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Bryan Schwartz

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Abstract
In this article, Herman Melville's short story, "Bartleby", is a springboard to discussing different aspects of interpretation in literature and law. "Semantic pluralism" in literature may mean that a work is well-crafted; in law, a multitude of possible meanings may allow a decision-maker to impose political choices undemocratically. The author illustrates this thesis by offering different interpretations of "Bartleby" and by contrasting these to the process of "legal" interpretation. The author concludes by relating the interpretations of "Bartleby" with the nature of lawyers' work.
A MEDITATION ON "BARTLEBY"

BY BRYAN SCHWARTZ*

In this article, Herman Melville's short story, "Bartleby", is a springboard to discussing different aspects of interpretation in literature and law. "Semantic pluralism" in literature may mean that a work is well-crafted; in law, a multitude of possible meanings may allow a decision-maker to impose political choices undemocratically. The author illustrates this thesis by offering different interpretations of "Bartleby" and by contrasting these to the process of "legal" interpretation. The author concludes by relating the interpretations of "Bartleby" with the nature of lawyers' work.

I. INTRODUCTION

"Bartleby, the Scrivener"¹ is the first piece Herman Melville published after Moby Dick.² Moby Dick is a wild sprawling adventure story about a man possessed by a will to go above and beyond. "Bartleby" is a tightly structured miniature about a man resigned to sinking into oblivion. It is a story that has fascinated literary critics. For every word of "Bartleby", there must be a thousand words of published commentary. (For every word of Bartleby, there must be a hundred-fold that.) My meditation on "Bartleby" has two major aspects. I will first discuss the theory of literary interpretation and then directly attempt an interpretation of "Bartleby". In the theoretical part, "Bartleby" will be used to illustrate that it is in the nature of great literature to have many meanings.

Semantic pluralism is part of what makes great literature great. There is no need to single out one dimension of interpretation as the best one; rather, the many different possibilities keep a work ever fresh; the interplay of different interpretive possibilities adds to the fascination of the work; the collective enterprise of different critics in producing different interpretations can be enjoyed by all, since no one can think of all the possibilities. I want to contrast this with legal interpretation, where the raw materials also permit a wide range of interpret-
tions. Academic critics revel in the multiple meanings of the legal materials. They provide us with the opportunity to exercise imagination and craft in devising novel interpretations. The negative implications of semantic pluralism in the law should not be overlooked. It opens the way for decision-makers to impose their own preferences undemocratically. Ordinary citizens may not be able to conform their conduct to the law if the law is uncertain. In order to limit the range of interpretations that decision-makers may choose among, the legal system includes rules which limit the interpretive sources that can be relied upon.

Many articles have been published recently on the “law and literature” approach to legal studies. Some discussion focuses on whether legal and literary meaning can be extracted from texts through the use of an objectively correct interpretive methodology, or whether meaning is imposed on the text according to the subjective tastes of readers or communities of readers. To oversimplify my own position, it is that interpreters create meaning for themselves by their subjective intellectual and emotional response to more-or-less uncontroversial things, like words, simple historical happenings, biographical data and so on. But the more-or-less uncontroversial facts will generally exert a strong influence on most interpreters. It may be that someone can find in the ingredients list on the side of a cereal package an important insight about despair in the face of the annihilation that awaits all mortals. But the words in “Bartleby” are more likely to have these effects on most readers. A great work of art is crafted to stimulate the apprehension of many meanings for most readers. If the work is well crafted, the shared culture or just plain shared humanity of the work’s readership will result in considerable agreement on many of its dimensions of meaning. I do not believe that readers of literature generally can or

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should determine the meaning of the work by reference to the values of an ideologically homogeneous community. Readers should instead adapt, combine and add to the insights of other interpreters. It is unnecessarily limiting to confine yourself to one school of thought. If you do so in an attempt to find a comforting type of objectivity, that of inter-subjective agreement, you will likely be somewhat disappointed. Unless you happen to join a cult that slavishly adheres to the words of a leader of unprecedented consistency, you will find considerable variance in the approaches of different participants in the same school of thought. To that extent, you still have to produce your own personal synthesis. The subjectivity of interpretive standards does not mean that the interpreters can do no more that report an unanalyzable response. Skillful interpreters can articulate their interpretive standards, explaining their merits, and carefully demonstrate how they apply to a particular work.

II. A SYNOPSIS OF “BARTLEBY”

“Bartleby” is told in the first person by an elderly commercial lawyer: “one of those unambitious lawyers . . . who do[es] a snug business among rich men’s bonds, and mortgages and title deeds.” His office is populated by three Dickensian bit players. Working as scriveners are the elderly, blustery, erratic Turkey and the young, ambitious, irritable, part-time ward politician, Nippers. A twelve-year old boy, Ginger Nut, has been sent to the office by his working class father to be a student-at-law and errand boy.

One day a sepulchral character arrives at the door in response to an employment advertisement for a scrivener. His name is Bartleby. The lawyer gives him a desk beyond a green folding screen and in front of an office window “which originally had afforded a lateral view of certain grimy back-yards and bricks, but which, owing to subsequent erections, commanded at present no view at all, although it gave some light.”

At first, Bartleby is exceptionally productive. But there are hints of trouble. On the third day of his employment, Bartleby is asked to examine a document. He says he “would prefer not to.” He does not elaborate. A few days later, the lawyer asks Bartleby to help him and the other scriveners check some documents in quadruplicate. Bartleby

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4 Supra note 1, at 40.
5 Id. at 46.
6 Id. at 47.
“prefers not to.” Later on, he “prefers not” to go to the post office. He “prefers not” to summon Nippers. The industrious copying of documents by Bartleby does, however, continue. It is interrupted only by the “dead wall reveries,” in which Bartleby stands silently looking through his window. One Sunday, the lawyer decides to go for a walk through his office chamber, and discovers that Bartleby lives there outside of working hours. The lawyer feels, for the first time in his life, “a feeling of overpowering, stinging melancholy” and “sincerest pity” for Bartleby.

He decides to relieve himself of these burdens by dismissing Bartleby, with full pay for services rendered and twenty dollars on top of that. When he confronts Bartleby the next day, the lawyer asks Bartleby where he was born, anything about himself. Bartleby “prefers not” to say. He “prefers not” to say why he will not say. The day after, the lawyer is still resolved to dismiss Bartleby. Bartleby announces that he would “prefer not” to do any more copying. When asked why, Bartleby says, “Do you not see the reason for yourself?” Thinking that perhaps it is failing eyesight that is troubling Bartleby, the lawyer suggests he get a few days exercise in the open air.

Days and days later, Bartleby is still there, still “preferring not” to do anything. The lawyer gives him six days’ notice. Six days later, Bartleby is still there. He “prefers not” to leave. People in the street start to lay bets on whether Bartleby will leave. The lawyer calms himself by deciding that Bartleby has been sent for some mysterious purpose of an all-wise Providence, and may as well be left in peace. After a while though, the lawyer finds Bartleby’s gloomy silence too disturbing. It is perplexing visitors, challenging the lawyer’s authority and injuring his professional reputation. The lawyer decides that if Bartleby will not leave, he will. He moves his operation to new premises. Bartleby continues to cast his gloom about the lawyer’s old haunt, causing the new tenants to complain, even threaten the lawyer. The latter returns to his old building and finds Bartleby, cast out of the office, sitting on a bannister. The lawyer urges Bartleby to find a new occupation if he will not go back to copying: clerk in a dry goods store (“too much confinement,” says Bartleby); bartender (“I would not like it at all; but I am not particular”); bill collector (“I would prefer to be doing something else”); travelling companion to entertain some young gentleman with his conversation (“I like to be stationary. But I am not particular”). Finally, the lawyer asks if Bartleby will accompany him to his own home until a more convenient arrangement can be made. Bartleby pre-

7 *Id.* at 55.

8 *Id.* at 69.
fers not to make any changes at all. The lawyer gives up. He recalls his perception that he had done his duty to both the new occupants of the building and to Bartleby. Upon returning to his office, he is handed a note. Bartleby has been removed to a jail as a vagrant, the one known as "the Tombs." The lawyer goes to see him. Bartleby says, "I know you — and I want nothing to say to you." The lawyer pays the grubman, unofficial supplier of food to prisoners, to make sure Bartleby is at least provided the best dinners possible. But Bartleby prefers not to dine that day, or any other. The lawyer returns to find a wasted, motionless Bartleby huddled in a corner. The lawyer closes the still open eyes. "Asleep, ain't he?" asks the grub-man. "With kings and counsel-

There is a short postscript to the story: According to a rumour the lawyer hears, Bartleby had once worked as a subordinate clerk in the Dead Letter office in Washington. The lawyer concludes:

Dead letters! does it not sound like dead men? Conceive of a man by nature and misfortune prone to a pallid hopelessness, can any business seem more fitted to heighten it than that of continually handling these dead letters, and assorting them for the flames? For by the cart-load they are annually burned. Sometimes from out of the folder paper the pale clerk takes a ring — the finger it was meant for, perhaps, smoulders in the grave; a bank-note sent in the swiftest charity — he whom it would believe, nor eats nor hungers any more; pardon for those who died despairing; hope for those who died unhoping; good tidings for those who died stifled by unrelieved calamities. On errands of life, these letters speed to death.

Ah Bartleby! Ah humanity!

The last part of this meditation looks at what "Bartleby" might say about being a lawyer in the middle kingdom.

II. THE PROBLEM OF INTERPRETATION

An immediate reaction to "Bartleby" is likely to be: "what?" I am going to propose an answer to that question. To set the stage for it, and to explain why my answer is only a partial one, I will say more than a few words about the problem of interpretation generally.

A. Moby Dick

Critics have suggested dozens of interpretations of Melville's earlier work, Moby Dick. I think the text, and the context in which Melville wrote it, support the view that Moby Dick is, among other things:

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9 Id. at 73.

10 Id. at 73-74.
i) an historically accurate portrayal of the nineteenth-century New England whaling industry;
ii) an adventure story;
iii) a psychological and moral study of the problem of evil in the world; and
iv) a drama about the struggle between human free will and the impersonal force of nature.

Correspondingly, Moby Dick, the whale, may be understood as a big white sea mammal, the "the bad guy," Evil or The Impersonal Universe. None of these interpretations is a complete interpretation of the novel. But that is one reason why the novel fulfills the author's intentions and why it is a great work of art. Melville deliberately constructed *Moby Dick* so that it could be taken many different ways. Indeed to the previous list one can add two more items. *Moby Dick* is a study of the problem of interpretation, both of literature and the universe; *Moby Dick* is a Difficult Text and an Inscrutable Universe.

In Chapter 36, the first in which Moby Dick is mentioned, Captain Ahab nails a doubloon to the mainmast as an offer of reward to the first sailor to sight the great whale. Ahab admits to the first mate, Starbuck, that the object of his search is the same creature that on a previous encounter cost Ahab a leg. Starbuck cries that it is "blasphemous" to seek vengeance against a "dumb brute." Ahab replies:

Hark ye yet again, — the little lower layer. All visible objects, man, are but as pasteboard masks. But in each event — in the living act, the undoubted deed — there, some unknown but still reasoning thing puts forth the moulding of its features from behind the unreasoning mask. If man will strike, strike through the mask! How can the prisoner reach outside except by thrusting through the wall? To me, the white whale is that wall, shoved near to me. Sometimes I think there's naught beyond. But 'tis enough. He tasks me; he heaps me; I see in him outrageous strength, with an inscrutable malice sinewing it. That inscrutable thing is chiefly what I hate; and be the white whale agent, or be the white whale principal, I will wreak that hate upon him.¹¹

For Ahab, the things of the world are hieroglyphics which he cannot, but must, interpret. The obstinate, maddening inscrutability of the world is for him symbolized by the whiteness and the silence of the whale.

In Chapter 99, Melville presents a striking little allegory about the problem of interpretation. Captain Ahab offers aloud his interpretation of the inscriptions on the doubloon he earlier nailed to the mainmast. The three mountain peaks on it are "proud as Lucifer." The tower on

¹¹ *Supra* note 2, at 157.
one peak is Ahab; the volcano on a second is Ahab; the crowing cock
on the third, "the courageous, the undaunted and victorious fowl, that,
too, is Ahab." On the top of the coin, the sun is shown entering a
segment of the zodiac at Libra. Libra is the "sign of storms," continues
Ahab, and the sun must pass "[f]rom storm to storm! So be it, then . . . 'tis fit that man should live in pains and die in pangs!"

Starbuck, the earnest first mate, is the next to speak. It is he who
will try hardest to dissuade Ahab from his monomaniacal quest to con-
front Moby Dick. For him, the inscriptions on the doubloons signify
that the Valley of Death is girded round by the Trinity (symbolized by
the three peaks); and that "over all our gloom, the sun of Righteous-
ness still shines a beacon and a hope."

Stubb, the second mate, is portrayed for his cheerful and unques-
tioning acceptance of fate. He reads the coin to symbolize the trials
and troubles which a man passes through in his life, cheerfully from
first to last, just as the ever shining sun passes through the zodiac.
Finally, there is Flask, the third mate on The Pequod and a thor-
oughly practical man. For him, a whale is merely an objectionable per-
sonal enemy, a sort of giant water rat. A doubloon is a round thing,
made of gold, worth sixteen dollars — or 960 cigars.

Ahab acknowledges the idiosyncrasy of each man's interpretation:

[T]his round gold is but the image of the rounder globe, which, like a magician's
glass, to each and every man in turn but mirrors back his own mysterious self.
Great pains, small gains for those who ask the world to solve them; it cannot
solve itself.

Or as Stubb puts it: "Book! you lie there; the fact is, you books must
know your places. You'll do to give us the bare words and facts, but we
come in to supply the thoughts."

B. Semantic Pluralism

In works which admit many meanings, each reader may find some-
thing which relates to his or her own experience. One reason for read-
ing is to relieve our loneliness; to see a representation of our own expe-
rience and assure us that we are not the only ones who have wandered

12 Id. at 405.
13 Id. at 406.
14 Id.
15 Id. at 406-407.
16 Id. at 408.
17 Id. at 405-406.
18 Id. at 407.
this way in the fog. One function of what might be called "semantic pluralism," of a richness in possible meanings, is to make a work speak to many readers. More readers may find a passage worth travelling in the labyrinth of a semantically plural work than in the narrow tunnel of a simple one.

But each of us has many facets of our being and different ones may be brought to bear at different occasions in the course of our confrontations with a story with many meanings. With each rereading there develops an understanding of the story and of the different features of our own experience. *Moby Dick* and "Bartleby" are to be read more than once, and each reading leads to a richer, fuller and more integrated awareness. Reading a semantically plural work like "Bartleby" or *Moby Dick* can be like listening to contrapuntal music. The latter is understood better the more it is heard because each time attention can be focused on a different musical voice and its progression. After many listenings you know which voice or voices are most worthy of attention at a given time, and become able to appreciate how each voice relates to the others. There are some instructive limitations to my analogy. The strands of meaning in a story may be less clearly delineated and harder to discern than a voice in a baroque composition. The reader's own experience and imagination must be taxed if certain implications are to be at all appreciated. And when two contrapuntal voices meet at one pitch, it is fairly easy to tell, because the intensities reinforce each other and produce a louder sound. Furthermore, the voices maintain their own distinctive timbre. When a single word evokes several different meanings, however, some of them may be overlooked. The obviousness of one interpretation may prevent a reader from noticing others.

Each of us has limited resources with which to understand a work of art. The literary enigma does not yield itself to a single reader, but only to many. Whenever I read a new work, I feel alone with it. It is only when I find some criticism of it that I begin to feel at home with the text. The great authors give us puzzles that we can share. They give us the same raw experience about which we can teach each other. Through the centuries many great minds have applied themselves to the meaning of *Hamlet*. It is by now a shared experience of many, like looking at the moon or falling in love for the first time. But the literary experience can be easily shared and talked about with strangers, even strangers from the distant past.

I suspect that in Western culture the primary model of the semantically plural work is the Bible. The authors of the *Pentateuch* must have expected their own place in posterity, for they recorded promises
between man and God and commandments which were meant to be binding for all time. They must have known that their works would be carefully studied and interpreted by posterity. In the later books of the Bible, the earlier ones are cited and interpreted. The authors of the later books must have considered that their works too would be the subject of intensive and devoted study. Did they realize how many different meanings might be extracted from their stories? No doubt over the millenia imaginative readers have found pathways of beauty and truth in the Scriptures of which the authors had not a notion. But there is so much craft and subtlety in the narration of the stories that we can be sure that the authors were deliberately suggestive. Robert Alter has written in *The Art of Biblical Narrative* that:

Every biblical narrator is of course omniscient, but in contrast, for example, to the narrator of the Homeric poems, who makes his characters beautifully perspicuous even (as in the *Iliad*) when he is dealing with the most darkly irrational impulses of the human heart, the ancient Hebrew narrator displays his omniscience with a drastic selectivity. He may on occasion choose to privilege us with the knowledge of what God thinks of a particular character or action — omniscient narration can go no higher — but as a rule, because of his understanding of the nature of his human subjects, he leads us through varying darknesses which are lit up by intense but narrow beams, phantasmal glimmerings, sudden strobic flashes. We are compelled to get at character and motive, as in Impressionist writers like Conrad and Ford Madox Ford, through a process of inference from fragmentary data, often with crucial pieces of narrative exposition strategically withheld, and this leads to multiple or sometimes even wavering perspectives on the characters. There is, in other words, an abiding mystery in character as the biblical writers conceive it, which they embody in their typical methods of presentation.¹⁹

For thousands of years, the whole Jewish culture has been built around the study and interpretation of the *Tanach*. It has been the centre of their culture, strong enough to give a people a shared identity through thousands of years of dispersion and oppression.

In Christian civilization, especially in fundamentalist Protestantism, the Bible is read and reread because it is supposed to be the direct revelation of eternal truth. I imagine the idea that authors could win themselves immortality by writing a great semantically plural work has often come from their observations of the way the world has treated the Bible. Authors sacrifice much of the time they could otherwise spend living by sitting in chairs and making ink marks on pieces of paper. Perhaps many authors have thought they would win a life after death through the sacrifice of whatever ephemeral pleasures are available in mundane existence. I suspect that Melville in particular, fundamental-

ist Protestant (Presbyterian) that he was, had in mind the interpretive efforts centered on the Bible when he was working the many meanings into his own stories. There is no doubt that he was familiar with the amenability of the Bible to a multitude of interpretations. Take the sermon by Father Mapple on Jonah at the beginning of *Moby Dick*, a colourful interpretation of the story of Jonah that is about as long as the book itself in the Bible. Perhaps Melville imagined that his work would be painstakingly studied by generation after generation, each attracted by the subtlety and plurality of his symbolism. In this way, perhaps he hoped to ensure not only a pallid afterlife, but a rich and vibrant one. The quality of the afterlife counts, not just its length.

Semantic pluralism is a form of compression. The writer seeks to write and rewrite a book until the reading of it is more profound and denser than the experience of ordinary life. Writing is rewriting until the words bear as much meaning as they can while maintaining their grace. An author like Melville is able to give a book far more possibilities of meaning and interpretation than a writer whose approach is straightforwardly realistic or one-dimensionally allegorical. So when I turn to "Bartleby", it will be with the understanding that it has many meanings, and that Melville strove to make it that way.

In the type of semantically plural work discussed so far, the different possible interpretations can peaceably live together, even reinforce each other. Sometimes, however, different meanings cannot be appreciated simultaneously. The starkest example is where the work can be read either straight or ironically. Thus *Titus Andronicus*, Shakespeare’s bloody revenge play, can be read as an earnest tragedy or as a satire on revenge tragedies. These two different readings are antagonistic. Readers cannot experience imaginatively the horror of Titus Andronicus having his hand cut off as a ransom for his sons if they are laughing at the incident as one more grotesquerie in an unrelenting parade.

A reader may leave unresolved, remain undecided about or waiver between inconsistent lines of interpretation. But an active interpreter of a work — someone who is reading it aloud for others, or producing it as a stage play or film — usually has no choice but to select one of the antagonistic interpretations and stay with it. There is often no "right

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20 *Supra* note 2, at 44-51.
21 *Jon. (King James).* See also Wiesal, *Five Biblical Portraits* (1981) where the author shows (at 129-55) how Jonah can be read in one way which makes all the characters, from God to the natural elements, morally unattractive and reread in another way which makes them all rather commendable.
22 Sometimes it can be amusing to let the two possible interpretations play off against each
answer" to what the best interpretation is. Sometimes the text will clearly favour one interpretation. There is some black humour in *King Lear*, but the eloquence of its poetry and the subtlety with which the major characters are portrayed give a director no choice but to play it as a tragedy. It is hard to say whether you should play *Titus Andronicus* seriously or not. The sheer length of the play and the occasional effectiveness of the language would limit its value as a comedy, but the repetitive gruesomeness of the play prevents it from being a successful tragedy. I think the balance of aesthetic arguments would favour the tragic interpretation, but the "rightness" of the answer may just depend on whether you are in the mood for catharsis or merely a good laugh. *Henry V* can be done as a portrayal of a truly heroic and royal king, a duplicitous and vicious politician or something in between. Here, the text seems to allow equally well for many different approaches.

In citing the merits of semantically plural works, I have in mind those which provide ample textual support for an abundance of meanings. With some writing, whatever meaning readers derive is owed to their own, almost entirely uncontrolled, imagination. As a result, many of the satisfactions of a textually richer work are elusive. It is difficult to weave out of passages, interspersed throughout the text, a coherent strand of interpretation. The autobiographical dimension of meaning and those dimensions of meaning intended by the author may be impossible to discern. The interpretation of other readers may be too idiosyncratic to be instructive. The common apology of the popular songwriter or modernist poet — "I like to let everyone find his own meaning" — is often an excuse for works that are poorly crafted, in that the vagueness of the text permits a multitude of interpretations, but encourages none.

IV. THE AUTOBIOGRAPHICAL INTERPRETATIONS OF "BARTLEBY"

One possible approach to interpreting a literary work is to ask what the author intended it to mean. Certainly, this approach is open to objection. For one thing, the author may have understood the same passage one way when writing it the first time, another way when rewriting or editing it. The author’s intention as to the meaning of the work as a whole might vary from time to time during its creation. Or
the author may accidentally create a work which is more pregnant with meaning than originally understood. In earnestly attempting to write epic poetry, an author might accidentally write verse so bad that it is an amusing, unintentional parody of bad verse. Without conscious advertence, an author might use a figure of speech or symbol again and again in the work, which turns out to be entirely opposite to the theme of the work as a whole. One approach to interpreting a work, then, is to pretend that the author wrote it during a single instant of inspiration. But since the author is more and more becoming a construct of the reader, why not take the next step? Drop the author out of the picture entirely, and interpret the work so that it will be as coherent and aesthetically admirable as it can be. The New Criticism school of interpretation says that meaning should be determined almost exclusively by close study of the text. New Criticism downplays the importance of extra-textual sources of meaning, such as the author's subjective intention. For my part, I strongly object to the idea that the author can be ignored in our critical appreciation of a literary work. In doing so we deny ourselves an entire dimension of meaning. Just as important as the content of a statement is who is saying it.

Consider that largely rational enterprise of chess. The scores of grandmaster games comprise a "literature" from which readers derive enjoyment and edification. I have many times re-played a game between Emanuel Lasker and Jose Capablanca in St. Petersburg in 1914. Lasker, the world champion, had to win the game if he was to have a chance of winning the tournament. His opponent, twenty years his junior, was considered almost invincible. Later in his career, he went for eight years without losing a single game. Lasker had the white pieces, and played the Ruy Lopez, the most venerable and well-studied of all chess openings. On his fourth move, he played Bishop takes Knight. It is called the "exchange variation" because it leads to a prompt exchange of Queens. With the most powerful piece on the board traded off early in the game, with minimal advantage apparent to white, the variation was thought to be almost guaranteed to produce a draw. And Lasker had to win. I imagine him sitting like a stone, silent, inscrutable. Is he resigned to the impossibility of beating the young genius, the man who had been the greatest child prodigy in the history of chess? Is he tacitly accepting a draw? Maybe Capablanca was rattled by the uncertainty, or frightened by the prospect of losing

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under such tranquil circumstances. Maybe he was just lulled into over-confidence. In any event, he played poorly. Lasker's pieces slowly strangled those of Capablanca, until a simple sacrifice guaranteed Lasker the victory. Move number four, again, is Bishop takes Knight. It has been played before and since at least ten thousand times. Played by Lasker in those circumstances, move Bishop take Knight is a gesture of confidence, of defiance, and of psychological insight by a great artist. Played by one club player in a speed chess game against another mediocre player, the move might mean practically nothing at all. Played by one computer against another it might be informative about the objectively best move in the position but would be devoid of the dramatic significance of Lasker's.

Or think of Sergei Esenin's poem, "Farewell". It reads:

Goodby, my friend, goodby
My dear, you are in my heart;
Our predestined parting
Promises a future meeting.
Goodby, my friend, without gestures, without words;
Don't be sad, do not knit your brow;
In this life, to die is nothing new
But to live, of course, is nothing newer.

On first reading, the poem may not make much of an impact. But think of how it was written — in blood, drawn from Esenin's own wrists. He had slashed them. The poem was his last. The night after writing it, he hanged himself. If the poem had been written by a young poet trying to create a public image of himself as world weary, the poem would mean much less. Perhaps if the poem were presented as an imaginative construction, the imaginary poet's last thoughts, it would still be moving. Shakespeare, after all, constructed profoundly moving scenes and speeches for his characters, but very few of them were statements about his own life. But isn't the epilogue of The Tempest especially moving because it is partly Shakespeare's personal farewell to his public? When human expression comes directly from the artist's soul, it has an extra dimension. That is why for me, Esenin's poem has stayed in my memory all the years since I first read it, and why it chills me whenever I recall it. Still another example is a poem written by John Keats when he was twenty-two years old. His mother had already died of tuberculosis, and now his brother was spitting blood from the same disease. Three years and a month later, Keats himself would be killed by it. The poem reads:

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26 Obolensky, ed., The Penguin Book of Russian Verse (1962) 399-400: my translation from the Russian. In the original Russian there is a simple alternating rhyme scheme.
When, have fears that I may cease to be
Before my pen has gleaned my teeming brain,
Before high-piled books in charactery,
Hold like rich garners the full-ripened grain;
When I behold, upon the night's starred face,
Huge cloudy symbols of a high romance
And think that I may never live to trace
Their shadows, with the magic hand of chance;
And when I feel, fair creature of an hour!
That I shall never look upon thee more,
Never have relish in the faery power
Of unreflecting love! — then on the shore
Of the wide world I stand alone, and think
To love and fame to nothingness do sink.

The autobiographical dimension, it must be stressed, is one of many. Esenin's poem is not a "pure" expression of inner feeling. The phrasing, the choice of words, the rhyme, all reflect his artistic craft.

"Bartleby" clearly does not amount to a report of Melville's life. But there is much in it that speaks of his tragedy. After all, it is a story by the man who wrote Moby Dick. There is no grand poetry this time, just plain spoken prose. In sheer length, Moby Dick is a leviathan; "Bartleby", a minnow. The setting is not a vast sea, but a cramped lawyer's office. Moby Dick was written after four other major novels. "Bartleby" was written just before Melville went into a literary silence that would last, almost uninterrupted, for twenty years.

The autobiographical aspect of "Bartleby" has been explored most tellingly in Leo Marx's brilliant essay, "Melville's Parable of the Walls." According to Marx, Melville intended Bartleby to symbolize Melville himself, scrivening Melville's literary career. At first, Melville is content to make his living by turning out easily understandable adventure stories: for example, Typee and Omoo. Copying is a symbol for this, because Melville was not doing anything creative, only what other hack writers were doing. Note the reference, which Marx himself does not, at the end of "Bartleby" by the grub-man to the possibility that Bartleby was a forgerer. Perhaps this was an allusion to Melville's sense that his adventure stories were not authentic; that they were not honest exercises in self-expression.

In the story, Bartleby begins to interrupt his "copying" to engage in his reveries upon the dead wall. According to Marx, the dead wall is a symbol of the metaphysical schemes which haunted Melville in the period in which he wrote Mardi, Moby Dick and Pierre, none of which

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were popular successes. Melville is critical of himself for allowing himself to drift off into metaphysical reveries which made him obscure to his public. The wall Bartleby stares at is a wall which obscures the view of grimy backyards and bricks, the “sordid social scene.” Marx suggests that Melville was criticizing himself for working on metaphysical scenes as an escape from having to face up to “social experience which had become more than he could stand.” And the green partition is also a symbolic criticism of Melville himself. For it is not the authentic green of the grass in the prison yard, but a flimsy artificial one; in the same way, Melville’s pastoral novels about Tahiti were an inadequate evasion of nineteenth-century American society. According to Marx, Melville portrays Bartleby, and himself, as making the fatal mistake of forgetting that the dead wall he is staring at was constructed by men. The authentic green grass in the prison yard suggests the solution to the lawyer and the writer: a genuine and humane concern for other people.

Marx’s interpretation is a valuable one. There is no doubt that an autobiographical connection exists between “Bartleby” and Melville’s own life. Melville clearly did emphasize the dangers of metaphysical flight at the expense of the solace of human companionship. That is the tragedy of Captain Ahab. But there is an aspect of Melville the man on which Marx does not comment. That is his obsession with death; “the thought of ‘annihilation’ deeply troubled Melville, and his biographies are agreed that this was a lifelong agony for him.” On my interpretation of “Bartleby”, Marx has not captured the whole truth when he suggests that the blank wall, the dead wall at which Bartleby stares, is a human construction and that Bartleby is mistaken in interpreting it as a given. Other people often speed things up, but even without their help everyone must die. And everyone includes Bartleby.

V. THE THREE KINGDOMS

It seems to me that one of the most illuminating ways of understanding “Bartleby” is as anti-Moby Dick and Bartleby as anti-Ahab. To oversimplify Melville’s world view, it is possible to divide the universe into three realms. The lower kingdom is the abyss of nothingness. In the middle kingdom, there is ordinary human life. It is the world in

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28 Id. at 93.
29 Id. at 99.
30 Id. at 101.
which natural men like Stubb are content to dwell, taking life as it comes. The middle kingdom is organized into different communities and different formal structures. Above it, there is an upper kingdom, a world in which things are somehow more ordered, complete, and permanent than they are in the ordinary, sensible world. While these constructs may be necessary to maintain the order without which there cannot be justice or beauty, they wall people off from a human appreciation of each other.

In *Moby Dick* the friendship of Queequeg the Cannibal and Ishmael the Presbyterian is accomplished only when Ishmael begins to realize that overriding the differences between them is their joint participation in the “joint stock company” of humanity. In Melville’s *Billy Budd*, Captain Vere must struggle between his compassion for a sailor who has killed a petty officer and the demands of formal justice. The forms and conventions also block off our appreciation of the nature of life; thus, Parisian women wearing bottle perfume do not consider that it may have been extracted from the rotting carcass of a dead whale. The lawyer in “Bartleby” is walled off from human life and operates instead in the comfortable conventions and practices of paper-pushing lawyerdom. He deals with recondite documents rather than human beings. He seems to have little genuine sympathy for his employees. He treats them as curios rather than people. Nippers’ ambition he treats as a fault, as though the condemnation of a man to a life of copying documents might not be a soul-destroying waste of his potential. Ginger Nut, a young boy, is sent by his father to work in the lawyer’s office in order that the father may “see his son on a bench rather than a cart before he died.” Sent to the office as errand boy, sweeper and student-at-law, the lawyer seems to find it mildly amusing that the only thing the boy seems to have learned is how to act as a middleman in the acquisition of ginger nut cakes.

Bartleby is not dead while the story continues. It is Bartleby who begins to make the lawyer aware of pain in the lives of his fellow human beings. The sadness the lawyer feels for himself and his fellows is not just at the thought of their annihilation, but at the sadness in which they live during their lives:

For the first time in my life a feeling of overpowering stinging melancholy seized me. Before, I had never experienced aught but a not unpleasing sadness. The bond of a common humanity now drew me irresistibly to gloom. A fraternal melancholy! For both I and Bartleby were sons of Adam. I remembered the bright silks and sparkling faces I had seen that day, in gala trim, swanlike sailing

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22 *Supra* note 1, at 45.
down the Mississippi of Broadway; and I contrasted them with the pallid copyist, and thought to myself, Ah, happiness courts the light, so we deem the world is gay, but misery hides aloof, so we deem that misery there is none. These sad fancyings — chimeras, doubtless, of a sick and silly brain — led on to other and more special thoughts, concerning the eccentricities of Bartleby. Presentiments of strange discoveries hovered round me. The scrivener’s pale form appeared to me laid out, among uncaring strangers in its shivering winding sheet.53

“Bartleby”, on my interpretation, is not only about the fear of death. Bartleby’s sadness should be understood as despair at the prospect of ultimate annihilation of individual existence, and at the loneliness in the wall that his shell inhabits. Bartleby’s sadness is not only that of a human consciousness that believes itself to be alone, but is also that of a human consciousness which knows it will cease to be.

A. Ahab in Search of The Upper Kingdom

Moby Dick is many things to Ahab, many things to Ishmael, as well as many things to the reader. Ishmael suggests that Moby Dick is to Ahab a symbol of the impenetrability of the universe to comprehension; of the inscrutable higher world that lies behind the visible world. Indeed, it is striking how similar Ahab’s speech about the masks is to Plato’s metaphor of the cave. In the Republic, Plato says that the things we see in the world are like shadows of objects cast upon the walls of a cave in which we dwell.84 The role of the philosopher is to escape from the caves, and see not the shadows, but the reality of the objects themselves.

All visible objects are but as pasteboard masks. But in each event — in the living act, the undoubted deed — there, some unknown but still reasoning thing puts forth the mouldings of its features from behind the unreasoning mask. If man will strike, strike through the mask! How can the prisoner reach outside except by thrusting through the wall?55

The analogy to Plato’s search for a transcendental reality is made more plausible by Chapter 35 of Moby Dick, “The Mast-Head.” In it, Ishmael, whose ship-duty is supposed to be keeping a lookout for whales, instead indulges in philosophical reveries. A self-critical Ishmael warns:

Beware of such a one, I say: your whales must be seen before they can be killed; and this sunken-eyed young Platonist will tow you ten wakes round the world, and never make you one pint of sperm the richer. . . . Very often do the captains of such ships take those absent-minded philosophers to task, upbraiding them with not feeling sufficient “interest” in the voyage; half-hinting that they are so

53 Id. at 55.
54 Cornford, trans., The Republic of Plato (1941) c. XXV.
55 Supra note 2, at 157.
hopelessly lost to all honourable ambition, as that in their secret souls they would rather not see whales than otherwise. But all in vain; they are short-sighted; what use, then, to strain the visual nerve? They have left their opera glasses at home.\textsuperscript{36}

Again, in the next paragraph, Ishmael says of the young Platonist:

[L]ulled into such an opium-like listlessness of vacant, unconscious reverie is this absent-minded youth by the blending cadence of waves with thoughts, that at last he loses his identity; takes the mystic ocean at his feet for the visible image of that deep, blue, bottomless soul, pervading mankind and nature: and every strange, half-seen, gliding, beautiful thing that eludes him; every dimly-discovered, uprising fin of some undiscernible form, seems to him the embodiment of those elusive thoughts that only people the soul by continually flitting through it.\textsuperscript{37}

I am not saying that Ahab was either familiar with Platonic philosophy or looking for Platonic forms, but rather that one meaning of the whale to Ahab is the inability of our understanding to reach into the ultimate, transcendent reality, be it analogous to the realm of Platonic forms or not. Ahab wants knowledge that goes behind that of the superficial things of the mundane world — of the middle kingdom. He wills to break through to the higher kingdom. "Sometimes I think there's naught beyond," says Ahab.\textsuperscript{38}

Of course, neither Ishmael, the narrator, nor Ahab can explain exactly what the transcendent world is really all about. Both try to suggest its nature through metaphors. The middle kingdom, the ordinary world, is too small a place for a spirit as mighty as Ahab's. His flaw, if it can be called a flaw, is that he finds the ordinary world too small and plain to be satisfying; he wills that his knowledge find that which lies above and beyond. But possessed of greater intellect, eloquence, courage and determination, Ahab is to me an admirable figure. Like the tragic heroes of Shakespeare, his struggle is of such magnitude and intensity, the spirit with which he wages it so powerful, that I do not consider his fate a sad one: Lear, Hamlet, Richard III, Carion lanus, all wage such magnificent battles that they almost inspire envy.

It is a mistake to suppose that tragedies are sad, in contradistinction to comedies, which are happy. I have felt sadness for Bartleby, but never for Lear. To me, it is as important that the experience be pleasant as that it be intense. A finite life should have a great density of experience and understanding, rather than a thin filling of bland contentment. If the lower kingdom awaits us, if total nothingness is at the end, it seems appropriate to make what life remains to us as much of

\textsuperscript{36} Id. at 151-52.
\textsuperscript{37} Id. at 152.
\textsuperscript{38} Id. at 157.
something as possible. Thus, Lear's mighty suffering in the storm is his greatest moment of being. What is sad is not defeat so much as diminution. Bartleby's suffering is not great, it teaches nothing, it means nothing. He is a lonely, hopeless soul moving from relative oblivion in the middle kingdom to absolute oblivion in the lower kingdom.

There is a political implication to the contrast between the tragic Ahab and the desolate Bartleby. Often we romanticize — better tragedize — political oppression. Many Western writers might secretly envy their Eastern bloc counterparts. How much better it is to be a Russian author, with a mighty government against which to struggle, than an American one, who must bear the more grievous burden of being basically ignored by a vulgar society? I would not favour political oppression even if it offered a greater magnitude of experience; but it almost never does. Political oppression diminishes and wastes people. It does not make them greater. Political oppression means wasting time and creative effort on disguising your meaning just to avoid the censors. It means toadying up to non-creative apparatchiks in order to ensure that your works will be accepted and published. It means material poverty, so that you do not have time to write, nor materials with which to research or reproduce your manuscripts. If, as Alexander Solzhenitsyn suggests in *A World Split Apart*,

- totalitarian oppression produces spiritual richness, it would demand some appreciation for its inadvertent contribution to human welfare. My own impression of life in the Soviet Union and China leads me to believe that we need not clap even a single hand.

B. **Bartleby in Despair of The Lower Kingdom**

As I have said, "Bartleby" is also about the recognition of the lower kingdom, of death, of eternal nothingness that may await every human being. The first words of "Bartleby" are revealing: "I am a rather elderly man." Words which imply the prospect of death. Yet in the next paragraph, the lawyer says that "all who know me consider me an eminently safe man." Safe, perhaps, from the troubles of the middle kingdom, but how could he be safe from the threat of descent into the lower one?

"Bartleby" is subtitled "A Story of Wall Street," and Melville goes to some pains to describe the walls within the lawyer's office. Ear-

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40 Supra note 1, at 39.
41 Id. at 40.
lier, I noted the quote from *Moby Dick* which refers to the wall of inscrutability which separates Ahab from the transcendant.\(^4\) The lawyer's office is bounded on one side by a white wall. The other side is bounded by a black wall. A contrast of darkness and light, black and white, no colours and all colours. But what does Bartleby see?

I placed his desk close up to a small side window in that part of the room, a window which originally had afforded a lateral view of certain grimy back yards and bricks, but which, owing to subsequent erections, commanded at present no view at all, though it gave some light.\(^3\)

Bartleby does not see black or white. He sees nothing at all. He sees "no view at all." He sees annihilation. The narrator refers to it as "the dead wall." In "Bartleby", there is no meditation on the transcendant as in *Moby Dick*, but on death.

But how do you portray nothing? In *Moby Dick*, Melville evokes the transcendant by suggestion, by example upon simile upon metaphor, each hinting in some way at what lies above expression. Ahab speaks in sonorous blank verse, defying the fates and the inscrutability of the universe with an overbursting spirit. In "Bartleby", by contrast, nothingness is suggested by the minimal speech of Bartleby; the few words are Bartleby's eloquent suggestion of utter nothingness, of the utter aloneness with which he faces it.

For the first time in my life a feeling of overpowering stinging melancholy seized me. Before, I had never experienced aught but a not unpleasant sadness. The bond of a common humanity now drew me irresistibly to gloom. A fraternal melancholy! For both I and Bartleby were sons of Adam.\(^4\)

Adam was not simply the father of humanity, but the man whose sin cost him immortality and condemned his progeny to death. Bartleby suggests not only sadness, but nothingness. I think the reason we are generally so successful in denying our own forthcoming deaths is that it is so difficult to imagine nothingness. But if we all had Bartleby to suggest the void of annihilation, could we still go on with our mundane affairs in tranquillity?

Like Ahab, Bartleby has a powerful effect on everyone he encounters. Ahab would carry them all on a heroic quest for the higher kingdom, Bartleby drags them all down with his reminder that they must all descend to the lower kingdom. No wonder this most passive of all men is regarded with such alarm. He is as close to a personification of nothing as a person could be. (So close that at the end of the story

\(^{44}\) *Supra* note 2, at 157.

\(^{43}\) *Supra* note 1, at 46.

\(^{44}\) *Id.* at 55.
his death is mistaken for sleep.) Compare the "fraternal melancholy" passage from "Bartleby", with this from Moby Dick (after Ishmael hears Ahab's declaration of war against Moby Dick): "A wild, mystical, sympathetic feeling was in me; Ahab's quenchless feud seemed mine." Bartleby makes the narrator know the despair of the inevitability of the lower kingdom; Ahab makes the narrator feel the excitement of the quest for the higher kingdom. Ahab is will: "What I've dared, I've willed, and what I've willed, I'll do." Whereas Bartleby, the spirit of resignation in the face of descent to the lower kingdom, prefers not to use expressions of will: "You will not?" the lawyer asks, emphasizing the word "will". "I prefer not," replies Bartleby, emphasizing the word "prefer".

Bartleby recognizes the hopelessness in struggling against the inevitable nothingness. All that he is prepared to report is his subjective likes and dislikes. He does not seem to believe that it makes much difference what he wills, or that the contingent circumstances of the world count for much, in view of the total void that is to follow. His objection to the world is unqualified:

"Would you like a clerkship in a dry-goods store?" [asks the lawyer].
"There is too much confinement about that. No, I would not like a clerkship; but I am not particular," [says Bartleby].

"How would a bartender's business suit you? There is no trying of the eyesight in that."
"I would not like it at all; though, as I said before, I am not particular."

"How, then, would going as a companion to Europe, to entertain some young gentlemen with your conversation — how would that suit you?"
"Not at all. It does not strike me that there is anything definite about that. I like to be stationary. But I am not particular."

The end of Moby Dick is the destruction of the Pequod and all its crew except Ishmael, the narrator. Before the final and fatal confrontation of the Pequod with Moby Dick, it came upon another whaler, the Rachel. The Rachel's captain had abandoned the pursuit of the whale in order to look for his own son, whose whaling boat had gone astray. He pleads with Ahab to help him in his search. Ahab refuses in the same way as Ahab rejects Starbuck's plea to turn back from his fight with Moby Dick and find comfort in Ahab's new wife and newly born son. Ahab's ambition to ascend into the higher kingdom makes it im-

45 Supra note 2, at 169.
46 Id. at 161.
47 Supra note 1, at 52.
48 Id. at 69.
possible for him to find the consolation of the middle kingdom: the companionship of fellow beings of the ordinary world. That is the salvation of Ishmael at the end of *Moby Dick*. He is rescued by the Rachel in search of its own orphans.

The ending of “Bartleby” is in some ways similar. Bartleby has rejected the entreaties of the world to rejoin the ordinary world, to be the lawyer’s friend. Perhaps the lawyer was not as profound in his understanding of what it means to be a friend — his offer to take Bartleby into his home is to last only until other arrangements can be made — but it is still something Bartleby might have clutched to forestall his descent into the lower kingdom. By sharing with the lawyer some of his despair, Bartleby might in turn have made the lawyer more capable of feeling within himself the sympathy of a true friend. But Bartleby will not be consoled. Better, Bartleby prefers not to be consoled. Whereas Bartleby’s contemplation of the lower kingdom has sapped him of the will to resist it, Ahab’s speculation on the upper kingdom has energized his will too much to allow him to turn back.

In the end, though, as surely as the Rachel comes to rescue Ishmael, some grass grows in the cracks of the “Tombs” where Bartleby spends his last days in the middle kingdom. Marx’s interpretation, and one aspect of mine, is that grass is a symbol of the brotherhood of those who live in it. A flimsy green divider once separated Bartleby from the lawyer. The lawyer recognized some of Bartleby’s despair, but he was not prepared to respond authentically and naturally. But the genuine, natural grass at the end may symbolize the lawyer’s deepened sympathy and appreciation of the despair of his fellow beings. “Ah Bartleby! Ah humanity!” concludes the lawyer. The lawyer is lamenting the failure of human beings to reach each other emotionally. But on my Three Kingdom interpretation, grass is also a symbol of human life. The lawyer has come to the sad recognition that everyone is mortal. Yet the grass reminds me that while death must come to everyone, and even now is taking its toll, for others life is just beginning or still persisting. The lawyer begins to treasure life now that he realizes what an ephemeral gift it is.

VI. APPLICATION TO THE LEGAL WORLD

A. *Semantic Pluralism in The Law*

When interpreting the law the observational standpoint taken is crucial. One may approach the law as an academic commentator whose purpose is to offer an interpretation of the law which is enlightening or engaging for other people. The moral significance of legal activity is
then not much different from that of literary criticism. A way to proceed is to offer a new doctrinal account or model of a body of law. The positive legal material — the cases, statutes, legislative history and so on — is semantically plural, so an original interpretation is often possible. An alternative approach is to look at a course of legal events in the light of another discipline besides law. One can explore the literary and rhetorical devices used in a written judgment, or demonstrate how a ruling will enhance or impair economic efficiency. I have discussed how a literary critic can interpret “Bartleby” as an autobiographical expression of Melville; as a legal critic, sometimes it is possible to bring out the autobiographical dimension of a judgment.

Lord Denning's judgment in the Cabbage case begins by quoting from the Through the Looking Glass poem, “The Walrus and The Carpenter”:

“The time has come,” the Walrus said
“To talk of many things;
Of shoes — and ships — and sealing wax —
Of cabbages — and kings. . . .”

The case is about a farm corporation suing a seed merchant for selling defective cabbage seeds. The Looking Glass quote has a scintilla of relevance on the ground; about as much as the list of Hall of Fame baseball players with which Justice Harry Blackmun began the United States Supreme Court's majority opinion in Flood v. Kuhn, an antitrust action against the major leagues. But realize that the Cabbage case is the last judgment of the most famous English jurist of this century, retiring in his eighties after decades of activity, and the quote has a certain poignancy. “The Walrus and The Carpenter” ends with a scene of annihilation. The chattering oysters are now silent. They are all gone. There will never be another judgment by Lord Denning.

The rest of the judgment is a consciously constructed epitome of Lord Denning's judicial philosophy and style. In folksy, stacatzzo sentences, he tells how in the good old days judges protected the “little man” from contractual clauses that unfairly limited a party's responsibilities. The judges construed the clauses in a narrow fashion to

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40 See Leff, supra note 3.
42 Dodgson, Through the Looking Glass/By Lewis Carroll (1965).
43 Supra note 50, at 111 (All E.R.), 294 (Q.B.).
44 407 U.S. 258, 92 S.Ct. 2099 (1972) at 262-63 (U.S.), 2102 (S.Ct.).
45 Supra note 50, at 113-14 (All E.R.), 297-98 (Q.B.).
achieve a "reasonable result." If the breach was "fundamental", the "big concern" could not rely on the clause at all. Lord Denning cites a number of precedents for the latter approach, culminating in one by Lord Denning. All was well. But then a case came in which the House of Lords bowed down and worshipped the "idol" of freedom of contract. It said you had to give effect to the "true construction" of the clause. Everything the Law Lords said in this regard, Lord Denning declares, was gratuitous and unnecessary to the decision before them. Anyway, says Lord Denning, despite all the esoteric legalism of the House of Lords, an approach is still available whereby reasonableness can triumph. As it happens, he, Lord Denning, has long been an exponent of it: a disclaimer clause can only be enforced if it is fair and reasonable. Lord Denning concludes his judgment and career by once more doing the "fair and reasonable" thing, overcoming all the legalistic obstacles in his path to doing so. In a brief aside at the end of his judgment, Lord Denning refers to a new British statute which precludes the reliance on disclaimer clauses when it would be unfair or unreasonable to do so. He might have started his judgment there, but then his swan song would have been a brief gurgle. The autobiographical dimension of the judgment is both crucial and fascinating.

An academic critic criticises and evaluates, not simply explains a legal event. The claim may be that a judgment is stylistically clumsy or, more seriously, that the outcome is unfair in terms of the abstract principles of corrective or social justice. The aim may be to instigate and guide social and legal reform, not merely to entertain and edify. But a critic who produces an evaluation of the political morality of the case is still in a less responsible and difficult position than a judge who must actually decide a case. If there is to be order and equality in the legal system, it cannot be open to judges to always decide a case in accordance with their general sense of morality. Some respect must be paid to the legal sources, such as cases and statutes.

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65 Id.
68 Supra note 50, at 114 (All E.R.), 298 (Q.B.).
69 Id.
When it comes to the business of adjudicating lawsuits, interpretive richness is a moral problem, not a cause for delight. The results of litigation have to be predictable so people can plan their affairs. We want the results to be justified by authority, rather than the product of a judge's personal views on justice; the latter looks too much like tyranny. Furthermore, the outcome of an adjudication affects peoples' lives in important ways. No one suffers much from a bad critique of *Hamlet* and no one suffers too much from a bad performance of *Hamlet*. The stakes in literary affairs are relatively small. But judges who decide lawsuits badly may unjustly ruin lives. They may even mandate the wrongful taking of human life. When the stakes are high, the public, the litigants, all want the judge to find the right answer, not just an interesting or entertaining answer.62

In his letter in 1817 to his brothers George and Thomas, John Keats wrote:

> [I]t at once struck me what quality went to form a man of achievement especially in literature and which Shakespeare possessed so enormously — I mean negative capability, that is, when a man is capable of being in uncertainties, mysteries, doubts, without any irritable reaching after fact and reason — Coleridge, for instance, would let go by a fine isolated versimilitude caught from the penetralium of mystery, from being incapable of remaining content with half-knowledge. This pursued through volumes would perhaps take us no further than this, that with a great poem the sense of beauty overcomes every other consideration, or rather obliterates all considerations.63

Law professors are often good at maintaining negative capability. A doctrinal aperçu here, an economic insight there, a deft political criticism or two, and when students ask “What’s the right answer?”, the professor responds with an ostentatiously humble remark about the uncertainty amidst all the confusion, or else a reproachful insistence that students think for themselves. Some students are still anxious. “What about the exam?” “Well”, the professor says, “there are no marks for knowing the right answer; the idea is to argue both sides of the case well.” When an official decision-maker is faced with an interpretive problem, however, choice cannot be evaded; the consequences of a decision may be the destruction of a human being’s property, pride, liberty or even life. Negative capability is not a mark of a great jurist; instead, the jurist must have both the humility to leave some mysteries unresolved, and the courage to resolve others forthrightly and clearly.

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62 Some litigants are objective enough to understand the difference between the right answer and an answer that is favourable to them, even though they would prefer the latter.

While in many ways it would be desirable to have a hermeneutically monistic legal system, no modern society will ever succeed in devising one. In games and sports, it is usually easy to determine what the applicable rules are — it is the assessment of the facts that is often controversial. But the rules of games and sports do not only determine the value and consequences of acts within an activity, they define the activity. They prescribe the playing field, number of players, equipment, object of the game and types of actions whereby the object may be achieved. They establish a fairly simple microworld in which a limited range of events occur. By contrast, a public legal system must attempt to bring order and justice to the entire range of human activity in a complex society. It is impossible to establish rules which precisely determine the criminal, regulatory and civil consequences of all the events that can occur. The most that can be done is to establish principles, standards and rules which specify what happens in a common type of situation and provide some guidance for a decision-maker who must later deal with an unusual, borderline or unanticipated case. Often lawmakers do not have a clear idea of what they want done, even in a common type of case, and choose instead some vague formula to give the appearance of having made a decision while shunting the burden of decision to someone else later on. But even when the author has the clearest of intentions in stating a legal principle, its application is vexed. The use of ordinary languages like English limits the precision with which thoughts can be expressed. Almost any statute or judicial rule can be read so as to permit a variety of different results. Even when the language of a statute and ruling is precise, it must be understood as a response to a set of circumstances which exist at a particular time. But the accompanying circumstances can be used to colour, modify and limit the meaning of a legal statement in many different ways. In deciding a case, a judge is often faced with a large number of relevant precedents and statutes each with its peculiar context. The task is to arrive at and justify a result on the basis of an overall interpretation of this complex. Sometimes a legal interpretation by a majority of a court is contradicted by a dissenting judgment which is equally well supported by the materials.

Further complexity is added by the fact that a judge is not confined to giving a simple set of yes and no answers to the legal questions posed. A judge interprets the legal materials in order to arrive at and justify the particular set of conclusions needed to dispose of the particular case before the court. But the answers that must be given are often much more varied than A wins, B loses. There is considerable room to decide by how much and in what respect A wins the particular case. In
a civil suit, the judge might find that the plaintiff recovers one type of damage (economic loss), but not another (mental distress). The judge can juggle the different issues to achieve a result that seems, on the whole, just. In many Canadian criminal cases, a judge can choose whether to convict on one, some or all of the charges; whether to find the accused guilty of a lesser included offence, rather than the one alleged; whether to impose the maximum penalty, a light one, a suspended one, or none at all. There are so many ways of mixing and matching it is often hard or impossible to point to the one particular outcome as the uniquely right one.

Furthermore, a legal judgment does not usually consist only of the statement of a result, but the statement of reasons for judgment. If a senior or appellate court is involved, the justification for the decision will be a precedent which influences the results of subsequent cases. In the course of resolving for a particular plaintiff, a court may provide a justification which will help most plaintiffs in the future, some of them, or none at all. Every way of stating the ratio of a decision has its own implications for the future. Thus, law appliers often find themselves faced with a wide range of possible decisions which can plausibly be supported by an interpretation of the legal materials. Judges must ultimately use their own sense of justice and public policy to choose among the possibilities. A judge does not, of course, say, "Well, the law isn't clear on this point, so I'll decide this point on the basis of my personal views." Rather, judges weave their assessments of justice and prudence into the interpretation they offer of the past material. Usually, judges try to make it look like these considerations were inherent in the legal materials all along and are not the product of their own political philosophy. That way, the appearance of legal objectivity and impartiality is preserved.

In an attempt to limit the unpredictability and subjectivity of the law applying process, officials in the legal decisions try where possible to devise ways of limiting interpretive possibility. They try to establish rules of interpretation. Most of these are useless, because they are vague or open to negation by an equal and opposite principle of interpretation. But some of the rules are somewhat effective: for example, the rule that a Supreme Court of Canada decision is binding on lower courts. Lawmakers and jurists also try to limit the sources that can be relied upon for interpretation. In Canada, legislative debates cannot be cited in court.44 In the United States, records of legislative delibera-

tions can be referred to in Court, but no one is officially interested in hearing the views of the bureaucrats who actually wrote the rules, or the privately expressed opinions of the politicians who voted for them. Neither in Canada nor in the United States are the off-the-record opinions of judges relevant in subsequent decisions, as opposed to their formal opinions. Officials try to limit the perspectives that can be brought to bear on a case. A psychological analysis of Supreme Court judges may be enormously useful in understanding some of their decisions, but a lawyer would never rely upon one in making a formal legal argument. The biographical dimension of a judgment may be fascinating to academic observers of the legal system, but it is not a dimension which lawyers or judges are supposed to take into account.

It might be argued that no interpretive source should ever be made inadmissible: the insight it provides in a given case may tip the balance in favour of one line of interpretation and if it doesn’t, no harm is done. Not all jurists, however, will agree on whether a source is relevant to the justice of a case or what weight should be accorded it. Additional interpretive sources may create more disagreement among judges than they resolve, may complicate the tasks of lawyers in preparing cases and advising clients, and ultimately, burden ordinary citizens with additional expense and uncertainty.

The rules and techniques which legal officials use to limit the range of interpretive possibility are not without effect. But they do not succeed in eliminating the problem of judicial subjectivity. The problem would be solved, if there was an acceptable and objective source of values that law interpreters could resort to when the positive material dictates no single result. Until a century ago, many jurists believed that there was a natural moral law discernable through the exercise of dispassionate reason. But not many judges believe that any more. If judges did, they would be hard pressed to explain why the law of nature is not equally evident to other, apparently reasonable people. This does not mean that I believe that moral and political views are simply emotional preferences. Reason allows us to clarify our terms, to determine whether our beliefs are internally consistent, to consider objections and alternatives to them, to work out their practical implications, and to ensure that they rest on a solid basis of fact. But ultimately our values must be partly contingent on our personal history and character, on commitments we make out of love or respect, and not through reason alone. As for divine law as a source of objective values, a judge who expressly relied on that would be inviting impeachment. What then, about the shared values of society? If there were a societal consensus on what justice is there would not be so much litigation. In the end,
there cannot be a government "not of men, but of laws." We have a
government of laws which are made and applied by all too human be-
ings. The inequality, arbitrariness and uncertainty that follow are, to
some extent, unavoidable. On the brighter side, the semantic plurality
of positive laws allows law appliers to interpret away the outdated or
unfair prescriptions of the past. This is particularly useful when a legal
system is based on a sacred text which is difficult or impossible to re-
vise — like the Talmud, the Koran or the American constitution.

B. The Interpretations of "Bartleby": Law in the Middle Kingdom

What about the interpretations I have offered of "Bartleby"? What
do they say about the legal system and life as a lawyer? My
discussion of the Three Kingdoms began with the observation that
"Bartleby" is partly about the ways in which the forms and conventions
of ordinary life in the middle kingdom block off our appreciation of
human reality. Legal life necessarily involves the deliberate refusal to
take into account the wholeness of human beings. If there is to be order
and predictability in the legal system, there must be rules. Rules oper-
ate on the basis of a very limited number of human factors. In a civil
negligence suit, it matters whether the defendant has ignored a stop
sign before running into the plaintiff's car. It does not matter whether
the plaintiff is a rich man who can easily sustain the loss and the defen-
dant is a poor man who will be driven into bankruptcy by the judg-
ment. It does not matter whether the defendant is chronically indiffer-
ent to the safety of others or suffered a lapse of attention while
returning from the funeral of a close friend. In *Billy Budd* Captain
Vere believed he had to apply the letter of the law in order to maintain
military order, regardless of the radical innocence of the convicted
"criminal".65

Still, there are many ways in which legal officials can recognize
the humanity of the people they deal with. Lawyers can be more sensi-
tive to what clients really want to do, rather than what lawyers want
them to do. Where appropriate, prosecutors can drop charges or lessen
the penalties they demand. Judges can be merciful in their sentenc-

65 See Reich, *Justice and Billy Budd* (1966-67), Yale Review (N.S.) 368.
66 Most of the recent writing on the conflict between form and humanity in the secular legal
system has come from legal academics with Christian perspectives. In Noonan, *Persons and the
Masks of Law* (1976), the author explores four famous cases in which eminent judges have been
indifferent to social and human reality. His most telling essay is on *Palsgraf v. Long Island* 248
N.Y. 339 (1928), a case studied by every first year law student in the United States. It features a
highly abstract, and, to the uneducated ear, eloquent exploration by the famous jurist Judge Ben-
What do the upper and lower kingdoms have to do with the secular legal world? I expect that most readers have rarely been consciously troubled by any variant of this question. But there have been, and still are, legal systems in which the upper kingdom is considered to be directly relevant to ordinary legal life. In the Jewish legal system, decisions about everyday practical issues are decided by reference to a chain of interpretation which begins with the legal rules supposedly revealed to Moses at Mount Sinai. The contemporary Islamic world is struggling to reconcile the prescriptions of an almighty, eternal God as revealed to Mohammed in the seventh century, with a widespread desire to enjoy the benefits of Western science, technology, and political organization. Most modern Western legal systems, by contrast, have eschewed doctrinal contact with revealed religion. Many have constitutionally prohibited legislatures and courts from making their decisions expressly dependent upon the teachings of any particular organized religion. It was not so long ago that great Western constitutionalists and jurists relied upon an appeal to a “secularized” upper kingdom. Hugo Grotius, the pioneer of the international legal system, based his approach on a universally binding set of rules accessible through the exercise of reason. These laws would apply even if “there is no God, or if the affairs of men are no concern to him.”

For Hegel, the troubled course of world history was the process whereby the world spirit achieved its final liberation. The most mundane laws of a state — or at least a state of historical importance — were therefore a manifestation of a process of cosmic significance. For Kant, the universal moral law, the categorical imperative, could be understood by all creatures endowed with reason. Kant’s political writings attempt to show how this abstract principle can be made the basis of a practical, functioning legal system. In a Kantian legal world, jurists would attempt to exercise the most noble of human faculties in order to vindicate the eternal moral truth. But the age of reason is over in Western legal thought; it is now, in Grant Gilmore’s words, the “age of anxiety.”

A picture of the higher kingdom can be useful for people trying to operate a legal system. It can help to answer the recurring questions about justice and metaphysics which everyday legal life presents. Do

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jamín Cardozo of the theory of transferred negligence. Noonan takes the unprecedented step of finding out who Mrs. Palsgraf was and what happened to her.

67 Grotius, De Jure Belli ac Pacis, Prolegomena §11, quoted in D’Entreaves, Natural Law (1951) 52.


people have free will such that they "deserve" retributive punishment for their wrongdoing? Is the person now in jail for a crime committed half a lifetime ago enough of the same person that we can justify his or her continued incarceration? These questions won't go away, but we cannot answer them in a way which is intellectually satisfying. Sometimes, the questions are ignored or an answer is chosen that accords with what we would like the answer to be; but the uncertainty will not go away. The intellectual resources of middle kingdom life are not up to the questions that life in the middle kingdom raises.

If you are a legal Ahab, a lawyer or a judge who is looking for a higher meaning inherent in the doctrine and practice of everyday legal life, you are likely to be disappointed. The connection between religious doctrine and legal life has been severed, belief in natural law largely abandoned. There is a roundabout way by which people with religious faith can satisfy their metaphysical needs in ordinary legal life. The teaching of their religion might lend transcendental significance to their everyday legal life. Roman Catholic lawyers might hold that they are following the commands of Jesus by helping their fellow human beings and hope for reward in the afterlife for having done so. But the roundabout way is barred to some Ahabs because of the requirement it puts on nonrational faith.

If you are a Bartleby, you will find no more satisfaction in the middle kingdom legal life than can a legal Ahab. You are not concerned with eternal principles of justice, you are not working to implement absolute and permanent moral truth. Mathematicians may find a share in eternity by a sense that they are working with the timeless logic of numbers; physicists may find solace against the spectre of death in the knowledge that they are involved with the search for the fundamental universal and immutable laws of nature; literary artists may believe they are writing for the ages; musicians that their compositions will be performed a millennium from now. But what is lasting in lawyers' work? Not the law; it changes with each new judicial decision and act of the legislature. Not the morality of the people who make the law; a principle of justice which is self-evident to one generation (liberals think that all racial discrimination is irrational and immoral) is qualified, to some extent abandoned, by the next (liberals thinks racial discrimination in favour of minority groups is good). Occasionally, a lawyer or judge is involved in a case that sets a major precedent. The jurist may be under the delusion of having made law for the ages. With luck, the jurist has made law for the next few decades. Lyman Poore Duff was Chief Justice of the Supreme Court of Canada for longer than anyone else. His bust stands at the threshold of the main hearing
room of the Supreme Court. Very few lawyers in Canada would today be able to name and indicate the substance of more than a few of his decisions.

VII. CONCLUSION

It looks like whatever meaning there is in being a lawyer must come from the sense of accomplishment there is in executing fairly demanding technical tasks, the material reward and prestige that come from doing so, and in serving fellow human beings. That is about all the meaning there is to find. To find satisfaction as a lawyer, you must be content to dwell in the middle kingdom. You have to live in the world.