

Articles

Distorted Records in “Benito Cereno” and the Slave Rebellion Tradition

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This Article reexamines Herman Melville's short story “Benito Cereno,” in which the “true history” of the story's events is only revealed to the reader at the end of the story through lengthy extracts from the official deposition of Benito Cereno, captain of the slave ship San Dominick, who testifies that a slave revolt resulted in the deaths of numerous Spaniards and slaves on board. The deposition extracts through which this history is presented to the reader contain numerous defects and contradictions that have troubled critics. This Article reexamines the reliability of the deposition extracts through the lens of the exaggeration, distortion, and censorship that characterize the records of historical slave rebellions. The Article argues that the parallels between the deposition extracts in “Benito Cereno” and the unique historiographical problems raised by the records of historical slave rebellions have been largely overlooked by critics and provide a basis for reexamining whether the deposition extracts in fact provide the “true history” of the story and for reevaluating suggestions of a conspiracy between the Spaniards and slaves in the story. The Article also concludes that by using a deliberately defective official document to end “Benito Cereno,” Melville provides important commentary regarding the authorship and distortion of official records in slave rebellion trials and the autonomous agency on which law, narrative, and history depend.

The document selected, from among many others, for partial translation, contains the deposition of Benito Cereno, the first taken in the case. Some disclosures therein were, at the time, held dubious for both learned and natural reasons. The tribunal inclined to the opinion that the deponent, not undisturbed in his mind by recent events, raved of some things which could never have happened.

Herman Melville, “Benito Cereno”¹

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Putnam's Monthly Magazine first published Herman Melville's short story "Benito Cereno" in three monthly installments on October 1, November 1, and December 1, 1855.² In the first two installments, a limited third person narrator tells the story of American Captain Amasa Delano boarding the Spanish slave ship *San Dominick* off the coast of Chile in 1799 after he notices its erratic movement in the harbor of St. Maria and its dangerously close approach to land.³ Upon boarding the *San Dominick*, Delano is greeted by a "clamorous throng of whites and blacks" who tell a "common tale of suffering." The nearly incapacitated Spanish captain of the *San Dominick*, Don Benito Cereno, explains to Delano that the ship ran into storms off Cape Horn followed by sultry calms that left the ship adrift and at the mercy of scurvy and fever, resulting in the deaths of many of the Spaniards and slaves on board, including the slaves' owner Alexandro Aranda.⁴ After Delano sends his whale-boat back to his ship the *Bachelor's Delight* to retrieve supplies for the *San Dominick*, Delano is entertained by Cereno, whose slave Babo is constantly by Cereno's side, at times physically supporting Cereno during periodic fainting spells which Delano attributes to Cereno's near incapacity from the ill-fated voyage.

Throughout this early part of the story, Delano finds the relationship between the Spaniards and slaves on the *San Dominick* deeply disturbing. Despite Delano's offer of assistance to the *San Dominick*, Cereno initially greets Delano passively, with an "unhappy glance," and during Delano's stay on the *San Dominick* Cereno has a "gloomy hesitancy and subterfuge" about him.⁵ When on two occasions Delano observes the slaves violently striking the Spaniards on board, Cereno does nothing to stop the violence, dismissing it on one occasion as "merely the sport of the lad," and when Cereno and Babo step away from Delano to whisper together in low voices, Delano notes that they have "the air of conspirators" about them and begins to feel "a ghostly dread" of Cereno, suspecting him of a piratical scheme.⁶ In the third installment of the story, however, as the supplies arrive and Delano prepares to return to the *Bachelor's Delight*, Cereno dramatically leaps over the bulwarks of the *San Dominick* into Captain Delano's whale-boat the *Rover* followed first by three Spanish sailors and then by Babo and "the whole host of

1. HERMAN MELVILLE, *Benito Cereno*, in THE PIAZZA TALES 103 (Northwestern University Press, 2000) (1856).

2. LEA BERTANI VOZAR NEWMAN, A READER'S GUIDE TO THE SHORT STORIES OF HERMAN MELVILLE 95 (1986).

3. MELVILLE, *supra* note 1, at 46-47.

4. *Id.* at 48-56.

5. *Id.* at 51, 68.

6. *Id.* at 59, 63-68, 70.

negroes,” who, “as if inflamed at the sight of their jeopardized captain, impended in one sooty avalanche over the bulwarks.”⁷ Later, Cereno claims that the slaves had revolted at sea and forced him to tell Delano the story of storms and scurvy under threat of death if he revealed the truth of the revolt, but this account is only provided to the reader of “Benito Cereno” indirectly, through lengthy extracts from an official transcript of Cereno’s deposition taken before the vice-regal courts in Lima, Peru, where the revolt “underwent investigation” after the *San Dominick* was recaptured by the American sailors.⁸

The narrator introduces the deposition extracts, which constitute approximately half of the final installment of the story, by noting that “it is hoped” the deposition will, retrospectively, reveal the “true history” of the *San Dominick’s* voyage, and “if the Deposition have served as the key to fit the lock of the complications which precede it, then, as a vault whose door has been flung back, the *San Dominick’s* hull lies open today.”⁹ While critics have largely accepted Cereno’s deposition testimony as the “true history” of the *San Dominick’s* voyage and examined “Benito Cereno” as a commentary on the politics of slavery, some critics have noted that the deposition extracts are “deliberately defective,”¹⁰ contain “many unsolved contradictions,”¹¹ and “raise more questions than they answer,”¹² perhaps not unlike the hull of the *San Dominick* at the beginning of the story, a “shadowy tableau just emerged from the deep, which directly must receive back what it gave.”¹³ A close examination of the deposition extracts and the facts and circumstances surrounding them reveals serious doubts not only about the transcript’s account of the *San Dominick’s* voyage and the claim that a slave revolt occurred, but also about the transcript’s integrity as an official record. Significantly, these doubts parallel unique historiographical problems raised by the records of the historical slave rebellion trials that form the primary literary tradition of “Benito Cereno.” Thus, despite one reader’s complaint to the editor of *Putnam’s Monthly Magazine* that “it is a great pity [Melville] did not work [the story] up as a connected tale instead of putting in the dreary documents at the end,”¹⁴ Melville’s use of the “dreary documents” at the

7. *Id.* at 98-115.

8. *Id.* at 102. Immediately after leaping into the *Rover*, Cereno fell into a “speechless faint.” *Id.* at 99.

9. *Id.* at 103, 114.

10. Robert A. Ferguson, *Untold Stories in the Law*, in *LAW’S STORIES: NARRATIVE AND RHETORIC IN THE LAW* 97 (Peter Brooks & Paul Gewirtz eds., 1996).

11. Oliver Scheiding, *Subversions of Providential Historiography in Herman Melville’s ‘Benito Cereno’*, in *RE-VISIONING THE PAST: HISTORICAL SELF-REFLEXIVITY IN AMERICAN SHORT FICTION* 123 (Bernd Engler & Oliver Scheiding eds., 1998).

12. EDGAR A. DRYDEN, *MELVILLE’S THEMATICS OF FORM: THE GREAT ART OF TELLING THE TRUTH* 202 (1968).

13. MELVILLE, *supra* note 1, at 50.

14. WARNER BERTHOFF, *THE EXAMPLE OF MELVILLE* 153 (1962).

end of “Benito Cereno” provides important commentary on the authorship and distortion of records of slave rebellion trials and the presumption of autonomous agency on which law, narrative, and history depend.

This Article will explore these implications of “Benito Cereno” and argue that despite numerous parallels prior critics have noted between the story and historical slave rebellions—including parallels between the story and the *Creole* and *Amistad* mutinies, the San Domingo rebellion of 1799, and the Gabriel rebellion of 1800¹⁵—the parallels between the deposition extracts at the end of the story and the distortions that characterized the official records of historical slave rebellion trials provide the most important explanation of the transcript’s function in the story. As Herbert Aptheker observes in *American Negro Slave Revolts*, slave rebellion narratives were frequently characterized by “exaggeration, distortion, and censorship,”¹⁶ and the authorities presiding over slave rebellion trials often conducted their proceedings in secret, used inquisitorial procedures to interrogate witnesses, and distorted official records. This Article will illustrate these features in the records of two notorious slave rebellion trials—*The Confessions of Nat Turner* and the *Official Report* of the Denmark Vesey conspiracy trials—and examine similar features in the deposition extracts at the end of “Benito Cereno,” arguing that the parallel between the story and historical slave rebellion records provides a basis for reexamining whether the deposition extracts in fact provide the “true history” of the story and for reevaluating suggestions of conspiracy between the Spaniards and slaves in the story. The Article will conclude by discussing how such a reexamination of the deposition extracts also illuminates the role of autonomous agency in the legal process.

I. THE HISTORICAL SLAVE REBELLION TRADITION

By the time Melville wrote “Benito Cereno” in the 1850s, slave rebellions had become a frequent occurrence both at sea and on land, and slave rebellion narratives were a familiar genre in American literature. A 1937 study of documentary evidence of slave ship revolts between 1699 and 1845, for example, discovers records of fifty-five slave rebellions and concludes that additional unreported rebellions probably occurred during this period.¹⁷ Slave rebellions at sea had become so prevalent, in fact, that a special form of insurance was taken out to cover losses arising from them.¹⁸ As slave rebellions and unrest among slave populations rose, false

15. Carolyn L. Karcher, *The Riddle of the Sphinx: Melville's 'Benito Cereno' and the Amistad Case*, in *CRITICAL ESSAYS ON HERMAN MELVILLE'S "BENITO CERENO"* 196-229 (Robert E. Burkholder ed., 1992); Ferguson, *supra* note 10, at 97.

16. HERBERT APTHEKER, *AMERICAN NEGRO SLAVE REVOLTS* 150 (1978).

17. Harvey Wish, *American Slave Insurrections Before 1861*, 22 *J. NEGRO HIST.* 299-320 (1937).

18. *Id.*

and exaggerated slave rebellion reports also proliferated, so that in the wake of notorious slave rebellions such as those led by Nat Turner and John Brown, panic quickly spread to other states until at times “baseless rumors of conspiracies, rather than actual outbreaks, seemed to be the rule.”¹⁹ False and exaggerated slave rebellion reports were also motivated by a complex array of white interests such as anti-abolitionist fervor, profits from the purchase of slaves at reduced prices in the wake of rebellion alarms, and the concealment of crimes committed by whites,²⁰ and the detection of such false reports was rendered unlikely by the procedural laxity that characterized slave trials.²¹ A close examination of the records of two notorious slave rebellion cases—*The Confessions of Nat Turner* and the *Official Report* of the Denmark Vesey conspiracy trials—illustrates the unique historiographical problems raised by the records of historical slave rebellions and their significance as a literary tradition for the deposition extracts in “Benito Cereno.”

A. The Confessions of Nat Turner

The unique historiographical problems raised by slave rebellion records are clearly evident in the records of the Nat Turner rebellion in Southampton, Virginia in 1831, widely regarded as the most notorious slave rebellion in American history. Turner was accused of masterminding a slave rebellion that killed fifty-seven white citizens of Southampton. Shortly after the rebellion, attorney Thomas Gray published *The Confessions of Nat Turner* as a pamphlet claiming to represent the most authentic account of the rebellion in order to correct the “thousand idle, exaggerated and mischievous reports” that had quickly spread in the public mind.²² The *Confessions* purport to publish Turner’s own words, “fully and voluntarily made” with “little or no variation,”²³ but they met with almost immediate skepticism due to the “eloquent, even classical” language attributed to Turner,²⁴ such as the following complex grammatical structures unlikely to be encountered in spoken dialogue:

In my childhood a circumstance occurred which made an indelible impression on my mind, and laid the ground work of that enthusiasm, which has terminated so fatally to many, both white and black, and

19. *Id.* at 315.

20. Aptheker, *supra* note 16, at 152-55; ENCYCLOPEDIA OF SLAVE RESISTANCE AND REBELLION 252-53 (Junius P. Rodriguez ed., 2007); Wish, *supra* note 17, at 313.

21. MARK TUSHNET, THE AMERICAN LAW OF SLAVERY, 1810-1860: CONSIDERATIONS OF HUMANITY AND INTEREST 122 (1981) (establishing that “special courts were established for the trial of minor slave crimes, and procedural nicety was not always demanded in those courts”).

22. Thomas R. Gray, *The Confessions of Nat Turner*, in SLAVE NARRATIVES 245 (William L. Andrews & Henry Louis Gates, Jr. eds., 2000).

23. *Id.* at 245.

24. David F. Allmendinger, Jr., *The Construction of The Confessions of Nat Turner*, in NAT TURNER: A SLAVE REBELLION IN HISTORY AND MEMORY 37-38 (Kenneth S. Greenberg ed., 2003).

for which I am about to atone at the gallows. It is here necessary to relate this circumstance—trifling as it may seem, it was the commencement of that belief which has grown with time, and even now, sir, in this dungeon, helpless and forsaken as I am, I cannot divest myself of.²⁵

Similarly, the *Confessions* attribute to Turner the claim that “I sometimes got in sight in time to see the work of death completed, viewed the mangled bodies as they lay, in silent satisfaction, and immediately started in quest of other victims.”²⁶ These and other passages of the *Confessions* appear to reflect at best an edited rather than a verbatim transcription of any confession Turner may have made.

There are additional reasons to doubt the authenticity of the *Confessions*, however. Although not apparent on the face of the *Confessions*, Thomas Gray was not Nat Turner’s attorney, but rather a court-appointed attorney for other slaves prosecuted for participating in the rebellion.²⁷ Accordingly, Gray had a significant interest in establishing that Turner, rather than his own clients, was responsible for the rebellion. Furthermore, Gray faced significant financial difficulties at the time and appears to have seized on the lucrative financial prospects of publishing Turner’s confession. Gray was admitted to the Virginia bar in December 1830, less than a year before the *Confessions* were published,²⁸ and shortly before the rebellion he suffered “financial ruin,” compounded by the probate of his father’s will that “cut him out completely” and the death of his wife, which left him to care for an infant daughter.²⁹ Despite purporting to be an official document, as reflected in the declaration of the court clerk on the first page of the *Confessions* that the document is “a true copy, from the record of the District Court,” the declaration also states that Gray claims the right as proprietor of the work under the Copyright Act, and within two days of the trial Gray sought a publisher.³⁰ These circumstances indicate Gray had significant financial motives to dramatize Turner’s role in the rebellion. Indeed, the *Confessions* undoubtedly turned a profit for Gray, as they were widely popular in the South, with as many as 50,000 copies distributed by 1861.³¹

The consonance between Turner’s *Confessions* and Gray’s own investigations prior to his interview of Turner also casts serious doubt on the authenticity of the *Confessions*. Before obtaining Turner’s confession,

25. Gray, *supra* note 22, at 249.

26. *Id.* at 257.

27. Daniel S. Fabricant, *Thomas R. Gray and William Styron: Finally, A Critical Look at the 1831 Confessions of Nat Turner*, 37 AM. J. LEG. HIST. 333 (1993); Allmendinger, *supra* note 24, at 35.

28. Fabricant, *supra* note 27, at 340.

29. *Id.*

30. Gray, *supra* note 22, at 244; Allmendinger, *supra* note 24, at 24.

31. Fabricant, *supra* note 27, at 332; HENRY IRVING TRAGLE, *THE SOUTHAMPTON SLAVE REVOLT OF 1831: A COMPILATION OF SOURCE MATERIAL* 279 (1971).

Gray had conducted an extensive investigation of the rebellion, and in a September 26, 1831 letter to the Richmond *Constitutional Whig*, he published many of the details later contained in the *Confessions*.³² Gray had publicly ridiculed the notion of a widespread conspiracy, arguing for a local conspiracy instead,³³ and much as his *Constitutional Whig* letter had referred to Turner as the “ringleader” of the rebellion,³⁴ Gray’s *Confessions* describe Turner as the “leader of the late insurrections in Southampton,” the “leader of this ferocious band,” the “contriver and head,” and the “author” of the revolt.³⁵ Furthermore, although in his preface to the *Confessions*, Gray claims that during Turner’s incarceration he “fully and voluntarily” confessed “without being questioned at all,”³⁶ the *Confessions* contain numerous indications that Gray questioned Turner and specifically sought to corroborate Gray’s version of the rebellion. In the opening lines of the *Confessions*, for example, Turner states, “you have asked me to give a history of the motives which induced me to undertake the late insurrection, as you call it,” and the text expressly evidences numerous questions posed by Gray.³⁷ Moreover, the final section of the *Confessions* is a summary of Turner’s responses to Gray’s “cross examination” after Turner was threatened that “concealment would only bring destruction on the innocent as well as guilty, of his own color, if he knew of any extensive or concerted plan.”³⁸ These threats and cross-examination raise serious doubts about the confession’s reliability. It is also clear that Turner was Gray’s last hope for establishing the motive and details of the rebellion, as stated in Gray’s preface to the *Confessions*:

The insurgent slaves had all been destroyed, or apprehended, tried and executed, (with the exception of the leader,) without revealing any thing at all satisfactory, as to the motives which governed them, or the means by which they expected to accomplish their object. Every thing connected with this sad affair was wrapt in mystery, until Nat Turner, the leader of this ferocious band, whose name has resounded throughout our widely extended empire, was captured.³⁹

Thus, not only was Turner the only means left of establishing the motives behind the rebellion and how it was implemented, including the local conspiracy Gray had advocated, but none of the slaves involved in the rebellion remained to contradict the account attributed to Turner in the

32. Fabricant, *supra* note 27, at 344-46; Allmendinger, *supra* note 24 at 24, 32-37; Letter from Thomas Gray (Sep. 26, 1831), *reprinted in THE CONFESSIONS OF NAT TURNER AND RELATED DOCUMENTS* 78 (Kenneth S. Greenberg ed., 1996).

33. Allmendinger, *supra* note 24, at 35.

34. Greenberg, *supra* note 32, at 79.

35. Gray, *supra* note 22, at 243, 245, 262.

36. *Id.* at 249.

37. *Id.* at 249, 250-251, 253-54, 258, 260-61.

38. *Id.* at 261.

39. *Id.* at 245.

Confessions.

Finally, although the *Confessions* claim to have been read and acknowledged by Turner during his trial and bear the seal of the Clerk of the County Court of Southampton, Virginia, there is no evidence in the official trial record that the *Confessions* were read to or acknowledged by Turner.⁴⁰ Instead, the trial record reflects that Justice of the Peace James Trezvant testified during Turner's trial to what Turner said during a private pretrial interrogation in his cell conducted by Trezvant and another justice.⁴¹ This interrogation followed a common interrogation practice of early English justices of the peace "to allow the justices, in secret proceedings of an inquisitorial nature, to build a case against the defendant."⁴² It is worth noting, however, that out of more than fifty trials involving the rebellion, Turner's was the only one in which a sitting justice provided testimony.⁴³ Moreover, although the trial record only indicates that Turner "pleaded not guilty,"⁴⁴ according to Gray's *Confessions*, Turner pleaded "*not guilty*," saying to his counsel, that he did not feel so,⁴⁵ suggesting the emotional plea of an individualist romantic hero rather than a not guilty plea based on a denial of fact or law. Accordingly, this passage of the *Confessions* may have been inserted not only to render the plea consistent with Turner's confession to leading the rebellion, but to dramatize Turner's romantic appeal to Gray's audience.

B. The Official Report of the Denmark Vesey Conspiracy Trials

Similar problems are reflected in the records of the Denmark Vesey conspiracy trials of 1822, in which Vesey and 130 slaves were charged with planning a vast conspiracy to set fire to the city of Charleston, South Carolina, to kill all the whites in the city, and to escape by sea to the black republic of Haiti.⁴⁶ The Charleston officials claimed that the Charleston conspiracy was instigated and led by Vesey, a free black carpenter who was raised as a slave in the Caribbean and brought to America at the age of fourteen before ultimately purchasing his freedom with lottery winnings.⁴⁷ According to historian Michael Johnson, who conducted an exhaustive review of the Denmark Vesey trial records in 2001, the Charleston Court of Magistrates and Freeholders that presided over the Vesey conspiracy trials conducted the majority of its proceedings in secret

40. Greenberg, *supra* note 32, at 101-03.

41. Fabricant, *supra* note 27, at 335, 343.

42. *Id.* at 350.

43. *Id.* at 351.

44. Greenberg, *supra* note 32, at 101.

45. Gray, *supra* note 22, at 263 (emphasis in original).

46. Michael P. Johnson, *Denmark Vesey and His Co-Conspirators*, 58 WM. & MARY Q. 915 (2001).

47. *Id.* at 916.

and used “intimidation, beatings, and the threat of death to collect testimony,” so that “black witnesses knew that their words, heard by an imposing group of white men, could send them to the gallows,” while “the right words might save them from the executioner’s slipknots.”⁴⁸ Based on Johnson’s comparison of the Charleston court’s *Official Report* to two manuscripts containing handwritten transcriptions of the proceedings, he concludes that the Charleston court uncritically accepted the testimony of the slave witnesses without any corroborating evidence and that nearly all historians to have considered the Charleston conspiracy “failed to exercise due caution in reading the testimony of witnesses recorded by the conspiracy court.”⁴⁹ Similarly, in 1964 historian Richard Wade wrote of the Charleston court’s *Official Report* that “there is persuasive evidence that no conspiracy in fact existed, or at most that it was a vague and unformulated plan in the minds or on the tongues of a few colored townsmen.”⁵⁰

Significantly, the conclusions of Johnson and Wade that no conspiracy in fact existed also appear to have been shared by prominent contemporaries of the trials, including United States Supreme Court Justice William Johnson and South Carolina’s Governor Thomas Bennett.⁵¹ Just two days after the trials began, Justice Johnson published a newspaper article in the *Charleston Courier* warning of the “Melancholy Effect of Popular Excitement,” in which he told the story of a false slave rebellion alarm that turned violent when a drunk bugleman blew his horn to test the effect it would have on nearby slave patrols.⁵² Justice Johnson wrote that in the excitement that followed, the patrols discovered nothing but “a single poor half-witted Negro, who had been taken crossing a field on his way home, without instrument of war or of music,” and who was first “whipped severely to extort a confession” then threatened with death before he finally “recollected” that a man named Billy had blown the horn that raised the alarm.⁵³ The authorities immediately searched Billy’s home, and upon discovering an old horn that was “covered and even filled with cobwebs,” reflecting that it had not recently been blown, they condemned Billy to die the next day.⁵⁴ The Charleston court interpreted Justice Johnson’s article as an insinuation that it was capable of suborning perjury and committing murder and demanded that Justice Johnson retract his accusation, prompting an exchange of public accusations between

48. *Id.* at 942, 944; see also Michael P. Johnson, *Reading Evidence*, 59 WM. & MARY Q. 193-202 (2002).

49. Johnson, *supra* note 46, at 915-16, 919, 949.

50. Richard C. Wade, *The Vesey Plot: A Reconsideration*, 30 J. S. HIST. 150 (1964).

51. Johnson, *supra* note 46, at 935-39; Wade, *supra* note 50, at 150-53.

52. Johnson, *supra* note 46, at 935.

53. *Id.*

54. *Id.*

Justice Johnson and the court.⁵⁵ Similarly, in a report delivered to South Carolina's legislature in late 1822, South Carolina's Governor Thomas Bennett claimed that the court's secret proceedings violated the "rules which universally obtain among civilized nations, in the judicial investigation of crime," and that such proceedings were particularly troubling in a slave conspiracy trial, which necessarily "admitted no testimony, but such as was equivocal, the offspring of treachery or revenge, and the hope of immunity."⁵⁶

In an apparent response to such public criticism of its proceedings, the Charleston court published an *Official Report of the Trials of Sundry Negroes* which not only includes a testimonial transcript but a preface that provides a narrative of the rebellion constructed from the testimony. The first sentence of the court's narrative begins: "at the head of this conspiracy stood Denmark Vesey."⁵⁷ The court declares that Vesey was the "author and original instigator of this diabolical plot," and that from him "all orders emanated," reasoning that Vesey must have been the leader because planning such a vast conspiracy could only be accomplished by a free man:

Being a free man [he] encountered none of those obstacles which would have been in the way of a slave; his time was at his own disposal, and he could go wherever he pleased, without interruption, qualifications and advantages absolutely necessary for the Chief in a Conspiracy, and which enabled him to travel so much about the country as he did.⁵⁸

By reasoning that Vesey must have been the leader of the conspiracy due to his ability to travel at will, the court finds a convenient means of connecting the participants in a vast conspiracy it appears to have either imagined or greatly exaggerated.⁵⁹

The Charleston court's *Official Report* of the Vesey conspiracy trials is also prefaced by a lengthy effort to establish that the report is a complete and unadulterated record of the proceedings:

55. *Id.* at 935-37.

56. *Id.* at 938.

57. JAMES R. SCHENCK, AN OFFICIAL REPORT OF THE TRIALS OF SUNDRY NEGROES, CHARGED WITH AN ATTEMPT TO RAISE AN INSURRECTION IN THE STATE OF SOUTH CAROLINA: PRECEDED BY AN INTRODUCTION AND NARRATIVE; AND IN AN APPENDIX, A REPORT OF THE TRIALS OF FOUR WHITE PERSONS, ON INDICTMENTS FOR ATTEMPTING TO EXCITE THE SLAVES TO INSURRECTION (1822), reprinted in THE TRIAL RECORD OF DENMARK VESEY 11 (John Oliver Killens ed., 1970).

58. *Id.* at 14, 17, 135.

59. Somewhat similar logic animated other slave rebellion trials, such as that of Castner Hanway for his alleged role in the Christiana Resistance in Lancaster, Pennsylvania in 1851, in which a crowd of free blacks and fugitive slaves violently resisted service of a warrant by a federal marshal under the Fugitive Slave Act of 1850. Although the event initially prompted federal authorities to charge forty-one defendants with treason in the largest mass charge of treason in U.S. history, prosecutors only proceeded against Castner Hanway, a white neighbor who had stood by while the resistance occurred, based on the assumption that that Hanway must have incited the black defendants because they were incapable of organizing on their own. Rodriguez, *supra* note 20, at 112-14.

The whole evidence has been given, in each particular case, in the order of its trial, and wherever any additional, or incidental testimony has been disclosed against any criminal subsequent to his conviction, sentence, or execution, it has been duly noted. The evidence is in most cases preserved, as it was originally taken, without even changing the phraseology, which was generally in the very words used by the witnesses.

Although a different style might have been more agreeable to the ear, it was supposed that this report would be considered more authentic and satisfactory if this method were adopted. It will be perceived, in several instances, that hearsay communications have been recorded, and it may be imagined that they had some influence on the minds of the Court. Such communications were only admitted under the belief that they might lead to further discoveries, but they had no effect whatever on the decision of the cases; and being preserved, it was thought advisable to lay before the public the whole narrative, as it was given by the witnesses, and not to suppress any part of it.⁶⁰

Not only is the court's effort to defend the integrity of its proceedings in this preface equivocal, claiming only that the evidence was preserved in its original form "in most cases" and "generally" in the words of the witnesses themselves, but according to Michael Johnson it is also contradicted by the manuscript records. Johnson found that, contrary to the Charleston court's claim that the *Official Report* preserved the integrity of the evidence as originally given, the court in fact "crafted a coherent narrative of a skillfully planned insurrection" from a "loose jumble" of often contradictory testimony, which merely "creates the illusion of trials by describing separate trials not present in the court record, chopping up continuous witness testimony to make it appear to have been given in the trials of specific defendants."⁶¹ Furthermore, the manuscript records themselves indicate that they are not verbatim transcriptions of the proceedings but were written sometime after the court sessions, and thus are, as Johnson describes, "revised versions of the words witnesses uttered, words filtered through ears and pens belonging to one or more unknown clerks, words that now appear with seductive clarity in the surviving transcripts."⁶² According to Johnson, "the unambiguously legible and perfectly horizontal handwriting stretching line after line [in the manuscript records] indicates that neither manuscript represents rough notes scribbled hurriedly during court sessions," but they must have been

60. SCHENCK, *supra* note 57, at 1-2.

61. Johnson, *supra* note 46, at 934, 953.

62. *Id.* at 921, 925-32. Similarly, in 1964, Richard Wade noted that "the confessions of Bacchus Hammett and John Enslow, among the few surviving original documents, have been carefully edited in the authorized version," with some facts omitted and others added, and "even the tone of the narrative was changed with the alterations." Wade, *supra* note 50, at 155.

written later.⁶³

Moreover, according to Johnson the discrepancies between the *Official Report* and the manuscript records are not isolated occurrences. Instead, a comparison of the *Official Report* with the manuscript records reveals massive alterations. Although the *Official Report* includes the testimony of five witnesses under the heading “The Trial of Denmark Vesey,” and describes dramatic encounters in which Vesey confronts and cross-examines witnesses, the manuscript records do not mention a trial of Vesey nor do they even reflect the presence of Vesey or his counsel.⁶⁴ Similarly, the *Official Report* reflects numerous “confessions” that do not appear in the manuscript records and numerous alterations of specific language contained in the manuscript transcripts:

A word-by-word comparison with the manuscript testimony discloses that the court made thousands of changes in the *Official Report*, omitting words that are present in the transcript, adding words that are not present, and changing words, punctuation, capitalization, and word order. In the aggregate, these changes have the effect of making the testimony of witnesses smoother, less ambiguous, more coherent, and—thereby—more inculpatory. The second major innovation of the court was to publish confessions that do not appear in the manuscript transcript. Calling routine testimony confessions and printing confessions uttered at death’s door helped the *Official Report* inculcate all the defendants, whether or not they confessed, as well as exculpate the court for any alleged irregularity or misjudgment.⁶⁵

Johnson concludes that a more careful reading of the records in the Vesey conspiracy trials reveals that Vesey and the other men sentenced to death or to be sold into exile were not guilty of conspiracy, but were “victims instead of rumors and an erroneous reading of evidence that confirmed popular beliefs,” and that Vesey himself was “the victim of a conspiracy of collusion between the white court and the cooperative black witnesses, both eager for their own reasons to pay homage to the enduring power of white supremacy.”⁶⁶

63. Johnson, *supra* note 46, at 921.

64. *Id.* at 933.

65. *Id.* at 941.

66. *Id.* at 916, 971. Similarly, critics have concluded public authorities fabricated other slave rebellion conspiracies, such as the Conspiracy of the Ladder, or *La Escalera*, in which slaves who were tortured following a series of slave rebellions in Cuba in the early 1840s testified to an extensive slave conspiracy which some believe to have been “a fabrication created by the colonial government to validate its despotic policies.” Rodriguez, *supra* note 20, at 137-39.

II. THE DEPOSITION EXTRACTS IN "BENITO CERENO"

A. Cereno's Dubious "Ravings" and Their Doubtful Corroboration

As indicated in the epigraph of this article, the Peruvian tribunal that conducts the investigation of the *San Dominick's* voyage in "Benito Cereno" at first doubts Cereno's testimony, concluding that it is "dubious for both learned and natural reasons," in part because Cereno is "not undisturbed in his mind" and "raved" (from *rêvere*, "to dream")⁶⁷ of things that "could never have happened."⁶⁸ Significantly, the "raving" character of Cereno's testimony before the Peruvian tribunal is consistent with Delano's observations of Cereno's condition throughout the first two installments of the story, during which Cereno tells Delano that storms and scurvy killed the Spaniards and slaves on the *San Dominick*. In the first two installments of the story, Delano describes Cereno as a "half-lunatic," an "involuntary victim of mental disorder" with an air of "gloomy hesitancy and subterfuge" or "secret vindictiveness" about him, who "ever seemed eating his own heart," with a "guilty shuffle," a "husky whisper," and a "twitching" face.⁶⁹ Furthermore, when Cereno appears before the Peruvian tribunal to testify, he appears "in his litter" (i.e., on a stretcher) and is attended by a Dominican monk who "volunteered to be [Cereno's] special guardian and consoler, day and night," and administers the testimonial oath to Cereno.⁷⁰ The extracts reflect that when Cereno's testimony is completed, he is "broken in body and mind," and he dies "three months after being dismissed by the court."⁷¹ Thus, throughout the story Cereno's condition is described as severely debilitated, and in several instances is specifically linked to doubts regarding his competence, consistent with the tribunal's own doubts regarding his mental state.

The tribunal resolves its initial doubts regarding Cereno's testimony only after the later depositions of six surviving Spanish sailors confirm "several of the strangest particulars" of Cereno's testimony, which the tribunal finds "gave credence to the rest," so that "the tribunal, in its final decision, rested its capital sentences upon statements which, had they lacked confirmation, it would have deemed it but duty to reject."⁷² The testimony of the Spanish sailors, however, is as dubious as Cereno's own. To begin with, the story does not identify which of the "strangest particulars" of Cereno's testimony were confirmed and which were merely

67. 2 ERNEST WEEKLEY, AN ETYMOLOGICAL DICTIONARY OF MODERN ENGLISH 1203 (Dover Publications 1967) (1921).

68. MELVILLE, *supra* note 1, at 103.

69. *Id.* at 52-53, 55, 59, 63, 65-66, 68, 81.

70. *Id.* at 103-04.

71. *Id.* at 114, 117.

72. *Id.* at 103.

accepted without confirmation. Accordingly, the extent and reliability of the Spanish sailors' corroboration of Cereno's testimony is unclear. In the earlier narrative, Delano relies on a similarly partial confirmation of Cereno's story of storms and scurvy by asking an old Spanish sailor on deck "several questions concerning the voyage, questions purposely referring to several particulars in Don Benito's narrative, not previously corroborated," and "the questions were briefly answered, confirming all that remained to be confirmed of the story."⁷³ Moreover, throughout the earlier narrative Cereno continually confesses an "ill opinion" and gives a "bad account" of the Spanish sailors, impugning their character, and at one point when Delano recalls Cereno's comment regarding the sailors' "ill conduct," he decides not to speak to them because he is "indisposed to countenance cowardice or unfaithfulness in seamen."⁷⁴

These concerns regarding the Spanish sailors' corroboration of Cereno's testimony are further compounded by the fact that Cereno's deposition was the "first taken in the case,"⁷⁵ which raises the question of whether the sailors were independently interrogated or merely asked to confirm Cereno's version of the events, a question the text of "Benito Cereno" does not answer. Moreover, the possibility that Melville purposefully created this ambiguity is suggested by the fact that in the historical account of the *Trial* slave revolt on which Melville based "Benito Cereno,"⁷⁶ Delano's midshipman Don Nathaniel Luther merely confirmed Delano's prior testimony, as reflected in Luther's deposition:

He knows that his captain, Amasa Delano, has deposed on every thing that happened in this affair; that in order to avoid delay he requests that his declaration should be read to him, and he will tell whether it is conformable to the happening of the events; that if any thing is omitted he will observe it, and add to it, doing the same if he erred in any part thereof; and His Honour having acquiesced in this proposal, the Declaration made this day by captain Amasa Delano, was read to him through the medium of the Interpreter, and said, that the deponent . . . knows that the narration which the captain has made

73. *Id.* at 72. This effort to corroborate Cereno's story of the voyage appears to reflect Delano's partial reconsideration of his earlier conclusion that Cereno's story had been corroborated by the facial features of the "indiscriminate multitude" when he first boarded the *San Dominick*: "Don Benito's story had been corroborated not only by the wailing ejaculations of the indiscriminate multitude, white and black, but likewise—what seemed impossible to counterfeit—by the very expression and play of every human feature, which Captain Delano saw." *Id.* at 69.

74. *Id.* at 71-72. *Cf.* Scheiding, *supra* note 11, at 127-28. It is also apparent that none of the surviving Spanish sailors are officers, because Cereno tells Delano that a malignant fever killed "every remaining officer on board," and no officers appear in the story. MELVILLE, *supra* note 1, at 56.

75. *Id.* at 103.

76. In 1928, it was first discovered that Melville based "Benito Cereno" on significant portions of the text from Chapter 18 of Amasa Delano's *A Narrative of Voyages and Travels in the Northern and Southern Hemispheres*, including much of the text from Benito Cereno's historical deposition transcript. See Harold Scudder, *Melville's Benito Cereno and Captain Delano's Voyages*, 43 *PROC. MOD. LANGUAGE ASS'N* 502 (1928).

in the deposition . . . is certain and exact in all its parts⁷⁷

Because it is unlikely that a sailor would contradict his captain's version of the events, this method of corroboration is particularly unreliable.⁷⁸ Thus, Cereno's deposition testimony in "Benito Cereno" appears to have been accepted based solely on a partial confirmation by a handful of disreputable Spanish sailors unlikely to contradict his testimony, possibly in response to leading questions.

B. Partially Translated Extracts From a Summary Transcript

According to a familiar trope in Melville's prose, "this is not the half; look again," or as Captain Ahab tells Starbuck on the quarter deck scene in *Moby-Dick*, "Hark ye yet again—the little lower layer."⁷⁹ The dubious credibility of Cereno's raving testimony and the Spanish sailors' questionable corroboration represent but the beginning of the doubts regarding the deposition extracts in "Benito Cereno." The transcript also reflects missing documents, numerous memory lapses and gaps in the testimony, the "partial translation" of the extracts from Spanish into English, and a host of irresolvable contradictions.⁸⁰ The extracts indicate, for example, that Cereno can only testify regarding "the most substantial of what occurs to him at present," that "in some things his memory is confused, he cannot distinctly recall every event," and that he omits testimony regarding some events because they "can only serve uselessly to recall past misfortunes."⁸¹ Furthermore, the reader is only provided with selected extracts from Cereno's testimony rather than the complete transcript, suggesting that a sizeable amount of testimony is not revealed.

77. AMASA DELANO, A NARRATIVE OF VOYAGES AND TRAVELS IN THE NORTHERN AND SOUTHERN HEMISPHERES: COMPRISING THREE VOYAGES ROUND THE WORLD; TOGETHER WITH A VOYAGE OF SURVEY AND DISCOVERY, IN THE PACIFIC OCEAN AND ORIENTAL ISLANDS 345 (Boston: E. G. House, 1817).

78. Courts have long provided that witnesses may be sequestered from the courtroom to prevent them from hearing the testimony of other witnesses, a practice today referred to simply as "the rule" of witnesses. The Federal Rules of Evidence, for example, provide that "at the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses . . ." FED. R. EVID. 615. This rule is a well-established means of "discouraging and exposing fabrication, inaccuracy, and collusion," FED. R. EVID. 615 advisory committee's notes, which the United States Supreme Court has observed goes back to "our inheritance of the common Germanic law," *Geders v. United States*, 425 U.S. 80, 87 (1976), and which one federal court has commented is "at least as old as the Bible," *Frideres v. Schiltz*, 150 F.R.D. 153, 158 (S.D. Iowa 1993) ("In the Biblical story of Susanna and the Elders, Daniel exposed falsehood by insisting that the two accusers separately describe the place where the alleged adultery occurred. When the two described different places, Susanna was belatedly released" (citing *Daniel* 13:36-64)).

79. HERMAN MELVILLE, *MOBY-DICK, OR, THE WHALE* 109, 164 (Northwestern University Press, 2001) (1851).

80. SUSAN WEINER, *LAW IN ART* 134 (1992); Alfred Konefsky, *The Accidental Legal Historian: Herman Melville and the History of American Law*, 52 *BUFF. L. REV.* 1179 (2004); Scheiding, *supra* note 11; Brook Thomas, *The Legal Fictions of Herman Melville and Lemuel Shaw*, in *CRITICAL ESSAYS ON HERMAN MELVILLE'S "BENITO CERENO"* 116 (Robert E. Burkholder ed., 1992).

81. MELVILLE, *supra* note 1, at 108, 110, 114.

The transcript is also a summary of the testimony rather than a verbatim transcript and is identified only as a “partial translation” from Spanish into English, which introduces multiple layers of mediation between the testimony and the reader. The summary form of the transcript is evident in the fact that the testimony is recorded in the third person, using “he” and “the deponent,” rather than the first person “I.” Because the proceedings are set in Peru in 1799, at a time when Peruvian tribunals were governed by the civilian, or “inquisitorial,” procedural tradition of the Spanish Empire, according to which the judge alone would have interrogated Cereno and the parties would not have been afforded an opportunity to cross-examine him,⁸² Cereno’s transcript is an English translation of the judge’s Spanish summary of the interrogation which the judge would have periodically stopped to dictate during the proceedings. Without a verbatim transcription of the testimony, because “hesitation, other signs that the witness is lying, and even most corrections are not recorded,”⁸³ significant opportunities exist for the judge to construct the testimony not only through leading questions but through the summary he dictates to the reporter.

The translation of the deposition transcript from Spanish into English also raises the possibility of erroneous translations, as illustrated by the errors reflected in the depositions taken in the historical *Tryal* inquiry on which “Benito Cereno” is based.⁸⁴ In the documents from the *Tryal* inquiry, Delano apologizes for any inconsistency or “impropriety of expression” in the transcripts, noting that his and his first mate’s depositions were translated through a “bad linguist, who could not speak the English language so well as I could the Spanish,” and he later corrects “a mistake of the linguist” by which his midshipman Luther is erroneously referred to as “supercargo” rather than “midshipman.”⁸⁵ The deposition transcript in “Benito Cereno” repeatedly uses the expression “the Spanish” to describe the slave José, “who speaks well the Spanish,” Babo, who “understands well the Spanish,” and “some others who were constantly on the watch, and likewise understood the Spanish,”⁸⁶ which suggests the

82. See HENRY CHARLES LEA, *SUPERSTITION AND FORCE: ESSAYS ON THE WAGER OF LAW—THE WAGER OF BATTLE—THE ORDEAL—TORTURE* 513 (2003); JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA* 126-28 (2d ed. 1985). As Henry Charles Lea describes the inquisitorial criminal procedure of fifteenth-century France, “the whole investigation was in the hands of the government official, who examined every witness by himself, and secretly, the prisoner having no knowledge of what was done, and no opportunity of arranging a defense.” LEA, *supra*, at 513.

83. Paul Storm, *The Netherlands, in OBTAINING EVIDENCE IN ANOTHER JURISDICTION IN BUSINESS DISPUTES* 112 (Charles Platto & Michael Lee eds., 2d ed. 1993).

84. DELANO, *supra* note 77, at 331. While the transcripts generated by civilian authorities rarely conform to the precise expression of witnesses, translated testimony is particularly problematic and frequently recorded both incompletely and erroneously. HEIKKI E.S. MATTILA, *COMPARATIVE LEGAL LINGUISTICS* 37 (Christopher Goddard trans., Ashgate 2006) (2002).

85. DELANO, *supra* note 77, at 331, 350.

86. MELVILLE, *supra* note 1, at 104, 110.

translator was not entirely fluent in English. Accordingly, not only does the summary form of the transcript omit hesitation and other idiosyncrasies of Cereno's testimony, but the translation further removes any particularities of expression that may have existed in the original, a problem Melville specifically highlighted by including nonstandard grammatical forms in the transcript.

The translated and summary form of the deposition extracts also reflects a pattern of fragmented narration that appears on nearly every level of "Benito Cereno." The earlier narrative is also a translated summary, because Delano provides only "the substance" of Cereno's story, which was "very brokenly delivered," and Delano apparently translates the story from Spanish into English, a fact that is revealed when Delano notes in the second installment of the story that an old man on deck speaks to him in "broken English,—the first heard in the ship."⁸⁷ Similarly, the deposition extracts in "Benito Cereno" are interrupted by ellipses and interlineations that do not appear in the historical Cereno's deposition transcript but were added by Melville to create an aura of incompleteness around the testimony,⁸⁸ and at the end of the story the narrator apologizes that the narrative has been "retrospectively, or irregularly given."⁸⁹ Accordingly, it is apparent that the fragmented and mediated quality of the deposition extracts in the story form part of a larger stylistic theme of "Benito Cereno."

C. Crucial Testimony Based on Hearsay of the Slaves' Account of the Revolt

But in the words of Captain Ahab, "hark ye yet again—the little lower layer," or as the narrator of "Benito Cereno" describes the opening scene of the story, "shadows present, foreshadowing deeper shadows to come."⁹⁰ A careful reading of the deposition extracts also reveals that the most crucial extract of Cereno's "ravings," the corroboration of which "gave credence to the rest" of his testimony, consists almost entirely of hearsay based on the pretrial statements of slaves and missing documents. Hearsay testimony generally consists of any statement, other than one

87. *Id.* at 56, 76.

88. Edgar Dryden notes that from its opening scene, "Benito Cereno" presents "a world composed entirely of surfaces, with all of its parts mixed and confused":

Shadows here do not lead to essential forms but to "deeper shadows." Sky and sea are almost indistinguishable and both seem equally artificial. The sea, product of a smelter's mould, is "laid out and leaded up," "soul gone, defunct"; and the "surtout" sky is the first of a series of sinister, artificial coverings. Like the "San Dominick," which seems a "shadowy tableau just emerged from the deep," nature also is composed of an enigmatic set of shadows and surfaces which apparently conceal some terrifying secret.

DRYDEN, *supra* note 12, at 206.

89. MELVILLE, *supra* note 1, at 114.

90. MELVILLE, *supra* note 79, at 164; MELVILLE, *supra* note 1, at 46.

made by a witness while testifying at a trial or hearing, offered in evidence to prove the truth of the matter asserted, and because the value of hearsay does not derive solely from the credibility of the witness testifying but instead from the veracity and competency of others, it is generally inadmissible subject to specifically recognized exceptions.⁹¹ In “Benito Cereno,” the narrator’s interlineations of Cereno’s deposition extracts specifically identify a particular extract as that which contains the record of the slaves’ “individual part in the past events, with a view to furnishing, according to command of the court, the data whereon to found the criminal sentences.”⁹² This language closely parallels the narrator’s earlier reference to statements on which the tribunal “rested its capital sentences” after they were confirmed by the Spanish sailors but which the tribunal “would have deemed it but duty to reject” had they remained unconfirmed.⁹³

Significantly, the testimony in this crucial extract is almost entirely outside the personal knowledge of either Cereno or the Spanish sailors, because it repeatedly relies on hearsay of the slaves’ account of the revolt. The testimony in this crucial extract notes, for example, that “this is known and believed, because the negroes have said it,” that certain acts were performed “in a way the negroes afterwards told the deponent,” that “this also the negroes told him,” and that the negresses “testified themselves satisfied at the death of their master.”⁹⁴ Moreover, the statements contained in the extract are separated only by semicolons, and the extract concludes with the statement, “all this is believed, because the negroes have said it,” suggesting that nearly all of the testimony in the extract may be hearsay based on the statements of slaves.⁹⁵ These passages at minimum suggest that hearsay slave statements were an important source of the testimony attributed to Cereno. Furthermore, unidentified documents appear to have been another source of this testimony, as evidenced by the narrator’s statement that a list of slave names, descriptions, and ages was “compiled from certain recovered documents of Aranda’s.”⁹⁶

91. See FED. R. EVID. 801-807; BLACK’S LAW DICTIONARY [s.v. “hearsay”] (6th ed. 1990).

92. MELVILLE, *supra* note 1, at 111-12. This extract appears to reflect the evidence in the second stage of a typical conspiracy trial, the first stage of which is to establish the existence of a conspiracy and the second to establish the conspirators’ respective participation in the conspiracy for purposes of determining individual sentences. It is not surprising that Melville would be familiar with such legal practices given his close relationship with his father-in-law Judge Lemuel Shaw, Chief Justice of the Massachusetts Supreme Court and one of the most influential state court judges in American legal history, and given that two of Melville’s brothers were also successful lawyers in New York. See ROBERT L. GALE, A HERMAN MELVILLE ENCYCLOPEDIA 282, 288, 409-410 (1995).

93. MELVILLE, *supra* note 1, at 103.

94. *Id.* at 111-12.

95. Similarly, a later extract regarding the disappearance of Spanish sailor Luys Galgo indicates that “this the negroes have since said.” *Id.* at 112.

96. *Id.* at 104.

It is significant when reading the references to slave statements in “Benito Cereno” that critics have disagreed over whether the slaves were deposed in the story. Alfred Konefsky concludes that the tribunal “does not seek the testimony of Babo and the surviving slaves,”⁹⁷ while Oliver Scheiding concludes that the deposition transcript “clearly evidences that the ‘negroes’ were actually heard by the court.”⁹⁸ Neither of these conclusions appears to be accurate. The narrator indicates that the deposition extracts all come from “the deposition of Benito Cereno,” and because it is “the first taken in the case,”⁹⁹ the references to statements of the slaves do not appear to reflect official testimony but instead suggest that Cereno or others unofficially interrogated the slaves prior to the proceedings, a practice typical of slave cases. The testimony indicates, for example, that the slave Yau prepared the skeleton of slave-owner Alexandro Aranda for display “in a way the negroes afterward told the deponent.”¹⁰⁰ It is equally difficult to conclude, however, that the tribunal did not seek the official testimony of any of the slaves, because the narrator states that the slaves’ leader Babo “could not be forced to” speak following his capture, suggesting his testimony was sought but that he merely refused to speak, and because at one point the transcript indicates that the negresses “testified” themselves satisfied at the death of their owner.¹⁰¹ The use of the word “testified” further suggests the disconcerting conclusion that the slaves may have been officially interrogated after Cereno and their testimony retrospectively used to prepare the summary of his own, or that Cereno was interrogated on multiple occasions not reflected in the transcript.

Not only is hearsay inherently unreliable, but the range of motives for the slaves to distort their testimony, including threats of punishment and promises of immunity, renders references to their statements in the story particularly difficult to evaluate. By the 1850s, when “Benito Cereno” was written, American courts considering the admissibility of slave confessions recognized that “slaves were susceptible to peculiar pressures” inherent in the master-slave relationship,¹⁰² which cast “a certain degree of discredit over any confession of guilt they may make, and renders it unsafe if not improper, to act upon such evidence alone, without other corroborating proof.”¹⁰³ As Mark Tushnet has explained, “given coerciveness, the voluntariness rule could be preserved [in slave cases] only if third parties, particularly representatives of the state, were treated

97. Konefsky, *supra* note 80, at 1197.

98. Scheiding, *supra* note 11, at 127.

99. MELVILLE, *supra* note 1, at 103.

100. *Id.* at 111-12.

101. *Id.* at 112, 116.

102. TUSHNET, *supra* note 21, at 127.

103. *State v. Clarissa*, 11 Ala. 57, 61-62 (1847).

as independent of the master class,” but given the relationship of race to the system of slavery this was impossible.¹⁰⁴ As Peter Brooks has also observed in his recent study of confession and the law, “confession and its contexts have long been a problem to the law.”¹⁰⁵ Because even voluntary confessions may arise “from a state of dependency, shame, and the need for punishment, a condition that casts some doubt on the law’s language of autonomy and free choice,” the act of confession may in its very nature “undercut the notion of human agency that the law wishes to—and must—promote.”¹⁰⁶ Because freedom was expressly denied to slaves, the doubt confessions cast on the law’s language of autonomy and free choice was particularly magnified in slave cases.

D. The Spanish Inquisition and Torture

But in the words of Captain Ahab, “Hark ye yet again—the little lower layer.”¹⁰⁷ The investigation in “Benito Cereno” takes place in Lima, Peru, the center of the Spanish Inquisition in South America at a time when the Spanish Inquisition was still in force, and numerous allusions to the Spanish Inquisition haunt the story.¹⁰⁸ The setting and the allusions to the Spanish Inquisition suggest a tribunal that is both corrupt and in which torture would have been a common method of extracting testimony from witnesses, a circumstance which may serve to explain the defects and irresolvable contradictions in the deposition extracts. In the eighteenth century, the criminal proceedings in civilian legal systems frequently used torture “for compelling testimony and eliciting proof.”¹⁰⁹ Inquisitorial tribunals had the power to torture witnesses if they were suspected of withholding testimony or “when they varied or retracted, or so contradicted other witnesses that it was deemed necessary thus to ascertain the truth.”¹¹⁰ Judges also interrogated witnesses with a decided bias in favor of guilt:

While thus with unwilling witnesses the inquisitor acted as counsel for the prosecution, with those who were willing he made no attempt to ascertain the truth of their stories. He asked leading questions without reserve and abstained from any cross-examination that might

104. TUSHNET, *supra* note 21, at 127.

105. PETER BROOKS, *TROUBLING CONFESSIONS: SPEAKING GUILT IN LAW AND LITERATURE* 9 (2000).

106. *Id.* at 46, 63, 74.

107. MELVILLE, *supra* note 79, at 164.

108. John Bernstein, *Benito Cereno and the Spanish Inquisition*, 16 *NINETEENTH CENTURY FICTION* 346 (1962).

109. LEA, *supra* note 82, at 512; MERRYMAN, *supra* note 82, at 126-28.

110. 3 HENRY CHARLES LEA, *A HISTORY OF THE INQUISITION OF SPAIN* 12-13 (1907), 4 *id.* at 540-41. The European equivalent of American “common law,” known as the *jus commune*, was formed from both Roman civil law and the canon law of the Roman Catholic Church, but canon law influenced the *jus commune* most in the areas of criminal law and the law of procedure. See MERRYMAN, *supra* note 82, at 10-11.

confuse the story and expose mendacity. . . . So long as witnesses incriminated the accused, as a rule there was no effort to test their accuracy or to obtain details of place and time or other points which would facilitate against false charges.¹¹¹

The inquisitorial process was based on the conviction that “it was better that a hundred innocent persons should suffer than that one culprit should escape,” and required among other things that an accused identify his accomplices, with the result that he was tortured until he revealed the names of people he knew, who were then interrogated in the same fashion, ever widening the circle of incrimination.¹¹²

Significantly, at the time “Benito Cereno” was written it was widely known that torture was used in Lima until the Inquisition ended in the nineteenth century.¹¹³ An October 1851 article in *Harper’s New Monthly Magazine* entitled “Lima and the Limanians,” for example, vividly describes the instruments of torture discovered at the end of the Inquisition in Lima when the palace of the Inquisition was thrown open and “the customary array of racks, pillories, scourges, gags, thumbscrews, and other instruments of torture was found.”¹¹⁴ Melville was also particularly fascinated by Lima, which he believed “enjoyed an evil fame all along the coast for a special inner destructiveness of its own, a special corruption,”¹¹⁵ and in “The Town-Ho’s Story” of *Moby-Dick*, members of the Golden Inn’s audience in Lima refer to the “proverb all along this coast, ‘Corrupt as Lima.’”¹¹⁶

“Benito Cereno” contains numerous allusions to Dominican monks, who were “principal sponsors of the Inquisition” known for the “excessive

111. 4 LEA, *supra* note 110, at 542-43. As Lea describes elsewhere:

The theory of the Inquisition, that the suspected man was to be hunted down and entrapped like a wild beast, that his guilt was to be assumed, and that the efforts of the judges were to be directed solely to obtaining against him sufficient evidence to warrant the extortion of a confession without allowing him the means of defence—this theory became the admitted basis of criminal jurisprudence.

LEA, *supra* note 82, at 512-13.

112. LEA, *supra* note 82, at 514, 516.

113. LEA, *supra* note 82, at 541.

114. *Lima and the Limanians*, HARPER’S NEW MONTHLY MAGAZINE, Oct. 17, 1851, at 598-609. Similarly, according to a record of criminal proceedings against two slaves accused of murdering their master in Spanish Louisiana in 1771, the slaves’ confessions and the names of their accomplices were extracted by putting them “on the rack,” after which they were condemned to death by hanging. See Laura L. Porteous, *Torture in Spanish Criminal Procedure in Louisiana*, 1771, 8 LA. HIST. Q. 5-22 (1925).

115. NEWTON ARVIN, HERMAN MELVILLE 71 (2002).

116. MELVILLE, *supra* note 79, at 249. The Peruvian Inquisition’s sale of offices may have particularly exemplified this corruption, as by the late eighteenth century the offices of the Inquisition “came to be a matter of almost open bargain and sale,” culminating at last in an investigation of inquisitor Pedro Zalduegui by the Suprema in the mid-1790s, the time in which “Benito Cereno” is set. HENRY CHARLES LEA, THE INQUISITION IN THE SPANISH DEPENDENCIES 372-73 (1908). Zalduegui was “wholly illiterate” and began as a “sweeper and sacristan of the chapel of the tribunal,” but ultimately purchased the office of inquisitor for 14,000 ducats, and although the Suprema briefly suspended him, it later restored him. *Id.* at 372-73.

cruelty with which they punished suspected heretics,”¹¹⁷ and the Dominican order was founded the same year the Fourth Lateran Council instituted mandatory annual confession and an inquisition against heresy.¹¹⁸ The *San Dominick* is named after the head of the Dominican order and first appears to Captain Delano “like a white-washed monastery,” with “Black Friars pacing the cloisters,” reminiscent of the San Dominicans who were known as Black Friars in England,¹¹⁹ and Delano considers Cereno’s behavior on the *San Dominick* “like that of his imperial countryman, Charles V,” under whose reign the Spanish Inquisition was intensified.¹²⁰ In addition, Cereno’s testimony of a ritual ceremony in which Babo compels the Spanish sailors to view Alexandro Aranda’s skeleton resembles the public penance of an *auto-de-fé*, and the condemned heretics of an *auto-de-fé* wore yellow garments known as “senbenitos,” reminiscent of “Don Benito” Cereno and the Spanish flag Babo uses as a barber’s cloth during a scene in which he shaves Cereno on the *San Dominick*.¹²¹ Melville also dedicated the last novel published during his lifetime, *The Confidence-Man*, to “victims of Auto de Fe,” which suggests the *auto-de-fé* held a peculiar significance for Melville.¹²² As critic John Bernstein notes, “it is through the use of the Spanish Inquisition that Melville destroys any simple distinctions between good and evil, appearance and reality, the past and the present,” thereby raising “Benito Cereno” “to a tale of the magnitude and complexity of Melville’s best works.”¹²³

Thus, both the textual and historical evidence suggest that the tribunal before which Cereno testified may have been particularly corrupt and in the practice of torturing witnesses. In such a context, the fact that the tribunal initially doubted Cereno’s testimony “for both learned and natural reasons” is particularly important.¹²⁴ It was customarily opined by civilian treatise writers that if an accused lied during his interrogation, torture could be used to compel him to testify truthfully, so that eventually any suggestion that testimony was implausible or contradictory became a “fearful herald of torture.”¹²⁵ On the *San Dominick* Cereno had lied to

117. H. Bruce Franklin, “*Apparent Symbol of Despotism Command*”: Melville’s Benito Cereno, 34 NEW ENG. Q. 463-64 (1961); Bernstein, *supra* note 108, at 345-50.

118. See 1 THE READER’S ENCYCLOPEDIA: AN ENCYCLOPEDIA OF WORLD LITERATURE AND THE ARTS 307 (William Rose Benét, ed., 1948); BROOKS, *supra* note 105, at 2, 15, 93.

119. MELVILLE, *supra* note 1, at 48. See 1 THE READER’S ENCYCLOPEDIA, *supra* note 118, at 307; Bernstein, *supra* note 108, at 346.

120. MELVILLE, *supra* note 1, at 53; see Bernstein, *supra* note 108, at 349.

121. MELVILLE, *supra* note 1, at 107; see Bernstein, *supra* note 108, at 348.

122. HERMAN MELVILLE, THE CONFIDENCE-MAN: HIS MASQUERADE (Stephen Matterson ed., Penguin Classics 1991) (1857).

123. Bernstein, *supra* note 108, at 349.

124. MELVILLE, *supra* note 1, at 103.

125. ALESSANDRO MANZONI, THE COLUMN OF INFAMY 125, 174 (Fr. Kenelm Foster, O.P. trans., Oxford Library of Italian Classics 1964).

Delano, and perhaps Cereno's testimony before the Peruvian tribunal, much like in the earlier narrative, was given "brokenly and obscurely, as one in a dream," as is suggested by the tribunal's conclusion that Cereno "raved of some things that could never have happened."¹²⁶ Because the tribunal ordered Cereno to appear before it as "captain of the ship *San Dominick*"¹²⁷ to satisfy the tribunal's inquiry into a disastrous voyage that resulted in the loss of valuable lives and endangered the entire coast, it is unlikely the tribunal would have remained passive in the face of an equivocating captain, particularly given his prior deception.¹²⁸

The historical Cereno's potential liability for the *Trial* revolt, reflected in a letter of April 6, 1805 from the Royal Consulado of Spain to the Royal Governor of Santiago, Chile, confirms this potentially serious liability of the literary Cereno.¹²⁹ The Royal Consulado of Spain, a merchant guild that the Spanish Crown vested with "special authority to prevent slave uprisings" and which "performed the functions of judges in cases involving merchant wrongdoing,"¹³⁰ concluded that the damage of the *Trial* revolt was caused by Cereno's failure to adequately guard the slaves on the *Trial*, and the Consulado ordered that in the future half the crew of Chilean slave ships must guard the slaves at all times under penalty of "disciplinary action if ignored."¹³¹ Because slave rebellions

126. MELVILLE, *supra* note 1, at 55, 103.

127. *Id.* at 103.

128. To many inquisitorial tribunals, torture was a routine procedure for interrogating slaves and criminal accomplices in particular, and in some tribunals even became the rule for interrogating all witnesses. As Henry Charles Lea describes, slave testimony in ancient Rome was believed to be unreliable unless it was given under torture, because "with slaves [torture] was not simply a consequence of slavery, but a mode of confirming and rendering admissible the testimony of those whose character was not sufficiently known to give their evidence credibility without it." LEA, *supra* note 82, at 440. Lea describes, for example, how "a legist under Constantine states that gladiators and others of similar occupation cannot be allowed to bear witness without torture." *Id.* Following similar logic, later civilian authorities concluded that because criminals were disreputable witnesses, the testimony of an accomplice was inadmissible unless torture "cleansed his disrepute." MANZONI, *supra* note 125, at 161. This attitude toward torture eventually came to encompass all witnesses, however, as Alessandro Manzoni recounts in the nineteenth-century historical novel *The Column of Infamy*, in which he describes fifteenth-century Italian criticism of judges who "when they get a man in their power . . . refuse to speak to him until he is actually under torture." *Id.* at 125. The critique of evidence obtained through torture is at least as old as Aristotle, who discussed the arguments against such evidence in his *Rhetoric*:

What is true of torture of every kind alike, [is] that people under its compulsion tell lies quite as often as they tell the truth, sometimes persistently refusing to tell the truth, sometimes recklessly making a false charge in order to be let off sooner. . . . We must say that evidence under torture is not trustworthy, the fact being that many men whether thick-witted, tough-skinned, or stout of heart endure their ordeal nobly, while cowards and timid men are full of boldness till they see the ordeal of these others: so that no trust can be placed in evidence under torture.

ARISTOTLE, *THE RHETORIC AND THE POETICS OF ARISTOTLE 1376-1377* (Edward P.J. Corbett trans., Modern Library 1984).

129. Joshua Leslie & Sterling Stuckey, *Avoiding the Tragedy of Benito Cereno: The Official Response to Babo's Revolt* (Maria del Valle trans.), 3 CRIM. JUST. HIST. 130-131 (1982). Despite different spellings, the *Tryal*, identified by Amasa Delano, and the *Trial*, identified by Leslie and Stuckey, refer to the same historical slave ship.

130. *Id.* at 127.

131. *Id.* at 130-31. The Consulado's letter adds that "the Navy Commandant of Callao department

were a common occurrence in the oceanic slave trade, slave ships frequently took additional precautions to prevent such rebellions, including ample arsenals and crew to guard the slaves, careful confinement of the slaves below deck, and routine searches of slave quarters.¹³² By contrast, Cereno admits in “Benito Cereno” that “none [of the slaves] wore fetters, because the owner, his friend Aranda, told him they were all tractable.”¹³³ The fact that Cereno was in significant danger before the Peruvian tribunal is also reflected in the references in his testimony to the claims of duress and efforts to mitigate losses from the revolt, including his testimony that he endeavored “not to omit any means to preserve the lives of the remaining whites,” and that his testimony was intended “to show the court that from the beginning to the end of the revolt, it was impossible for the deponent and his men to act otherwise than they did.”¹³⁴

In addition, there is some evidence in “Benito Cereno” that the Peruvian tribunal may have used bodily force during its inquiry. The narrator notes, for example, that Babo “uttered no sound, and could not be *forced* to,” that Benito Cereno was “*pressed* by the judges” to look at Babo until “he fainted,” and that when Cereno’s testimony was finished he was “*broken* in body and mind.”¹³⁵ The word “pressed” not only evokes the idea of physical or mental pressure, but may also allude to a particular form of torture known as *peine forte et dure*, by which the body of one who refuses to plead to a crime was crushed with a heavy load of stones or iron, a punishment also referred to as “pressing to death.”¹³⁶ In an infamous American example of this practice, Giles Corey was “pressed to death” during the Salem witch trials,¹³⁷ and as recounted in a famous American ballad of 1692, instead of confessing requested “more weight” for a quicker death.¹³⁸ Similarly, the phrase “broken in body and mind”

is to investigate the carrying out of this method, and is to compel the captains who do not meet it to do so.” *Id.* at 130. The Consulado also ordered the separation of “Ladinos,” or slaves who spoke Spanish and had “been in the new world for some years,” commenting that “experience has proven that in cases of mutiny the principal initiators have been the ‘Ladinos,’” not the “raw Africans” Cereno thought were responsible for the revolt. *Id.* at 128, 130-31. As indicated earlier, Babo and other slaves in “Benito Cereno” speak Spanish.

132. ENCYCLOPEDIA OF SLAVE RESISTANCE AND REBELLION, *supra* note 20, at 551-52; David Richardson, *Shipboard Revolts, African Authority, and the Atlantic Slave Trade*, 58 WM. & MARY Q. 73 (2001); Wish, *supra* note 17, at 301.

133. MELVILLE, *supra* note 1, at 104; *cf.* Wish, *supra* note 17, at 300 (“Some slave ship captains put their trust in the relative docility of certain African peoples.”).

134. MELVILLE, *supra* note 1, at 108, 113.

135. *Id.* at 114, 116.

136. BLACK’S LAW DICTIONARY 1132 (6th ed. 1990).

137. COLLECTIONS OF THE MASSACHUSETTS HISTORICAL SOCIETY FOR THE YEAR 1799, at 269 (Samuel Hall 1800).

138. The following stanzas of “The Ballad of Giles Corey” reflect the use of this punishment:

“Giles Corey,” said the magistrate,
 “What have thou here to plead
 To these who now accuse thy soul

evokes the image of a body broken on the rack, which, as Peter Brooks notes, is the “very emblem of inquisition.”¹³⁹ These traces of force are consistent with the numerous allusions to the Spanish Inquisition and inquisitorial procedures that used torture to compel testimony, and this connection not only casts further doubt on the reliability of the testimony presented in the deposition extracts in “Benito Cereno,” but may provide the best explanation of their defects and contradictions.

III. PATTERNS OF DISTORTION

The numerous defects and contradictions reflected in the deposition extracts in “Benito Cereno” closely resemble the patterns of distortion in the records of historical slave rebellion trials, and these patterns provide an important index for interpreting Melville’s use of the deposition in the story. The deposition extracts contain numerous indications, for example, that like the Charleston court in the Vesey conspiracy trials, the Peruvian tribunal in “Benito Cereno” relied on hearsay testimony of slaves and missing documents to craft a more coherent narrative of the *San Dominick’s* voyage than the proceedings supported. The summary form of the transcript provides a ready means for the tribunal to construct Cereno’s testimony through leading questions and through its dictation of the summary to the court reporter, rendering undiscoverable the sort of detailed alterations reflected in the Denmark Vesey trial records, in which the court edited the manuscript testimony of the trials, “omitting words that are present in the transcript, adding words that are not present, and changing words, punctuation, capitalization, and word order.”¹⁴⁰ Furthermore, because Cereno was “the first witness,”¹⁴¹ the appearance of slave testimony also raises the possibility that the transcript may have

Of crimes and horrid deed?”
 Giles Corey—he said not a word,
 No single word spoke he.
 “Giles Corey,” said the magistrate,
 “We’ll press it out of thee.”
 They got them then a heavy beam,
 They laid it on his breast.
 They loaded it with heavy stones,
 And hard upon him pressed.
 “More weight” now said this wretched man,
 “More weight” again he cried.
 And he did no confession make
 But wickedly he died.

MICHAEL V. USCHAN, *THE SALEM WITCH TRIALS* 29 (2004); see also COTTON MATHER, *THE WITCHCRAFT DELUSION IN NEW ENGLAND: ITS RISE, PROGRESS, AND TERMINATION* 174 (Roxbury, Mass., 1866).

139. MELVILLE, *supra* note 1, at 114; BROOKS, *supra* note 105, at 69.

140. Johnson, *supra* note 46, at 941.

141. MELVILLE, *supra* note 1, at 103.

been retrospectively supplemented by these sources. The secrecy that surrounds the references to slave statements in “Benito Cereno” also suggests parallels to the secret interrogations of Nat Turner and the slave witnesses in the Vesey conspiracy trials, indicating that the Peruvian tribunal in the story may have carefully built its case against Babo and the other slaves before using Cereno’s testimony to confirm it, much as Thomas Gray apparently used *The Confessions of Nat Turner* to confirm details of the Southampton rebellion that Gray had previously published in his *Constitutional Whig* letter.

In addition, Cereno’s testimony that Babo was the leader of the *San Dominick* revolt, “the plotter from first to last,” who “ordered every murder, and was the helm and keel of the revolt,”¹⁴² closely parallels the construction of leaders of slave rebellions in historical slave rebellion records, such as the construction of Nat Turner as the “author,” “contriver and head,”¹⁴³ of the Southampton rebellion, and of Denmark Vesey as the “author and original instigator” of the Charleston conspiracy, from whom “all orders emanated.”¹⁴⁴ In his edits to the transcript of the historical Cereno’s deposition taken from *A Narrative of Voyages and Travels in the Northern and Southern Hemispheres*, Melville emphasizes Babo’s central role in the revolt by replacing numerous passages in the historical transcript that refer to “they” or to “the negroes” to refer instead to “the negro Babo.” The testimony that Babo was the “helm and keel” of the revolt also appears in the extract discussed above that is based almost entirely on hearsay derived from slaves who had significant motives to distort their testimony regarding Babo. In a similar vein, the testimony that Babo “ordered every murder” is belied by Cereno’s testimony that one of the murders during the revolt was spontaneously committed by slaves who were suffering from heat and dehydration:

On the fifth day of the calm, all on board suffering much from the heat, and want of water, and five having died in fits, and mad, the negroes became irritable, and for a chance gesture, which they deemed suspicious—though it was harmless—made by the mate, Raneds, to the deponent, in the act of handing a quadrant, they killed him.¹⁴⁵

Importantly, the narrator of Melville’s earlier novel *Typee* describes thirst as the most debilitating of all conditions: “I am aware of no feeling, either of pleasure or of pain, that so completely deprives one of all power to resist its impulses, as this same raging thirst.”¹⁴⁶ The desperate conditions

142. MELVILLE, *supra* note 1, at 112.

143. Gray, *supra* note 22, at 245, 262.

144. SCHENCK, *supra* note 57, at 135.

145. MELVILLE, *supra* note 1, at 108, 112.

146. HERMAN MELVILLE, *TYPEE: A PEEP AT POLYNESIAN LIFE* 52 (John Bryant ed., Penguin Books 1996) (1846).

on the *San Dominick* may lead the reader of “Benito Cereno” to question the simplicity of Cereno’s claim that Babo was the sole plotter, “whose brain,” “that hive of subtlety,” “had schemed and led the revolt,” among the many slaves on board.¹⁴⁷

It is also important to recognize that the distortion of official records in slave rebellion trials may be explained not only by private motives, but also by the complicated motives public authorities had to protect the political and commercial interests that rebellions threatened. With regard to the historical *Trial* inquiry, for example, Joshua Leslie and Sterling Stuckey write that considering the importance of slavery to the Spanish empire, the Consulado, which held special authority to prevent slave rebellions, “felt the need to use its ties to the Crown to threaten the Governor [of Santiago], whose motives it considered suspect, in the aftermath of the revolt.”¹⁴⁸ By referring the case to the Consulado, the Governor of Santiago had apparently attempted to absolve himself of responsibility for implementing the proper precautions against rebellions by implying that it was the Consulado’s responsibility to implement such precautions.¹⁴⁹ In response, the Consulado cited a royal decree that granted it jurisdiction over “all tribunals, judges, magistrates, political and military heads,” including the Governor, to accomplish its mandate, and denied that it had “given any cause, “either directly or indirectly, for any accusation of negligence in the carrying out of its duties.”¹⁵⁰ The Consulado stated that it was willing to overlook the fact that “regular legal procedure” had not been followed in the case, and concluded by announcing its hope that in the future the Governor “will demand that the Consulado be treated with the respect and preeminence it merits as a body empowered and honored by our sovereign.”¹⁵¹ As Leslie and Stuckey describe the tension in this exchange, which resembles that between the Charleston Court of Magistrates and Freeholders and the Governor of South Carolina regarding the proceedings in the Denmark Vesey trials, “the response suggests the two authorities related to each other in a dense field of political intrigue,” demonstrating “the corrupting influence of slavery to social relations in post-Renaissance Europe at the heart of Melville’s *Benito Cereno*.”¹⁵² Because the politics of slavery added a “dense field of political intrigue” to the interests threatened by slave rebellions, the authorities presiding over slave rebellion trials had powerful incentives to swiftly conclude their investigations and to understate the significance of rebellions in their official records, regardless

147. MELVILLE, *supra* note 1, at 116.

148. Leslie & Stuckey, *supra* note 129, at 128.

149. *Id.*

150. *Id.*

151. *Id.* at 131.

152. *Id.* at 128.

of what actions they might have taken to prevent them from recurring in the future.

IV. ALTERNATIVE NARRATIVES

The reader who is led to doubt Cereno's testimony regarding the *San Dominick* revolt and to ask, as Delano does of the story Cereno tells on the *San Dominick*, "if that story was not true, what was the truth?" will find suggestions of alternative narratives throughout "Benito Cereno."¹⁵³ Perhaps most startling are numerous suggestions of conspiracy between the Spaniards and slaves on the *San Dominick*, as Delano himself suspects in the middle of the story after the facial expression of one of the Spanish sailors suggests to Delano that the sailor may be inclined to warn Delano of some plot Cereno is maturing below deck:

But if the whites had dark secrets concerning Don Benito, could then Don Benito be any way in complicity with the blacks? But they were too stupid. Besides, who ever heard of a white so far a renegade as to apostatize from his very species almost, by leaguering in against it with negroes?¹⁵⁴

Contrary to Delano's belief that it was unheard of for whites to conspire with blacks in slave rebellions, as one writer notes, "white men played an important role in many Negro uprisings, frequently furnishing arms, and even leadership, as well as inspiration."¹⁵⁵ Toward the end of the first installment of "Benito Cereno," Delano questions whether the *San Dominick* had "unlawfully come into the Spaniard's possession," and later fears that it is a "haunted pirate-ship," and that Cereno is in "collusion" with the slaves.¹⁵⁶ Although Delano later dismisses these thoughts as implausible, his quick dismissal of a conspiracy between the Spaniards and slaves suggests that perhaps the thoughts were merely too unsettling, and as the narrator describes Delano's attempt to dismiss other mysteries on the *San Dominick*, he "strove, by ignoring the symptoms, to get rid of the malady."¹⁵⁷

In fact, on close inspection "Benito Cereno" contains numerous allusions to piracy. Captain Delano's whale-boat is named the *Rover*, the original name for pirate and probably an allusion to James Fenimore Cooper's 1828 pirate novel *The Red Rover*,¹⁵⁸ and Delano's chief mate, whom Delano appoints to lead the party of American sailors to recapture

153. MELVILLE, *supra* note 1, at 68.

154. *Id.* at 75.

155. Wish, *supra* note 17, at 310.

156. MELVILLE, *supra* note 1, at 68, 77, 87.

157. *Id.* at 77.

158. 2 WEEKLEY, *supra* note 67, at 1254; JAMES FENIMORE COOPER, *THE RED ROVER, A TALE* (Thomas Philbrick & Marianne Philbrick eds., State Univ. of New York Press 1991) (1828).

the *San Dominick* after the chaos that ensues when Cereno leaps overboard in the final installment, is a former “privateer’s-man, and, as his enemies whispered, a pirate.”¹⁵⁹ There are also suggestions that Delano’s original decision to investigate the *San Dominick* is motivated by the hope of commercial salvage gain. The narrator refers to the “lawlessness” of the harbor of St. Maria where Delano first notices the *San Dominick*, for example, and Delano only decides to board after the *San Dominick*’s dangerous proximity to the reef reveals her “no wanted freebooter on this ocean.”¹⁶⁰ This commercial motive is also evinced in Delano’s declaration to his sailors, apparently without consulting Cereno, that if they recapture the *San Dominick* they will receive a portion of the ship and its cargo.¹⁶¹ Significantly, in the investigation of the *Tryal* revolt on which Melville based “Benito Cereno,” the historical Cereno alleged that Delano boarded the *Tryal* with precisely such a motive and Cereno took the depositions of three prison convicts who swore Delano was a “pirate.”¹⁶²

These allusions to piracy also appear in the behavior of the American sailors who pursue and recapture the *San Dominick* from its control by the slaves in the final installment of the story. Specifically, according to Cereno’s testimony, the American sailors show no surprise or hesitation when during the recapture of the *San Dominick* they shoot two of the Spaniards upon concluding that the Spaniards have conspired with the slaves in the revolt. In one scene, for example, when one of the Spaniards calls to the American boats from the mizzen-rigging of the *San Dominick*, “‘don’t board,’ lest upon their boarding the negroes should kill him,” the American sailors conclude that “he some way favored the cause of the negroes” and shoot him.¹⁶³ Similarly, in a scene in which the slaves reportedly make another Spaniard stand on the bulwarks with a hatchet tied to his hand “in a questionable attitude,” the American sailors conclude he is “a renegade seaman” and shoot him.¹⁶⁴ Moreover, because Cereno testifies that some of the slaves “were killed after the capture and re-anchoring at night, when shackled to the ring-bolts on deck; that these deaths were committed by the sailors, ere they could be prevented,”¹⁶⁵ Oliver Scheiding suggests Spaniards who had conspired with the slaves murdered potential slave witnesses when the *San Dominick* was

159. MELVILLE, *supra* note 1, at 101.

160. *Id.* at 47.

161. *Id.* at 101.

162. DELANO, *supra* note 77, at 329.

163. MELVILLE, *supra* note 1, at 113. In *A Narrative of Voyages and Travels in the Northern and Southern Hemispheres*, Amasa Delano recounts that the chief mate “ran up the mizzen rigging of the *Tryal* as high as the cross jack yard, and called out in Spanish, ‘Don’t board,’” which “induced our people to believe that he favored the cause of the Negroes; they fired at him, and two balls took effect.” DELANO, *supra* note 77, at 327.

164. MELVILLE, *supra* note 1, at 113.

165. *Id.*

recaptured in order to silence them.¹⁶⁶ Not only does the transcript invite these interpretations, but it suggests Spaniards capable of such murder would readily falsify their testimony before the Peruvian tribunal, which would be far more likely to believe the testimony of the Spaniards than that of the slaves.

In the second installment of the story, when Delano begins to suspect Cereno of a malign motive, Delano also alludes to Guy Fawkes, leader of the infamous Gunpowder Plot of 1605 in which a group of English Catholics conspired to assassinate James I and the Protestant aristocracy of England by using gunpowder to blow up the English Parliament. Specifically, as Delano waits for his whale-boat to return to the *San Dominick*, he reflects on Cereno's mysterious behavior on the *San Dominick* and muses that "the very word Spaniard has a curious, conspirator, Guy-Fawkish twang to it."¹⁶⁷ This allusion is not accidental. In 1841, shortly before Melville wrote "Benito Cereno," William Harrison Ainsworth published a historical novel entitled *Guy Fawkes; Or, The Gunpowder Treason*, which questions the official version of the Gunpowder Plot and portrays Fawkes sympathetically.¹⁶⁸ Furthermore, the irony was surely not lost on Melville that his literary Delano associates Cereno with Guy Fawkes's Catholic conspiracy to assassinate the Protestant aristocracy of England in the Gunpowder Plot, while the historical Delano was a descendant of the Protestant Huguenots¹⁶⁹ who conspired against the Catholic aristocracy of France and whose very name derives from words meaning "oath companion" or "confederate."¹⁷⁰ The St. Bartholomew Day Massacre of the Huguenots by the French Catholics in 1572 is even specifically evoked at the end of "Benito Cereno" by a reference to the burial of slave-owner Alexandro Aranda's bones in the vaults of St. Bartholomew's church.¹⁷¹

Finally, although presumably Cereno's successful escape from the *San Dominick* would have calmed his troubled nerves, the last installment of "Benito Cereno" reveals that Cereno remains troubled even after his safe arrival in Lima, raising significant doubts regarding his relationship to the

166. Scheiding, *supra* note 11, at 127. Similarly, Edgar Dryden notes that the behavior of the sailors toward the surviving slaves after they have been captured and shackled to the ring bolts of the deck further complicates the unanswered questions Cereno's deposition raises about the relationship between slaves and crew. See DRYDEN, *supra* note 12, at 203.

167. MELVILLE, *supra* note 1, at 79.

168. WILLIAM HARRISON AINSWORTH, *GUY FAWKES; OR, THE GUNPOWDER TREASON* (Paris, Baudry's European Library 1841). Furthermore, a confession was tortured out of Guy Fawkes, and Ainsworth devotes a lengthy chapter to depicting "How Guy Fawkes Was Put to the Torture." *Id.* at 264-76.

169. The Delano family, including the historical Amasa Delano, traces its genealogy to Philippe De la Noye, a Huguenot who arrived at Plymouth in 1621 on the *Fortune*. See GEOFFREY C. WARD, *BEFORE THE TRUMPET: YOUNG FRANKLIN ROOSEVELT, 1882-1905*, at 66 & n.2 (1985).

170. I WEEKLEY, *supra* note 67, at 734.

171. MELVILLE, *supra* note 1, at 117; see 1 THE READER'S ENCYCLOPEDIA, *supra* note 118, at 79.

slaves and the veracity of his testimony before the Peruvian tribunal. During the earlier narrative while Cereno is on the *San Dominick*, he cannot look at Delano, but “with every token of craven discomposure dropped his eyes to the deck.”¹⁷² If Cereno’s testimony is accepted, this is presumably explained by the fact that Cereno was compelled to deceive Delano and feared for his life if he disclosed the truth of the slave revolt. During the investigation in Lima, however, Cereno similarly refuses to look at Babo until “when pressed by the judges he fainted,”¹⁷³ and although in this instance Delano’s behavior may be explained as that of one unable to face his assailant, the parallel to the incident in the earlier narrative suggests deceit. It is only during Cereno’s voyage to Lima after he leaps overboard and the *San Dominick* is recaptured that, “relaxed from constraint,” he “showed some signs of regaining health with free-will,” but the narrator later remarks that Cereno suffers a “decided relapse” shortly before arriving in Lima.¹⁷⁴ As Edgar Dryden notes, when Cereno returns to Lima “he finds only another and larger ‘San Dominick,’”¹⁷⁵ and Cereno’s brief recovery during this passage to Lima suggests pressures in Lima that parallel those on the *San Dominick*. The text provides no satisfactory explanation for the persistence of Cereno’s troubled nerves after his safe arrival in Lima, only that it is caused by the shadow of “the negro.”¹⁷⁶ These and other passages of the text suggest deeper narratives than the deposition extracts explain and leave the reader like the *San Dominick* in the earlier narrative, “deserted . . . in unknown waters, to sultry calms,”¹⁷⁷ without the means to navigate between appearance and reality.

There are numerous interpretive possibilities that would account for the suggestions of conspiracy in the story. Could Cereno have killed the slaves’ owner Alexandro Aranda and the Spanish officers as part of a plot to seize possession of the vessel and its valuable cargo, only to later abandon the venture and blame the losses on a slave revolt? The concealment of white crimes motivated many historical slave rebellion claims, such as the death of Captain Thomas Gould during the *Hope* revolt in 1764, which newspaper accounts first attributed to a mutiny of two white crew members before later accounts attributed the death to a slave revolt.¹⁷⁸ Or could the slaves have mutinied and Cereno later joined their cause, as suggested by Cereno’s testimony that he and the Spaniards agreed “to draw up a paper, signed by the deponent and the sailors who

172. MELVILLE, *supra* note 1, at 66, 115.

173. *Id.* at 116.

174. *Id.* at 103, 114.

175. DRYDEN, *supra* note 12, at 207.

176. MELVILLE, *supra* note 1, at 116.

177. *Id.* at 56.

178. See ENCYCLOPEDIA OF SLAVE RESISTANCE AND REBELLION, *supra* note 20, at 252-53.

could write, and also by the negro Babo, for himself and all the blacks, in which the deponent obliged himself to carry them to Senegal, and they not to kill any more, and he formally to make over to them the ship, with the cargo."¹⁷⁹ The signing of this paper, like other passages of the testimony, suggests a deeper collaboration between the Spaniards and slaves than the extracts explain. It could suggest, for example, that not unlike Cereno's accusation of the slaves during his testimony, Cereno and the Spanish sailors, "though not in the first place knowing to the design of the revolt, when it was accomplished, approved it."¹⁸⁰ Or could Cereno and other Spaniards have first mutinied, then lost control to the slaves in the chaos that ensued? Would the Peruvian tribunal have been inclined to minimize or conceal any white complicity in the events on the *San Dominick* to preserve public order and its own reputation as the authority responsible for preventing such revolts? These and other alternative narratives lie just below the surface of the story and may serve to explain many of the defects and contradictions in the deposition extracts.

V. "TRUE HISTORY"

In "Benito Cereno," law, narrative, and history fuse like the "past, present, and future"¹⁸¹ in Cereno's dramatic leap into Delano's whale-boat the *Rover* in the third installment of the story, reflecting Melville's deepening concern with legal and historiographical issues that culminated in *Billy Budd*. As Hayden White has observed regarding the intimate relationship between law, narrative, and history, "the more historically self-conscious the writer of any form of historiography, the more the question of the social system and the law that sustains it, the authority of this law and its justification, and threats to the law occupy his attention."¹⁸² By placing Cereno's account of the *San Dominick* revolt in the form of an official transcript and simultaneously undermining its claim to be the "true history" of the story, Melville not only questions the political foundation of slavery but demonstrates the corruption of law that a diminution of legal agency entails.

Because by the 1850s when Melville wrote "Benito Cereno" historical slave rebellion records had long been characterized by "exaggeration, distortion, and censorship,"¹⁸³ as exemplified by *The Confessions of Nat Turner*, the *Official Report* of the Denmark Vesey conspiracy trials, and numerous other slave rebellion records, a slave rebellion narrative

179. MELVILLE, *supra* note 1, at 108.

180. *Id.* at 111.

181. *Id.* at 98.

182. HAYDEN WHITE, *THE CONTENT OF THE FORM: NARRATIVE DISCOURSE AND HISTORICAL REPRESENTATION* 13 (1987).

183. APTHEKER, *supra* note 16, at 150.

provided Melville with the ideal form for a commentary on the construction and manipulation of agency in the legal process. In “Benito Cereno,” Melville provides the reader with ample evidence to question the credibility of Cereno and the Spanish sailors, the Peruvian tribunal’s corruption and lack of procedural formalities during the proceedings, and the many layers of mediation between the story and the reader as reflected in the fragmented, summary, and translated form of Cereno’s testimony and its reliance on hearsay. Thus, despite the authority the deposition carries by being identified as an official legal document, its authority is simultaneously undermined by other textual features.

In Hegel’s *Lectures on the Philosophy of History*, Hegel teaches that law is a precondition for both narrative and history because it is only in a society with laws that “distinct transactions take place, accompanied by such a clear consciousness of them as supplies the ability and suggests the necessity of an enduring record.”¹⁸⁴ Accordingly, Hegel describes the absence of history in Indian literature as the result of India’s inordinate dependency on the caste system:

Where that iron bondage of distinctions derived from nature prevails, the connection of society is nothing but wild arbitrariness,—transient activity,—or rather the play of violent emotion without any goal of advancement or development. Therefore no intelligent reminiscence, no object for Mnemosyne presents itself, and imagination—confused though profound—expiates in a region, which, to be capable of History, must have had an aim within the domain of Reality, and, at the same time, of substantial Freedom.¹⁸⁵

Hegel highlights the necessary relationship between the autonomous agency on which law must depend and the necessity of maintaining distinct records of human actions which motivates both narrative and history. Similarly, Hayden White has remarked that narrativity, “whether of the fictional or factual sort, presupposes the existence of a legal system against which or on behalf of which the typical agents of a narrative account dictate.”¹⁸⁶ Because slaves were deprived of the autonomous agency on which law, narrative, and history depend by virtue of their legally delimited agency, both the ability and the necessity of creating an enduring record of the transactions concerning them was diminished if not destroyed, and the procedural laxity of slave trials became an inevitable concomitant of their legal status.

When trial records lack sufficient integrity they fail to achieve the closure that they are designed to provide. But as Robert Ferguson has

184. G.W.F. HEGEL, *LECTURES ON THE PHILOSOPHY OF HISTORY* 64 (J. Sibree trans., G. Bell & Sons 1914); see also Robert Weisberg, *Proclaiming Trials as Narratives: Premises and Pretenses*, in *LAW’S STORIES*, *supra* note 10, at 61, 77-78.

185. HEGEL, *supra* note 184, at 64-65.

186. WHITE, *supra* note 182, at 13.

observed, the various levels of explanation in courtroom transcripts resemble the layers of human consciousness in which surface narratives must always suppress alternative narratives that struggle for recognition:

The surface narrative of a courtroom transcript is not unlike the consciousness of an individual; both offer the official record of what passes for explanation, and both know themselves to be under distinct pressure from other levels of explanation that need to be contained.¹⁸⁷

The deposition extracts at the end of “Benito Cereno” invite the reader to consider these “other levels” of explanation, or in Captain Ahab’s words, the “little lower layer” that was such a familiar trope of Melville’s prose, implicating the reader in evaluating not only the sufficiency of the evidence on which the official account of the *San Dominick*’s voyage is founded, but what the inconsistencies in an official account of the voyage reveals about the power relations both on the *San Dominick* and in Lima. Accordingly, the reader of “Benito Cereno” is placed in the perilous position of Delano in the story, constantly questioning when and under what circumstances the “imputation of malign evil in man” is justified, while entangled in the pursuit of a “true history” that, like the *Rover*’s return trip to the *San Dominick* in the middle of the story, is ever “lengthened by the continual recession of its goal.”¹⁸⁸ The absence of a reliable record of the story’s “true history” gives “Benito Cereno” a treacherous complexity that places it among Melville’s greatest works, demanding that the story and the “dreary documents at the end”¹⁸⁹ be read with a careful eye for the potential exaggerations, distortions, and censorship that lie submerged in official records.

187. Ferguson, *supra* note 10, at 89.

188. MELVILLE, *supra* note 1, at 47, 70, 103.

189. BERTHOFF, *supra* note 14, at 153.