BARTLEBY, LABOR AND LAW

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“Bartleby the Scrivener” has intrigued both lawyers and literary scholars for generations. Commentators agree that it is a work of artistic genius, but they differ widely about Melville’s purpose in writing it. Bartleby has been read as a religious parable, a study of the legal profession, a critique of Lemuel Shaw, Melville’s father-in-law, an attack on Charles Dickens, a story about Melville’s economically stressful career, a fantasy, a lament about the loss of meaning, a meditation on the nature of literature and writing, an assault on capitalist exploitation of

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2. See Liane Norman, Bartleby and the Reader, 44 THE NEW ENGLAND Q. 22 (1971) (making a legal comparison to the story).


5. See Leo Marx, Herman Melville’s Parable of the Walls, in BILLY BUDD, BENITO CERENO, BARTLEBY THE SCRIVENER, AND OTHER TALES 1 (Harold Bloom ed., Chelsea House Publications 1987) (“There are excellent reasons for reading ‘Bartleby’ as a parable having to do with Melville’s own fate as a writer . . . . [T]he copyist is a man who obstinately refuses to go on doing the sort of writing demanded of him.”).


8. See Marx, supra note 5, at 626 (“Among the countless imaginative statements of the artists’ problems in modern literature ‘Bartleby’ is exceptional in its sympathy and hope for the average man and in the severity of its treatment of the artist.”).
workers, and a "criticism of a sterile and impersonal society." And these are only a small fraction of the different readings given to this remarkable and tantalizing story.

The story is filled with hints that point the reader in different directions, anomalous references to legal treatises, and allusions to other stories with differing themes. Its subtexts seem to have subtexts. All of this makes it impossible to speak with any assurance about "the theme of 'Bartleby.'" Nevertheless, at its heart the story seems to focus fairly straightforwardly on the treatment of the exploited by those with power, wealth, and position.

The many readings, both inside and outside of this framework, are not an accident of literary interpretation. They are built into the structure of the novella. It is apparent from the story's opening paragraph that Melville meant for the reader to struggle over his meaning. As the story begins the narrator, a commercial lawyer, states:

The nature of my avocations for the last thirty years has brought me into more than ordinary contact with what would seem an interesting and somewhat singular set of men of whom as yet nothing that I know of has ever been written—I mean the law-copyists or scriveners. I have known very many of them, professionally and privately, and if I pleased, could relate divers histories, at which good-natured gentlemen might smile, and sentimental souls might weep.

Many questions are embedded in this seemingly innocuous opening. Why does the narrator describe copyists as an "interesting and somewhat singular set of men . . . ?" What does this description tell us about him? Does the narrator actually believe this? Can it be true? Why does the narrator draw a distinction between "the smiles of good-natured

10. See Mordecai Marcus, Melville's Bartleby as a Psychological Double, 23 COLLEGE ENGLISH 365 (1962) (critiquing society).
11. See DAN MCCALL, THE SILENCE OF BARTLEY 14-15 (Cornell Univ. Press 1989) (pointing out the many competing theories developed by "the Bartleby Industry." "Bartleby" is a fantasia of literary gossip. Critics 'prove' that Bartleby is Melville himself, and Edgar Allan Poe, and Nathaniel Hawthorne. . . . Similarly the quiet, self-effacing Lawyer-narrator is 'proved' to be not only Charles Dickens but also Ralph Waldo Emerson, Washington Irving, Poe again, Hawthorne again, Melville himself again, Melville's father-in-law Lemuel Shaw, Duyckinck, and even Pontius Pilate.
13. Id.
gentlemen”\textsuperscript{14} and “the tears of sentimental souls”\textsuperscript{15} concerning the lives of copyists? Which does he consider more appropriate? Does this opening have any relation to the deeper points of the story?

The narrator quickly shifts focus from copyists generally to Bartleby, “a scrivener the strangest I ever saw or heard of.”\textsuperscript{16} He admits that he has little knowledge of the subject.\textsuperscript{17} And throughout the novella, Bartleby remains separated from his own past. The reader learns nothing about his family, his education, his place of birth, or his history. Nor do we learn anything about his thinking, his plans, his hopes, or his feelings. In fact, Bartleby does not come on the scene until the narrator has completed a lengthy introduction: “Ere introducing the scrivener, as he first appeared to me, it is fit I make some mention of myself, my employe[e]s, my business, my chambers, and general surroundings; because some such description is indispensable to an adequate understanding of the chief character about to be presented.”\textsuperscript{18}

This statement is accurate only if the narrator, and not Bartleby, is the “chief character about to be presented.”\textsuperscript{19} And the story then turns to the narrator’s self portrait:

I am a man who, from his youth upwards, has been filled with a profound conviction that the easiest way of life is the best . . . I am one of those unambitious lawyers who never addresses a jury, or in any way draws down public applause; but in the cool tranquility of a snug retreat, do a snug business among rich men's bonds . . .\textsuperscript{20}

The narrator then boasts about his concern with money and worldly success:

The late John Jacob Astor, a personage little given to poetic enthusiasm, had no hesitation in pronouncing my first grand point to be prudence; my next, method. I do not speak it in vanity, but simply record the fact, that I was not unemployed in my profession by the late John Jacob Astor; a name which, I

\begin{enumerate}
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.} ("What my own astonished eyes saw of Bartleby, that is all I know of him, except, indeed, one vague report which will appear in the sequel. . . . While of other law-copyists I might write the complete life, of Bartleby nothing of that sort can be done . . . Bartleby was one of those beings of whom nothing is ascertainable, except from the original sources, and in his case those are very small.").
\item \textit{Id.}
\item \textit{Id.} (implying that it is a significant hint that the opening line of the story has nothing to do with Bartleby—"I am a rather elderly man.").
\item \textit{Id.} at 109-10.
\end{enumerate}
admit, I love to repeat, for it hath a rounded and orbicular sound to it, and rings like unto bullion.\textsuperscript{21}

As if to underline his lack of humanity and to mock the lawyer's traditional literary role as avenger of wrongs, the narrator limits himself to a single expression of outrage at a perceived injustice, when he protests—in pallid, pompous language—the elimination of the office of Master of Chancery:

I seldom lose my temper; much more seldom indulge in dangerous indignation at wrongs and outrages; but I must be permitted to be rash here and declare, that I consider the sudden and violent abrogation of the office of Master of Chancery, by the new Constitution, as a—premature act; inasmuch as I had counted upon a life-lease of the profits, whereas I only received those of a few short years.\textsuperscript{22}

The callowness of the protest is underlined by the narrator's statement that Master of Chancery was "not a very arduous office, but very pleasantly remunerative."\textsuperscript{23} However, this self portrait—devoid of vision, ideals, or concern for fellow human beings and written in the stilted prose that makes lawyers so easy to stereotype—is misleading.\textsuperscript{24} It hides complex aspects of the narrator's personality that emerge slowly as the story unfolds. It is probably intended to erect a wall of misunderstanding between the narrator and the reader that will make it more difficult for the reader, without considerable effort, to understand the complex personality of the narrator.

The narrator, who alone among the story's characters remains nameless, follows his unflattering self-portrait with a description of the dismal setting of his office:

My chambers were up stairs at No.—Wall-street. At one end they looked upon the white wall of the interior of a spacious sky-light shaft, penetrating the building from top to bottom. This view might have been considered rather tame than otherwise, deficient in what landscape painters call "life." But if so, the view from the other end of my chambers offered, at least, a contrast, if nothing more. In that direction my windows commanded an unobstructed view of a lofty brick wall, black by age and everlasting shade; which wall required no spy-glass to

\textsuperscript{21} Id. at 110.
\textsuperscript{22} Id. (The reader is warranted in assuming from this badly phrased, self-deprecatory introduction that the narrator will turn out to be a foolish, linguistically rigid observer with little understanding of the human soul. But in fact, he is articulate, witty, observant, and psychologically acute.)
\textsuperscript{23} Id.
\textsuperscript{24} Id. (" Rounded" and "orbicular" are two ways of saying the same thing which is neither interesting nor insightful. "Not not unemployed" presents the standard confusion of a double negative.).
bring out its lurking beauties, but for the benefit of all near-sighted spectators, was pushed up to within ten feet of my window panes.\(^{25}\)

The office description challenges the reader’s initial appraisal of the narrator. It has surprisingly witty charm derived from the contrast between its elegant artistic style and the sordid reality being described. The tone of the description informs the reader that the narrator is capable of accepting the unpleasant reality that hems in his existence.\(^{26}\) Indeed, as the story progresses, the reader comes to learn that both appreciation and acceptance of the less than ideal is central to the narrator’s personality.

The narrator’s passivity makes it difficult to evaluate his actions and failures to act as employer. Critics dispute whether he is benign and forgiving or manipulative and exploitative. The narrative gives evidence in support of both positions. Prior to Bartleby’s arrival, the narrator employed two copyists and an office boy, each of whom is referred to solely by nickname. The senior copyist is “Turkey,” and the junior is “Nippers.”\(^{27}\) The narrator keeps them on, although neither is an unalloyed asset. Turkey is likely to return from his midday meal in a state of excited inebriation during which he regularly makes mistakes in copying. It is a troubling problem that the narrator describes elegantly:

In the morning, one might say, his face was of a fine florid hue, but after twelve o’clock, meridian—his dinner hour—it blazed like a grate full of Christmas coals; and continued blazing—. . . All his blots upon my documents, were dropped there after twelve o’clock, meridian. . . but some days he went further, and was rather noisy. At such times, too, his face flamed with augmented blazonry, as if cannel coal had been heaped on anthracite.\(^{28}\)

His description of “Nippers” is equally artistic although more caustic:

Nippers. . . was a whiskered, sallow, and, upon the whole, rather piratical-looking young man of about five and twenty. I always deemed him the victim of two evil powers—ambition and indigestion. . . . Among the manifestations of his diseased ambition was a fondness he had for receiving visits from certain ambiguous-looking fellows in seedy coats, whom he called his clients. . . . I have good reason to believe, however, that one

\(^{25}\) Id. at 110-111.

\(^{26}\) The narrator’s s point of view is similar to that of the GI’s in World War II who—in coining the term SNAFU (Situation Normal All Fucked Up)—presented a cynical but accepting view of the inevitable glitches and mistakes of the enormous army bureaucracy.

\(^{27}\) MEVLLE, supra note 12, at 111 (The use of the nicknames “which were mutually conferred upon each other” serves both to diminish and to humanize the copyists. The nicknames themselves are borderline humorous, but it is a humor tinged with melancholy and humiliation.).

\(^{28}\) Id. at 111-112.
individual who called upon him at my chambers, and who, with a
grand air, he insisted was his client, was no other than a dun, and
the alleged title-deed, a bill.  

The narrator realizes that Nippers’ problems are due not to drink but
to his antagonistic personality:

When I consider how, amid the stillness of my chambers,
Nippers would sometimes impatiently rise from his seat, and
stooping over his table, spread his arms wide apart, seize the
whole desk, and move it, and jerk it, with a grim, grinding
motion on the floor, as if the table were a perverse voluntary
agent, intent on thwarting and vexing him; I plainly perceive that
for Nippers, brandy and water were altogether superfluous.

The work situation is made tenable by the fortunate fact that Turkey
and Nippers were likely to be troublesome at different times:

It was fortunate for me that, owing to its particular cause—
indigestion—the irritability and consequent nervousness of
Nippers, were mainly observable in the morning, while in the
afternoon he was comparatively mild. So that Turkey's
paroxysms only coming on about twelve o’clock, I never had to
do with their eccentricities at one time. Their fits relieved each
other like guards. When Nippers' was on, Turkey's was off; and
vice versa.

The descriptions reveal a more positive side of the narrative. The
portraits are insightful, the voice elegant, the metaphors original and
effective. The reader feels that if he were to meet Turkey or Nippers he
would know them. The sentence “[t]heir fits relieved each other like guards” is original, memorable, succinct, and insightful. It gives the
reader a new sense of the narrator's impressive intellectual and artistic
potential.

The narrator had the unfettered right to fire either Turkey or Nippers
and each had given him good reason to do so. Nevertheless, he decides to
keep them both on; attributing his decision in each case to a careful cost-
benefit analysis focused on his own pecuniary interests. He states with
respect to Turkey “he was in many ways a most valuable person to me, and
all the time before twelve o’clock, meridian, was the quickest, steadiest
creature too, accomplishing a great deal of work in a style not easy to be
matched—I was willing to overlook his eccentricities.”

29. Id. at 113-14.
30. Id. at 116.
31. Id.
32. Id.
33. Id. at 112.
Nippers, too, "was a very useful man to me; wrote a neat, swift hand; and, when he chose, was not deficient in a gentlemanly sort of deportment. Added to this, he always dressed in a gentlemanly sort of way; and so, incidentally, reflected credit upon my chambers."³⁴

The narrator concludes his preliminary observations with a description of the office boy:

Ginger Nut, the third on my list, was a lad some twelve years old. His father was a carman, ambitious of seeing his son on the bench instead of a cart, before he died. So he sent him to my office as a student at law, errand boy, and cleaner and sweeper, at the rate of one dollar a week.³⁵

He is called Ginger Nut because his main activity, other than cleaning and sweeping, is shopping for nut-filled pastries for his seniors. There is no mention of his learning law or being engaged in any non-menial pursuit in the office. The narrator turns this into a small joke: "Indeed, to this quick-witted youth the whole noble science of the law was contained in a nut-shell."³⁶

While the narrator seems willfully blind to the fact that Ginger Nut is learning nothing about the practice of law, he is not uniformly indifferent to the needs of his employees. After noting that Turkey’s "coats were execrable,"³⁷ the narrator seeks to convince him to buy a better one. When Turkey refuses, the narrator decides not to push the point concluding that "a man with so small an income could not afford to sport such a lustrous face and a lustrous coat at one and the same time."³⁸ He deals with the problem by a gift. "I presented Turkey with a highly-respectable looking coat of my own, a padded gray coat, of a most comfortable warmth."³⁹

And when the narrator attempts to reduce Turkey’s afternoon hours in order to reduce mistakes, he is persuaded not to do so by Turkey’s appeal to their common humanity:

"But the blots, Turkey," intimated I. "True,—but, with submission, sir, behold these hairs! I am getting old. Surely, sir, a blot or two of a warm afternoon is not the page—is honorable.

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³⁴. Id. at 115.
³⁵. Id. at 116.
³⁶. Id.
³⁷. Id. at 115.
³⁸. Id.
³⁹. Id. (the result of this generosity was not what the narrator hoped for: "I thought Turkey would appreciate the favor, and abate his rashness and obstreperousness of afternoons. But no. I verily believe that buttoning himself up in so downy and blanket-like a coat had a pernicious effect upon him; upon the same principle that too much oats are bad for horses. In fact, precisely as a rash, restive horse is said to feel his oats, so Turkey felt his coat. It made him insolent. He was a man whom prosperity harmed.").
With submission, sir, we both are getting old.” This appeal to my fellow-feeling was hardly to be resisted.\footnote{Id. at 113.}

Taken as a whole, the carefully written description of his office, prior to Bartleby’s arrival, portrays an isolated but harmonious community ruled over by the narrator in a benign fashion—overlooking mistakes and bestowing gifts.

But the narrator’s vision of the harmonious work community is deceptive. It is as cut off from the outside world as the office itself. There is no recognition of the back-breaking, tedious, spirit-killing work that the copyists must do; no recognition of the fact that an elderly employee after years of service cannot afford to buy himself a decent coat, and no concern for the fact that Ginger Nut’s youth is being wasted sweeping, cleaning and running errands. The narrator simply accepts the exploitation of his employees as an aspect of doing business. Turkey and Nippers are bound to finish their working lives bent over copying desks, and Ginger Nut, the “quick-witted youth,” will never have a chance to fulfill his father’s dreams or his own potential. It is as though the walls that block the view of the world outside the office have their counterparts in the mind of the narrator.\footnote{See Marx, supra note 5 (stating that the importance of the walls to the story has been recognized by several scholars).}

The narrator’s acceptance of the existing situation is a matter of choice. As proprietor and employer, he has enormous power. He sets the salary, assigns the tasks, and enforces rules of decorum. He has the power to hire, to fire, to set and also to alter both the job and the payment. While he can change things if he chooses,\footnote{Herbert F. Smith, Melville’s Master in Chancery and his Recalcitrant Clerk, 17 AM. Q. 734, 736 (1965) (“[I]t is the narrator who is the ordering force the regal or possibly even divine power who rules over the so various dispositions of his employees—Turkey, Nippers and Ginger Nut—and creates a functional society from their disparate parts.”).} he does not even consider it. Nevertheless, because of the need to employ an additional copyist, his environment is about to change:

In answer to my advertisement, a motionless young man one morning, stood upon my office threshold, the door being open, for it was summer. I can see that figure now—pallidly neat, pitiably respectable, incurably forlorn! It was Bartleby.\footnote{MELVILLE, supra note 12, at 117.}

What the narrator first perceives is exploitable weakness. He anticipates that Bartleby will be grateful for the job and obedient to his instructions. Indeed, he tells us that someone “of so singularly sedate an
aspect . . . might operate beneficially upon the flighty temper of Turkey, and the fiery one of Nippers.”

The narrator, in his eagerness to make use of Bartleby, places him nearby to his own desk, “I resolved to assign Bartleby a corner by the folding-doors, but on my side of them, so as to have this quiet man within easy call, in case any trifling thing was to be done.” The narrator notes that Bartleby’s desk “commanded at present no view at all, though it gave some light.” To make his disregard for Bartleby’s comfort complete, the narrator then “procured a high green folding screen, which might entirely isolate Bartleby from my sight, though not remove him from my voice. And thus, in a manner, privacy and society were conjoined.” Once again, the narrator uses elegant language to mask the unpleasant reality of exploitation. And once again, his point of view is breathtakingly narrow.

Bartleby initially set to work zealously. “As if long famishing for something to copy, he seemed to gorge himself on my documents. There was no pause for digestion. He ran a day and night line, copying by sunlight and by candle-light.” Bartleby is tucked away in his demeaning corner of the office when the narrator, expecting instant obedience, asks him to proof-read a document:

In my haste and natural expectancy of instant compliance, I sat with my head bent over the original on my desk, and my right hand sideways, and somewhat nervously extended with the copy, so that immediately upon emerging from his retreat, Bartleby might snatch it and proceed to business without the least delay.

It is at this point that Bartleby’s subservience ends. The narrator recounts how Bartleby, “in a singularly mild, firm voice,” flatly refuses with words that will forever thereafter be associated with him: “I would prefer not to.” The lawyer repeats the proofreading request/demand, twice, and each time Bartleby restates his “preference.”

The narrator briefly contemplates discharging the insubordinate scribe but is dissuaded by Bartleby’s manner and his own customary caution:

Had there been the least uneasiness, anger, impatience or impertinence in his manner; in other words, had there been any thing ordinarily human about him; doubtless I should have violently dismissed him from the premises. But as it was . . . I then reseated myself at my desk. This is very strange, thought I.

44. Id.
45. Id. at 118.
46. Id.
47. Id.
48. Id.
49. Id. at 119.
50. Id.
What had one best do? But my business hurried me. I concluded to forget the matter for the present, reserving it for my future leisure.  

The narrator, whose professional life as a lawyer required respect for precedent, attempts to use past practice to convince Bartleby of the propriety of his request, particularly to proof reading his own copy:

"Every copyist is bound to help examine his copy. Is it not so? Will you not speak? Answer!"

"I prefer not to," he replied in a flute-like tone. It seemed to me that while I had been addressing him, he carefully revolved every statement that I made; fully comprehended the meaning; could not gainsay the irresistible conclusion; but, at the same time, some paramount consideration prevailed with him to reply as he did.

"You are decided, then, not to comply with my request—a request made according to common usage and common sense?"

He briefly gave me to understand that on that point my judgment was sound. Yes: his decision was irreversible.

Here, as in each subsequent refusal, the narrator must decide how to respond to Bartleby's rejection of the rules of the work place. Should he fire Bartleby? Have him removed by the police? Let him remain? Help him? The decisions are never easy. The narrator's emotions are powerfully stirred, and in each case they are a curious mixture: anger at Bartleby's refusal to act as a dutiful servant, sympathy for Bartleby's suffering and loneliness, concern with his own status and appearance, and anxiety about Bartleby's impact on the other copyists. In each situation—in true lawyer-like fashion—the narrator produces arguments for and against taking action. And while he deliberates, Bartleby remains a silent, fragile, unbending presence, whose rigid behavior strongly suggests serious past abuse.

51. Id. at 120.
52. Id. at 121.
53. The narrator describes Bartleby's demeanor at length:

I remembered that he never spoke but to answer; that though at intervals he had considerable time to himself, yet I had never seen him reading—no, not even a newspaper; that for long periods he would stand looking out, at his pale window behind the screen, upon the dead brick wall; I was quite sure he never visited any refectory or eating house; while his pale face clearly indicated that he never drank beer like Turkey, or tea and coffee even, like other men; that he never went anywhere in particular that I could learn; never went out for a walk, unless indeed that was the case at present; that he had declined telling who he was, or whence he came, or whether he had any relatives in the world; that though so thin and pale, he never complained of ill health.

Id. at 130-31.
The narrator reluctantly allows Bartleby to continue copying while refusing to proofread or run errands:

Shall I acknowledge it? The conclusion of this whole business was that it soon became a fixed fact of my chambers, that a pale young scrivener, by the name of Bartleby, had a desk there; that he copied for me at the usual rate of four cents a folio (one hundred words); but he was permanently exempt from examining the work done by him, that duty being transferred to Turkey and Nippers . . . moreover, said Bartleby was never on any account to be dispatched on the most trivial errand of any sort; and that even if entreated to take upon him such a matter, it was generally understood that he would prefer not to—in other words, that he would refuse point-blank.54

At this point, the narrator seems to be the worst of employer-judges. He allows a troublesome, potentially disastrous situation to continue without formulating either a firm rule or an adequate penalty for disobedience. His desire not to confront difficult situations has left the office without a rule to cover the basic responsibility of the staff or the manager himself.

Shortly thereafter, the narrator is stunned to discover that Bartleby actually seems to be living in his office. He responds with profound emotion:

Yes, thought I, it is evident enough that Bartleby has been making his home here, keeping bachelor's hall by himself. Immediately then the thought came sweeping across me, What miserable friendlessness and loneliness are here revealed! His poverty is great; but his solitude, how horrible!

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 . . . for both I and Bartleby were sons of Adam.55

This is the first expression of compassion by the narrator for someone else's suffering; the first suggestion that his point of view is widening. The narrator's powerful emotion at this point, "a feeling of overpowering stinging melancholy,"56 together with his failure to mention a wife, children, parents, or friends, suggests identification with Bartleby's situation of "miserable friendlessness and loneliness."57 Perhaps the
narrator will make an effort to break through the barriers of silence, class, and status to achieve a deeper level of understanding with Bartleby—a resolution that might be life altering for them both. But instead, the narrator comes up with a plan almost assured to lead to his separation from Bartleby:

Finally, I resolved upon this:—I would put certain calm questions to him the next morning, touching his history, &c., and if he declined to answer them openly and unreservedly (and I supposed he would prefer not), then to give him a twenty dollar bill over and above whatever I might owe him, and tell him his services were no longer required . . . Moreover, if, after reaching home, he found himself at any time in want of aid, a letter from him would be sure of a reply.\(^\text{58}\)

How deflating the plan is; how intimacy defeating; how at odds with the deep feelings just acknowledged.

The next morning, when the narrator attempts to put his plan into operation, Bartleby simply refuses—as both the reader and the narrator expect. At this point, the narrator, according to his plan, should dismiss Bartleby. However, his conscience rebels:

Mortified as I was at his behaviour, and resolved as I had been to dismiss him when I entered my office, nevertheless I strangely felt something superstitious knocking at my heart, and forbidding me to carry out my purpose, and denouncing me for a villain if I dared to breathe one bitter word against this forlornest of mankind.\(^\text{59}\)

Describing Bartleby as "this forlornest of mankind,"\(^\text{60}\) is freighted with meaning, calling to mind the parable in Matthew 25:40, wherein Jesus assures the righteous of a place in the kingdom of heaven because "[i]nasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me."\(^\text{61}\) Bartleby—"pallidly neat, pitifully respectable, incurably forlorn"\(^\text{62}\)—stands for "the least" of mankind. And with the narrator's conscience stirred thereby, he recognizes that his Christian duty is to support Bartleby as though he were Jesus himself.

As the narrator soon learns, living up to biblical admonition is not easy, especially for one used to placing a high premium on his own convenience. After all, the least of mankind are also the most troubled and therefore, I believe, the most difficult to help. Furthermore, they are often the most demanding, the least accommodating and the most rigid and

\(^{58}\) Id. at 132.
\(^{59}\) Id. at 133.
\(^{60}\) Id.
\(^{61}\) Matthew 25:40.
\(^{62}\) MELVILLE, supra note 12, at 117.
frightened of people. The narrator comes to this realization as Bartleby’s intransigence and refusal to work becomes complete:

My first emotions had been those of pure melancholy and sincerest pity; but just in proportion as the forlornness of Bartleby grew and grew to my imagination, did that same melancholy merge into fear, that pity into repulsion. . . . What I saw that morning persuaded me that the scrivener was the victim of innate and incurable disorder. I might give alms to his body; but his body did not pain him; it was his soul that suffered, and his soul I could not reach.63

Thereafter, Bartleby refuses to do anything but hang around the office. It is at this point that the conflict between rules and mercy, law and equity becomes most acute. Bartleby is by now an unmitigated burden to the narrator,64 but getting rid of him is now almost as painful as keeping him since the narrator has become aware of the depth of his need. He is also naturally resentful of the enormous imposition created by Bartleby, “It was rather weak in me I confess, but his manner on this occasion nettled me. Not only did there seem to lurk in it a certain calm disdain, but his perverseness seemed ungrateful, considering the undeniable good usage and indulgence he had received from me.”65

The narrator finally works up the courage to tell Bartleby to leave, but once again, Bartleby refuses. The narrator, at his wits’ end, is contemplating violence. However, he is saved by a reminder of his religious obligation:

But when this old Adam of resentment rose in me and tempted me concerning Bartleby, I grappled him and threw him. How? Why, simply by recalling the divine injunction: “A new commandment give I unto you, that ye love one another.” Yes, this it was that saved me. . . . I strove to drown my exasperated feelings toward the scrivener by benevolently construing his conduct. Poor fellow, poor fellow! thought I, he don’t mean any thing; and besides, he has seen hard times, and ought to be indulged.66

For a time, he is convinced of the soundness of his decision and feels a certain pleasure in his righteous behavior: “Bartleby was billeted upon me for some mysterious purpose of an all-wise Providence . . . . Yes, Bartleby,

63. Id. at 131.
64. Discharge would certainly be warranted under any system of rational rules. In the jurisprudence of labor relations, insubordination is far more serious than Turkey’s mistakes or Nippers’ freelancing. Indeed, even under unionized contracts with a “just cause” provision, any arbitrator would sustain a discharge for a worker’s flat refusal to do his job.
65. MELVILLE, supra note 12, at 133.
66. Id. at 142.
stay there behind your screen.... My mission in this world, Bartleby, is to furnish you with office room for such period as you may see fit to remain."\textsuperscript{67}

But, once again, the consequences of behaving in a truly Christian fashion turns out to be more costly than the narrator can handle. When clients and other attorneys meet Bartleby, they are confused by his presence, and this casts suspicion over the entire operation:

At last I was made aware that all through the circle of my professional acquaintance, a whisper of wonder was running round, having reference to the strange creature I kept at my office. This worried me very much... denying my authority; and perplexing my visitors; and scandalizing my professional reputation; and casting a general gloom over the premises....\textsuperscript{68}

Unable to confront Bartleby directly, the narrator comes up with a, cowardly solution: "Since he will not quit me, I must quit him. I will change my offices; I will move elsewhere; and give him fair notice, that if I find him on my new premises I will then proceed against him as a common trespasser."\textsuperscript{69} A week later the narrator moves to new offices, once more trying in vain to give Bartleby money to soften the blow to his own conscience. Nevertheless, Bartleby’s behavior remains unchanged:

Throughout all, the scrivener remained standing behind the screen... the motionless occupant of a naked room. I stood in the entry watching him a moment, while something from within me upbraided me... [A]nd then—strange to say—I tore myself from him whom I had so longed to be rid of.\textsuperscript{70}

The problem does not end with the move. Indeed, it grows worse. The narrator is visited by a lawyer working at his own previous premises who tells him "you are responsible for the man you left there. He refuses to do any copying, he refuses to do anything; and he says he prefers not to; and he refuses to quit the premises."\textsuperscript{71}

The narrator, echoing the apostle Peter’s denial of Jesus, denies any responsibility for Bartleby:

"I am very sorry, sir," said I, with assumed tranquillity, but an inward tremor, "but, really, the man you allude to is nothing to me—he is no relation or apprentice of mine, that you should hold me responsible for him."

\textsuperscript{67. Id. at 143.}
\textsuperscript{68. Id. at 144.}
\textsuperscript{69. Id. at 145.}
\textsuperscript{70. Id. at 146.}
\textsuperscript{71. Id.}
“I shall settle him then,—good morning, sir.”  

A few days later, a group of people, including the lawyer, come to his office and insist that:

“You must take him away, sir, at once . . . he now persists in haunting the building generally, sitting upon the banisters of the stairs by day, and sleeping in the entry by night. Everybody here is concerned . . . .”

. . . In vain I persisted that Bartleby was nothing to me—no more than to any one else there. In vain:—I was the last person known to have any thing to do with him, and they held me to the terrible account.  

The narrator makes another appeal, but once again Bartleby refuses to leave the premises. In desperation, the narrator comes up with a new plan:

I was precipitately leaving him, when a final thought occurred to me—one which had not been wholly unindulged before.

“Bartleby,” said I, in the kindest tone I could assume under such exciting circumstances, “will you go home with me now—not to my office, but my dwelling—and remain there till we can conclude upon some convenient arrangement for you at our leisure? Come, let us start now, right away.”

“No: at present I would prefer not to make any change at all.”

When this offer is rejected, the narrator leaves, believing that “I had now done all that I possibly could, both in respect to the demands of the landlord and his tenants, and with regard to my own desire and sense of duty . . . .”

The narrator, worried about the outcome of the matter, stays away from his office for a few days. When he returns he receives a note, which “informed [him] that the writer had sent to the police, and had Bartleby removed to the Tombs as a vagrant.” The narrator quickly accommodates himself to this process which, “as a last resort, under such peculiar circumstances, it seemed the only plan.”

He visits the halls of justice and announces to the authorities that Bartleby is an honest and harmless person. He asks for, and is granted, the opportunity to meet with him in debtors’ prison. While there, he gives the “Grubman” money to make sure that Bartleby is given enough to eat.

72. Id. at 146-47.
73. Id. at 147-48.
74. Id. at 149.
75. Id. at 150.
76. Id.
77. Id.
78. Id.
Here, Bartleby and the narrator have one final unsatisfactory interview:

"Bartleby!"

"I know you," he said, without looking round,—"and I want nothing to say to you."

"It was not I that brought you here, Bartleby," said I, keenly pained at his implied suspicion. "And to you, this should not be so vile a place. Nothing reproachful attaches to you by being here. And see, it is not so sad a place as one might think. Look, there is the sky, and here is the grass."

"I know where I am," he replied, but would say nothing more, and so I left him.79

A few days later, the narrator returns to the Tombs and finds Bartleby dead.

In a postscript to the story, the narrator adds "one little item of rumor, which came to my ear a few months after the scrivener's decease. . . . The report was this: that Bartleby had been a subordinate clerk in the Dead Letter Office at Washington.80 This bit of news has a powerful effect upon the narrator. "When I think over this rumor, I cannot adequately express the emotions which seize me. Dead letters! does it not sound like dead men?"81 The narrator then describes in eloquent language the sadness that might overtake a person working in this setting, ending with a despondent conclusion:

Sometimes from out the folded paper the pale clerk takes a ring: . . . a bank-note sent in swiftest charity:—he whom it would relieve, 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!82

The story is much like a classic law school hypothetical where competing visions of justice are presented.83 Never did an employer have

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79. Id. at 151.
80. Id. at 154.
81. Id. at 155.
82. Id. at 155.
83. The generic issue that Bartleby presents is a familiar one in labor relations. During the days that I was active as an arbitrator, I was frequently asked to decide whether an employer had good cause for discharging an employee. In each case, I was required to balance the employer's legitimate concern for productivity and adherence to company rules against the employee's claim to fair and compassionate treatment. Invariably I sympathized with both sides. The employer usually had some understandable reason for wanting to be rid of the employee. But the consequences to the employee's life in most cases were likely
better grounds for disciplinary action up to and including discharge and never did an employee have a greater claim for compassion. The narrator is fully aware of both claims: Bartleby deserves to be fired, and Bartleby must be treated with God’s mercy. He ponders carefully, reasons analytically, resorts to various forms of authority—from precedent to biblical injunction—and, after thorough analysis of the situation, dithers hopelessly. There is reason to believe that Melville viewed the narrator’s confused behavior as symbolic of the inadequacy of the law in confronting the claims of the “least of these.” Melville’s works are replete with questions of justice and portraits of the legal system operating in crises where reason and emotion, precedent and humanity, are likely to be at odds.

These were family issues for Melville, whose father was ruined by debt, whose oldest and youngest brothers were both New York City lawyers, and whose father-in-law was Lemuel Shaw, the most renowned state court judge of the era. Melville’s relationship with Shaw was a complex one, but in many ways Shaw seemed to represent the elements of the legal system that most troubled Melville, including its over-reliance on rigorous reasoning and rules sanctified by precedent. As several critics have noted, there are striking similarities between the narrator and Shaw. The narrator brags of his prudence, and Shaw is the judge who introduced the “prudent man” concept into torts. The narrator seems to adopt conflicting positions in dealing with Bartleby and Shaw seemed to do the same in dealing with the rights of workers and of slaves.

With regard to the rights of labor, Shaw wrote a classic decision rejecting the concept previously accepted in most jurisdictions that unions or strikes were criminal conspiracies. But Shaw also articulated the

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84. Andrew Delbanco, Melville: His World and Work 23 (Alfred A. Knopf 2005) (noting that Melville’s father was a failed businessman, defaulted on rent, and ultimately went to his own father for help).
85. Id. at 87 (noting that Allan and Gansevoort Melville had a law firm south of City Hall).
86. Id. at 62 (noting that Lemuel Shaw served as Chief Justice of the Supreme Judicial Court of Massachusetts).
87. Brown v. Kendall, 60 Mass. (6 Cush.) 292, 296 (1850) (defining the legal standard of “ordinary care” as “that kind and degree of care, which prudent and cautious men would use, such as is required by the exigency of the case, and such as is necessary to guard against probable danger.”).
88. Commonwealth v. Hunt, 45 Mass (4 Met.) 111, 134 (1842) (“associations may be entered into . . . that may have a tendency to impoverish another, that is, to diminish his gains and profits, and yet . . . the object may be highly meritorious and public spirited.”).
"fellow servant rule," which denied employer liability to workers injured by the negligence of co-workers.  

Shaw was similarly, for a time, a hero to abolitionists because he freed a young slave girl brought into the state temporarily by her master. But some years later, in the Thomas Sims case, Shaw, who had long announced his opposition to slavery, denied a writ of habeas corpus to a fugitive slave. In so doing, he upheld the constitutionality of the Fugitive Slave Law, which he said was specifically authorized by the Constitution and was implicit in the understanding that permitted slave and free states to join together in a single union. Shaw also deferred to the Boston School Authority in permitting the establishment of segregated schools. Each of these opinions is cautious, methodical, and based on applicable precedent.

Many critics have read *Bartleby* as a protest against the exploitation of workers. Melville understood and condemned the dehumanizing treatment of workers in the capitalist society. And the narrator, despite his flashes of decency, is an exploiter who accepts without thought or the hint of objection the low wages and inferior roles of his servants. Being a copyist was a tedious, difficult job. As Robin West has noted, "it is hard to think of a more deadening, spirit-murdering employment of language than the task of copying out, longhand and in quad-duplicate, hundred page-plus deeds of trust, mortgages and bonds. The copied word is the antithesis of the creatively spoken utterance . . . ." It is understandable why Nippers

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89. Farwell v. Boston & W.R. Corp., 45 Mass (4 Met.) 49, 51 (1842) (holding that the defendant employer was not liable to the plaintiff "for the injury he may have received from the negligence of . . . another servant of the corporation, and in their employment.").

90. Commonwealth v. Ayes, 35 Mass. (18 Pick.) 193, 217 (1836). In his opinion, Shaw stated, "the general and now well established law of this Commonwealth, bond slavery cannot exist, because it is contrary to natural right, and repugnant to numerous provisions of the constitution and laws . . . ." *Id.* He concluded, "all persons coming within the limits of a state, become subject to all its municipal laws, civil and criminal, and entitled to the privileges which those laws confer . . . this rule applies as well to blacks as whites . . . ." *Id.* The court thus barred the owner's representative from taking the young girl named Med back to Louisiana, ordering that Med be put into a guardian's custody instead. *Id.* at 224. She was later adopted by Isaac Knapp, the publisher of the leading abolitionist newspaper *The Liberator*.

91. Shaw, in a very influential opinion, rejected the conspiracy doctrine previously applied to make unions and strikes criminal. *Hunt*, 45 Mass. (4 Met.) at 134 (holding "[organized labor] associations may be entered into" as long as their actions are "carried into effect by fair or honorable and lawful means"). But it was also Shaw who held that an employer could not be held liable to an employee injured due to the negligence of a fellow employee. *Farwell*, 45 Mass. (4 Met.) at 54 ("[o]rdinary care is all that a master is bound to use in behalf of his servants").

longed to be rid of the task, why Turkey took to drink, and why Bartleby preferred not to.

The copyists were hardly unique in having jobs that thwarted their creative impulses. Their job was probably better paid and less dangerous and demanding than the jobs of miners, rail road workers, mill workers, paper makers, and laborers. Indeed, West herself notes that we should understand the character Bartleby as essentially a stand-in, or representative, of an “underworld” of oppressed workers.93

Other critics have argued with equal plausibility that Bartleby, the most forlorn of mankind, represents the black workers bound in chains, much as Bartleby was bound by the four walls of the office.94 Indeed, it would have been strange for Melville, writing at that time of growing abolitionist agitation, to limit his portrait of “the least of these” to wageworkers, the vast majority of whom would necessarily be white, and ignore the even more desperate situation of fugitive slaves. When Lemuel Shaw refused to release the fugitive slave Thomas Sims, he wrote a careful, prudent opinion, explaining why he felt bound by the language of the Constitution and by precedent.95 His opinion was a model of methodical reasoning that would surely have persuaded the narrator, but not Melville, who disdained reason that led to injustice. He would certainly have intended for Bartleby to represent victims like Sims, whom Shaw so skillfully and regretfully returned to the masters from whom he had fled.96

We know that Melville, the author of Moby Dick, The Confidence Man, and Benito Cereno (written around the same time as Bartleby), was concerned with relations between the races and he regularly attacked stereotypes that held dark-skinned people to be inferior to whites. He detested not just slavery, but racism.

But if slaves and those subject to the Fugitive Slave Act are what Bartleby represents, why should he be a white worker? Why the absence of color or issues of color in the story? Part of the answer is that Melville was a master of misdirection who used metaphor and symbol to force the reader to recognize for himself the issues of justice implied in his story. I believe that Melville was connecting the status of white workers like Nippers, Turkey, and Ginger Nut with that of slaves in the South, and that he meant for the reader to connect their misery.97 Indeed, part of the genius

93. Id.
94. See, e.g., Stark, supra note 3.
95. In re Sims, 61 Mass. (7 Cush.) 285, 315 (1851) (stating that “it belongs to each [state] to decide for itself, whether it will uphold and maintain by its laws the existence of slavery... although other powers may denounce it, and declare it founded in force and violence, injustice and wrong.”).
96. Id.
of the work is Melville’s recognition that both exploited workers and slaves saw their claims for respect, dignity, and human understanding rejected by the law: the first because of the law’s commitment to the market, and the other because of the compromise with slavery that gave rise to the Constitution.

The common elements of the claims of workers and fugitive slaves are underlined by the conclusion of the postscript, which, like much of the story, is initially confusing. The narrator, seemingly blind to the constant exploitation of the copyists and office boy in his own office, holds forth eloquently on the damage to the human soul of one who must work in the Dead Letter Office. But at the very end, he suddenly cries out “Ah, Bartleby! Ah, humanity!” This conclusion is the story’s moment of epiphany. For the first time, the narrator realizes the breadth of the exploitation and alienation of which he is both a perpetrator and victim. It is all of humanity who suffers and all, including slaves and wageworkers, which deserve to be treated as Bartleby’s Jesus urged treatment of “the least of these.”

The narrator, with his carefully hidden personality, is one of Melville’s most complex creations. He is usually careful and deliberate, but on occasion becomes impulsive and generous. He is insightful and thoughtful but also mindless and accepting of injustice. He tries to be a good Christian but fails. He mistreats Bartleby but also empathizes with his suffering. He is, like Bartleby, a victim of isolation and loneliness, a person with flashes of insight and moments of foolishness. Surely, Melville meant for readers of whatever status or views to empathize with the internal struggle of a person who, from the “snug” retreat of his office, is suddenly confronted with an excruciating series of decisions involving a delicate balancing of competing claims. Who among us can be sure that we would do better?

One reason for the narrator’s failure is that, like the legal system he represents, he is limited in what he is capable of achieving. There are problems that the most skilled judge cannot resolve. Bartleby’s problems pre-date his encounter with the narrator, just as the woes of blacks and workers have origins that the legal system, with its emphasis on particular cases, cannot even address. There is no more reason to believe that the narrator was in a position to solve Bartleby’s problems than there was to assume that Shaw could solve the problems of race, slavery, or the exploitation of workers.

Nevertheless, the narrator’s prudence is as deflating as the law’s reliance on rules and precedent. The narrator’s flaw is an excess of

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98. MELVILLE, supra note 12, at 155.
method, an overload of prudence most evident in the thoughtful, analytic way that the narrator incorporated the commandment to love one another as part of his balancing of interests. It is his prudence that supports his leaving Bartleby stranded in his office, his denying him three times, and his acceptance of Bartleby being shunted to the Tombs. It is this step-by-step method that conveys the grudging nature of the narrator’s charity and perhaps explains why this charity never met Bartleby’s needs.

It is also true that Bartleby is a threat to the narrator and all that he believes. Bartleby is a low-wage worker who refuses to do his assigned task. His rebellion cannot be stopped by small efforts to appease him, or by offers of charity. The narrator hires him because he expects he will be an example of calm submission to Turkey and Nippers. Instead, Bartleby sets an example that would be disastrous for the narrator if followed by Turkey and Nippers. When Bartleby refuses to do his assigned work, the narrator is quick to obtain assurances from the others that they oppose Bartleby’s rebellious course. Nippers, for example, assures the narrator by declaring “I think I should kick him out of the office.”

Turkey and Ginger Nut also express rejection of Bartleby and the course that he represents. They know what their employer wants and they eagerly agree with him. Nevertheless, Bartleby remains a quiet, insidious influence. The others begin to emulate him without even being aware of it:

Turkey blandly and deferentially approached.

“With submission, sir,” said he, “yesterday I was thinking about Bartleby here, and I think that if he would but prefer to take a quart of good ale every day, it would do much towards mending him, and enabling him to assist in examining his papers.”

“So you have got the word too,” said I, slightly excited.

“With submission, what word, sir,” asked Turkey.

When Nippers too uses the word several times, the narrator finally recognizes the threat: “I thought to myself, surely I must get rid of a demented man, who already has in some degree turned the tongues, if not the heads of myself and my clerks.”

If the Turkeys, Nippers, and Ginger Nuts of the world—those who do the necessary subordinate work of society—begin to react like Bartleby and

99. “I engaged him, glad to have among my corps of copyists a man of so singularly sedate an aspect, which I thought might operate beneficially upon the flighty temper of Turkey, and the fiery one of Nippers.” Id. at 117.
100. Id. at 122.
101. Id. at 134.
102. Id. at 135.
reject the small offerings of their superiors, the economy and the entire society could be brought to a standstill.\textsuperscript{103}

Bartleby is engaged in a one-person strike, for no apparent purpose and with no effort to make common cause. His protest is sad, futile and almost comical. However, the danger of wider protest that he represents is powerful and broadly threatening.

The story only hints at an alternative approach, one based less on prudence and more on love and on human solidarity. Bartleby's problems should not be viewed as that of an employee, but of a fellow human being; just as a fugitive slave should be thought of as a fellow human, not property. Of course, we do not know if a more loving and open response could have saved Bartleby. All we know is that the narrator himself would have become a different, more appealing person, one who is more responsive to the needs and rights of his workers. It seems clear that Melville meant to argue against prudence and method in dealing with the least of mankind. It is less clear whether he is making a broader point. Are prudence, safety, and method equally suspect when used by the powerful in dealing with the ordinary day-to-day affairs of humanity—for Turkey, Nippers, and the office boy Ginger Nut, and for employees generally?

On careful examination, the story reveals the weakness of our employment system; still a system of master and servant as it was then. Turkey is elderly and vulnerable, Nippers unhappy and unfulfilled, Ginger Nut youthful and exploited. The kindness of the narrator in keeping Turkey on is provisional; his gifts inadequate, and when Bartleby first begins to work at the office, his treatment is demeaning. Melville does not suggest an alternative. Perhaps he was unsure whether a better system was possible. But surely this story in no way affirms the values of the capitalist system.

Several perceptive critics have taken the narrator's agonized description of the Dead Letter Office as Melville's own complaint about the meager readership of his novels. It is well-known that the poor sales of his books caused Melville great pain. The narrator expresses, in part, Melville's unhappiness at the state of his career. Yet the comparison between the narrator's situation and that of his clerks might also reflect Melville's relationship with the great bulk of suffering humanity, including slaves and exploited workers. Why should he have felt so ill used when so many others were treated so much more infamously? Melville surely knew this and expressed his compassion for them in the eloquent final sentence of the story. It is not self-pity, but sorrow for humanity's suffering that finally moves the narrator. But, alas, too late.

\textsuperscript{103} As the old union anthem \textit{Solidarity Forever} announces: "Yet without our brain and muscle not a single wheel would turn, for the union makes us strong."
Assuming that I am correct about the jurisprudence of Bartleby, the question remains: why should anyone care about the thoughts of an eccentric writer telling the story of a scrivener too odd for reality that was written a century-and-a-half ago? It is, to be sure, a fascinating and intriguing story, but how can its views on law be taken seriously? How indeed can they be said to offer a serious critique of sophisticated jurisprudential analysis or of the application of economic theory to issues of employee relations? What does Bartleby’s story offer that makes it worthy of study by law students, lawyers, and legal academics?

For one thing, by the miracle of great literature, it forces the reader to confront with emotion and intellect the meaning, validity, and significance of religious teaching. Most people, no matter how educated or how pious, rarely do this in a situation not motivated by a sense of guilt. The reader inevitably comes to care about Bartleby, a wounded, frightened, pitiable creature who, by his silence, stands so eloquently for all of those who cannot speak for themselves. And most readers share the confusion of the narrator (a strange, sometimes despicable, sometimes admirable, sometimes overly intellectual, sometimes passionately emotional person) as he tries to determine the right course of action. It is impossible not to judge him, even though the honest reader cannot confidently claim that he would have done better or even as well, that he would have similarly overlooked Bartleby’s insubordination and eventually offered to share his home. The reader is forced to conclude that the failure here is not attributable to the malice, selfishness, or foolishness of the narrator. It is somehow inherent in a system that overvalues rules and undervalues passion. And if the logic of rules based on economic self-interest is inadequate to deal honorably with Bartleby, why should we assume that it is any better for Turkey or Nippers? The story is a valuable reminder that something inadequately caring is at the foundation of our legal system.

104. In some sense the narrator’s internal struggles are like the debate between Herbert Wechsler and Charles Black over the Brown case. One is motivated by a lofty, high-minded concern for the enunciation of neutral principles, the other by passionate contempt for the Southern system of segregation. See Brown v. Bd. of Educ., 349 U.S. 294 (1955); Herbert Wechsler, Toward Neutral Principles of Constitutional Law, 73 HARV. L. REV. 1, 34 (1959); Charles L. Black, Jr., The Lawfulness of the Segregation Decisions, 69 YALE L.J. 421, 424 (1960).