

## LEMUEL SHAW AND HERMAN MELVILLE

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Between the closing years of the American Revolution and the coming of the Civil War, the grand outlines of an American system of law were drawn. Although institutions in every section of the country contributed to this creative effort, it was centered in the law schools of New England and even more so in its courts, of which the most important by far was the Supreme Judicial Court of the Commonwealth of Massachusetts. To an amazing degree, the influence exerted by this court was the achievement of a single law giver, Lemuel Shaw. During the three decades (1830 to 1860) in which he served as Chief Justice, Shaw wrote a staggering total of almost 2,200 opinions—only one of them a dissent—on topics touching on every aspect of jurisprudence excepting admiralty. If collected separately, his pronouncements would have filled twenty volumes of the *Massachusetts Reports*. A generation after his death, Holmes said of him in *The Common Law* that he was “the greatest magistrate which this country has produced.”<sup>1</sup>

As Leonard Levy observed thirty years ago in the introduction to his valuable book, *The Law of the Commonwealth and Chief Justice Shaw*, the extant materials on Shaw are “a source of disappointment to the would-be biographer,” for while his manuscript remains are bulky, “he left little to reveal his mind and character.”<sup>2</sup> As a result, Levy was unable to track the private development of Shaw’s ideas, unable to be sure about all the influences that bore upon him, unable to say what drove him to think creatively about so many different legal issues. These critically important questions haunt the opening pages of Levy’s book, and he eventually attempted to answer them in the only way he saw open to him, by setting Shaw’s opinions in a historical context.

It was a fitting historical coincidence, says Levy, that Shaw was nominated Chief Justice on the very day of the successful trial

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1. O.W. HOLMES, *THE COMMON LAW* 106 (1881).

2. L. LEVY, *THE LAW OF THE COMMONWEALTH AND CHIEF JUSTICE SHAW* 4 (1957).

run of the first American steam-powered locomotive.<sup>3</sup> In several areas of the North, but most dramatically in lower New England, the structure of a traditionally agrarian and commercial society was steadily being altered by the growth of manufacturing enterprises and factory towns. The advent of the railroad accelerated the process exponentially. That the emerging industrial order had a pressing need for the adjudication of a host of conflicts became vividly apparent to the Supreme Judicial Court of Massachusetts. It is against this backdrop that Levy would have us understand the Chief Justice's achievement. Unprecedented social and economic change gave Shaw, he explains, an unrivaled opportunity to mold the law.<sup>4</sup>

"The first puff of the engine on the iron road announced a revolution in the law of bailments and of common carriers," one of Shaw's associates on the court would recall, and it was the Chief Justice who propounded the key decisions.<sup>5</sup> To meet other new needs, Shaw introduced the idea of "eminent domain," established the rule of damages in cases of injury to property and persons, and laid the foundation for the new industrial concept of a "public utility." If he delighted workingmen by providing a legal foundation for trade unionism, he also protected businessmen by affirming the principle that an employer is not liable to his servant for injuries resulting from the carelessness of a fellow servant. And in one of many manifestations of his transcendent allegiance to the community at large, he enriched the concept of "Commonwealth," an ancient Puritan term which had been revived in the Massachusetts Constitution of 1780, by upholding the right of the legislature to interfere with the liberty and property of banks.

Thus, at the dawning of the modern industrial age, contentious interest groups called upon Shaw to make the law for a new America, and the challenge ignited his imagination. This explanation of how Shaw rose to greatness as a judge makes a lot of sense. Within limits, one must add. For an emphasis on socioeconomic circumstances casts no light on the question of why a mind which was so absorbed in the facts and figures of the world around him was equally fascinated by the dark world of mental derangement. To explain that, a different sort of context has to be established.

In 1838, another notable son of Massachusetts, a thirty-one-year-old physician named Isaac Ray, published a trail-blazing treatise on the medical jurisprudence of insanity. Five years later, the

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3. *Id.* at 11.

4. *Id.* at 22.

5. D. BOORSTIN, *THE AMERICANS, THE NATIONAL EXPERIENCE* 41 (1965).

Lord Justices of England would lay down the M'Naghten Rule, setting the standard for criminal responsibility as the defendant's ability to distinguish right from wrong.<sup>6</sup> Ray preemptively attacked the Justices' position by pointing out that disorders of the mind are not limited by any means to disturbances of the intellect. In cases of "moral insanity," Ray believed a man might be fully aware of the immorality of a possible course of action, yet be unable to repress his passions or to abstain from the acts of violence to which they impelled him.<sup>7</sup> Shaw not only read Ray's treatise with the utmost care, but made its outlook his own. In 1844, just a year after the M'Naghten Rule was published, the Chief Justice presided over a jury trial of a prisoner in the state penitentiary, Abner Rogers, Jr., who ordinarily knew right from wrong but had nevertheless killed the warden of the prison by stabbing him in the neck with a knife. At the end of the testimony, which had included presentations by Isaac Ray and two other psychiatric experts, Shaw posed the problem for the jury as follows:

If then it is proved, to the satisfaction of the jury, that the mind of the accused was in a diseased and unsound state, the question will be, whether the disease existed to so high a degree, that for a time being it overwhelmed the reason, conscience, and judgment, and whether the prisoner, in committing the homicide, acted from an irresistible and uncontrollable impulse: If so, then the act was not the act of a voluntary agent, but the involuntary act of the body, without the concurrence of a mind directing it.<sup>8</sup>

With those words, "irresistible and uncontrollable impulse," Shaw raised issues for American jurisprudence that were infinitely more complicated and problematic than the M'Naghten Rule.

In his further remarks to the jury, Shaw analyzed the particular form of insanity from which Rogers was allegedly suffering.

The character of the mental disease, relied upon to excuse the accused in this case, is partial insanity, consisting of melancholy, accompanied by delusion. The conduct may be in many respects regular, the mind acute, and the conduct apparently governed by the rules of propriety, and at the same time there may be insane delusion, by which the mind is perverted. The most common of these cases is that of *monomania*, when the mind broods over *one idea* and cannot be reasoned out of it.<sup>9</sup>

As to the contents of Rogers's delusion, Shaw disclosed his own views by means of a question. "Did the accused act under a false but sincere belief that the warden had a design to shut him up, and

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6. M'Naghten's Case, 8 Eng. Rep. 718 (1843).

7. I. RAY, A TREATISE ON THE MEDICAL JURISPRUDENCE OF INSANITY 131 (W. Overholser ed. 1962).

8. 8 T. METCALF, REPORT OF CASES ARGUED AND DETERMINED IN THE SUPREME JUDICIAL COURT OF MASSACHUSETTS 502 (1845).

9. *Id.*

under that pretext, destroy his life?" Monomaniacally convinced, Shaw in effect proposed, that the warden was plotting to confine him for life, Rogers retaliated with a lethal strike at the warden's neck.<sup>10</sup> After absorbing the Chief Justice's charge, the jury quickly acquitted Rogers on the grounds of insanity.

Shaw's remarkable openness to Isaac Ray's ideas, and the psychological sensitivity of his understanding of Rogers, cry out for explanation. Could it be that Shaw's own psyche was troubled, that he himself knew what it was like to contend with irrational ideas and violent impulses? Everything we know about him argues strongly to the contrary. According to Frederic Hathaway Chase, author of a 1918 biography of Shaw, the sight of the Chief Justice upon the bench was a palpable reminder of the majesty and dignity of the law. Although he was not tall, he had an impressively wide and powerful frame, and a voice that rumbled out of lower depths. His movements tended to be slow, as did his speech. So deliberate indeed could his utterance become that his children sometimes thought he had finished speaking when in truth he had merely paused. His large head and shaggy hair encouraged many of his contemporaries to compare him to Moses.<sup>11</sup> Observers also likened him to a bulldog, to a mountain crag, to the statues of Gog and Magog in the Guildhall in London, and to an ugly wooden idol, of the sort American Indians worshipped.<sup>12</sup> Throughout Massachusetts, he was revered, to use biographer Chase's word, as no other man of his time, save Daniel Webster. Senator George Frisbie Hoar remembered that the people of the Commonwealth considered him a demi-god, while in his native county of Barnstable he aroused thoughts of the Almighty Himself.<sup>13</sup>

Upon his courtroom he maintained a grip of iron. Moments of humor were not tolerated, nor were long-winded arguments, nor interruptions. Thus, when a lawyer had the temerity to interrupt the Chief Justice in order to propose an amendment, the imprudent fellow was withered from on high with the observation that "There is one amendment you can make without a motion, your *manners*, sir."<sup>14</sup> Another lawyer who was cautioned from the bench for speaking too long sought to justify his prolixity by saying, "We have quite a broad sea before us, Your Honor"—to which Shaw rejoined, "So much the more need of keeping close-hauled on the wind

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10. *Id.*

11. F. CHASE, LEMUEL SHAW: CHIEF JUSTICE 275-76 (1918).

12. *Id.* at 222; L. LEVY, *supra* note 2, at 26.

13. F. CHASE, *supra* note 10, at 289.

14. L. LEVY, *supra* note 2, at 26.

then."<sup>15</sup> Is it any wonder that Judge Emory Washburn once confessed that he would rather lay his head on a railroad track than argue a case before Shaw?<sup>16</sup>

There is no evidence that the inner life of this titanic authority figure was marked in any way by psychic unsteadiness. What is likely, though, is that Shaw's interest in unbalanced behavior derived from an intimate association across three generations with the family of Herman Melville.

The association began in 1803, a decade and a half before Herman's birth, when Shaw, a law student of twenty-two, fell in love with Nancy Melvill, the daughter of Major Thomas Melvill, Herman's grandfather-to-be. Thomas Melvill had been one of the "Mohawks" of 1773 who flavored the waters of Boston Harbor with East India Company tea. Afterwards, he had fought with the Continental Army, attaining the rank of major. At the end of the Revolution George Washington appointed him Collector of the Port of Boston, a sinecure he would hold for forty years. As two of the major's eccentricities demonstrated, there were disorders in his personality. The first eccentricity was a passion for attending fires, which grew upon him "like gambling," it was said.<sup>17</sup> Ultimately, he died from exposure and fatigue after attending a fire when he was in his eighties. According to modern-day clinicians, chronic personal frustrations, psychosexual dysfunction, resentment of authority figures, and alcoholism are among the features often associated with pyromania. "Tea Party" Melvill's other eccentricity involved unusual clothing. Despite drastic changes in fashion, he insisted on wearing the cocked hat and knee breeches of Revolutionary America. In time, his aspect in the crowded streets would remind the Autocrat of the Breakfast Table, Oliver Wendell Holmes, Sr., of a withered leaf holding to its stem through the storms of autumn and winter. In a poem entitled "The Last Leaf," the Autocrat would mischievously write,

I know it is a sin  
For me to sit and grin  
At him here;  
But the old three-cornered hat  
And the breeches and all that,  
Are so queer!<sup>18</sup>

Lemuel Shaw's romance with the daughter of this peculiar gen-

15. *Id.* at 26-27.

16. 2 G. HOAR, AUTOBIOGRAPHY OF SEVENTY YEARS 388-89 (1903).

17. N. ARVIN, HERMAN MELVILLE 10 (1950).

18. F. CHASE, *supra* note 10, at 46 (quoting O.H. Holmes, The Last Leaf (1830)).

tleman resulted in an engagement of marriage, but before the wedding could be arranged, Nancy Melville fell gravely ill and died. For the rest of his life, Shaw carefully preserved two notes he had received from her.

Nancy Melvill's death did not terminate Shaw's involvement with her family. With Allan Melvill, one of Nancy's brothers and the father-to-be of Herman, he forged an enduringly close friendship. As it had in his father's case, special clothing set off vibrations in Allan's delicately poised mind, and out of this sensitivity he rapidly built a prosperous business as a merchant of French silks and taffetas and Leghorn hats. Boyed by success, he frequently indulged his taste for foreign travel and rented ever larger houses in New York City in which to accommodate his growing family. (All told, there were eight offspring for whom he was responsible, not counting the child he sired out of wedlock with another woman.)

Yet for all of Allan Melvill's prosperity, his business was shaky. He had borrowed heavily from his father and from the Gansevoort family of Albany, New York, the patrician clan to which his wife, Maria, belonged. By 1830, he was so overextended financially that he went bankrupt and had to move his family to Albany, where he went into the fur business on more borrowed money from the Gansevoorts. In the dead of a cruelly cold winter, the harassed businessman felt compelled to pay a visit to New York City; on his return, he had to make his way on foot across the frozen Hudson River in sub-zero weather. Despite the ill effects he suffered from this experience, he refused to stop working. Only when his health worsened did he finally take to his bed, but he was too wrought up to sleep. Suddenly, his mind lost its moorings. "Hope is no longer permitted of his recovery," his brother, Thomas Melvill, Jr., reported to Lemuel Shaw, "and indeed,—oh, how hard for a brother to say!—I *ought not* to hope for it,—for, in all human probability—he would live, *a Maniac!*"<sup>19</sup> Within two weeks, the mad invalid was dead. Thenceforward, the gifted Herman, a boy of twelve at the time, would look upon Judge Shaw as a surrogate father. And in 1847, at the age of twenty-seven, he would bind Shaw even more tightly to him by marrying the Chief Justice's daughter, Elizabeth.

Rumors that his wife and family feared for Herman Melville's sanity all date from the period after 1851, the year *Moby-Dick* appeared, as do the tales of his irascibility as a parent, his excessive drinking, and his bullying of Elizabeth, who in her unhappiness

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19. L. HOWARD, HERMAN MELVILLE: A BIOGRAPHY 7 (1951).

would ultimately consider separating from him.<sup>20</sup> By 1856, Chief Justice Shaw had become so alarmed by Melville's state of mind that he gave him the money to take an extended trip to Europe and the Near East. Yet if his son-in-law's mid-life crisis alarmed the judge, he could not have been altogether surprised by it. In the 1830s, Shaw had surely not been unaware of the adolescent Herman's violent mood swings, or of his ambivalent attitude, at once resentful and worshipful, toward his dead father, or of the searing doubts he had about his mother's affection that would someday lead him to assert that she had hated him. Shaw would have known, too, of the boy's bitter reaction to his family's swift plunge into poverty and to the premature termination of his schooling that resulted from it.

Out of a desperate need to enliven a drab and depressing existence, Melville first went to sea in the spring of 1839, two months before his twentieth birthday, as a sailor on the *St. Lawrence*, bound for Liverpool. The story of this unexpectedly harsh initiation into life before the mast was fictionalized by Melville ten years later in the novel *Redburn*. Not only were most of the young sailor's shipmates shockingly coarse, but one of them, a squint-eyed desperado named Robert Jackson, conceived a monomaniacal hatred for him. If the novel can be believed, the psychologically unbalanced Jackson was suffering as well from a fatal physical disease, and hated Melville out of envy of his health and handsomeness.

A chief mate aboard the *St. Lawrence* was a certain Joseph Shaw. Whether he was a blood relative of the Chief Justice, and whether the Chief Justice played a role in securing a place for Melville aboard the vessel, are unknown. What is more certain is that after his return Melville talked with Shaw about his experiences, thereby deepening Shaw's sense of the mysteries of insanity.

Equally interesting is the thought that fruitful influence in the Melville-Shaw relationship was not just a one-way stream. Just as it is plausible to suppose that knowing Herman Melville enriched the mind and deepened the sympathies of a famous judge, so there are reasons for thinking that knowing Shaw had a profound impact on the burgeoning imagination of a great writer, beginning with his very first book, *Typee*, a partially fictionalized account of his adventures in the Marquesas Islands in the South Pacific in the summer of 1842.

Melville had made his way to the South Pacific as a common sailor aboard a whaling vessel, but when the vessel reached the is-

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20. A COMPANION TO MELVILLE STUDIES 23, 25 (J. Bryand ed. 1986); E. METCALF, HERMAN MELVILLE: CYCLE AND EPICYCLE 159, 215 (1953).

land of Nukuheva in the Marquesas, he and another young man named Toby jumped ship and fled into the mountains. On the floor of a beautiful valley they encountered a tribe of supposed cannibals, the Typees, but were treated hospitably. Toby was even permitted to leave the valley in order to seek medical assistance for Melville, who had developed some obscure trouble in one of his legs. When Toby did not return, Melville stayed on for the better part of a month, until he made contact with sailors from an Australian whaleship.

He reached home in October of 1844, the same year in which Lemuel Shaw presided over the murder trial of Abner Rogers. Within two months he was hard at work on *Typee*. Writing at top speed, the twenty-five-year-old author finished his book the following summer. The dedication page read, "To Lemuel Shaw, Chief Justice of the Commonwealth of Massachusetts, This Little Work is Affectionately Inscribed by the Author." On one level, the dedication was in all likelihood a taunt. For at the heart of *Typee* is a vision of a society in which laws and law givers are unnecessary, of a primitive paradise unshadowed by the repressions, inequities, and other discontents of civilization. In the company of a spectacular-looking native girl, Fayaway, the narrator of the book loafs, bathes, eats, and cavorts with an ease that anticipates Gauguin. Food is absurdly abundant. Work is virtually nonexistent. Polygamous mating is, for the women at least, the norm.

Yet there is evil in paradise. The narrator's accidental discovery of some severed heads constitutes horrifying proof of the Typees' cannibalism. Moreover, he finds that he is as much the Typees' captive as he is their guest. In the book (although not in actuality) paradise turns out to be a prison.

One of Melville's characteristics, both as a man and as a writer, was his ability to identify with mentally unbalanced characters. In their thoughts and actions he apparently could see a warped reflection of himself. Home from the sea, he heard Lemuel Shaw speak about Abner Rogers. Did Rogers's fear of lifelong confinement and his murderous strike at the warden's neck inspire the completely fictional climax of Melville's first book? Almost certainly it did. When the narrator of *Typee* learns that a whaleship has dropped anchor in the bay at Nukuheva, he hastens to the beach and clambers aboard a small boat manned by five rowers, who at once set off for the ship as fast as they can. Determined to prevent the escape, an athletically powerful Typeean chief with a tomahawk clenched between his teeth leads a band of swimmers in pursuit of the boat. Finally, the chief overtakes it. "[I]n another instant," the narrator



writes, "he would have seized one of the oars. Even at the moment I felt horror at the act I was about to commit; but it was no time for pity or compunction, and with a true aim, and exerting all my strength, I dashed the boat-hook at him. It struck him just below the throat . . . ."21

Beneath the beautiful surfaces of Polynesian life, Melville's narrator uncovered the spoor of darkly murderous forces. Such forces, however, also lurked within himself. In a richly paradoxical denouement, the narrator gave way to violent emotions and killed a man—but did so in order to submit his life anew to an emotionally repressive civilization. If, on one level, the dedication of Melville's first book to Shaw was a taunt, on another it was a heartfelt tribute to the rule of law as the only viable way for a civilized person to live.

Lemuel Shaw and the values he stood for bulked larger than ever in Melville's imagination in the five years between the publication of *Typee* and the completion of *Moby-Dick*. Many different experiences entered into the making of his masterpiece, but few had a more fundamental influence on the novel than Melville's anxiety about the intensifying slavery dispute, a dispute in which Chief Justice Shaw was playing an increasingly significant role. As in the great tragedies of Shakespeare, which Melville valued above all other works of literature, *Moby-Dick* contains a political vision, and Shaw helped to shape it.

I have said that Shaw was revered as a god; in certain quarters, though, he also came to be likened to Pontius Pilate.<sup>22</sup> His court's jurisdiction over cases involving fugitive slaves inevitably exposed him to a vicious cross-fire between legal representatives of southern slave-owners and equally angry northern abolitionists. In the opinion of many prominent Americans who were attempting to steer a middle course, the fabric of American society was being rent one way and torn the other by madmen. Like the "monomaniacs" of the South, exclaimed Senator Thomas Hart Benton of Missouri, the "fanatics" of the North have made slavery their obsession; these two factions, he continued, were "the twin blades of the shears that together would cut up the Union."<sup>23</sup> The extremists in both regions are "monomaniacs . . . in hot pursuit of one solitary idea," charged Representative Charles Ezra Clarke of New York.<sup>24</sup> A writer for

21. H. MELVILLE, *Typee*, in 1 THE WRITINGS OF HERMAN MELVILLE 252 (Northwestern-Newberry ed. 1968).

22. L. LEVY, *supra* note 2, at 82.

23. Quoted in M. ROGIN, *SUBVERSIVE GENEALOGY: THE POLITICS AND ART OF HERMAN MELVILLE* 130 (1983).

24. Quoted in *id.* at 136.

the *Southern Literary Messenger* summed up the darkening mood of his southern compatriots by describing a man "possessed with an inveterate monomania, which presents to his diseased mind all objects under one image," a man "haunted by a spectre, whose shadowy form darkens and discolors all his perceptions."<sup>25</sup> Even Lemuel Shaw's great friend and political ally, Daniel Webster, decried the abolitionists of the North as "insane."<sup>26</sup> They would strike down the sun itself, Webster added on another occasion, by way of dramatizing the hubristic extremism of their moral pride.<sup>27</sup>

The conciliationists' use of the language of psychological illness was not just a rhetorical tactic, for they firmly believed that inflamed responses to the fugitive-slave situation were a form of political madness. Perhaps a thousand fugitives a year were slipping into the free states; in relation to the total slave population, the number was microscopic. Nevertheless, the southern political majority, including a huge preponderance of the planters who had never had a slave successfully escape, felt aggrieved. Indeed, they felt more than aggrieved; in an outburst of mass paranoia, they became convinced that a northern conspiracy was afoot to destroy them. If they put pressure on the courts of the North every time a Negro got away, it was to test whether northern intentions were as hostile as they had feared. Meanwhile abolitionists applied counter-pressure on those courts, out of a wish to thwart what they believed was a southern conspiracy to corrupt the democratic ideals of all of America.

Personally, the Chief Justice abhorred the South's "peculiar institution." Furthermore, he considered it incumbent upon the slave states to provide for emancipation as speedily as their internal safety would permit. At the same time, Shaw shared with Daniel Webster a particularly fervent love, an over-arching love, for the Union. If the federal government were to insist on a sudden and general emancipation in states where slavery had long prevailed, the results, he felt, would be calamitous for southern whites and blacks alike, and the secession of the South would become inevitable. "The principles of self-defense, therefore," Shaw wrote in the *North American Review*, "and powerful considerations of national safety, constituting a case of political and moral necessity, require at least the continuance of this great evil."<sup>28</sup>

As a jurist, Shaw did his best to avoid enforcing the Fugitive

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25. Quoted in Heimert, *Moby-Dick and American Political Symbolism*, 15 AM. Q. 500, 517 (1963).

26. F. CHASE, *supra* note 10, at 173.

27. M. ROGIN, *supra* note 22, at 144.

28. L. LEVY, *supra* note 2, at 60.

Slave Law, doing so only when the facts of a case left him no choice. Nevertheless, the abolitionists looked upon him as an enemy. The first terrible indication of their distrust of him made newspaper headlines in 1836. Two Negro women were arrested aboard a ship in Boston harbor on the assertion of a slave catcher that they were the property of a wealthy Baltimorean. Shaw was clearly disposed to discharge them, because they held documents which certified that they were not slaves. Thus, he granted a writ of habeas corpus directing that they be set free from detention pending a full hearing; moreover, he denied the slave catcher's request for a postponement so that proof could be brought from Baltimore that the women were indeed the property of the plaintiff. Yet when the slave catcher arose in the courtroom and began to invoke the provisions of the Fugitive Slave Law, the spectators in the room did not trust Shaw sufficiently to wait for his response. Someone cried, "Take them!" Other spectators began chanting, "Go—go!" Within seconds, chaos reigned. A mob of whites and Negroes leapt over the rail and seized the women. Shaw's outraged command, "Stop, stop," was drowned out by the thunderous yell, "Don't stop." The solitary police officer in the room was almost choked to death by an assailant. The mob hustled the women into Court Square and pushed them into a waiting carriage. The driver whipped his horses into a gallop. The women were never seen again by the authorities, and not a single witness came forward to identify the rioters. An indignant letter writer who signed himself "A Friend of the Union" proclaimed a few days later in a Boston newspaper that if a few fanatical whites and their Negro allies were to be allowed to flout the authority of the highest tribunals in the land, "then adieu to its peace and union."<sup>29</sup>

A decade and a half later, the moment of that adieu seemed to have arrived. As the 1840s came to a close, the nation confronted a series of agonizing questions. Should the land acquired in the Mexican War be organized as territories and states which permitted slavery, or which outlawed it? Should trading in slaves be tolerated any longer in the District of Columbia, the nation's capital? What, if anything, should the Congress do about the Fugitive Slave Law, which had been on the books without alteration since 1793?

Henry Clay of Kentucky, one of the three giants of the antebellum U.S. Senate, put together a grand compromise which offered answers to all of these questions. In a speech to his colleagues in January 1850, Clay warned that the alternative to compromise was

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29. *Id.* at 74-76.

civil war, "furious, bloody, implacable, exterminating."<sup>30</sup> To the second of the Senate's giants, John C. Calhoun of South Carolina, Clay's compromise was unacceptable, even though it offered concessions to the South, because it failed to provide permanent machinery for protecting minority rights under majority rule. But the third of the giants, Daniel Webster of Massachusetts, put aside his long rivalry with Clay and fully supported the compromise as the only way to save the ship of state. On March 7, 1850, he rose in the Senate to make the most memorable speech of his long oratorical life. "Mr. President," he intoned in his organ-like voice, "I wish to speak today, not as a Massachusetts man, nor as a Northern man, but as an American. . . . I speak for the preservation of the Union. 'Hear me for my cause.'"<sup>31</sup>

All his political days, Daniel Webster had trailed clouds of glory, at least in the eyes of friendly beholders. As in the case of Lemuel Shaw, awestruck admirers reached for the most tremendous figures of speech in which to describe him. Not only was he like the granite hills of his native New Hampshire, in particular Mount Monadnock, but he embodied the Union. He was titanic. He was colossal. He was continental. He spouted like a whale and roared like a leviathan. His massive brow reminded observers of the dome of St. Peter's in Rome.<sup>32</sup> Yet his Seventh-of-March speech not only caused him to be vilified by many of his Massachusetts constituents, but it did not suffice to save Clay's omnibus bill from defeat.

Nevertheless, the fight to preserve the Union from civil war went on. A younger Senator, Stephen A. Douglas of Illinois, assumed the lead of the compromise forces. By September of 1850, largely thanks to his adroitness, legislation had passed both houses of Congress, and President Fillmore wasted no time in signing the Compromise of 1850, as the legislation was called. One of its sops to the South, however, was a tougher, more effective Fugitive Slave Law. As a result, tensions soon mounted higher than ever in the states of the North, especially in Massachusetts. Before too long, all eyes were once again fixed on Lemuel Shaw's courtroom.

In February 1851, an alleged runaway named Shadrach was rescued by fifteen Negroes from a federal courtroom in Boston, after he failed to receive legal satisfaction in Shaw's. The episode served to remind the nation that no fugitive slave had ever been returned to the South from the Massachusetts capital. Was the government of the city prepared, or not, to provide guarantees that the

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30. Quoted in D. DONALD, *LIBERTY AND UNION* 42 (1978).

31. *Id.* at 44; M. ROGIN, *supra* note 22, at 145.

32. M. ROGIN, *supra* note 22, at 144.

law of the land would be enforced there? In the fire-eating South, the monomaniacal South, the spirit of secessionism was feeding on the conviction that the answer to that question was no.

Two months later, on April 3, 1851, a Negro named Thomas Sims was detained in Boston on charges of being a fugitive from a plantation in Georgia. Daniel Webster personally supervised the arrangements for his court appearance. Five hundred policemen were brought into Court Square, and chains and ropes were stretched along the sidewalks so as to keep the huge and hostile crowd that assembled every day from approaching the Court House. To get into the building, the lawyers, reporters, city officials, and judges who had entry permits all had to stoop beneath those chains. The sight of Judge Shaw bending his massive head to do so was regarded by the conciliationists as a symbol of Massachusetts's willingness to be bound by the law—but was interpreted by the abolitionists as a sign that the Chief Justice, as well as millions of innocent Negroes, had been fettered by a morally squalid slavocracy.

The *Sims* case was first brought before a special commissioner, whose appointment had been stipulated in the new Fugitive Slave Law. The commissioner rejected the contention of Sims's lawyers that he was actually a free man, not a slave. The lawyers then petitioned Chief Justice Shaw and his colleagues for a writ of habeas corpus, but the petition was unanimously denied. The court's opinion, written by Shaw, sustained, for the first time anywhere, the constitutionality of the Fugitive Slave Act of 1850. For the sake of the Union, the North had given the South its pound of flesh, and in a Massachusetts court. The moral dilemmas of a half-free, half-slave society had never been more agonizingly apparent.

Daniel Webster oversaw the arrangements for the return of Sims to the South, and he made speeches in praise of Shaw's opinion, exultantly declaring that the abolitionists and secessionists alike had been overwhelmed by the power of the Union.<sup>33</sup> Many of the nation's newspapers likewise saluted the power of federal authority, as represented by Lemuel Shaw. The Union is like a whale, trumpeted the *New York Herald*.<sup>34</sup>

Other papers, though, denounced Shaw's opinion as a national shame. Poets and ministers also raised voices of protest, often in biblical terms. Thus, the liberal minister, Theodore Parker, attacked the *Sims* ruling on April 10, 1851, by preaching in Boston against the biblical King Ahab, who worshipped the false god Baal

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33. *Id.* at 143.

34. *Id.* at 142.

and "made a law that all the Hebrews should serve Baal." The prophet Elijah had forthwith declared, however, that if the children of Israel bowed down to Baal, they would betray their fidelity to the Lord God Jehovah. Lemuel Shaw was King Ahab. The people of America were the children of Israel. And Theodore Parker was the prophet Elijah. This is what the allegory came to, and it posed a terrible question: Which law should the people of the United States obey, the law of man or the law of God? Parker's answer was, the law of God, and if American society should be destroyed in the process, then the fault would lie with the immoral South and its northern lackeys.<sup>35</sup>

Throughout this period of sporadic hope and onrushing darkness, Herman Melville not only immersed himself in every detail of the slavery quarrel, but he also drew progressively closer to Judge Shaw. In 1847, he married Shaw's daughter. Two years later, in the spring of 1849, he lived in Shaw's house on Beacon Hill for two months, during which time he probably gave his host an advance copy of the allegorical novel called *Mardi*, wherein Melville portrayed recognizable counterparts to John C. Calhoun, Daniel Webster, and other important political figures. In an especially eloquent passage in the book, the author warned America that by expanding at the expense of Mexico it might well be preparing to go the way of Rome and other mighty empires of the past. The warning expressed Shaw's views as well as Melville's about the fearful consequences that might flow from adding another geographical dimension to the sectional struggle over slavery.

During the winter of 1849-1850, the attention of every politically aware American, including Melville, was gripped by the great Senate debate on Henry Clay's compromise. Immediately prior to Daniel Webster's Seventh-of-March speech, Melville reached an equally dramatic moment in his own career; at his home in New York City, he set down the first words of *Moby-Dick*. The following summer, he continued to work on the novel in Pittsfield, Massachusetts. In the fall, he decided to make his permanent home in Pittsfield and bought a house there, with money advanced by Judge Shaw. He had expected that by the time he and his family moved in the novel would be finished. But in fact it was far from done. Throughout the fall and ensuing winter and spring as well—across the whole time span, in other words, of the final passage of the Compromise of 1850, the violent rescue of Shadrach, and the ruling by Shaw in the *Sims* case—he continued his labors. In July 1851, he at last completed them.

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35. T. Parker, *The Chief Sins of the People*, in 9 WORKS, 25-26 (1907-1913).

The protagonist of the story, as everyone knows, is a one-legged sea captain called Ahab. But unlike Theodore Parker, Melville did not have any parallelism to Judge Shaw in mind when he plucked that awful name from the Old Testament. The worship of a false god was not the biblical Ahab's only sin; he also coveted Naboth's vineyard. For Melville, it was the advocates of unlimited western expansionism who were the Ahabs of America.

That Melville was not thinking of Judge Shaw when he conceived of Captain Ahab is evident in other ways as well. Captain Ahab is a monomaniac whose worship of fire is no less pathological than the fear and rage he feels about the spheres of life lying beyond the walls of appearance. All about him in the universe, he feels a sense of threat; in an outburst of egocentric defiance, he declares that he would strike the sun if it insulted him. Allan Melville's tragic death, and the fire-adoring Thomas Melville's demise, were among the memories that lay behind the portrayal of Captain Ahab; but no less important than these personal items was Melville's consciousness of the language of psychological illness in which the conciliationists in the slavery crisis had persistently condemned the moral absolutists of the North and the fire-eaters of the South.

If one goes in search of Lemuel Shaw in *Moby-Dick*, one will find him embodied, along with Daniel Webster, in the great white whale. For years, the admirers of Shaw and Webster had attempted to measure their grandeur through metaphors and analogies drawn from American nature, from architecture, and from religion. In *Moby-Dick* the grandeur of whales is similarly affirmed. The image of the dome of St. Peter's in Rome is invoked in a description of their vastness; their bodily appearance is compared to rocks on the New England coast; and a whole array of gods is called upon to convey the special sublimity of the whale that is white. "A gentle joyousness—a mighty mildness of repose in swiftness, invested the gliding whale. Not the white bull Jupiter swimming away with ravished Europa clinging to his graceful horns; his lovely, leering eyes sideways intent upon the maid, with smooth bewitching fleetness, rippling straight for the nuptial bower in Crete; not Jove, not that great majesty Supreme! did surpass the glorified White Whale as he so divinely swam."<sup>36</sup>

A mighty mildness of repose. But within that repose, Melville adds, lay a "vesture of tornadoes."<sup>37</sup> Something approaching that degree of power was an attribute of all leviathans of the deep, which is why the New York editorialist, in saluting Shaw's enforcement of

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36. H. MELVILLE, *MOBY-DICK* 783 (Random House ed. 1930).

37. *Id.*

federal law in the *Sims* case, proclaimed that the Union was a whale. Nevertheless, *Moby-Dick's* power is one-of-a-kind, like his color—which is why we can be virtually certain that Melville, from the beginning, intended to portray him as unconquerable. One-legged Ahab's quest for revenge against the mighty creature which had dismembered him on an earlier voyage would inevitably be defeated.

Yet the decision to turn Ahab's defeat into a larger, more comprehensive disaster, in which the white whale would not only destroy Ahab but sink his ship, the *Pequod*, and drown all but one of his men as well, may not have been reached until Melville was on the very brink of composing the novel's final scenes. The facts we can be certain of are these: during the April weeks just after the *Sims* ruling, while Daniel Webster and other admirers of Lemuel Shaw were congratulating him for having smashed the monomaniacs, North and South, with one blow, Shaw gave his son-in-law a book about another sort of smashing. It was a copy of Owen Chase's factual account of his experiences as a first mate aboard the whaleship *Essex*, an account which had climaxed with the sinking of the *Essex* by a sperm whale.<sup>38</sup> Melville had first become acquainted with this story during his days as a sailor in the South Pacific. But when Judge Shaw reminded him of it, he at last saw how he could fashion a cataclysm in *Moby-Dick*.

In his dreaming imagination, Melville conflated a vision of the god-like Chief Justice of Massachusetts with the vision of a god-like whale. This is not to say, though, that his novel expresses a political optimism akin to Daniel Webster's belief in the wake of the *Sims* case: "A long and violent convulsion of elements has just passed away, and the heavens, the skies, smile upon us."<sup>39</sup> To the contrary, the final meaning of *Moby-Dick* is dark. For if a leviathan can be said to symbolize the might of the Union, it is also true that the *Pequod* is a ship of state. As we are pointedly told, the ship is constructed of American wood, while the men aboard her, whom Melville describes as federated along one keel, are thirty in number, even as there were thirty states in the Union. And if the captain of the ship is heedless of the common good, the same could be said of many American leaders of the day.

Because Melville, like Shaw, adored the Union, one might wonder why, in *Moby-Dick*, he did not simply deplore the sort of psychological extremism that threatened to destroy the nation. But

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38. 4 W. Cowen, *Melville's Marginalia* 244-45 (1965) (unpublished Ph.D. dissertation, Harvard University).

39. M. ROGIN, *supra* note 22, at 144.



his imaginative sympathy with madmen was too deep for that. If he portrayed the one-legged captain of the *Pequod* as a monomaniac, he also saluted him as a noble figure who cannot help himself. The tragedy of Captain Ahab is that his psychic history has predestinated him, it has precluded the possibility of his turning away from a suicidal course. In the final chapter of *Moby-Dick*, the whale rams the *Pequod*; the *Pequod* sinks; the whale disappears; "and the great shroud of the sea," Melville sonorously says, "rolled on as it rolled five thousand years ago."<sup>40</sup> Into that apocalyptic scene the thirty-one-year-old novelist poured all his feelings of dread about the coming of a bloody civil war.

It was a harsh prophecy that Melville preached to his America, but not to have done so, he felt, would have been a sin against God. In the ninth chapter of *Moby-Dick*, that tortured man of God, Father Mapple, preaches a sermon about Jonah. Jonah was "an anointed pilot-prophet" and a "speaker of true things," Father Mapple relates, who was "bidden by the Lord to sound those unwelcome truths in the ears of a wicked Nineveh."<sup>41</sup> But Jonah, "appalled at the hostility he should raise, fled from his mission, and sought to escape his duty and his God by taking ship at Joppa."<sup>42</sup> "Woe to him," Melville cries in Mapple's voice, "who seeks to pour oil upon the waters when God has brewed them into a gale!"<sup>43</sup> Instead of oil, tragic times need honesty. The climactic words of the Mapple sermon resound with Melville's resolve: "Delight is to him, who gives no quarter in the truth, and kills, burns, and destroys all sin though he pluck it out from under the robes of Senators and Judges."<sup>44</sup> Even from under the robes, Melville might have written, of morally compromising eminences like Senator Webster and Judge Shaw.

Shaw died in 1861, Melville not until 1891. Yet Melville, no less than Shaw, was a man of the 1840s and 1850s, and the final proof of this is *Billy Budd*, the novella he wrote in the last years of his life. For in its concerns it is very much an antebellum work.

The moral dilemma confronting the leading character, Captain Vere, is that he must decide between his sworn obligations as a war-time officer in the British Royal Navy and the magnetic pull of his natural instincts. Just as antebellum America had to choose between the conflicting claims of the head and the heart, of civilization and nature, so Captain Vere, whose duty it is to uphold the

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40. H. MELVILLE, *supra* note 36, at 822.

41. *Id.* at 67.

42. *Id.* at 67-68.

43. *Id.* at 68.

44. *Id.* at 69.

law, has to deal with a capital crime committed before his eyes by a stammering young sailor, Billy Budd, to whom he is emotionally drawn.

Handsome Billy is a natural innocent, utterly unfamiliar with evil, but passionate withal. Vere's first mate, Claggart, Billy's nemesis, is a man of nature as well—in his case, of depraved nature, for his sexual longings are unspeakable. Thus the eventually bloody conflict between Billy and Claggart is so deeply rooted in the structure of their natural beings that the rules of civilization cannot touch it. Falsely accused of treasonous activity by the poisonously jealous Claggart, Billy is suffused with a rage he cannot articulate; wherefore, he lashes out with his arm, and the force of the blow he lands is so powerful that his accuser falls dead. But now, Billy's life, too, has been jeopardized, for he has murdered an officer under whom he has served. Civilized considerations of the common good dictate how Captain Vere must decide, despite his personal feelings for Billy. In Vere's schizoid agony the aging Melville forgivingly recalled the ordeal of Lemuel Shaw during the slavery crisis.