

Follow Your Leader – I Prefer not to: Slavery, Giorgio Agamben and Herman Melville

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Abstract

Giorgio Agamben proffers Bartleby's phrase "I prefer not to" as a model for paralyzing apparatuses of power rather than slave mutiny leader Babo's phrase "follow your leader." This article compares the strategies embodied in these characters from Herman Melville's work of non-cooperation with versus violent resistance to violence. It argues that because the slave-figure is the shadow image of the free human in liberal democratic thought, violence is an illusory basis for emancipation. Such violence would not only be a mimicry of the oppressor by the oppressed but also relies on political theodicy in justifying violence as a necessary evil.

Keywords

Giorgio Agamben; Babo; Bartleby; Faust; Herman Melville; law; political theodicy; slavery; violence

I. Introduction

This article engages with the work of Italian philosopher Giorgio Agamben and American literary figure Herman Melville to conclude that the most effective antidote to political violence is not better violence but better politics. It does this through the admittedly risky and controversial argument that the figure of the slave within the philosophical schematics of Agamben's work counterintuitively paves the way to an authentic freedom, which is not underwritten by violence. The article begins by outlining certain aspects of Agamben's engagement with slavery. It then turns to Melville's work to discuss the various alternatives that Agamben could proffer as models for emancipatory politics.

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Following which, the model of Bartleby that Agamben sources from Melville is used to show how to escape the strictures of the office (per Agamben's take on that notion) with specific reference to the office of master in the master/slave dialectic.

II. Agamben and Slavery

Agamben's *The Use of Bodies* opens with an extended discussion on slavery.¹ Prior to this, an apparent omission often cited with regard to Agamben was his supposed neglect of slavery in favor of an obscure figure of Roman law, the "sacred man" *homo sacer*.²

Antonio Negri expressed this best as "resistance is interpreted by Agamben as passivity rather than as rebellion, represented by Bartleby rather than Malcolm X, by *homo sacer* rather than the slave or the proletariat."³ The principal basis for this claim is because Agamben states that: "the strongest objection against the principle of sovereignty is contained in Melville's Bartleby, the scrivener who, with his 'I would prefer not to,' resists every possibility of deciding between potentiality and the potentiality not to."⁴

Those pointed criticisms by Negri and others, concerning Agamben's valorization of passivity over resistance, exemplification of Bartleby rather than Malcolm X and preferring the *homo sacer* to the slave or the proletarian are the impetus and starting point behind this article's argument. The discussion of slavery in *The Use of Bodies* might very well be a response to the criticism. However, whether it was included to amend a supposed omission or to merely amplify or render explicit something that was already present in Agamben's work is less clear. This article favors the latter view as follows below.

For Agamben modern humans appear to be virtually sacralized or reduced to *homine sacri* in that all human life as a bare biological fact is banned or excluded from political calculation – yet it is the background upon which those calculations are made.⁵ But is the relative obscurity of slavery in Agamben's project an actual lack? On the face of it the critique admittedly appeared sound – perhaps even necessary – when it was made. For one, in *Homo Sacer* that begins the multi-book project of the same name Agamben cites Aristotle's *Politics* regarding the *oikos* or homestead as being excluded from the *polis* or city as the space of politics but does not see fit to mention too Aristotle's views on the naturalness of slavery expressed in the same source and at the same place.⁶ For another in Roman Law, ostensibly of which he writes, the primary distinction was the division between slaves and

1. Giorgio Agamben, *The Use of Bodies* (Stanford, CA: Stanford University Press, 2016), (Homo Sacer IV), p. 23.

2. S. Bignall and M.G. Svirsky, "Introduction: Agamben and Colonialism," in Simone Bignall and Marcelo G. Svirsky (eds), *Agamben and Colonialism* (Edinburgh: Edinburgh University Press, 2012), p. 1.

3. Negri, "Giorgio Agamben: The Discreet Taste of the Dialectic," in Matthew Calarco and Steven De Caroli (eds), *Sovereignty and Life* (Stanford, CA: Stanford University Press, 2007), p. 123.

4. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Daniel Heller-Roazen, tr.) (Stanford, CA: Stanford University Press, 1998), p. 48.

5. Agamben, *Homo Sacer*, p. 111.

6. Op. cit., p. 2.

free men.⁷ This is moreover not lost on Agamben.⁸ As Magnus Fiskesjö very pithily puts it: “In ancient Rome – the source of Agamben’s *homo sacer* – slaves were everywhere.”⁹ Further, Agamben recalls Magna Carta as being the first instance in which bare life was inscribed in the law but takes no note of the fact that the *homo liber*, or free man, upon which its freedom is based was defined negatively from slavery.¹⁰

Additionally, Thomas Hobbes arises in Agamben principally in support of the thesis that bare life or *nuda vita* is the foundation upon which the political society of the state is founded.¹¹ This is the bare life, which by its exclusion from political life engenders the body-politic bringing the violence of the state of nature to an end. However, the fact that the social contract itself being, as it is, without valuable consideration and consequently a bare agreement or *nudum pactum* is not mentioned. Can we also look at this agreement without valuable consideration as the bare contract that through its exclusion founds political society? Although Agamben insists this is the wrong way to approach Hobbes,¹² what if we nonetheless did? How would this affect the way we look at Agamben’s work? Hobbes’ *Leviathan* is pivotal for Susan Buck-Morss because in it slavery is portrayed a consequence of the war of all against all in the state of nature, hence belonging to “the natural disposition of man.”¹³ Hobbes considered the “elemental struggle between two enemies” to be “the natural condition which made slavery necessary as a social institution.”¹⁴ Buck-Morss argues that “[b]y the eighteenth century slavery had become the root metaphor of Western political philosophy, connoting everything that was evil about power relations.”¹⁵

Positing either bare life or bare contract still generates a law-shaped void; a yearning for law prior to the instatement of law. By this void whatever its provenance, the mere fact of living presence in a territory where a sovereign claims authority is sufficient to construct general acquiescence to that sovereign’s will. This presence gives purchase to the law with every member of the political community’s assumed consent as well as that of every visitor to that territory. Consequently, Agamben could plausibly substitute bare contract for bare life and still make his main point of a disenfranchising moment at the simultaneous emergence of law, the state and the sovereign. To restate these general observations: in Ancient Greece slavery was considered natural; in Roman law, birth or capture in war sufficed to make one a slave; while in Hobbes the war in the state of nature

7. William Buckland, *The Roman Law of Slavery: The Condition of the Slave in Private Law from Augustus to Justinian* (New York: Cambridge University Press, 2010) (xii), p. 1.

8. Giorgio Agamben, *The Time that Remains: A Commentary on the Letter to the Romans* (Stanford, CA: Stanford University Press, 2005), p. 13.

9. M. Fiskesjö, “Outlaws, Barbarians, Slaves: Critical Reflections on Agamben’s *Homo Sacer*,” *HAU: Journal of Ethnographic Theory* 2(1) (2012), 161–80 at 166.

10. Agamben, *Homo Sacer*, p. 123.

11. *Op. cit.*, p. 125.

12. *Op. cit.*, p. 106.

13. *Op. cit.*, pp. 26–7.

14. David Brion Davis, *The Problem of Slavery in Western Culture* (New York: Cornell University Press, 1966), p. 120.

15. Susan Buck-Morss (2009), *Hegel, Haiti and Universal History* (Pittsburgh, PA: University of Pittsburgh Press), p. 21.

was the basis for slavery. Clearly slaves as such – just like *homine sacri* – were excluded from the Greek *polis*, outside of Roman civil law and not party to the Hobbesian social contract, all three of which are mainstays of Agamben’s political thought.

Having said all that though, it is not all that simple to diagnose slavery as lacking in Agamben’s project even if you set aside *The Use of Bodies*. Indeed Agamben references slavery and cognate terms such as slave, enslaved, etc. in at least thirteen of his pieces, a substantial portion of which even predate the critique of his work for neglecting the figure of the slave.¹⁶ In *The Time that Remains*, Agamben notes the “importance of the term” slave in the biblical writings of Paul.¹⁷ For Agamben Paul’s highly technical usage of the term “is used to express the neutralization that the divisions of the law and all juridical and social conditions in general undergo as a consequence of the messianic event.”¹⁸ Subsequently, in *The Use of Bodies* Agamben clearly describes the special status of slaves who were both excluded and included in humanity in the sense that a free man implies a slave as a necessary condition of its possibility.¹⁹ The slave is in between an artificial instrument and a living body.²⁰ Consequently slavery does not appear to be that much of a blind spot for him. One way then to constructively approach this question of slavery is to take Agamben seriously and compare Bartleby the scribe whom Agamben proffers as the figure to emulate versus Babo a slave figure from a shared source. Herman Melville. As James Martel expresses it, Agamben uses Bartleby’s signature phrase “I prefer not to” to distinguish between immanent forms of power and potentialities or potencies of power to do and not to do.²¹ The utility of that formulation of Bartleby is that it carves out a position beyond the prescribed binary of either doing or not doing.²²

16. Giorgio Agamben, *Language and Death: the Place of Negativity* (Minneapolis, MN: University of Minnesota Press, 1991), (xiii), pp. 46–7, 49, 58, 73 and 139; Giorgio Agamben, *Infancy and History: The Destruction of Experience* (New York: Verso, 1993), p. 28; Giorgio Agamben, *Stanzas: Word and Phantasm in Western Culture* (Minneapolis, MN: University of Minnesota Press, 1993), (xix), p. xviii and 42; Agamben, *Homo Sacer*, p. 95; Giorgio Agamben, *Remnants of Auschwitz: the Witness and the Archive* (New York: Zone Books, 2000), pp. 108–9; Giorgio Agamben, *The Open: Man and Animal* (Stanford, CA: Stanford University Press, 2004), (viii), pp. 12, 37; Agamben, *The Time that Remains*, pp. 11, 13, 17, 19, 26, 28, 29, 34, and 165; Giorgio Agamben, *State of Exception* (Chicago, IL: University of Chicago Press, 2005), pp. 21, 71; Giorgio Agamben, *The Kingdom and the Glory: For a Theological Genealogy of Economy and Government* (Stanford, CA: Stanford University Press, 2011), pp. 17, 24, 31, 81, 82, 86 and 287; Giorgio Agamben, *The Sacrament of Language: an Archaeology of the Oath* (Adam Kotsko, tr.) (Stanford, CA: Stanford University Press, 2011), pp. 26 and 60; Giorgio Agamben, *The Church and the Kingdom* (New York: Seagull Books, 2012), p. 13; and Giorgio Agamben, *Opus Dei: An Archaeology of Duty* (Stanford, CA: Stanford University Press, 2013), pp. 72, 73 and 102.

17. Agamben, *The Time that Remains*, p. 12.

18. Op. cit., p. 13.

19. Agamben, *The Use of Bodies*, p. 20.

20. Op. cit., p. 23.

21. James R. Martel, “Book Review: Decolonizing Democracy: Power in a Solid State,” *Law, Culture and the Humanities* 13(2) (2017), 309–11, 309.

22. Michael J. Shapiro, “The Micropolitics of Justice: Language, Sense and Space,” *Law, Culture and the Humanities* 8(3) (2011), 466–84.

Having now established that Agamben did consider slavery previously and in any event has definitely done so now, the next section will consider Negri's implied criticism that Agamben could and should have identified a slave figure from his various sources both legal and literary upon which to found his emancipatory project in order to answer what value Agamben gains and provides in singling out Bartleby as an exemplary figure. In this way as the argument unfolds it brings into dialogue the guiding principles as expressed in the signature phrases of the key (and eponymous) characters – Herman Melville's so-called three Bs: *Bartleby*, *Benito Cereno* and *Billy Budd*.²³

III. Bartleby or Babo? Definitely not Billy Budd

Although Melville's three Bs as seen in the previous section are Bartleby, Benito Cereno and Billy Budd it is a fourth B however that invokes slavery – Babo the African slave leader of a mutiny. Although Babo's story is told through Amasa Delano an American shop captain as a plot device, the tale is named after Benito Cereno a Spaniard and Babo's hostage. Evidently, Melville could have easily titled it Babo instead of *Benito Cereno* but did not do so.

Bartleby from *Bartleby* is the figure that Agamben relies on as a model of political resistance.²⁴ The action takes place in a law firm on Wall Street. Initially, Bartleby's work as a clerk copying out documents is of the highest quality, the envy of his co-workers Nippers and Turkey and the pride of his lawyer boss. Later however, when asked to do the routine work of verifying the accuracy of his copy Bartleby utters the phrase "I prefer not to" to his employer (the narrator of the story). That phrase gradually becomes his standard response to whatever task that he is assigned. This response is poised between the acquiescence of yes and the disobedience of no; it is neither defiance nor subservience but instead is studiously non-committal. His is neither a rebellion nor a straight-up refusal to do work but merely the expression of a stubborn preference not to do the work. He remains unmoved by either threats or bribes. This is baffling to his boss who would prefer Bartleby either did the work as asked or, alternatively, refused outright which would then give grounds for an immediate dismissal. So uncomfortable does the lawyer (we are not told his name) become with Bartleby's persistent non-cooperative stubbornness that rather than evict him from the office that has now become Bartleby's home he himself moves out of the premises and abandons Bartleby to his fate. The narrator however cannot help himself but check on Bartleby and upon learning of his subsequent imprisonment tries to ensure that he is still kept fed while incarcerated. Bartleby however has other ideas and "prefers not to eat," starving to death as a consequence. For Robin West, *Bartleby* explores how positive law in liberal societies ensures compliance via a

23. Dan McCall, *The Silence of Bartleby* (Ithaca, NY: Cornell University Press, 1989), p. 140.

24. Agamben has referenced Bartleby the Scrivener, first in "Bartleby, or On Contingency," in Giorgio Agamben, *Potentialities: Collected Essays in Philosophy* (Stanford, CA: Stanford University Press, 1999); see also Giorgio Agamben, "Bartleby," in Giorgio Agamben, *The Coming Community* (Minneapolis, MN: University of Minnesota Press, 1993); Agamben, *Homo Sacer*, p. 48; Giorgio Agamben, *Idea of Prose* (Albany, NY: State University of New York Press, 1995), p. 65; and Giorgio Agamben, *Means Without End: Notes on Politics* (Minneapolis, MN: University of Minnesota Press, 2000), p. 23.

two-pronged strategy, brute force accompanied by influencing conscious compliance and thus ensuring both efficacy and legitimacy.²⁵ Thus, Agamben proffers Bartleby's signature phrase "I prefer not to" as a way of paralyzing the apparatuses of power in western liberal societies without breaking the law.

Benito Cereno is a character in another of Melville's short stories published in *The Piazza Tales* – the same collection that *Bartleby* was published in. Carl Schmitt, a perennial reference point of Agamben's was not the only German intellectual immediately after World War II to see parallels between the stories and their situation under Nazi Germany.²⁶ Indeed Schmitt compared himself to Benito Cereno in the context of Nazi Germany while defending himself from the Allies against accusations of international crimes.²⁷ Needless to say, Agamben is well aware of that fact.²⁸

Moreover, a certain justification for a methodological approach surmising that Agamben is familiar with *Benito Cereno* is that Agamben himself acts precisely in this way when surmising that because Schmitt was a reader of the journal *Archiv* it was very likely that he was familiar with Walter Benjamin's *Critique of Violence* when Agamben says:

Now, not only did Schmitt publish numerous essays and articles (including the first version of *The Concept of the Political*) in the *Archiv* between 1924 and 1927, but a careful examination of the footnotes and bibliographies of his writings shows that from 1915 on Schmitt was a regular reader of the journal (he cites, among others, the issues immediately preceding and following the one containing Benjamin's essay). As an avid reader of and contributor to the *Archiv*, Schmitt could not easily have missed a text like "Critique of Violence," which, as we will see, touched upon issues that were essential for him.²⁹

Additionally, prior to Agamben's example Susan Buck-Morss executed the same maneuver when arguing that Georg Wilhelm Friedrich Hegel's Master/Slave dialectic (of which more below) was conceived of in contemplation of the Haitian Revolution as that event was reported in the journal *Minerva* about which she states: "another regular reader of *Minerva*, as we know from his published letters, was the philosopher Georg Wilhelm Friedrich Hegel."³⁰ Also:

We are left with only two alternatives. Either Hegel was the blindest of all the blind philosophers of freedom in Enlightenment Europe, surpassing Locke and Rousseau by far in his ability to

25. Robin West, "Invisible Victims: A Comparison of Melville's Bartleby the Scrivener and Glaspell's A Jury of Her Peers," *Cardozo Studies in Law and Literature* 8 (1996), 203–52, 219–20.

26. Leland R. Phelps, "The Reaction to Benito Cereno and Billy Budd in German," *Symposium: A Quarterly Journal in Modern Literatures* 13(2) (1959), 294–9, 295–6.

27. Carl Schmitt, *Ex Captivitate Salus: Experiences, 1945–47* (Cambridge: Polity Press, 2017), p. 21. See also Reinhard Mehring, *Carl Schmitt: a Biography* (Cambridge: Polity Press, 2014), p. 412.

28. Giorgio Agamben, *Stasis: Civil War as a Political Paradigm* (Edinburgh: Edinburgh University Press, 2015), (*Homo Sacer II*, 2), p. vi.

29. Giorgio Agamben, *State of Exception* (Chicago University Press, 2005), pp. 52–3.

30. Susan Buck-Morss, "Hegel and Haiti," *Critical Inquiry* 26(4) (Summer, 2000), 821–65, 842.

block out reality right in front of his nose (the print right in front of his nose at the breakfast table); or Hegel knew – knew about real slaves revolting successfully against real masters, and he elaborated his dialectic of lordship and bondage deliberately within this contemporary context.³¹

It is consequently not unreasonable to infer that Agamben had ample opportunity to consider Babo's plight and it would stretch credulity to infer that such a careful thinker of Agamben's caliber would not have done so.

Benito Cereno was the captain of a slave ship taken over by the slaves whose leader Babo forced him to act as the master while they feigned the condition of slaves in order to get provisions from Amasa Delano, an American ship captain that came to their aid.³² The slaves for a time successfully staged a masquerade, a grim carnival that took advantage of Delano's racist attitudes toward the (for him) natural affinity for Africans to servile roles to hoodwink him under Babo the mutiny mastermind's harsh and cruel leadership. So much so that Babo could not only nonchalantly hold a cut-throat razor to Benito Cereno's neck but go ahead to draw blood and still convince Delano that he remained a loyal manservant ministering to his master as a barber. Babo – supremely self-aware – ruled through delicately posed irony, terror, violence and cunning exemplified in displaying the body of Alexandro Aranda, his erstwhile owner on the prow of the ship (later covered in tarpaulin but never far from the consciousness of his captives) above the hastily scrawled prescription "follow your leader." Benito Cereno as master-yet-captive-of-slaves has been interpreted in Germany as a symbol for the Germans generally or German generals specifically under Hitler, Delano as symbolizing a naive America and in at least one other instance (including by Schmitt) Babo as symbolizing Hitler and later as embodying abstract evil.³³ These readings of Melville grant the status of parables to his tales. For Agamben "parables are a discourse ciphered to prevent those who should not understand it from understanding it; yet, at the same time, they fully display the mystery."³⁴

Now with these in mind we can return to the question structuring the present inquiry: to whom do we look as a model for political emancipation among these literary characters? Should we choose Bartleby standing in as a cipher for bare life/*homo sacer* through his signature phrase "I prefer not to"? Or do we look to Babo as a political militant who is a referent to the violence inherent in the institution of slavery through his signature phrase of "follow your leader"?

As a preliminary step we can contrast both of these with the respectful attitude toward law even unto death as portrayed in the shape of Billy Budd, yet another of Melville's characters in a short story once more of the same name. Melville's *Benito Cereno* and *Billy Budd* were translated into German in 1938.³⁵ For present purposes Billy Budd's

31. Op. cit., 844.

32. Herman Melville, *Benito Cereno* (Raleigh, NC: Generic NL Freebook Publisher, 2008).

33. Leland R. Phelps, "The Reaction to Benito Cereno and Billy Budd in German," *Symposium: A Quarterly Journal in Modern Literatures* 13(2) (1959), 294–9, 297.

34. Giorgio Agamben, *The Fire and the Tale* (Stanford, CA: Stanford University Press, 2017), p. 21.

35. Phelps, "The Reaction to Benito Cereno and Billy Budd in German," 295.

signature phrase is contained in his last words “God bless Captain Vere!” They preceded his execution under Captain Vere’s orders. This invocation of God’s blessing was despite the execution being patently unjust even to those that presided over the verdict. The German reception of *Billy Budd* saw it as a political allegory initially seeing Billy Budd as a sacrificial lamb quite willingly and for the sake of salvation of the whole going along with his sacrifice and later more critically as the sacrifice of innocents for the sake of social order in a manner quite in keeping with the letter of law.³⁶ Agamben, of course, would emphatically reject the active acquiescence to the law as portrayed by Billy Budd and modeled on the exemplary law-abiding citizen. This is why the question arising is not the alliterative: “Bartleby or Babo or Billy Budd?” because Billy Budd as a solution to liberal democracy’s deliberate coupling of brute force to conscious compliance is simply out of the question for Agamben. Billy Budd is only in play therefore by his exclusion from consideration. Bartleby’s studied passivity and Babo’s emancipatory violence on the other hand point to two different ways of approaching law’s complicities with violence.

In some ways Babo is a literal and literary embodiment of the slave element of Hegel’s master-slave dialectic. He is simultaneously self-aware while also being aware of his master’s inner psyche in a way that is not reciprocated. He has with ample justification even been referred to as “the genius of the story.”³⁷ Babo through deploying violence solely as a means to emancipation is the sovereign of the political space of the slave ship under revolt in the name of freedom wanting nothing but to be returned to their homeland whence they were abducted. Melville has Babo make his captives look at the skeleton of his former master and asks them whether the whiteness of its bones reveals the skeleton of a white man. Babo believed that there would be no freedom while his master was still alive and therefore puts him to death. This murder does not reckon with law neither in the guise of succession law, which would in principle ensure Babo as property would either devolve onto his master’s heirs or failing which, the State, nor did it reckon with the operation of the criminal law, which in the end, tries, convicts, hangs and orders the public displaying of his head mounted on a spike. The law’s self-reflexive complicity in this needs emphasizing in that the law recognizes that it itself is actually necessary for slavery to take place:

The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political; but only positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory: it’s so odious, that nothing can be suffered to support it, but positive law.³⁸

As a matter of historical record, even legal emancipation and the criminalization of slavery guaranteed in fact financial compensation for erstwhile slave owners.³⁹

36. Op. cit., 297–8.

37. Frederick Busch, “Melville’s Mail,” *The Iowa Review* 16(2) (Spring-Summer, 1986), 150–63, 159.

38. *Somerset v. Stewart* (1772) 98 ER at 510.

39. Nicholas Draper, *The Price of Emancipation: Slave-Ownership, Compensation and British Society at the End of Slavery* (Cambridge: Cambridge University Press, 2010) (xiii), p. 8 of plates.

Importantly for this article's argument, upon capture Babo adopted Bartleby's attitude of withdrawal from social intercourse and mutely followed his fate wherever it led. Bartleby who by contrast to violent struggle "prefers not to" carves out a position of pure potentiality for himself from the start. Not quite defying the law but not cooperating either, merely acting in a place beyond the law's reach. He perplexes and haunts all those that try in vain to bind him to its strictures. It is precisely here that Babo himself ends up after all the violent struggle. At least one insight may be gleaned at this point which is that regardless of whether you deploy violence fighting for or against the system you are still within the system's parameters either fighting to retain your place or fighting to gain or perhaps regain a place. The oppressive system itself is not in question and is indeed the only element whose survival is guaranteed by the very terms of the violent exchange.

Consequently, violent struggle merely affirms the system and demonstrably does not weaken it in any way whatsoever. Indeed it does precisely the opposite. Preferring not to participate is instead the genuine position of rejecting the system as such. Thus to follow Agamben's lead is to unmask the apparent politics of the city as really being part of the apparatus of the camp.⁴⁰ Both Billy Budd and Babo in trying to preserve their lives in the face of the law manifestly failed in directly opposed ways. Instead, they only succeeded in taking responsibility for a system over which they had no actual power, being, as they were, under fatally constrained moral agency. Responsibility, after all is defined juridically and not ethically.⁴¹ Charles Mitchell observed that Melville investigated "the moral psychology of the legalistic mind which supports the use of legal forms for the protection of evil" in three places, *Bartleby the Scrivener*, *Benito Cereno* and for Mitchell, "most penetratingly" in *Billy Budd*.⁴² More on this use of legal forms to protect evil as a species of political theodicy below.

Robert Cover engages with both *Billy Budd* and *Benito Cereno* in *Justice Accused* reading both through the prism of law's complicit role in the oppressive legal institution of slavery.⁴³ As a clear instance of a decision-maker's will being irrelevant to their decision Cover quotes Captain Vere's words "however pitilessly that law may operate in any instances, we nevertheless adhere to it and administer it."⁴⁴ Cover goes on to make the ingenious proposition that Captain Vere had a real life model in Melville's father in law, Chief Justice Lemuel Shaw who was privately opposed to slavery but yet applied the harsh laws against fugitive slaves unflinchingly despite the personal agony it caused him.⁴⁵ Cover also likened Billy Budd to a slave in their mutual mute subjection to the law's strictures.⁴⁶ Cover too noted the theological aspect of Billy Budd including "the clash of elemental good and elemental evil" embodied in the characters.⁴⁷ Furthermore Cover

40. Giorgio Agamben, *State of Exception*.

41. Agamben, *Pilate and Jesus*, p. 13.

42. Charles Mitchell, "Melville and the Spurious Truth of Legalism," *The Centennial Review* 12(1) (Winter 1968), 110–26, 110.

43. Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven, CT: Yale University Press, 1975), pp. 1–7, 108, 110.

44. Op. cit., p. 3.

45. Op. cit., pp. 4–5.

46. Op. cit., p. 5.

47. Op. cit.

highlighted that a slaveholder could readily see that the law in certain instances recognized “that in the natural order of things – even though not in the legal order – his slave had a right to kill him.”⁴⁸

Agamben’s work does delve deeply into theological concepts but the focus is more on their strategic deployment rather than their systematic development over time.⁴⁹ As such it is always political theology in the Schmittian sense. In the context of the law’s complicity with violence generally and specifically regarding slavery this is a political theodicy as seen in his treatments of the Faustian pact which is located at the intersection of philosophy, law and religion. Resort to violence appears then as a Faustian pact by way of conceiving of violence as inherently evil but nevertheless somehow capable of achieving good. In Goethe’s *Faust* Faust asks Mephistopheles: “Who are you then?” and is answered perhaps truthfully but not completely honestly: “Part of that force which would do ever evil, and does ever good.”⁵⁰ This is ultimately an illusory hope in that while the evil is certain the good is only promised. Moreover any good that may occur subsequent to the agreement is not causally linked to the agreement as such.

As Walter Benjamin pointed out the difference between a strike as divine violence and a riot as law making or law preserving violence leaves the question of violence itself untouched and unquestioned.⁵¹ The prevailing test is only violence as a means to an end and therefore in this way violence is only to be evaluated strictly as a means, a so-called necessary evil whose evil is undisputed but whose necessity is impossible to either prove or disprove. Agamben notes in this regard that “the law is defined as an articulation of violence and justice.”⁵² Agamben reads this definitive aspect of the law as a political theodicy – a justification of evil – stating that “the law consists of essentially in the production of a permitted violence, which is to say in a justification of violence.”⁵³ For Agamben Goethe “devoted his life” to “the cult of the demon.”⁵⁴ Furthermore, “[t]he demon with whom Goethe made an informal deal, one that is yet no less firm than Faust’s, is the ambiguous power that guarantees success to the individual on condition of renouncing every ethical decision.”⁵⁵ In this regard Agamben notes two paradigms in Western ethical and political thought, a “tragic” model based on action and an anti-tragic one founded on knowledge and contemplation. As tragedy Goethe’s *Faust* resolutely assigns the primacy to action.⁵⁶ For Agamben free will read as freedom is equivocal because the context in which it is used is not political freedom but moral and juridical

48. Op. cit., p. 111.

49. Giorgio Agamben, *Karman: A Brief Treatise on Action, Guilt, and Gesture* (Stanford, CA: Stanford University Press, 2018), pp. 43–4.

50. Johann Wolfgang von Goethe, *Faust: A Tragedy: Interpretive Notes, Contexts, Modern Criticism* (2nd edn, W.W. Norton, 2001), p. 36.

51. Walter Benjamin, “Critique of Violence,” *Reflections: Essays, Aphorisms, Autobiographical Writings* (New York: Harcourt Brace Jovanovich, Schocken Books, 1978), p. 277.

52. Agamben, *Karman*, p. 20.

53. Op. cit., p. 22.

54. Giorgio Agamben, *The Adventure* (Cambridge, MA: MIT Press, 2018), p. 5.

55. Op. cit., pp. 13–14.

56. Agamben, *Karman*, p. 35.

freedom regarding the imputability of actions.⁵⁷ The Church Fathers used “it as a technical term to express the mastery of the will over actions in” “the origin of evil and responsibility of sin.”⁵⁸ In that sense it was first found “referring significantly to the devil.”⁵⁹ For Schmitt, power as such is never evil but always good even when held by the devil.⁶⁰ Agamben coins a neologism “kakokenodicy” to name how following the two World Wars philosophers and theologians have reached for “a justification of evil through kenosis” which is to say based on an emptying out of the individual will.⁶¹

Pat Robertson, a well-known Christian television evangelist expressed a view of the matter that he was unafraid to broadcast to the world even though it sides with slave owners against revolting slaves and invokes the wrath of God on the slaves for violently overthrowing their masters:

The Haitians “were under the heel of the French”. “And they got together and swore a pact to the devil. They said, ‘We will serve you if you will get us free from the French.’ the devil said, ‘OK, it’s a deal.’ You know, the Haitians revolted and got themselves free. But ever since, they have been cursed by one thing after the other.”⁶²

Kojo Koram would see the assimilation of Satan to blackness as also deeply embedded in international law and argue for embracing it in the spirit of the Satan presented in John Milton’s *Paradise Lost*.⁶³ The Haitian revolutionaries themselves however did not believe they were worshipping the devil, which is what matters in this context, indeed if anything they expressed the very opposite view to Robertson’s. In the book that follows Buck-Morss’ article above, she cites Baron de Vastey’s words: “Our Haitian painters depict the Deity and angels black, while they represent the devil as white.”⁶⁴ Quite appositely to the pact between Faust and Mephistopheles was one of mutual slavery here and then hereafter, respectively.

Only Bartleby therefore paralyzes permanently the mutual violence of the master-slave dialectic whereas Babo instrumentalizes it at least for a time. Slavery moreover is not merely an office it is also a condition that is outside of the social contract.⁶⁵ Although

57. Op. cit., p. 47.

58. Op. cit., p. 47.

59. Op. cit., p. 47.

60. Carl Schmitt, *Dialogues on Power and Space* (Malden, MA: Polity Press, 2015), p. 41.

61. Giorgio Agamben, *The Mystery of Evil: Benedict XVI and the End of Days* (Stanford, CA: Stanford University Press, 2017), pp. 36–7.

62. <http://edition.cnn.com/2010/US/01/13/haiti.pat.robertson>; <http://news.nationalgeographic.com.au/news/2010/01/100125-haiti-earthquake-vooodoo-pat-robertson-pact-devil-wade-davis/> Pat Robertson says Haiti paying for “pact to the devil” (2010).

63. Kojo Koram, “‘Satan is Black’ – Frantz Fanon’s Juridico-Theology of Racialisation and Damnation,” *Law, Culture and the Humanities* 0(0) (2017): 1743872117738914 at 16, 18 and 20.

64. Susan Buck-Morss, *Hegel, Haiti and Universal History* (Pittsburgh, PA: University of Pittsburgh Press, 2009), p. 143.

65. Article 1 of the *Slavery Convention* of 1926 defines “Slavery” as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

Babo demonstrated that given sufficient violence even someone in the status or condition of a slave can as it were “operate” the office of master (even against that master’s will) that does not free anyone from enslavement. The emancipatory potential of a carnivalesque reversal of roles while superficially attractive is transient and therefore illusory. The high point of moral, physical and intellectual courage when faced with the apparatus of the camp then is to prefer not to cooperate. Taking up arms against just as cooperating fully with a violent apparatus are the system’s own pre-defined roles for which is has prepared consequences beforehand. Consequently, violence does not work to achieve freedom while the law seems completely ambivalent at best but really is complicity at its very worst. The master seems to be free until we look at Cereno himself imprisoned in his mastery by a slave. The power of that tale in part lies on the racially inflected naiveté of narrator Amasa Delano who is taken in right until the final moment by Babo’s elaborately enforced masquerade. Delano’s confidence in his easy superiority over both the African slaves and Spanish slavers and crew makes him attribute agency to Cereno and not to Babo.⁶⁶

Babo with a certain element of both intentional irony and false modesty bats away Delano’s praise of him in the presence of Cereno with the statement that “what he has done was but duty.”⁶⁷ This is a disarmingly simple statement yet subtly yields at least three meanings. The first is the basic one speaking of his duty as a slave to serve his master – which Delano takes at face value; the second is his duty as a human being to revolt from slavery that completely passes Delano by. These two meanings are simultaneously addressed to the two recipients present with opposed meanings. The third meaning is more allusive and makes the first two meanings possible which is that him playing the part of a slave is only possible by dint of the office of master. Recall that officiousness means taking on anything as a duty. Edward Gibbon provides such an instance: “Constantius had a right to disclaim the officiousness of his ministers, who had acted without any specific orders from the throne.”⁶⁸ This is a deliberately exaggerated case but still demonstrates the link between office and duty. A command is only effective as long as there is someone left to obey as Agamben reminds us.⁶⁹ Babo skillfully reverses this to be as long as there is someone left to obey a command is effective. This is with or without the will of the master. In fact the master may even be dead! In Agamben’s work we get the example of how the exclamation “We have no king but Caesar” was deployed by the mob to force Pilate’s hand despite his high office and avowed reluctance to crucify Christ.⁷⁰ There Agamben obliquely references Faust when noting the characterization of

66. Lawrie Balfour, “What Babo Saw: Benito Cereno and ‘The World We Live In’,” in Jason Frank (ed.), *A Political Companion to Herman Melville* (Lexington, KY: University Press of Kentucky, 2013), p. 260.

67. Herman Melville, “Benito Cereno,” in Dan McCall (ed.), *Melville’s Short Novels: Authoritative Texts, Contexts, Criticism* (New York: W.W. Norton & Company, 2001), p. 329.

68. Edward Gibbon, *The History of the Decline and Fall of the Roman Empire* (London: Penguin Books, 1996), (II), p. 152.

69. Giorgio Agamben, *The Archaeology of Commandment* (European Graduate School Video Lectures 2011) <https://www.youtube.com/watch?v=JVV94Fi5ChI>.

70. Giorgio Agamben, *Pilate and Jesus* (Stanford, CA: Stanford University Press, 2015).

Pilate in Mikhail Bulgakov's Faust adaptation *The Master and Margarita*. George Orwell's *Shooting an Elephant* also cannily demonstrates the mutually fatal embrace of the colonial encounter where the ruled can effectively control the rulers simply by relying on the established institutions even against the will of the rulers. In that tale Orwell – ostensibly as the Eton-educated colonial policeman with his rifle at his side – is browbeaten by his unarmed putative colonial subjects to shoot and kill an elephant at their behest despite his own personal misgivings. The natives, as it were, use his office as policeman to overcome any personal squeamishness he may have. This externally prescribed logic is internalized by both the colonizer and colonized and as a consequence none of them is free of it. What then is this office that encompasses masters as well as slaves by holding them both in its deadly embrace and thrall?

IV. The Absolute Ambiguity of Law and the “Office”

The office in the sense of a socially constructed role that is fundamentally separate from its immediate holder has as we have seen above a fascinatingly enabling as well as constricting role. Agamben in *Opus Dei* looks at the fundamental indifference of moral qualities to the efficacy of official acts. The religious paradigm of *Opus Dei* provides the secular West with the term “office” which: “is more efficacious than the law because it cannot be transgressed, only counterfeited.”⁷¹ Furthermore, “[i]t is more real than being because it consists only in the operation by means of which it is realized. It is more effective than any ordinary human action because it acts *ex opere operato*, independently of the qualities of the subject who officiates it.”⁷² Such diverse concepts as Kelsen's pure theory of law, Kantian ethics, the political militant and the ministerial functionary are modeled by “acts of office” that is to say, duties.⁷³ Agamben introduces the crucial distinction between an act in its effective reality and an action insofar as an agent carries it out.⁷⁴ This distinction goes back to affirming the validity of baptisms conferred by an unworthy priest.⁷⁵ Agamben traces the doctrine back to the theory of the action of the devil within the providential economy.⁷⁶ In it the devil serves God and God approves his work, but not the way in which he has worked.⁷⁷

Agamben continues to trace the genealogy of office and the insertion of ethics into duty in the West to find that:⁷⁸

Officium is neither a juridical or moral obligation nor a pure and simple natural necessity: it is the behavior that is expected among persons who are bound by a relation that is socially codified, but the compulsory nature of which is sufficiently vague and indeterminate that it can

71. Agamben, *Opus Dei*, p. xii.

72. *Op. cit.*

73. *Op. cit.*

74. *Op. cit.*, p. 21.

75. *Op. cit.*

76. *Op. cit.*, p. 23.

77. *Op. cit.*

78. *Op. cit.*, p. 72.

be connected – even if in a derisory way – even to behavior that common sense considered self-evidently offensive to decency. ... *Officium* is what causes an individual to comport themselves consistently: “as a prostitute if one is a prostitute, as a rascal if one is a rascal, but also as a consul if one is a consul and, later, as a bishop if one is a bishop.”

For Agamben it is clear that while obligation derives from an action, *officium* (just like slavery) derives from a condition or a status. The Romans distinguished between an absolute material necessity and juridical obligation (of human or divine law). The distinction seems to coincide with what, according to Kelsen, opposes the material necessity and juridical necessity. To illustrate this Agamben retells of how Seneca the Elder related the unconsciously illuminating gaffe of the orator Quintus Haterius stating that “unchastity is a crime for the freeborn, necessity for the slave, and duty for a freedman.”⁷⁹ This taxonomy ranging from the slave to the freeborn mediated by the freedman is clearly founded on slavery and demonstrates that slaves are not autonomous individuals with any kind of free will or separate legal personality. No less than Aquinas noted that “even a slave can voluntarily do his duty by his master, and so he makes a virtue of necessity.”⁸⁰

Agamben provides three terms relevant to the discussion: inoperativity, destitution and use. To start with inoperativity he says that: “Only a power that is made inoperative and deposed is completely neutralized.”⁸¹ Further: “It is this operativity of the law that the messianic faith neutralizes and renders inoperative, without thereby abolishing the law.”⁸² With regard to destitution Agamben states that in order to resist something framed in the terms has-to-be (as the inherently violent institution of slavery was) we can counter it using as-not: “The ‘as not’ is a destitution without refusal. To live in the form of the as-not means to deactivate every juridical and social property, without establishing a new identity.”⁸³ Agamben recommends the “use” of a form of life to bring about this destitution: “‘Use’ names here the deposing potentiality in the Christian form of life, which destitutes ‘the figure of this world’.”⁸⁴

This is how then the abject and problematic figure of the slave has become the kernel of the solution at the end of the *Homo Sacer* project:

the symmetry between the slave and the machine thus goes beyond the analogy between two figures of “the living instrument”: it concerns the ultimate achievement of anthropogenesis, the becoming fully human of the living human being. ... In this sense, slavery is to ancient humanity what technology is to modern humanity: both as bare life, watch over the threshold that allows access to the truly human condition (and both have shown themselves to be inadequate to the task, the modern way revealing itself in the end to be no less dehumanizing than the ancient).⁸⁵

79. Op. cit.

80. St Thomas Aquinas, *Summa Theologica* (New York: Benzinger Bros., 2013) (III Part II), p. 1524.

81. Giorgio Agamben, “What is a Destituent Power?”, *Environment and Planning D: Society and Space* 32(1) (2014), 65–74, 71.

82. Op. cit.

83. Op. cit.

84. Op. cit.

85. Agamben, *The Use of Bodies*, p. 78.

The importance of the slave to contemporary times for Agamben can hardly be overstated because the slave sits at the intersection of two sets of axes, the human/animal axis as well as the human/instrument or organic/inorganic axis:

The slave is, on the one hand a human animal (or an animal human) and, on the other hand and to the same extent, a living instrument (or an instrument-human). That is to say, the slave constitutes in the history of anthropogenesis a double threshold, in which animal life crosses over to the human just as the living (the human) crosses over into the inorganic (into the instrument) and vice versa.⁸⁶

Agamben ascribes specific responsibility to the law as such in initially conjuring up this figure of the slave as well as conjuring it away when it was no longer “useful” as it were:

The invention of slavery as a juridical institution allowed the capture of living beings and of the use of the body into productive systems, temporarily blocking the development of the technological instrument: its abolition in modernity freed up the possibility of technology, that is, of the living instrument.⁸⁷

There is at least one real-life instance of the use of bodies being deployed to paralyze the violent force-of-law modeled on and mimicking the master slave dialectic. This is where the passengers in a Kenyan bus refused to distinguish themselves as either Christians and Muslims when confronted by Islamic militants drawn from the Al Shabab terrorist group.⁸⁸ What usually happened in cases such as these was that as soon as Christians were separated from Muslims, the Christians would be put to death and the Muslims spared and released to go off on their way. Only the heroic actions of the Muslims saved their Christian compatriots but at great risk to their lives. The Muslims literally used their bodies to shield the Christians. They did this by sharing items of clothing like veils, caps and scarves rendering themselves indistinguishable (similarly to the defeated slaves of the Spartacist uprising proclaiming they all were Spartacus the slave mutiny leader) and thus not subject to the violent subjectification of the militants which mimicked the force of law. An example for the rest of us courageous and selfless enough to emulate. Al Shabab used political violence to self-consciously simulate the violence of the master/slave dialectic while dissimulating a religious objective. Thus enabled by the Muslim contingent the bus passengers indicated their preference not to divide themselves as ordered to do. This action instigated by the Muslim travelers deprived the Islamic militants the political basis for their violent actions and in that way paralyzed the militants’ political calculations which as a consequence had no purchase upon their intended

86. *Op. cit.*, pp. 78, 79.

87. *Op. cit.*, pp. 78, 79.

88. <https://www.theguardian.com/world/2015/dec/22/kenya-al-shabaab-attack-muslims-protect-christians-mandera> “Muslims hailed for protecting Christians during terror attack on Kenyan bus,” and <http://www.dailymail.co.uk/news/article-3369735/The-militants-threatened-shoot-Muslim-passengers-board-bus-defy-terrorists-demands-separate-Christians-deadly-terror-attack.html>.

subjects. Both Christians and Muslims had to work together indistinguishably because the Christians could still have of course rejected the help of their Muslim travel companions and identified themselves as Christians and died the deaths of martyrs. That self-sacrifice would still have been sufficient for the militant's logic to proceed as the militants had anticipated beforehand. However, killing both groups would completely undermine the militants' explicit and implicit claim that they were fighting for Muslim interests as a whole. Through Agamben's work it is possible to extend what was done spontaneously in this instance to a general proposition which "rejects all identity and every condition of belonging" as the paradigmatic form of resistance that he names "whatever singularity."⁸⁹

V. Conclusion

This article used Melville's work to argue that Agamben must have already thought about slavery while working on *Homo Sacer* and has in turn used Agamben to demonstrate how Melville was able to so convincingly portray Amasa Delano as being duped so effectively and for so long. The article then compared the opposed strategies of non-cooperation with as distinguished from violent resistance to political violence as these were expressed in signature phrases from Melville's characters to show not only that the slave-figure is the shadow image of the free human in liberal democratic thought, but counter-intuitively, the abject figure of the slave gestured a way out of the politically sanctified violence of the master/slave dialectic. This is because violence is a wholly inappropriate basis for resistance to violence if the aim of resistance is to target violence *as such*. Because the ambiguity of law's relationship to violence – which enabled the effectiveness of office – can be undone by preferring not to further participate in violent politics, it is now possible to conclude that the most effective antidote to political violence is not better violence but rather better politics.

89. Agamben, *The Coming Community*, p. 87