CONSIDERING HIS VORACIOUS AND RATHER UNDISCIPLINED READING, WE SHOULD not be too surprised to find that Herman Melville had a considerable acquaintance with some of the more arcane points of law and Anglo-American legal history. Yet, for the most part Melville was content to use his knowledge of law either to ridicule the legal profession or to suggest the failure of law, with all its complexities, its immense traditionalist structure, to eradicate human evil. He is jocular about the situation of the lawyers in the Church of the Apostles in Pierre: they are restricted to the ground floor “as people would seldom willingly fall into legal altercations unless the lawyers were always very handy to help them.” But the vacant upper floors suggest “unwelcome similitudes” to the lawyers, “having reference to the crowded state of their basement-pockets, as compared with the melancholy condition of their attics;— alas! full purses and empty heads!”  

Chapters LXXXIX and XC of Moby Dick, “Fast Fish and Loose Fish” and “Heads or Tails” include more legal citations and examples than any other chapters in the novel, but present a bitter picture of law as reducible merely to the concepts of possession and force.  

One of Melville’s short stories, “Bartleby the Scrivener,” does deal entirely with a lawyer and his office staff. Though critics who have analyzed the story have paid little attention to the narrator’s profession, it is, I believe, important to a full understanding of the story. At the time the story opens, the unnamed narrator had enlarged his “snug business among rich men’s bonds, and mortgages, and title deeds” to become a Master in Chancery. Why this specific office? The answer provides the underlying metaphor for the story.

2 “Fast Fish and Loose Fish” is something of a metaphoric analysis of the limitations of natural law.
The situation of the Court of Chancery is unique to Anglo-American law. Courts of Chancery were founded in England in the fourteenth century, directly descended from the position of the Lord Chancellor of the King. The Chancellor, first appointed under Edward the Confessor, acted as the king’s secretary, chief chaplain, holder of the great seal and as spiritual adviser, the “conscience of the king.” It could be a delicate position, as the examples of Becket, Wolsey and More attest. The Chancellor very early in English history became a force at law. In a monarchy the king must possess the power to dispense justice, to defend the poor and the defenseless. Moreover, since English common law tended to be circumscribed by literalness and dependence upon precedent, subjects asked the king for relief from injuries which demanded redress beyond the power of the ordinary courts. Since the Chancellor was always a churchman during the early reigns, and therefore might be expected to judge morality as well as legality, the king often passed the complaints on to him, at first for advice, later for positive action.

For a long period the Chancellor’s powers were only advisory, though as an ecclesiastic he could inflict the punitive powers of the church. But in the reign of Richard II, Chancellor Waltham set up a Court of the Chancellor and issued *subpoenae* which were recognized by both the king and the people of England. The court thus founded was immensely powerful in the beginning, though it declined through the centuries. Offices of twelve Masters in Chancery were then created, to be chosen by the Chancellor and to hear cases in Westminster Palace. They made recommendations to the Chancellor who passed the final decision. They were expected to know Roman law as well as common law and took precedence over all serjeants-at-law. With rank came jealousy and criticism. In the fifth year of the reign of Richard II they were criticized by the Commons as “over fatt both in boddie and purse, and over well furred in their benefices, and put the King to veiry great cost more than needed.”

Chancery was transported across the Atlantic to the English colonies where it flourished side by side with courts of common law. The Courts of Chancery in America were closely identified with the royal governors, as their heritage might suggest. But, strangely enough, after the revolution they were retained, sometimes even strengthened for the first few decades of the new nation’s life until, in the middle of the nineteenth century, a wave of reform combined chancery pleadings with common

---

law. In 1848 the state of New York did away with the court, though it kept many of its forms of pleading.4

For Melville’s purposes in the writing of “Bartleby,” two aspects of the history of chancery were so significant that he needed to make the particular point that his narrator had been conferred a mastership in chancery. First, the fact that the office existed in a republic almost a century after the last colonial governor had departed was an extraordinary anachronism.5 The Master in Chancery, essentially, draws his power from association with the king, not at all from “below,” from the common-law courts and, in a democracy, from the people. A connoisseur of symbols, Melville must have seen the possibilities of a character who has the position of a Master in Chancery in historic-symbolic terms, as he does the specksynder in *Moby Dick*, or the mates and harpooneers as “Knights and Squires.” Moreover, the royal association of the Master in Chancery perfectly suited the microcosm of the law office at —— Wall Street; it 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. The possibilities of this metaphor in terms of readings for the story are endless: the narrator may be God, Pilate or the king; the office group mankind, the Jews at the time of Christ or society in general; Bartleby enquiring man, the historic Christ or the unsatisfied artist in society. One need only substitute a new foundation, and off we go into a new allegory.

A second consideration implicit in the history of Chancery may have been more important in Melville’s choice of the trope. Courts of Chancery were commonly also called Courts of Equity and differed in principle from courts of common law as their second title suggests. “The evolution of law,” a recent writer has stated, “is to a large extent the history of its absorption of equity.” While primitive law is concerned only with the maintenance of public order and strict law (common law) is principally interested in individual security, equity draws its principles from “natural law,” and is concerned with what can only be described as the ideal application of justice. Aristotle defined equity as “that idea of justice which contravenes the written law,” and that definition has hardly been im-


5 It is perhaps worth noting that Pennsylvania, while a colony, had no Courts of Chancery. They were instituted briefly after the Revolution. The association with royal prerogative may thus be seen on the one hand, the forgetfulness of the colonists concerning this association in the first flush of democracy on the other.
proved upon. Courts of Equity or Chancery, then, are not “higher” than courts of common law, but are courts wherein different principles of law are extended—principles of ideality instead of precedent, principles of absolute instead of relative justice.

We can perhaps trace Melville’s thinking to his arrival at the donnée of a Master in Chancery. We know that from July 6, 1852, to sometime before the publication of “Bartleby” in Putnam’s for November, 1853, Melville was wrapped in the story of “Agatha.” This was the story told him by a New Bedford lawyer of a woman who married a man whom she rescued as a shipwrecked survivor. The man then left her and married again in Philadelphia, raising a family and living an apparently normal life. When his first wife, Agatha, finally attempted to reach him again, seventeen years after his departure, he had died and left everything to his second wife and family. The equitable division of his testament was then the knotty legal problem faced by the courts. As material to be converted into fiction, the story naturally divides into two parts: the legal difficulty of dispensing equity to the two wives, for which the wisdom of a Solomon would seem to be necessary, and the description of Agatha’s sensibilities as she waited, alone, on her island for seventeen years for news of her lover. Melville seems to have been preoccupied, indeed, almost obsessed with the latter consideration during this period. He offered the story to Hawthorne, sensing doubtless that the author of “Wakefield” would find the matter sympathetic, then asked Hawthorne to return the notes he had made in hope that he could write the story himself. Melville never wrote the story of Agatha, but he did write “Bartleby” as a first fruit of this absorption and, later, the story of Hunilla, the “Chola Widow.” The latter story is closely connected to the sensibility of an Agatha-character; the former, we may presume, was abstracted from the philosophical and legal background of the problem of Agatha. Agatha’s was a problem of the conflict of common and equity law, and Melville must have encountered the confusion (then rife in New York because of the procedural changes of 1848) between common law and equity. Never one to miss the possibilities of an “ambiguity,” of a metaphor deep enough to suggest that fundamental division between the real and the ideal, the material and the spiritual, Melville seized

6 Newman, Equity and Law, pp. 13, 255. Newman gives the citation from Aristotle as Rhetoric, Book I, Chap. 13. The apparent paradox of a distinction between “justice” and “equity” is the subject of innumerable treatises by distinguished lawyers and judges, many of which are cited by Newman in an appendix to his work, pp. 269-70.

upon the ironic possibilities for his newly conferred Master in Chancery.

Several recent critics have suggested that the narrator and Bartleby are "double" characters. Mordecai Marcus interprets this "doubling" of the narrator in Bartleby as a challenge to the narrator's adjustment to the conditions of the world. Kingsley Widmer sees the same "doubling" in a slightly larger sense: Bartleby's challenge of the narrator's "safe" position is a stinging criticism of the limitations of benevolence, rationalism and self-conscious humanism.8 The implications of the narrator's position as pettifogger recently raised to a mastership in Chancery tend to bear out either of these interpretations. A lawyer in his position is a lawyer just awakening to the complexities of law and life. The assurance he had as "one of those unambitious lawyers who never address a jury, or in any way draw down public applause," but who remain safe "in the cool tranquility of a snug retreat," is suddenly challenged by the whole new system of equity pleading and decision. The Master in Chancery is not concerned with the practicable, the workable, but strives for the ideal. Because of his new office, our narrator, hitherto content with a relative legal world and philosophy, is suddenly thrust into the legal equivalent of striving for absolute justice. Almost immediately, and as a direct result of that new position (for he must hire Bartleby as a consequence of the expected increase in his volume of work), he is challenged in his new legal thinking by the exactly opposite problem of Bartleby.

Most of the details of the story contribute to this central metaphor of the pettifogger in Chancery. The narrator's pre-Bartleby existence is one based on the idea of adjustment of and to conditions, an application of the common-law mind. His two unlikely clerks, Turkey and Nippers, balance each other out like contrasting paragraphs on a contract. And the narrator may be punning, but he is not entirely ironic in his admiration for Ginger Nut when he says, "indeed, to this quick-witted youth, the whole noble science of the law was contained in a nutshell."

When Bartleby arrives in the office, the narrator's first thoughts are still toward "adjustment." He favors Bartleby because he is "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." That this assumed purpose is really directed toward his own well-being is shown by the fact that the narrator places

Bartleby in his own office, separated from him only by a folding screen, in order that "privacy and society were conjoined." Again, the purpose and technique represent the workings of a practical common-law mind.

At first, Bartleby conforms to the narrator's expectations. His accommodation to the material, common-law needs of the narrator is born out by the association of eating imagery connected with his early copying: he is "famishing for something to copy," he seemed to "gorge himself" on the work with "no pause for digestion." But, immediately after the narrator makes his first statement in the story based upon the new kind of consciousness demanded by his new position in Equity, Bartleby begins his retreat into spiritual recalcitrance. The narrator notes that the reading of copy is a "dull, wearisome, and lethargic affair," intolerable "to some sanguine temperaments," as an example of which he cites "the mettlesome poet, Byron." When Bartleby first "prefers not to" read copy immediately after this passage, he is truly acting as the narrator's double. A similar progression follows through the story. Each time the narrator is made aware in his own mind of a complexity, an unpredictable or ambiguous element in life hitherto undreamed of in his petitfogger mentality, Bartleby presents an applicable case in point.

First, after Bartleby's refusal to read copy in front of the whole office staff, the narrator notes that "when a man is browbeaten in some unprecedented" and violently unreasonable way, he begins to stagger in his own plainest faith," and he calls upon "any disinterested persons" present "for some reinforcement for his own faltering mind." When the narrator does this, he finds that such amici curiae as Turkey and Nippers are not really helpful to him. Next, he determines to use Bartleby to "cheaply purchase a delicious self-approval," "to lay up in my soul what will eventually prove a sweet morsel for my conscience." Accordingly, he first provokes the post-prandially pugnacious Turkey against Bartleby, then demurs—"Pray, put up your fists," then a few days later repeats the scene in the morning, this time deterring Nippers from assault upon Bartleby with a Bartlebyan injunction himself: "'Mr. Nippers,' said I, I'd prefer that you would withdraw for the present.'"

At this point in the story the narrator (and, subordinately, the other members of his office besides Bartleby) has been indoctrinated to the point of a superficial and literal comprehension of the principles of

---

9 Surely the pun on the common-law pleader's staple, "precedent," is intentional. Throughout the story Melville has succeeded in parodying the style of legal rhetoric. The second paragraph of the story, for example, includes two instances of the "not un-" construction: "I was not unemployed in my profession. . . . I was not insensible to the late John Jacob Astor's good opinion." There are many other stunning examples of legal periphrasis. I discuss Melville's punning on the word "master" and the principle of assumpsit below.
equity. The key to their condition is in the word "prefer." The narrator finds that he uses the word "upon all sorts of not exactly suitable occasions," Turkey and Nippers use the word without even being aware of it. The word itself is exquisitely chosen by Melville to suggest the human and existential condition of "bearing before" or "setting before" in the matter of consequential choice. It is also apposite to the situation of equity pleading as opposed to common law pleading. Only in equity pleading is the preference of the plaintiff for one kind of restitution over another a consideration.10

Shortly after the narrator finds that Bartleby has "turned the tongues, if not the heads, of myself and clerks" through their own unconscious choice of the word "prefer," the narrator gives Bartleby his notice. But, of course, when the time is up Bartleby is still there. The narrator then embarks upon yet another extension of the principles of equity in hopes of ridding himself of Bartleby. Instead of engaging in "vulgar bullying . . . bravado . . . [or] choleric hectoring," he simply asserts the principle of *assumpsit*, a chancery writ issued in cases of nonfeasance (non-performance) in the fifteenth century and later. Melville gives away his metaphor with a series of puns, first on the narrator's position as Master in Chancery: "I could not but highly plume myself on my masterly management in getting rid of Bartleby. Masterly I call it. . . ." Then he continues with a bravura punning performance within two paragraphs in which the words "assume" and "assumption" are repeated no less than eleven times.

The narrator at this point has proceeded about as far as literalism can take him into the principles of equity. When the "old Adam of resentment" rises in him against Bartleby, he recalls the "divine injunction: 'A new commandment give I unto you, that ye love one another.'" 11 He invokes the idea of charity and determines to govern his relations with Bartleby through more than the literal reliance upon equity he has used to this point. He seeks solace through research in such non-common law works as "Edwards on the Will and Priestley on Necessity." 12 In this

10 Roscoe Pound, *An Introduction to the Philosophy of Law* (New Haven, 1954), pp. 64-65; Newman, *Equity and Law*, pp. 56-58. To a layman the details are confusing, but there is a distinct difference between a plaintiff's rights "at law" and "in equity." Where law is concerned with the rigid form, "damages," equity uses the more idealistic term, "remedy." The distinction is basic.

11 The equity-common law metaphor is apt for this extension into theology. The principles of equity may be described as relating to the principles of common law as the ideas of the New Testament relate to the ideas of the Old Testament.

12 No critic has noticed that these very philosophic sounding titles are also perfectly appropriate as legal titles, especially for the purposes of equity pleading. All one need do is accept the pun on "will" as "testament" and "necessity" in its legal sense, as cause in hardship. Both terms were common to equity pleading at the time of the writing of the story.
manner he does achieve a stasis with Bartleby within the microcosm of the office. But external, societal influences—the opinions of his "professional acquaintances"—lead him to the extreme step of abandoning his offices and Bartleby. He thereby brings about the dénouement of the story, Bartleby's imprisonment and death and his subsequent transcendence to the company of "kings and counselors [chancellors?]," 13 the perfect haven for a test of equitable principles.

13 Widmer, MFS, VIII, 284, points out the probable source of the phrase in Job (3:14). The identification of "chancellor" with "counselor" is a piece of folk etymology, but it is not unknown.