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## Judging the Judge: "Billy Budd" and "Proof to All Sophistries"

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In *The Failure of the Word*, Richard Weisberg addressed the most controversial question in the critical history of Melville's *Billy Budd*: How should we judge Captain Vere's decision to hang the Handsome Sailor?<sup>1</sup> Weisberg develops his answer further in his paper for this symposium, "Accepting the Inside Narrator's Challenge: *Billy Budd* and the 'Legalistic' Reader." In both the book and the paper, Weisberg quotes what he calls "the central passage" for understanding *Billy Budd*. It reads in part: "Such events [as the Great Mutiny] cannot be ignored, but there is a *considerate* way of historically treating them."<sup>2</sup> Weisberg claims that in this passage the narrator hopes "to educate us on theories of communication," and he goes on to use one such theory as the basis for his re-interpretation of Melville's story. In the following response to Professor Weisberg's paper, I address his two main points in using this theory of considerate communication: first, I discuss the theory as part of his specific reading of Vere's actions; and then I briefly examine the theory as part of a foundationalist project for grounding literary and legal interpretation in general.

## I

By "considerate" communication, Weisberg thinks that Melville means communication characterized by covertness and deception. For Melville, this covertness is sometimes necessary, as when he suggests that certain truths can be told to unwilling readers only "covertly, and by snatches."<sup>3</sup> But in *Billy Budd*, such considerate covertness is most often unnecessary and reprehensible, as in Claggart's dealings with Billy. Weisberg accuses Vere of this negative form of considerate communication and argues that Melville wants us to see through Vere's distortions and lies in condemning Billy in the court scene. He goes on to show in great detail how Vere egregiously misreads military law, and he claims Vere does this intentionally in order to justify hanging Billy. Weisberg argues further that there is a clear motive for Vere's unjust and illegal act: by executing Billy Budd, a

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jealous Vere is symbolically killing Admiral Nelson, the national hero Vere can never become.

I cannot examine here all the arguments Weisberg advances for this surprising interpretation, but I do want to introduce my main disagreement by mentioning at least a couple of my more local objections. For example, Weisberg gives much weight to the surgeon's reservations about Vere's behavior immediately before the trial scene. Yet he ignores the way the narrator undercuts our opinion of the surgeon in various places.<sup>4</sup> Immediately after describing the surgeon's doubts about Vere's sanity, the narrator observes that "with sanity and insanity" to "draw the exact line of demarcation few will undertake" and adds: "though for a fee becoming *considerate* some professional experts will." The narrator then notes that the "surgeon professionally and privately surmised" just this demarcation in Vere's case (102, my emphasis). These comments and others raise questions about the reliability of one of Weisberg's key witnesses.

Weisberg goes on to claim that readers should notice Vere's distortions of the law in his trial speech against Billy. But he fails to mention the rhetorical fact that it was not the niceties of legal interpretation, distorted or not, that convinced the court members to condemn Billy; it was Vere's straightforward appeal to their "instinct as sea officers," their worry over "the practical consequences to discipline, *considering* the unconfirmed tone of the fleet at the time" if there were not a "prompt infliction of the penalty" for the "violent killing at sea of a superior in grade" (113, my emphasis). Rhetorical effect, not interpretive deception, seems to be the point here.

I could continue this list of local objections to Weisberg's interpretive argument, but I do not want to give the impression of completely rejecting his negative evaluation of Vere's actions. I do want to suggest that the reasons Weisberg gives for condemning those actions are — how should I put it? — not well-considered.

## II

Not surprisingly, I have chosen a different passage than Weisberg's as my central text for interpreting *Billy Budd*. This passage appears in an earlier version of Chapter 7, where the narrator attempts to "fill out the sketch" of Vere by describing the Captain's reading habits. At one point in the late pencil stage of this passage, the manuscript took this form: in his reading, Vere "found confirmation . . . so that as touching most fundamental topics there had got to be established in him some positive conviction, which he forefelt would abide in him essentially unmodified *proof to all sophistries*" (313, emphasis added). If "considerate communication" is Professor Weisberg's key term, mine will turn out to be this phrase: "proof to all sophistries,"

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which I will use first to reread Weisberg's interpretation and then center my own.

Weisberg bases his interpretive case on the equation of "considerate" with "covert" and "deceptive." But Melville's text gives us several other usages not covered by this equation. Besides Weisberg's key passage about "considerate ways of historically treating" mutinies, we read how for a "fee becoming considerate" so-called experts will draw the impossible boundary between sanity and insanity and how the court members were "considering the tone of the fleet" in making their decision. Earlier the narrator mentions that utilitarians "suggest considerations" implying criticism of Nelson, and in Nelson's defense, the narrator comments that "personal prudence, even when dictated by quite other than selfish considerations, surely is no special virtue in a military man" (57-58). In his trial speech condemning Billy, Vere himself asks, "[I]s nothing but the prisoner's overt act to be considered?" (110), and later charges the court to "consider the consequences" of clemency (112). And still later in a defense of the court's actions, the narrator quotes an unnamed authority (probably Melville himself) "with respect to other emergencies involving considerations both practical and moral" (114). And, perhaps most ironically of all, considering Weisberg's view of Vere as a considerate communicator, we read that Vere seemed "unmindful" that his "remote allusions . . . were altogether alien" to his fellow officers. "But considerateness in such matters is not easy to natures constituted like Captain Vere's" (63).

My point here is a simple one: the word "considerate" and its variants do not just refer to covertness and deception in Melville's text. Rather, the terms refer more broadly to *taking into account* — *considering* — *the many factors involved in any judgment, interpretation, or argument*. Considerations are the multiple, messy, even indefinable circumstances surrounding interpretive and rhetorical practices (including interpretations *as* rhetorical practices). That is, considerate communication involves adjustments to complex situations, with many considerations, interpreted to an audience. Considerate communication deals with a multitude of considerations in trying to convince readers and listeners.

Perhaps Vere does show himself to be a considerate communicator, not because he deceives the court, as Weisberg suggests, but because he convinces it. That is, Vere is a considerate communicator not because he covertly misrepresents the law but rather because he explicitly and successfully appeals to the political considerations of the case. However, at another level, Vere is not considerate at all. He simply cannot cope with the multiple considerations in making judgments, interpretations, and arguments case by case. And here I arrive at the center of my counter-interpretation of Vere's actions.

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Captain Vere does not make his case to execute Billy because he wants to fulfill some kind of vendetta against Nelson, as Weisberg would have it. Vere does so because he cannot deal with the threat of political and intellectual chaos. Remember my key phrase: Vere wanted to have “positive convictions” safe from “all sophistries.” He wanted absolute security invulnerable to the new and dangerous arguments of the French Revolution. Here is the final version of my key passage in the late pencil stage, the version that appears in all published forms of the novel: in his reading, Vere “found confirmation . . . which he had vainly sought in social converse, so that as touching most fundamental topics, there had got to be established in him some positive convictions which he forefelt would abide in him essentially unmodified . . . His settled convictions were as a dike against those invading waters of novel opinion social, political, and otherwise, which carried away as in a torrent no few minds in those days” (62). Vere’s was not to be one of those minds carried away by such radical sophistry; his was not to be one of those overwhelmed by alien considerations. What Vere wanted was a fixed point, principles, foundations to stand upon to fight the impending chaos of sophistry, of dangerous arguments.

Such foundations give Vere the neutral ground from which to fight revolutionary ideas, or so he thinks. “While other members of that aristocracy to which by birth he belonged were incensed at the innovators mainly because their theories were inimical to the privileged classes, Captain Vere *disinterestedly* opposed them not alone because they seemed to him insusceptible of embodiment in lasting institutions, but at war with the peace of the world and the true welfare of mankind” (62-63, my emphasis). More pointedly, Melville had written in an earlier manuscript stage that Captain Vere “disinterestedly opposed the new theories not alone as impracticable but so far partaking of the unsound as to border on the insane” (313).

If we return now to Vere’s courtroom speech, we can see a reason for his argument entirely ignored by Weisberg: “[a]fter scanning [the] faces [of the three court members] he stood less as mustering his thoughts for expression than as one inly deliberating how best to put them to well-meaning men not intellectually mature, men with whom it was necessary to demonstrate certain principles that were axioms to himself” (109). The narrator does not say that Vere wanted to convince the court of Billy’s guilt but rather that he wanted “to demonstrate certain principles that were axioms to himself.” He did not want to “kill” Nelson by hanging Billy but to fight disorder, intellectual and political, by acting decisively to enforce and thus support stable principles of actions. “Certain principles that were axioms to himself” are the same as the “positive convictions” impregnable to

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“all sophistry,” the “settled” principles which were “a dike against those invading waters of novel opinion.”

From this perspective, then, *Billy Budd* does not present a conflict between good and evil, or between duty and compassion, or even between law and justice. Rather it enacts the conflict between the dangers of sophistry and the security of foundations: that perennial conflict, if you will, between rhetoric and philosophy. What the story and, in particular, Vere’s dilemma demonstrate is that there is no simple way of deciding which considerations matter; no general principle, no rules, no theory applicable to all cases of interpreting and arguing distinctions between sanity and insanity, guilt and innocence, political duty and higher responsibility. In the messy world of interpretive and rhetorical practices, one can, as Vere does, fall back on foundationalist thinking and try to avoid the potential dangers of sophistic rhetoric, or one can hire a paid expert, like the lawyers and doctors mentioned in the text, who will use sophistic rhetoric to argue for or against, depending on who pays. Neither remedy deals with the case at hand with all *its* considerations, Melville seems to suggest. Neither Vere’s intellectual security nor the experts’ greed offer legitimate motives for dealing with considerations of concrete historical problems of interpreting, judging, and arguing.

### III

In my rhetorical reading, the lesson of *Billy Budd* must turn back, finally, upon the theories underlying any reading of Melville’s text. Rhetorical (which is to say, political) considerations can never be escaped in interpreting law or literature. Rhetorical considerations are always historically specific, and thus general theories of interpretation attempting to provide permanent foundations for correct readings can never be effective except by accident. Professor Weisberg again provides me with my illustrative case.

Weisberg presents his interpretation of *Billy Budd* as part of a general hermeneutics for reading literary texts, and in an article called “Text into Theory: A Literary Approach to the Constitution,” he attempts to extend his theoretical claims to legal as well as literary interpretation. In both cases, he aims to establish a foundationalist theory for guaranteeing valid interpretations.<sup>5</sup> For example, in his paper he asks the question, “How is a text’s general atmosphere and approach to be gleaned?”, and he answers that a text can have in it its own “theory of interpretation.” In *Billy Budd* he finds, as we have seen, a “theory of considerate communication,” and he argues that the trial scene teaches us a methodology “to avoid interpretive error.” Weisberg adds the traditional objectivist exhortation: “[e]ngage the text in its fullness, avoiding no hint, embracing each nuance.” But

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whose fullness? Which fullness? Weisberg could answer: the fullness dictated by the text's own theory of interpretation. But don't we have to interpret the text first to find the theory for interpreting the text? Isn't this viciously circular? Moreover, I claim to have found a "theory" in *Billy Budd* myself (one that looks suspiciously like the rhetorical hermeneutics I have argued for elsewhere<sup>6</sup>), and my interpretation, the theory I have "found," is very different from Weisberg's.

We seem to be left with the same situation with which we started: we still need to interpret the text and argue our cases. Furthermore, no foundationalist appeal to "neutral principles" or "disciplinary rules" outside the text will change this rhetorical situation.<sup>7</sup> That is, neither Weisberg's claims about a text's theory nor the more usual foundationalist appeal to sanctioned rules provides an easy escape from specific rhetorical contexts of interpretive argument. In every case, the text or rules must be interpreted and the interpretation defended. Along with Captain Vere, we may desire "certain principles" that are "proof to all sophistries," but no hermeneutic theory will provide them for us.

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1. Richard Weisberg, *The Failure of the Word* (New Haven: Yale, 1984), Chs. 8 and 9.

2. The Hayford and Sealts 1962 hardbound edition includes a clear reading text (41-132) and a genetic text (274-432) providing a transcription of the manuscript as it stood when Melville died. P. 55, my emphasis.

3. Herman Melville, "Hawthorne and His Mosses," *Literary World* (August 17, 1850), rpt. in Herman Melville, *Moby-Dick*, eds. Harrison Hayford and Hershel Parker (New York: Norton, 1967) 542.

4. As Hayford and Sealts point out in their Introduction to the edition cited *supra* note 2, at 35-37.

5. Richard Weisberg, "Text Into Theory: A Literary Approach to the Constitution," 20 *Georgia L. Rev.* 939 (1986).

6. See Steven Mailloux, "Rhetorical Hermeneutics," 11 *Critical Inquiry* 620 (1985). Also see Steven Mailloux, *Rhetorical Power* (Ithaca: Cornell U. Press, 1989).

7. See, for example, H. Wechsler, "Toward Neutral Principles of Constitutional Law," 73 *Harvard L. Rev.* 34 (1959), and Owen Fiss, "Objectivity and Interpretation," 34 *Stanford L. Rev.* 739 (1982). For persuasive criticisms of these essays, see Mark V. Tushnet, "Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles," 96 *Harvard L. Rev.* 781 (1983), and Stanley Fish, "Fish v. Fiss," 36 *Stanford L. Rev.* 1325 (1984). Except for Wechsler, the essays cited in this note and *supra* notes 5 and 6 are reprinted (in some cases condensed) in Sanford Levinson and Steven Mailloux, eds., *Interpreting Law and Literature: A Hermeneutic Reader* (Evanston: Northwestern U. Press, 1988).