cannon; because too he lends the sanction of the religion of the meek to that which practically is the abrogation of everything but brute Force. (312)

The response of the crew to Billy’s execution is a direct refutation of Vere’s deterrence argument, in which he suggested to his officers that the threat of imminent mutiny was smoldering on the ship. Although the story is labeled an “Inside Narrative,” it reveals not the faintest hint of any such possibility prior to Billy’s death. Discipline is breached only after Billy’s hanging and in response to it, in the midst of the rituals of the public execution and subsequent burial (326, 330, 331).

The true significance of the killing of Billy Budd comes out in these scenes. Like many of the arguments raised against the death penalty
between the 1790s and the 1890s, *Billy Budd* strips away the illusions of justice and deterrence to reveal the essence of capital punishment: human sacrifice, a ritual of power in which the state and the ruling class demonstrate, sanctify, and celebrate their ultimate power—the power of life and death—over the classes they rule.

By the last third of the nineteenth century, public execution had been thoroughly discredited and legally abandoned, in England as well as in most of the United States. Nevertheless, crowds continued to find ways to view hangings that were officially closed to the public. When, for example, a “private” execution took place at the Tombs in New York City, “the neighboring buildings [were] black with people, seeking to look down over the prison walls and witness the death agonies of the poor wretch.”57 Such scenes were a main target of the stipulation in the New York State electrocution law that executions must take place inside the walls of a prison. A principal argument against public executions had been their effects on the “mobs” that came to watch. This reasoning is ironically echoed in the strange “murmur” that runs through the sailors forced to witness their shipmate’s execution: “it seemed to indicate some capricious revulsion of thought or feeling such as mobs ashore are liable to, in the present instance possibly implying a sullen revocation on the men’s part of their involuntary echoing of Billy’s benediction” (326).

Another argument against public execution was that, contrary to its alleged deterrent effect, it tended to transform the criminal into both a victim and a “hero.”58 The sailors, pointedly refuting Vere’s prediction about them, “instinctively felt that Billy was a sort of man as incapable of mutiny as of wilful murder.” To them he becomes more than a hero. The very spar from which he was hanged is metamorphosed into the object of their veneration: “To them a chip of it was as a piece of the Cross” (345–46).59

*Billy Budd* is not, however, a mere treatise against capital punishment. Melville is using contemporaneous awareness about the issue to explore the larger ethical, philosophic, and political questions it so dramatically focuses. Undoubtedly New York Assemblyman Hitt was overstating the case when he claimed in early 1890, “at present there are only two classes of the community who yet favor capital punishment and these are clergymen and prosecuting attorneys.”60 Nevertheless, Melville could safely assume that almost all potential readers in 1891 would regard public execution and hanging as relics
of a barbarous past, would be sensitized to the larger issues surrounding capital punishment, and would already either oppose the death penalty outright or consider it warranted only for first-degree murder and treason. Even the most ardent proponents of the death penalty in late-nineteenth-century America would be embarrassed by positions such as these: "Vere justifiably condemns Billy to death" (Peter Shaw); Billy Budd is a "murderer and a cause of his own death" and Melville "is to be identified" with Captain Vere (Milton Stern); "the virtuous man, Captain Vere," must "punish the violence of absolute innocence"—that is, must kill Billy Budd—since "absolute, natural innocence" is "at war with the peace of the world and the true welfare of mankind" (Hannah Arendt). Readers in 1891 would be far more likely to wonder, like the surgeon (235) and the narrator (236–237), whether Vere is insane.

There remains a question that by now must have occurred to most readers of this essay: Do not military circumstances, especially during war, demand the kind of martial law under which Vere proceeds (or claims to proceed)? A book published in 1850 presents in chapter after chapter a detailed refutation of this position. Ascribing British naval law of this period to a "barbarous feudal aristocracy" that had regained power in the Restoration and its sequel, the author argues that in the Interregnum, "a period deemed so glorious to the British Navy, these Articles of War were unknown." Therefore, he reasons, "such tyrannical ordinances are not indispensable—even during war—to the highest possible efficiency of a military marine." He points out that Nelson (lionized in Billy Budd) opposed corporal punishment and routinely reassigned "wholly ungovernable" seamen to an admiral who "held in abhorrence all corporal punishment," thereby winning the loyalty of these men. "The mutinous effects of government abuses in the Navy," according to this writer, "developed themselves at the great mutiny of the Nore." The author sums up his view in these words: "Certainly the necessities of navies warrant a code for its government more stringent than the law that governs the land; but that code should conform to the spirit of the political institutions of the country that ordains it. It should not convert into slaves some of the citizens of a nation of freemen." He then denounces the American Articles of War as "an importation from abroad, even from Britain, whose laws we Americans hurled off as tyrannical, and yet retained the most tyrannical of all." That author, of course, is Herman Mel-
ville. The book is *White-Jacket,* a volume he consulted frequently while composing *Billy Budd* on a writing box to which he had glued this motto: "Keep true to the dreams of thy youth."

On another level, the relations between martial law and civil society had more disturbing implications for Melville in 1891 than in 1850. As he was writing *Billy Budd,* the rising tide of imperialism, with its corollary of militarism, was threatening the basic republican and democratic values expressed so passionately in *White-Jacket.* In 1850 he could plead for extension of the highest laws of the land to its ships at sea. But by 1891, as the nation was about to build its first large-scale standing navy to prepare for its imperial manifest destiny, Melville envisioned the governance of the warship becoming dominant over the laws of the land. Like many of his contemporaries, he saw that the essence of capital punishment is the state’s power over life and death, a power boundlessly expanded in war. He dramatized the deadly meaning of capital punishment for the eighteenth, nineteenth, and twentieth centuries in the kidnapping of Billy Budd from the *Rights of Man* and his execution on the aptly named *Bellipotent.*

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**Notes**

1. My own view of the great debate can be found in "From Empire to Empire: *Billy Budd, Sailor,*" in *Herman Melville: Reassessments,* ed. A. Robert Lee (New York: Barnes and Noble, 1984): 199–216. For an astute analysis of the contesting interpretations as expressions of political changes during several decades of recent U.S. history, see Geraldine Murphy, "The Politics of Reading *Billy Budd,*" *American Literary History* 1 (summer 1989): 361–82.


In his groundbreaking article “The Movement to Abolish Capital Punishment in America, 1787–1861,” (American Historical Review 63 [October 1957], 23–46), David Brion Davis was shocked to discover that this prominent movement is “seldom mentioned in the standard social and intellectual histories of the period” (23). This article did most of the spadework for more recent studies and still offers the most comprehensive exploration of the philosophic background for the nineteenth-century American arguments opposing and defending capital punishment.

Herman Melville, Billy Budd, Sailor (An Inside Narrative), ed. Harrison Hayford and Merton Sealts Jr. (Chicago: Univ. of Chicago Press, 1962), leaves 267–72. Subsequent references to this text will be by parenthetical leaf number.


See Cooper’s volume for the history of the movement in England against capital punishment, public execution, and hanging.

B. Paul Neuman, “The Case Against Capital Punishment,” Eclectic Magazine, October 1889, 518; this is an American reprint from the British Fortnightly Review, September 1889, 322–33.


Bedau, 4; Sarah T. Dike, Capital Punishment in the United States (Hackensack, N.J.: National Council on Crime and Delinquency, 1982), 7–8; Mackey, Voices, xvi.


Mackey, Voices, xxvi–xxvii.

In 1850 Melville purchased Greeley’s Hints toward Reforms, in Lectures, Addresses, and Other Writings (New York, 1850), which included


17 William J. Bowers, with Glenn L. Pierce and John F. McDevitt, Legal Homicide: Death as Punishment in America, 1864-1982 (Boston: Northeastern Univ. Press, 1984), 140.

18 Spear, 224-31.

19 Bowers, 140.

20 Bedau, 8.

21 Spear, 223.

22 Spear, 224.


25 Neuman, 524.

26 In pre-1850 England, even those who were in favor of public executions admitted that they were "depraving," "ugly," "disgusting," "evil," and "brutalizing" (Cooper, 50).

27 Mackey, Voices, xx.

28 Edmund Clarence Stedman, "The Gallows in America," Putnam's Magazine, February 1889, 234. Stedman met Melville in 1888. On 20 October 1888 Melville returned books lent to him by Stedman with a letter in which he wrote, "And your own book in many of its views has proved either corroborative or suggestive to me." In 1890 Stedman arranged a dinner for Melville at the Author's Club, one of the few recognitions of the author in his later years. Stedman's son Arthur became a good friend of Melville in the last two years of the writer's life and after Melville's death worked with Elizabeth Melville in reissuing four of his books; see Jay Leyda, The Melville Log (New York: Harcourt, Brace, 1951), 1:xxxiii; 2:804-06.

29 Stedman, 230.


32 For a good overall account of the Battle of the Currents, see Matthew Josephson, Edison: A Biography (New York: McGraw Hill, 1959), 344-50; somewhat different perspectives are offered in Robert Silverberg,
"Forty-eight hours after the news..." New York Times, 2 May 1890;

"The Abolition of Hanging"; the reference is to the workers’ leaders hanged in 1887 for the 1886 Haymarket bombing. For a discussion of relations between the Haymarket hangings and Billy Budd, see Robert K. Wallace, Billy Budd and the Haymarket Hangings, American Literature 47 (March 1975): 108–13.

"Gen. Curtis of St. Lawrence...," New York Times, 29 March 1890;

For some of the battle’s cultural ramifications, including its role in Twain’s A Connecticut Yankee in King Arthur’s Court, see H. Bruce Franklin, War Stars: The Superweapon and the American Imagination (New York: Oxford Univ. Press, 1989): 54–77.

“Lightning for Murder,” New York Tribune, 17 January 1888. The dogs and cats were pets gathered from the West Orange, New Jersey, neighborhood of Edison’s laboratory by schoolboys who were paid twenty-five cents for each animal; as a result, the local animal population was decimated (Josephson, 347).

For a detailed account of Brown’s machinations and the covert operations of Edison’s front organizations, see Hughes, 156–58.

After the death of editor Horace Greeley, the New York Tribune soon ceased to be one of the foremost voices in favor of abolishing capital punishment.


46 “Far Worse Than Hanging; Kemmler’s Death Proves an Awful Spectacle,” *New York Times*, 7 August 1890.


50 [Benjamin O. Flower], “Shall We Continue to Kill Our Fellowmen?” *The Arena*, January 1890, 243–44.


52 Note the echo of the narrator’s comment about those possessed by “depravity according to nature”: “Toward the accomplishment of an aim which in wantonness of atrocity would seem to partake of the insane, he will direct a cool judgment sagacious and sound” (133–34).

53 Mackey, *Voices*, xxx.

54 An 1889 article published in both England and the United States gave statistics showing that the homicide rate had dropped in each state as well as each European country that had abolished capital punishment; see Neuman, 524.

55 Pentecost, 175–76, italics mine.

56 Pentecost, 178.

57 James D. McCabe Jr., *Lights and Shadows of New York Life* (1872), as quoted in Friedman, 170.


59 Compare Stedman, 227: “Great and good men have been hanged, and it was said of one, that he ‘made the gallows glorious, like the Cross’” (the internal quotation is from Emerson’s eulogy of John Brown).

60 “Is It the Dynamo Again? Rushing through the Bill to Abolish Capital Punishment,” *New York Tribune*, 2 May 1890.


62 Vere is actually not following but violating the code under which he claims to be operating. This violation was first pointed out by C. B. Ives, “*Billy Budd* and the Articles of War,” *American Literature* 34 (March
1962): 31–39; it has been explored further by other critics, including Stanton Garner, “Fraud as Fact in Herman Melville’s Billy Budd,” San Jose Review 4 (May 1978): 82–105, and, most thoroughly, Weisberg, The Failure of the Word, 144–59. Vere’s modern defenders take the position that Melville was simply unfamiliar with British naval law, an argument rendered dubious by the detailed exploration of this law, based on thorough research, in White-Jacket; see Howard P. Vincent, The Tailoring of Melville’s White-Jacket (Evanston, Ill.: Northwestern Univ. Press, 1970), 103–06.


65 For an analysis of Billy Budd in the context of the end-of-the-century movement toward imperialism, see my “From Empire to Empire: Billy Budd, Sailor.”