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MOBY-DICK AS CORPORATE CATASTROPHE:
LAW, ETHICS, AND REDEMPTION

*David Yosifon**

“This is my substitute for pistol and ball.”

– Herman Melville
Moby-Dick; Or, The Whale (1851)¹

INTRODUCTION

Some works of art suffuse the culture so deeply that they affect your mind even if you have no direct encounter with them. *Moby-Dick* is such a book. Its influence is everywhere, its power capacious, even mystical. Its deep themes are involved in your thinking about the world and can be redeployed to change your thinking about it, whether you have read the novel or not. My ambition here is to use *Moby-Dick* as a vehicle through which to interrogate core features of American corporate law and excavate some of the deeper lessons about the human soul that lurk behind the pasteboard mask of the law’s black letter. The inquiry yields an illuminating vantage on the ethical consequences of corporate capital structure, the law of corporate purpose, the meaning of voluntarism, the ethical stakes of corporate fiduciary obligations, and the role of lawyers in preventing or facilitating corporate catastrophe. Pursuing the corporate law dimensions of *Moby-Dick* will also yield valuable insights about the novel itself, how it works, and why it works so well.

“You know *Moby Dick* before you know it,”² and yet you may not know, as I did not the first time I read it, some key particulars which, in order to ripen what follows, I must spoil from the start. So let us begin this account of corporate catastrophe by making explicit what Herman Melville saves for last: everyone dies at the end of *Moby-Dick*. Or nearly everyone. The two survivors are the narrator Ishmael, who lived to tell us

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1. HERMAN MELVILLE, *MOBY-DICK* 27 (GEORGE STADE ED., BARNES & NOBLE CLASSICS ED. 2005) (1851).

2. JONATHAN LETHEM, *MORE ALIVE AND LESS LONELY: ON BOOKS AND WRITERS* 77 (2018).

the tale, and the White Whale, who heaps and tasks us still.

RAISING THE WHALE IN CORPORATE WATERS

Reference is made to *Moby-Dick* in 125 state and federal cases.³ It comes up in underlying facts: many bars, restaurants, and boats in this country are named “Moby Dick,” and these are the loci of fights, accidents, and other legal strife.⁴ Jurists also invoke the novel in their legal analysis. It is referenced to rue the burdensome length of a proceeding (the book is long).⁵ It is invoked to depict a party’s dogged pursuit of some outcome, especially vengeance (you know why).⁶ It is incanted to explain that a case is really about something weightier than a superficial reading of the pleadings would suggest (*e.g.*, “Defendant attempts to cast this litigation as little more than a liquor license case. That characterization is about as accurate as would be one that described *Moby*

3. An impressive clip. Compare JOHN STEINBECK, *THE GRAPES OF WRATH* (1939) (referenced 35 times in state and federal cases) and MARK TWAIN, *HUCKLEBERRY FINN* (1885) (referenced 59 times). But see WILLIAM SHAKESPEARE, *KING LEAR* (1606) (referenced 149 times).

4. See *e.g.*, *State v. McKissic*, 415 N.W.2d 341, 342 (Minn. Ct. App. 1987) (fight); *Folger v. State*, 648 P.2d 111, 113 (Alaska Ct. App. 1982) (fight); *Goldies, Inc. v. Alaska Hotel & Rest. Employees Health & Welfare Fund*, 622 P.2d 979, 980 (Alaska 1981) (labor dispute); *Stark v. Commonwealth*, 828 S.W.2d 603, 605 (Ky. 1991), *overruled* by *Thomas v. Commonwealth*, 931 S.W.2d 446 (Ky. 1996) (armed robbery at restaurant); *Romero v. ITW Food Equip. Grp., LLC*, 987 F. Supp. 2d 93, 98–99 (D.D.C. 2013) (worker injury at restaurant); *Aylsworth v. Comm’r*, 22 T.C.M. (CCH) 1111 (T.C. 1963) (tax dispute involving ownership of boat); *Thomson v. United States*, 266 F.2d 852, 853–54 (4th Cir. 1959) (boating accident).

5. *Petersen v. Bank of Am. Corp.*, 232 Cal. App. 4th 238, 254, 181 Cal. Rptr. 3d 330, 342 (2014) (describing a 3,000-plus page complaint as “Moby Dick”); *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc’y*, No. C11-2043JLR, 2017 WL 1057644, at *1 (W.D. Wash. Mar. 17, 2017) (characterizing the length of a dispute involving the protest of contemporary whaling activity as being longer than *Moby-Dick*); *People v. Lee*, 242 Cal. App. 4th 161, 176, 195 Cal. Rptr. 3d 76, 88 (2015) (characterizing the brevity of a policy report by contradistinguishing it to *Moby-Dick*); *Hershey Chocolate of Virginia, Inc. v. Cty. of Augusta*, 101 Va. Cir. 512 (2018) (describing the court’s own opinion as being as “turgid, dense, and seemingly without end as Herman Melville’s *Moby Dick*”); *Commonwealth v. Seiders*, 45 Pa. D. & C.3d 499, 499–500 (Pa. Com. Pl. 1987) (characterizing lapse between defendant’s guilty-plea and sentencing as lasting longer than Ahab’s hunt for Moby Dick).

6. *Commonwealth v. Blakeney*, 631 Pa. 1, 59–60, 108 A.3d 739, 774–75 (2014) (criticizing defense counsel for being “as monomaniacal as Captain Ahab in *Moby Dick* in seeking to confuse and thereby subvert Pennsylvania state procedural default doctrines in capital cases”); *Diamond v. Diamond*, 360 Pa. Super. 101, 104, 519 A.2d 1012, 1013 n.1 (1987) (in marital dissolution, characterizing husband’s relationship to corporate property as being “as inseparable as Ahab and the white whale”); *In re Recall of Washam*, 257 P.3d 513, 520 (2011) (comparing intensity and recklessness of litigant’s pursuit of legal claim as akin to that of Captain Ahab in *Moby-Dick*); *Eden Isles Condo. Ass’n, Inc. v. Dep’t of Bus. & Prof’l Regulations, Div. of Fla. Land Sales, Condominiums & Mobile Homes*, 1 So. 3d 291, 293 (Fla. Dist. Ct. App. 2009) (“With the obstinacy of Captain Ahab in search of Moby Dick, the Division filed numerous exceptions to the judge’s conclusions.”); *In re Escobedo*, 513 B.R. 605, 617 (Bankr. D.N.M. 2014) (characterizing creditor’s misconduct toward debtor: “Like Captain Ahab, she could think of nothing but revenge”).

Dick as being a book about a white whale.”⁷). In many cases the book’s majestic prose is borrowed to finely express what the law is. Not previously knowing it, you and I will now never forget that the owner of real property along the shoreline loses title to land that is worn away by “the sledge-hammering seas . . . the inscrutable tides of God.”⁸ The book is even cited as *authority* in a few cases concerning the law of whaling.⁹ *Moby-Dick* thus roams expansively over the law’s oceans. Yet never has it been raised in the sea where one might surely expect to find it: the law of fiduciary duty, the law of loyalty, the law of good faith and bad. Despite the fame and influence of the book, and the vibrancy of these themes at its core, it has not been used in caselaw to explicate agency or corporate law principles. Neither is there scholarship directly on point.¹⁰ *Moby-Dick* was overlooked by literary elites in Melville’s day.¹¹ The juridical and academic establishment in corporate law continues to miss it. Our understanding of corporate law has suffered from this lapse, and our understanding of the novel has perhaps suffered from it too. Here I take up the chase.

THE NATURE OF THE FIRM HUNTING WHALES

Part of what is so engrossing about *Moby-Dick* is how strange, even unthinkable, the nineteenth-century whaling industry seems to modern readers. The ludicrous truth is captivating: a primary source of fuel in the industrializing world of the nineteenth century was whales, captured and

7. *Grendel’s Den, Inc. v. Larkin*, 582 F. Supp. 1220, 1227 (D. Mass.), modified, 749 F.2d 945 (1st Cir. 1984); see also *Teamsters Local Union No. 776 v. Rite Aid Corp.*, 638 F. Supp. 408, 411 (M.D. Pa. 1985) (“To say that this case is about production quotas is akin to saying that “Moby Dick” is about a whale. It is true but inaccurate.”).

8. *Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach*, 177 S.E.2d 513, 517 (1970).

9. *Stevens v. Seacoast Co.*, 414 F.2d 1032, 1036 (5th Cir. 1969) (cited for evidence of common wage structures in the whaling industry); *Cape Shore Fish Co. v. United States*, 330 F.2d 961, 969 (Ct. Cl. 1964) (same).

10. Passing references to the novel in corporate law scholarship include Kent Greenfield & John E. Nilsson, *Gradgrind’s Education: Using Dickens and Aristotle to Understand (And Replace?) The Business Judgment Rule*, 63 BROOK. L. REV. 799, 813 n. 59 (1997) (noting *Moby-Dick*’s reference to the “lay system” used in compensating sailors on whaling ships; see *infra* text accompanying note 19 (discussing the lay system)) and Eileen A. Scallen, *Promises Broken vs. Promises Betrayed: Metaphor, Analogy, and the New Fiduciary Principle*, 1993 U. ILL. L. REV. 897, 924 n. 112 (1993) (discussing Melville’s use of the “monkey rope” in *Moby-Dick* as a metaphor for fiduciary relationships; see *infra* text accompanying notes 74-81 (discussing the monkey rope)). Of course, the law and literature movement generally has evinced vast theoretical and topical coverage. For scholarship adumbrating core achievements and controversies in law and literature, see JAMES BOYD WHITE, *HERACLES’ BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW* (1985) and RICHARD POSNER, *LAW & LITERATURE* (3d ed. 2009).

11. See generally Paul Lauter, *Melville Climbs the Canon*, 66 AM. LIT. 1 (1994) (surveying Melville’s literary reputation, with special reference to *Moby-Dick*).

killed for their oil.¹² Whale oil fueled the growth of capitalist America by greasing its factory machines and, perhaps more importantly, illuminating its nights. Production and consumption, legal work, the whole stuff of truck, barter, and exchange, carried on through the nineteenth-century evening as relentlessly as it did the day, by light of whale oil. This changed only when it became more efficient to seek oil underground by building spouts above it, instead of seeking oil underwater by chasing spouts across it.¹³

Whaling was a capital intensive industry. Large ships were built and expensively provisioned, then crewed with around thirty men and boys who would undertake a voyage that would last *years*, extending to the farthest reaches of the world in pursuit of whales that would be hunted in smaller boats launched off the ship. Captured whales were stripped and boiled down in fireworks maintained on board the ship, and their oil was then stored in large casks until the ship returned to its home port. Whaling was risky business. Many men were killed by whales or in other accidents at sea. Ships would get wrecked in the typhoons that stalked the best whaling waters. Pirates would chase down successful whaling ships and steal their hard-gained oil. After a many-years venture, a ship might come back “clean,” with no oil in it, because no whales were found or none captured, or the bounty was stolen. But if a ship came back safe and sound, full of oil, there was tremendous profit in it.¹⁴

Because of the industry’s capital demands and riskiness, whaling ships were not usually wholly-owned by a single entrepreneur. Rather, each ship would have numerous investors, and whaling investors diversified their interests across many ships. Melville emphasizes this organizational form early in his novel. When Ishmael is first interviewing for a position on the *Pequod* with the ship’s promoters, Captains Bildad and Peleg, he notes:

12. For some readers, revulsion at the atrocity of whale hunting from a humanitarian or ecological standpoint may trigger a rejection of any invitation to use *Moby-Dick* to grapple with other intellectual or moral themes. I urge such readers to continue precisely because of that revulsion. The agony of the whales, their near extinction, and the ecological devastation of whaling, are inexorably connected to the corporate law dynamics under review here. Understanding that corporate law connection is crucial to reversing that devastation, and saving the whales. *See also infra* note 26 (on the suffering of hunted whales).

13. *See generally* ERIC JAY DOLIN, *LEVIATHAN: THE HISTORY OF WHALING IN AMERICA*, (2007) (a comprehensive study of the rise and fall of the American whaling industry that provides extensive bibliographic material). Whale bone was also a valuable nineteenth-century commodity, used in corsets and other decorative items. Spermaceti, the pure and special oil taken from sperm whales like *Moby Dick*, was used in expensive candles, cosmetics, and medicines. *Id.* at 35-36.

14. In the mid-to-late nineteenth-century, a single captured whale might yield oil and bone worth \$2,000-\$3,000, at a time when the mean family income was \$600-\$800 per year in the United States. *See* Robert C. Ellickson, *A Hypothesis of Wealth-Maximizing Norms: Evidence from the Whaling Industry*, 5 J.L. ECON. & ORG. 83, 84 n. 3 (1989). *See also* DOLIN, *supra* note 13 at 270-72 (discussing profitability of whaling).

[Bildad and Peleg were among] the largest owners of the vessel; the other shares, as is sometimes the case in these ports, being held by a crowd of old annuitants; widows, fatherless children, and chancery wards; each owning about the value of a timber head, or a foot of plank, or a nail or two in the ship. People in Nantucket invest their money in whaling vessels, the same way that you do yours in approved state stocks bringing in good interest.¹⁵

By highlighting that the *Pequod* is a corporate enterprise held by passive investors, Melville structures the story at its core in terms of fiduciary relationships. Captain Ahab's pursuit of the White Whale is not the story of private hubris gone wrong. It is the story of corporate catastrophe.¹⁶ Melville is given occasion to grapple deeply with conflicts of individuality and loyalty, autonomy and compulsion, excess and restraint, because to tell his story he must confront an emergent organizational form that evokes these tensions within the individual human heart and forces them to play out across our relationships. In this we witness the synergies of institutional, legal, literary, and ethical innovation. *Moby-Dick* is given life by a corporate conception, and then it returns the favor by breathing deeper meanings into the corporate form.¹⁷

PURPOSE AND CONSCIENCE ON THE *PEQUOD*

Among the most important issues in corporate law is what *purpose* corporate operations are supposed to pursue. On this question, scholars

15. *MOBY-DICK*, *supra* note 1, at 106. The reference here to "approved state stocks" alludes to the relatively weak system of state-based securities regulation that prevailed before the Securities Act of 1933 and the Securities Exchange Act of 1934 were adopted during the Great Depression.

16. Compare JACK LONDON, *THE SEA WOLF* (1904) (concerning Wolf Larsen, the monomaniacal captain of a seal-hunting schooner, who owns his ship out-right; London's is a gripping, inspiring tale, but the narrow institutional context makes for a limited exploration of the forms of human life. Captain Larsen is an owner, Captain Ahab, more interestingly, is a manager).

17. Ishmael does not say one way or the other whether the *Pequod* was literally incorporated. Whaling firms in the 1830s and 1840s were in fact sometimes organized through formal corporate charters. However, most were unincorporated ventures. The modern corporate form did not become widely available to business enterprise in the United States until the late-nineteenth-century. I am concerned with using *Moby-Dick* to aid our modern thinking about contemporary corporate law, so I do not struggle here for a neat pairing of my analysis with an historical assessment of the nineteenth-century whaling industry. Nevertheless, it is clear that mid-nineteenth-century American whaling did evince many core corporate characteristics, including fractional ownership by diversified shareholders, and the separation of ownership and control. While whaling investors did not get limited liability by dint of their legal form (even nineteenth-century corporations did not always grant shareholders limited liability), whaling investors were mostly only on the hook (the harpoon) for what they invested, because the ventures were funded largely with equity, were insured, and because tort liability for maritime activity in that era was scant. For an excellent and technically precise overview of the law and economics of nineteenth-century whaling see generally Eric Hilt, *Investment and Diversification in the American Whaling Industry*, 67 J. OF ECON. HIST. 292 (2007) and Eric Hilt, *Incentives in Corporations: Evidence from the American Whaling Industry*, 49 J. L. & ECON. 197 (2006). I am grateful to Professor Hilt for his generosity in corresponding with me on these issues.

are divided both as to what the law *is* and what it *should be*. Some academics argue that corporate law requires directors to manage corporations solely in the interests of shareholders and forbids the sacrifice of corporate profits in order to serve other ends. Other scholars insist that corporate directors are not required to serve only shareholders but can instead legitimately attend to other stakeholders or issues, such as workers, consumers, or the environment, even at the expense of shareholder profits. My view is that existing corporate law in the United States requires shareholder primacy, but I think this rule should be changed. *Moby-Dick* gets the law of corporate governance right and sees clearly the stakes of this crucial debate.¹⁸

When it came time for Ishmael to “negotiate” (take or leave) compensation for sailing on the *Pequod*, Captain Peleg, a manager of the venture, wants to put him down for the “300th lay.” This is whaling cant for 1/300 of the ship’s total profits.¹⁹ But Peleg’s co-manager, Captain Bildad, thinks this is too much to offer the inexperienced Ishmael and wants to give him the “777th lay” (1/777 of the ship’s profits). Peleg and Bildad debate the legitimacy of shareholder primacy in the ship’s governance:

“Why, blast your eyes, Bildad,” cried Peleg, “thou dost not want to swindle this young man! he must have more than that

Bildad laid down his book, and turning solemnly towards him said, “Captain Peleg, thou hast a generous heart; but thou must consider the duty thou owest to the other owners of this ship—widows and orphans, many of them—and that if we too abundantly reward the labors of this young man, we may be taking the bread from those widows and those orphans. The seven hundred and seventy-seventh lay, Captain Peleg.”

. . . [Peleg replies:] “Blast ye, Captain Bildad, if I had followed thy advice in these matters, I would afore now had a conscience to lug about that would be heavy enough to founder the largest ship that ever sailed round Cape Horn.”²⁰

Who should have a heavier conscience: Captain Bildad, the shareholder primacist, or Captain Peleg, who wants the *Pequod*’s board to govern in a more “socially responsible” manner? Bildad is a man who contains multitudes: he is at once a pious Christian (he is reading from the Bible even as Peleg approaches him about Ishmael’s wages) *and* he is a strict adherent to the idea that the *Pequod* must be run only to maximize

18. For a full review of this dispute, see DAVID YOSIFON, CORPORATE FRICTION: HOW CORPORATE LAW IMPEDES AMERICAN PROGRESS AND WHAT TO DO ABOUT IT, 60-96 (2018).

19. MOBY-DICK, *supra* note 1 at 110; see also Lance E. Davis et al., *Risk Sharing, Crew Quality, Labor Shares and Wages in the Nineteenth Century American Whaling Industry*, NATIONAL BUREAU OF ECONOMIC RESEARCH, NBER Working Paper Series on Historical Factors in Long-Run Growth, No. 13 (1990) (economic analysis of the lay system).

20. MOBY-DICK, *supra* note 1 at 110.

shareholder profits. This seeming hypocrisy makes Ishmael wonder how Bildad sleeps at night. He assumes he does it the old-fashioned way: “very probably he had long since come to the sage and sensible conclusion that a man’s religion is one thing, and this practical world quite another.”²¹

Walt Whitman shrugged and had a cozy nap: “Do I contradict myself / Very well then I contradict myself.”²² But the truth of Bildad’s easy slumber is simpler and perhaps more pernicious than this. For the pious Bildad, and shareholder primacy theory, *there is no contradiction*. They are sure that shareholder primacy *is* the most socially responsible corporate governance system. On their view, the board must govern the corporation strictly on behalf of shareholders in order to give people the incentive to passively invest capital in socially useful enterprises. This gets whale oil to consumers, creates jobs for people like Ishmael, and makes a tax base for the polity. Unlike capital investors, workers and consumers do not need directors’ active protection in the boardroom before they will participate in corporate undertakings. Labor can attend to its own interests at the point of production by negotiating terms of employment and threatening to quit if they are mistreated. Consumers control their corporate interests at the cash register (or the checkout screen), deciding on what terms they are willing to deal with a firm, if at all. As “residual claimants,” shareholders only benefit from corporate operations after all other stakeholders have received the benefit of their bargains. Dividends are only paid, if they are paid, once wages, products, and taxes have been delivered. Shareholders are therefore first in the corporate conscience only because they are *last* at the corporate trough. In this way, shareholder primacy serves society’s most vulnerable members, lifting them out of poverty and bringing them delights in ways that superficially more socially-conscious systems would not.²³ Captain Bildad suffers neither cognitive nor spiritual dissonance in simultaneously running a dangerous profit-maximizing extraction industry, paying long-lays to his sailors, *and* maintaining his sincerely held Christian religious convictions. He sleeps very well indeed.²⁴

Captain Peleg’s conscience is rattled at the prospect of paying an unfavorable lay to Ishmael. But sometimes it is a mistake to calibrate conscience by the untutored impulses of the heart. Like our eating system,

21. *Id.* at 107.

22. WALT WHITMAN, *Song of Myself*, in LEAVES OF GRASS (1892).

23. For a fuller discussion of these claims and their academic advocates, see YOSIFON, CORPORATE FRICTION, *supra* note 18, at 7-17.

24. My concern is really to describe the purported coherence between shareholder primacy and a concern for social interests generally. The religious dimension is just one manifestation of that social concern. For sustained argument on behalf of the harmony of Christianity and shareholder primacy, see Stephen M. Bainbridge, *Christianity and Corporate Purpose* (Dec. 1, 2019). UCLA School of Law, Law-Econ Research Paper No. 19-10, available at <https://ssrn.com/abstract=3496850>.

which signals “hunger” whenever it is in the presence of sugar or fat, such impulses might have been a useful ethical guide to doing business in earlier epochs of human development. But some instincts must be restrained if we are to flourish under modern institutional arrangements, where, for example, junk food is always available, or where complex, capital-intensive production must be effectively orchestrated.²⁵ In the end conscience should be dictated by theory, not the other way around.

Then again, maybe it is Captain Bildad’s satisfied mind that needs the disruptive provocation of theoretical inquiry. Charged with managing firms only to pursue profits for shareholders, faithful directors will work tirelessly to externalize costs, wherever possible, to workers, consumers, the environment, or whales.²⁶ The command to maximize shareholder wealth encourages directors to skimp not only on wages but also on worker and consumer safety. The claim that non-shareholders can manage their own interests in corporate operations ignores the practical reality that many stakeholders have a limited ability to do so, especially given the firm’s motivation to obfuscate on important issues. Proponents of shareholder primacy acknowledge this incentive for directors to exploit others on behalf of shareholders. They insist, however, that this problem should be solved outside of corporate governance, through labor law,

25. See generally Adam Benforado, Jon Hanson, and David Yosifon, *Broken Scales: Obesity and Justice in America*, 53 EMORY L. J. 1645, 1675-1689 (2004) (describing evolution of the human eating system and its maladaptation to the contemporary food environment).

26. In surveying the corporate catastrophe of *Moby-Dick* we must highlight the calamity of the whales. On Nantucket Island, whaling began as a sustainable subsistence activity by the Wampanoag, a Native American tribe, who harvested blubber and bones from whales that washed up on the beach. By the time the *Pequod* sets sail in the mid-nineteenth-century, Nantucket whaling firms had to travel thousands of miles from home to hunt because by then industrial whaling had already wiped-out the whale populations off the Massachusetts coast. Whales brought nearly to extinction by overfishing is a statistic, but the suffering of any given whale in the course of the hunt is a tragedy. Ishmael tells that in his era whales were killed by slicing into their lungs with lances again and again, causing the massive creatures to thrash about in agony, drowning in their own gore until dead. The novel itself is both inspired by the glories of whale hunting and ashamed of its depravity.

Advances in petroleum production effectively ended the whale oil industry by the 1890s. But advances in whaling technology, and continued global demand for whale products such as baleen, actually resulted in dramatically increased kills of whales in the early decades of the 20th-century as compared to the “golden age” of whaling depicted in *Moby-Dick*. By the middle of the 20th-century, with many species of whales nearing extinction from human predation, serious regulatory restriction of whaling finally broke through. The International Convention for the Regulation of Whaling (ICRW) was established in 1946, and the United States adopted federal statutes in the 1960s and 1970s prohibiting whaling altogether. An international ban on whaling was promulgated through the International Whaling Commission in 1986, with exceptions granted for hallowed cultural and religious practices. Today it is not so much hunting as climate change that threatens the whales. The same thirst for oil that once chased the whales with harpoons now stalks them with rising temperatures in the sea. Climate change is a civilizational threat, and the corporate law dynamics that wrecked the *Pequod* are at the heart of the human causes of that catastrophe too. See generally Alison Rieser, *Whales, Whaling, and the Warming Oceans*, 36 B.C. ENVTL. AFF. L. REV. 401, 401 (2009) (summarizing regulatory environment on whaling, and examining the threat to whales from climate change); see also Henri Féron, *A New Ocean: The Legal Challenges of the Arctic Thaw*, 45 ECOLOGY L.Q. 83 (2018) (describing climate change risk to whales and other sea mammals).

environmental law, or consumer protection statutes. Shareholder primacy's critics view this as inadequate, because they anticipate what has in fact been seen from the nineteenth-century whaling industry through the twenty-first century technology industry: directors pursue shareholder profits just as doggedly through governments as they do through production and distribution processes, for example, by working to stunt the development of costly regulation. Critics also emphasize the ways in which shareholder primacy can be culturally destructive. Patriotic conscience, for example, is afforded no place in the shareholder primacy boardroom—not when it conflicts with the bottom-line. Firms unhesitatingly export jobs to cheaper labor markets abroad, irrespective of the consequences to domestic workers and national cohesion.²⁷

From this critical viewpoint, shareholder primacy's merely ostensible coherence has lulled Captain Bildad into an intellectual and moral complacency. As Captain Peleg and Ishmael approached Bildad for the lay negotiation, he was reading aloud a passage from his Bible: "Lay not up for yourselves treasures upon earth, where moth and rust doth corrupt, and where thieves break through and steal / But *lay* up for yourselves treasures in heaven, where neither moth nor rust doth corrupt."²⁸ Melville turns this passage into slapstick by italicizing "*lay*," thus putting on the nose the connection between the issue of what "*lay*" Ishmael will receive and the biblical injunction against earthly concerns. Slapstick too can be instructive. Bildad is consciously, or worse still, *unconsciously*, using the Bible, a text avowedly sacred to him, to manipulate Ishmael. In the end he may end up fooling (and making a fool of) himself too. Our deep-seeded impulse to avoid cognitive dissonance, our driving psychological motive to find alignment between our opinions and our behaviors, makes us a threat not just to others but to ourselves.²⁹ The seeming coherence of shareholder primacy has given Bildad a mirage of coherence in his own life. With his Bible in one hand, corporate ledger in the other, peace in his heart, and harmony in his head, dissonance avoidance has made a cartoon of Bildad. If we could let the contradictions dwell in our conscience, we might know ourselves better and turn our slapstick lives to more serious productions. Instead, we collapse everything into coherence and live in a happy fog.

But let us neither condescend to the absurd nor be overly righteous in

27. The literature critiquing shareholder primacy is expansive. For a review and assessment, see YOSIFON, CORPORATE FRICTION, *supra* note 18 at 17-60. On replacing shareholder primacy with a stakeholder-oriented corporate governance system, *see id.* at 172-206.

28. MOBY-DICK, *supra* note 1 at 110 (the passage from which Bildad is reading is MATTHEW 6:19-20).

29. See Jon Hanson & David Yosifon, *The Situational Character: A Critical Realist Perspective on the Human Animal*, 93 GEO. L. J. 1, 107-115 (2004) (reviewing social psychological findings on dissonance avoidance in human cognition).

our thinking about who is confused here. The scene works for laughs and as literature, and as an adjunct to corporate theory, because it is finally *not* polemical. Good writing can make a reader more confident, but great writing will leave them lost. Melville paints both sides of the corporate purpose debate, and while anyone can find confirmation of their priors in the text (as my preceding paragraphs well show), the honest reader is also confronted with complexity that must in the end leave them uncertain. Novelists do not have the policymaker's responsibility to finally make legal decisions and settle designs with particularity, as must be done. But knowing the complexities in a beautiful way can make us humble about our policy choices and unsanctimonious towards our opponents. Just when you are sure that shareholder primacy has made a mess of everyone involved, this comes: Ishmael brings along his new best friend Queequeg, a Pacific-Islander tattooed from head to foot, to sign up with the *Pequod* too. Queequeg gives the managers a brief demonstration of his harpooning skill by striking a bulls-eye through a small tar-stain floating in the water off the side of the ship. Captain Bildad quickly offers him the "90th lay", a far better rate than was given to Ishmael. The profit-motive is narrow, so narrow that it can sometimes sneak a path right through the worst demons of human nature. Queequeg is judged not by the inked icons on his skin, nor by racist presumptions about his character, but by the content of his harpooning skill. This anti-racist policy is dictated not from Bildad's Bible, nor any conscious humanitarianism, but from the acid bath of the market.³⁰

After settling terms with Ishmael and Queequeg, the pious Bildad does take a quick stab at converting the pagan Queequeg, but Peleg steps in—now he is the one thinking of the widows and orphans (or his own investment). He says it is better to have some "shark" in a harpooner on a whale hunt, and not too much of a Christian outlook.³¹ The profit-maximand thus also saves Queequeg from Bildad's proselytizing. (Although then again, the rule of profit-maximization may function here as a censor of Good News). As for bad news, there will be plenty to come for the *Pequod Incorporated*.

SHAREHOLDER PRIMACY AND THE SINKING OF THE *PEQUOD*

Everyone involved in a corporate enterprise—shareholders, creditors, workers, consumers, the government—wants the corporation to succeed.

30. See generally RICHARD EPSTEIN, FORBIDDEN GROUNDS: THE CASE AGAINST EMPLOYMENT DISCRIMINATION LAWS (1992) (arguing that competitive markets reduce racial discrimination more effectively than does government regulation); GARY S. BECKER, THE ECONOMICS OF DISCRIMINATION (1971) (arguing that the profit motive ameliorates racial discrimination in competitive markets).

31. MOBY-DICK, *supra* note 1 at 122.

Yet the interests of these groups are not aligned, and often are in tension. One important divergence relates to stakeholder attitudes towards risk.

Because the stockholders of the *Pequod* hold investments spread-out across numerous ships, they prefer each individual ship to be managed in a relatively aggressive fashion. Diversified investors do not care so much if any one ship in their portfolio comes back “clean” (i.e., empty) or does not come back at all. The real money may be in the high upside of very successful voyages.³² This institutional design is an integral component of the catastrophe of *Moby-Dick*. The managers of the *Pequod* knew Captain Ahab well. They knew that on a prior voyage he had lost his leg to an enraged whale (lost it, we will learn, to Moby Dick). Ahab suffered terribly after that attack. He was fevered and delirious the whole long journey home to Nantucket. Back on shore he recovered but was changed. Never previously gregarious, Ahab now became deeply, strangely reserved. The *Pequod's* managers could not fathom exactly what was going on with “Old Thunder” (as he was known) but they knew he was off.³³ So strange did Ahab seem that in their superstitious ways the Nantucketers thought he might be “invested . . . with terrors, not entirely underived from the land of spirits and of wails.”³⁴ Yet they let it ride. Looking to the high upside that an especially exercised whaling captain might deliver, they put Ahab in charge again of the next voyage of the *Pequod*. Understand that Ahab was put in command of the *Pequod* not despite its directors knowing he was twisted but because of it:

[F]ar from distrusting his fitness for another whaling voyage, on account of such dark symptoms, the calculating people of that prudent isle were inclined to harbor the conceit, that for those very reasons he was all the better qualified and set on edge, for a pursuit so full of rage and wildness as the bloody hunt of whales.³⁵

The shareholder primacy corporation will commodify danger, it will commodify dementedness, it will for the stockholders seek to commodify even suspicion of supernatural possession. A charismatic person at the

32. See John Armour & Jeffrey N. Gordon, *Systemic Harms and Shareholder Value*, 6 J. LEGAL ANALYSIS 35, 36 (2014) (“Diversified shareholders . . . want the firm to take more risks than would a sole owner. Managers are undiversified, because they have human capital tied up with their firm. Corporate governance mechanisms consequently encourage managers to take risks as if they were diversified”). Judge Winter’s opinion in *Joy v. North*, 692 F.2d 880 (2d Cir. 1982) remains a touchstone here: “Some opportunities offer great profits at the risk of very substantial losses, while the alternatives offer less risk of loss but also less potential profit. Shareholders can reduce the volatility of risk by diversifying their holdings. In the case of the diversified shareholder, the seemingly more risky alternatives may well be the best choice since great losses in some stocks will over time be offset by even greater gains in others.” *Id.* at 886.

33. *MOBY-DICK*, *supra* note 1, at 112-13.

34. *Id.* at 536-37. Note Melville’s double-entendre, invoking the supernatural with reference to “wails.”

35. *Id.* at 537.

helm of a whaling ship is more likely to return a ship full of sperm than is a cautious one, and investors only need some full ships to off-set a number of misspent adventures. I am not reading corporate law into this. Rather it is incumbent upon us to make this lesson part of our corporate law understanding. What happened on the *Pequod*, we must predict, is at work in its ways in our modern oil companies, our pharmaceutical concerns, our social media giants, and in our venture capital funds.

The risk-preferring posture of shareholders clashes with labor's preference that individual firms be managed carefully, with a risk-averse attitude. Whereas equity investors are diversified, workers have a lumpy stake in their particular job with a specific firm and, compared to shareholders, care more about abject corporate failure and less about high corporate profitability. On the *Pequod*, as in many workplaces, it is not just jobs that are at stake, but also life, limb, and wellness. Notice that this misalignment of interests bedevils the workers even where the captain is behaving *properly*. The shareholders are *hoping* that Ahab's affliction manifests in risky whale-hunting. They lose if it instead manifests disloyally in the idiosyncratic pursuit of one weird, dangerous whale. But the ordinary sailors lose either way.³⁶

Worse than putting Ahab at the helm, the *Pequod's* directors kept Ahab's off-kilter condition a secret. "[T]hrough their zeal for him, they had all conspired, so far as in them lay, to muffle up the knowledge of this thing from others; and hence it was, that not till a considerable interval had elapsed, did it transpire upon the *Pequod's* decks."³⁷ The directors knew, but they did not tell the crew. In fact, the prudent Ishmael had asked to see Ahab before signing up, thinking it wise to meet a ship's chief executive officer before joining up for such a long and perilous gig. Here Ishmael was doing what apologists for shareholder primacy expect: workers attend to their own interests at the point of production, freeing directors to serve the interests of absent, passive shareholders. But as critics of shareholder primacy anticipate, the corporate managers of the

36. The "lay" system described above, *supra* text accompanying note 19, deployed one classic method of better aligning the interests of principals and agents: incentive-based compensation. Ishmael says that because of the lay system formality and corporal discipline were less severe on whaling ships than on merchant or naval vessels. But incentive-based compensation cannot eliminate the agency problem. Since the sailors' stake in the *Pequod's* venture is not diversified, they are still more risk-averse than common shareholders. The lay gives an incentive to hunt, but most sailors have a "long lay," and bounded willpower, and so may still prefer to feed on the ship's daily dole rather than going after whales, or big whales anyway. Or, another misalignment, the men might be rougher with the ship and other capital equipment, because they are focused on short-term gains to be had on the present voyage, as against the longer-term interests of the ship's investors. The workers look to consume capital, just as capital looks to consume the workers. In this mournful way does the organizational form of the *Pequod* reflect rather than transcend the state of nature it confronts: "Oh, horrible vultureism of earth! from which not the mightiest whale [nor any corporate stakeholder] is free." *Id.* at 365.

37. *Id.* at 536.

Pequod mislead our reasonably prudent narrator about the risks of this venture. Director Peleg does it with ambiguity, that most potent weapon of the manipulator. Ishmael asks to meet Ahab, but Peleg puts him off:

I don't think thou wilt be able to at present. I don't know exactly what's the matter with him; but he keeps close inside the house; a sort of sick, and yet he don't look so. In fact, he ain't sick; but no, he isn't well either. Any how, young man, he won't always see me, so I don't suppose he will thee.³⁸

This is not the kind of disclosure one would require of a fiduciary, but it is fine for the morals of the marketplace. More than fine, it is a morality which Bildad is *obligated*, in fealty to the shareholders, to don in dealing with a common sailor.³⁹ As for Ishmael, the doe-eyed alchemist of optimism in him turns this ambiguity about Ahab into confirmation, finding in its assay evidence that everything will probably work out alright.⁴⁰ He joins up.

Capital's risk-preferring approach to corporate governance does not work out in every instance. For any given firm it may backfire. Ahab's charisma, it turns out, will not be deployed to fill the hull with sperm, for "with the mad secret of his unabated rage bolted up and keyed in him, Ahab had *purposely* sailed upon the present voyage with the one only and all-engrossing object of hunting the White Whale."⁴¹ And Ahab's vengeance will not in the end be visited upon that whale, but upon the firm, for Moby Dick escapes after smashing and sinking the ship. Yet the drowning of the *Pequod* and nearly all of its men leaves no lasting stain upon this capitalist design. In hiring a maddened captain to head up already dangerous work the *Pequod's* directors played with fire, but they did not really get burned. They and the other investors enjoy the retardant of diversification and insurance. Indeed, if ships never sink that may be evidence that their crews are too risk-averse, from a profit-maximization perspective. *Moby-Dick* chronicles a catastrophe for the sailors and their

38. *Id.* at 112-113.

39. We implies they, and loyalty implies abandonment. In their loyalty to the shareholders, the ship's promoters are disloyal to their friend Ahab. For expected gains, they put Ahab in charge of the ship, disregarding the danger this makes of Ahab to himself. See *infra* text accompanying notes 42-55 (exploring the relationship between Ahab's corporate association and his self-destruction). Ahab's disloyalty to the shareholders is bred in the promotor's disloyalty to him, which is motivated by their loyalty to the shareholders. "Ah monstrous / sweet monsters, / who spawned / thee chalk?" JACK KEROUAC, *BOOK OF BLUES* 129 (1995).

40. See Hanson & Yosifon, *supra* note 29, at 96-100 (reviewing studies on optimism bias). The grease of ambiguity is also enough to keep the pious Captain Bildad feeling smoothly about putting his friend Ahab at the helm. As the *Pequod* is piloted out of Nantucket harbor, with Ahab still cloistered unseen in his cabin below deck, Bildad looks around at the scene and murmurs, unconvincingly to any but a bad-faith dissonance avoider, "a pleasant sun is all he needs." *MOBY-DICK*, *supra* note 1, at 183. Again we see the corrupting combination of the law's command to shareholder wealth maximization, on the one hand, and the mind's command to dissonance avoidance, on the other.

41. *MOBY-DICK*, *supra* note 1, at 228 (emphasis added).

families, but to the stockholders it just ledgers the cost of doing business.

THE CORPORATE TRAGEDY OF CAPTAIN AHAB

Having witnessed that the sinking of the *Pequod* was a corporate affair, come now to the little lower layer and see the corporate causes of the wrecking of that legendary man who lost that miserable ship, Captain Ahab. The separation of ownership and control in whaling vessels was measured by thousands of miles, with no chance for ongoing oversight by the owners on land over the managers at sea. It was therefore especially important to have a skillful, loyal chief executive officer in command of a whaling vessel.⁴² As we have seen, Ahab instead exploits his position to advance his own private interest, vengeance, rather than pursuing the corporate purpose of the *Pequod*.⁴³

What I want to emphasize here is that it is the corporate form that enables the disloyal Ahab to do so much damage not just to the ship and the men he commands but also to himself. Ahab does not own the *Pequod*. Maybe if he did, he would have stayed more focused on the hunt or been more cautious about the dangers of pursuing that White Whale. Our own well-being, the good maintenance of our own soul and heart, can be hard to track and manage. But hearing the creaking of one's own—one's *owned*—timbers, or seeing the tearing of one's owned sails, can give some focus to ideas about what is really in one's own best interest and can keep the steering on a prudent course. The rattling of the *Pequod* in the chase of Moby Dick does not wake Ahab from his private nightmare, for it is not his vessel that strains. Ahab is alienated from the ship's time, supplies, and timbers, and through this alienation is freed into his unmoored, destructive fancies. Being the manager of other people's money, rather than his own, creates an agency problem not just for the ship's owners but for Ahab himself.⁴⁴

Anyone can fantasize about big deviance, but with the power of the corporation those fantasies can be made into self-destructive reality. No one person could, or rationally would, own outright a ship as big and capable as the *Pequod*. Ahab in a dinghy on a private fishing trip is a

42. See Davis et. al., *supra* note 19 at 19 (“The choice of the captain . . . was immensely important to the success of a voyage.”).

43. Corporate officers owe the same duties of loyalty and care to the corporation and its shareholders as are owed by corporate directors. See Aaron D. Jones, *Corporate Officer Wrongdoing and the Fiduciary Duties of Corporate Officers Under Delaware Law*, 44 AM. BUS. L. J. 475 (2007).

44. Here I showcase the ways in which corporate law facilitates Ahab's ruin. For a very different, but certainly related, analysis, see C.L.R James's brilliant treatment of Ahab as representing a proto-totalitarian revolt against democracy and capitalism, in *MARINERS, RENEGADES, AND CASTAWAYS* 60 (1953) (written while James was imprisoned on Ellis Island awaiting deportation; “Melville's theme is totalitarianism, its rise and fall, its power and its weakness.”).

threat to no one, neither to investors, nor sailors, *nor to himself*. Ahab at home in his easy chair, stewing over that lost leg and that damn whale, might eventually get over it. He might finally see that nothing could be done about it, and he might instead end up playing with his toddler son or making with his wife a few more dents in their marital pillow.⁴⁵ Left to his own devices, Ahab could not bring thirty men, the ship, and himself to their immediate ruin pursuing his mad, selfish ambition. It is the corporate form, with its means of aggregating capital, with its methods of separating ownership and control, that enables Ahab's enormous, anomalous undertaking.

Beyond the ship itself, Ahab makes use of corporate knowledge, and the cultural capital of the corporation, to accomplish his suicidal mission. He has at his disposal the ship's books and records from many previous journeys. These track the path of sperm whales with a granularity approaching the social media algorithms that track your movements and mind today. Ahab could not have found Moby Dick without these corporate assets. That data does not exist without the rationalizing, profit-maximizing imperatives driving whaling ventures. Without this corporate knowledge to misappropriate, Ahab would be left to search for the White Whale only in his corrupted mind. Imagination can be dangerous but not so dangerous as imagination mixed with corporate intelligence.

Ahab also takes advantage of the rules of corporate governance to bring disadvantage to himself. The law prescribes profit-maximization but under the "business judgment rule" it defers entirely to managerial discretion regarding the *means* of pursuing that end.⁴⁶ Among the discretionary customs of whale hunting that Ishmael is giddy to praise is the "gam." When two whaling vessels pass each other on the open-sea, they often stop and "have a gam:" the sailors come aboard each other's ships to socialize, often with drink.⁴⁷ Ishmael says that in gams, officers

45. In one mournful reflection Ahab rues that he had sailed on a whaling job the day after marrying, leaving "but one dent in my marriage pillow," *Moby-Dick*, *supra* note 1 at 621, and making his wife a constructive-widow before he made her an actual one. Cf. SENA JETER NASLUND, *AHAB'S WIFE: OR, THE STAR GAZER: A NOVEL* (2005) (well-reviewed novel imagining the life of Ahab's wife).

46. Under the business judgment rule, corporate decisions that are legal, unconflicted, and informed, will not be second-guessed by judges. Weird, bad, or even disastrous business decisions will not give rise to liability for directors' breach of their duty of care, so long as they were undertaken in good faith. See *e.g.*, In re Citigroup Inc. Shareholder Derivative Litig., 964 A.2d 106, 139 (Del. Ch. 2009) (dismissing shareholder suit against directors who lost hundreds of millions of dollars in the subprime mortgage market, on business judgment rule grounds). Certainly Ahab's decision to hunt Moby Dick does not enjoy business judgment rule protection, because it is self-interested. My point here is that the latitude of the business judgment rule, profitable as it is in general, can also create cover beneath which the unscrupulous agent can effectively destroy not just corporate value, but their own character too.

47. These gams might last for *days* (giving perhaps some historical context to cushy contemporary corporate "retreats"). Letters were exchanged in the gams, as whaling ships (get this) often carried mail from shore just in case their intended recipient was stumbled upon thousands of miles away at sea. One of the benefits of this unlikely method is that it involved no reply-all option. See DOLIN, *supra* note 13 at

would commonly share information about where they had seen whales and where the hunting was good. In a shallow way, this seems contrary to the charge of profit maximization. The fewer whales killed by a competitor, the more valuable the oil brought to shore for one's own firm. But the business judgment rule runs deep as the sea. Convivial customs on the cruising grounds may relax and fortify the men against the lonesome burdens of the long journey and the rigors of the hunt.⁴⁸

At one intriguing moment it seems that the possibility of a gam might even move Ahab out of his miserable solipsism, which might dislodge his selfish mission to hunt Moby Dick. Brooding again alone, he suddenly hears a man aloft cry, "sail ho!"⁴⁹ The *Pequod* has come upon another whaleship. "'Well, now, that's cheering,' cried Ahab, suddenly erecting himself, while whole thunder-clouds swept aside from his brow. 'That lively cry upon this deadly calm might almost convert a better man.—Where away?'"⁵⁰ But alas, it is not for Ahab. He forbids the *Pequod* from ordinary gams, not because they are frivolous but because they are substantive: they threaten to enliven him back to the true purpose of the ship. Yet while refusing regular gams, he exploits this discretionary whaling custom in order to procure information for his sordid diversion. He calls out to passing ships for news of the White Whale. If he hears none, he sails on, deeper into his loneliness. But when the *Pequod* comes upon the *Samuel Enderby*, whose captain has a whale-bone prosthesis for an arm, matching the one on Ahab's leg, both limbs lost to Moby Dick, Ahab calls for a gam and scampers aboard the neighboring ship. He is looking not for profitable leisure but information on the White Whale's whereabouts, which he gets. The *Samuel Enderby's* intelligence is available to the *Pequod's* captain because of corporate law, not despite it. Thus we see in *Moby-Dick* that the latitude of the business judgment rule can become the crux upon which corporate malfeasance is leveraged. We see too that it can serve as the feckless agent's gateway to a deeper depravity.

Any single lost soul can tilt at windmills, but if you want to tangle with Leviathan, you are going to need a crew. To stand up against an awful whale you are going to need men who are committed to following the dictates of your command. Ronald Coase explained in *The Nature of the Firm* that among the most powerful features of corporate organization is the authority it bestows on managers to dictate to workers just what they

276.

48. See *Hutton v West Cork Railway Co.* 23 Ch. D. 654 (1883) ("The law does not say that there are to be no cakes and ale, but there are to be no cakes and ale except such as are required for the benefit of the company.").

49. *MOBY-DICK*, *supra* note 1, at 367.

50. *Id.*

will do and how they will do it. A worker's engagement with the firm is contracted at a price, but within the day-to-day affairs of the business, "[i]f a workman moves from department *Y* to department *X*, he does not go because of a change in relative prices, but because he is ordered to do so."⁵¹ Ahab, limping alone into a Nantucket bar, looking to rally a crew to hunt the whale that wounded him, would be laughed at. The Saturday night crowd would have seen him for a madman, bought him a drink and had some song, and they and Old Thunder too would have gone home to kiss their sleeping children. Ahab uses the fiction of the corporation to get good men to go along with his terrible plot. With the customs attendant to his agency, Ahab "masked himself; incidentally making use of them for other and more private ends than they were legitimately intended to subserve."⁵² Melville understands how crucial the cultural capital of the workplace is to exercising the corporate power that Coase identified. "For be a man's intellectual superiority what it will, it can never assume the practical, available supremacy over other men, without the aid of some sort of external arts and entrenchments, always in themselves, more or less paltry and base."⁵³ Without the forms and usages of the sea, Ahab could not have gotten the men to do his bidding.⁵⁴ Being not Ahab but *Captain* Ahab, and salting his inducement with the promise of a gold doubloon "bonus" for the man who spots the White Whale, and plying the men with a little alcohol, Ahab easily wins the ship's subagents over to his self-destructive plot.⁵⁵ With the *Pequod's* crew at his disposal, Ahab can fully torment himself, until he is finally not just lonesome but lost.

THE SELF-PRESERVING MISSION OF LOYALTY

The corporation, and corporate law, thus enables Ahab's wrecking of his soul, before he wrecks the *Pequod*. However, the same corporate lens that we use to diagnose this catastrophe also suggests a pathway to redemption that might have saved Ahab, and might yet protect us readers from the Ahab in ourselves. As we witness the threat that Ahab's agency poses to himself, we can also see the rescue that the dictates of agency law offered to him. We can see through Ahab's tragedy that the function of the duty of loyalty is not only to protect the corporation from the agent,

51. Ronald Coase, *The Nature of the Firm*, 4 *ECONOMICA* 386, 387 (1937).

52. *MOBY-DICK*, *supra* note 1, at 184.

53. *Id.* at 184.

54. One could read the men's joining in Ahab's vengeant quest as a kind of labor radicalism, a revolt against shareholder primacy, and against money-making in general. The men are hungry for something less filthy than lucre to which to attach their loyalty impulse, and they find it in Ahab's pursuit of the White Whale. James, *supra* note 44, interprets the sailors' acquiescence to Ahab's frightful project as a prescient allegory of labor's cooperation with fascist and communist dictatorship.

55. *MOBY-DICK*, *supra* note 1, at 184.

but to protect the agent from themselves, and to keep the agent from being corrupted by the powers of the agency. The duty of loyalty requires thought of the self to be renounced, and this can be a blessed abnegation.

At one point the oil casks in the *Pequod's* hull were leaking, so the scrupulous First Mate, Starbuck, reports it to Ahab.⁵⁶ The only thing to do, Starbuck advises, is to stop the ship, raise the Burtons (a pulley used to lift the heavy casks), and set into repairs. Ahab at first insists they stay on course after Moby Dick: “Let it leak! . . . I’ll not have the Burtons hoisted.”⁵⁷ Starbuck flashes the black letter: “What will the owners say, sir?”⁵⁸ Ahab:

Let the owners stand on Nantucket beach and outyell the Typhoons. What cares Ahab? Owners, owners? Thou art always prating to me, Starbuck, about those miserly owners, as if the owners were my conscience. But look ye, the only real owner of anything is its commander; and hark ye, my conscience is in this ship’s keel.—On deck!⁵⁹

When Starbuck hesitates, Ahab threatens him with violence. Now Starbuck takes his warning about Ahab abandoning his agency duties to the lower layer. He draws down from Ahab’s fiduciary duty of loyalty to the *Pequod* into a deeper conceit warning Ahab about the disloyalty of his own soul, and calling him to discipline his corrupted agent back to his principal’s purpose: “Thou has outraged, not insulted me sir; but for that I ask thee not to beware of Starbuck; thou wouldst but laugh; but let Ahab beware of Ahab; beware of thyself, old man.”⁶⁰ Starbuck is warning the principal Ahab that his agent, Ahab, is driving his corporate soul to ruin. Melville gets to this powerful ethical invocation through a conception of corporate duties. The formulation immediately strikes Ahab as insightful. “What’s that he said—Ahab beware of Ahab—there’s something there!”⁶¹ The call to loyalty—to the ship, and to himself—relieves Ahab

56. More on Starbuck below, *infra* text accompanying notes 102-129 (assessing Starbuck’s failure to protect the *Pequod* from Ahab).

57. MOBY-DICK, *supra* note 1, at 547.

58. *Id.*

59. *Id.* Among corporate law scholars, even proponents of shareholder primacy agree it is a mistake to think of shareholders as “owners” of the corporation. *See e.g.*, STEPHEN BAINBRIDGE, THE NEW CORPORATE GOVERNANCE IN THEORY AND PRACTICE 127-29 (2008). Rather, it is better to say they are the “residual claimants” of the firm, entitled to the full concern of the directors within corporate governance. To say shareholders are “owners” obscures more than it reveals, because shareholders have none of the traditional indicia of ownership, such as the right to control, or the right to occupy and exclude, which actually come closer to the privileges Ahab has on the *Pequod*. Starbuck says to remember the owners, but Ahab finds it easy to avoid that injunction, since these shareholders are not really anything like “owners,” and Ahab himself looks more like an “owner” than they do. If Starbuck had better corporate theory, he might have been better able to address Ahab to his responsibilities. As it is, Ahab uses the confusion to evade his duty.

60. MOBY-DICK, *supra* note 1, at 548.

61. *Id.*

for a moment from his narcissistic designs. He comes on deck and gives the order to stop the ship and make repairs: “Furl the t’gallant-sails, and close-reef the top-sails, fore and aft . . . up Burton, and break out in the main-hold.”⁶²

Ahab’s renewed fidelity, to the shareholders and to himself, quickly passes. He *wants* it to pass, his madness does anyway, and one way he gets it to pass is by forbidding Starbuck from making further reports to him. Because no officer can be everywhere at once, corporate law imposes on directors and officers a duty to hear reports about the business: “the board must make a good faith effort—i.e., try—to put in place a reasonable board-level system of monitoring and reporting.”⁶³ To stay disloyal and maintain his malign purpose, Ahab has to reject this wise dictate of corporate governance that would threaten to make him well. Ahab sees, as we can now see, that the deeper purpose of this command to hear reports is not just to inform the corporate officer of happenings in the business but also to continually make salient the fact of their obligations to the firm, lest their mind wander in some other direction. It is not enough for Ahab to hear reports and ignore them. The very hearing of reports threatens (promises) to stoke fiduciary loyalty and personal healing in Ahab. So, Ahab has to stop hearing them. To keep on his selfish task Ahab must deeply isolate from others: “in this matter of the whale be the front of thy face to me as the palm of this hand—a lipless, unfeatured blank.”⁶⁴

It is an eerie image, Starbuck’s face as a palm. Ahab makes Starbuck mute so he can listen only to the lonely sorrow echoing in his own head. This lonesomeness Ahab will now suffer to the very last, for as the *Pequod* finally sinks, Ahab is not even on it with his crew. He is on his own whaleboat, watching from afar: “death-glorious ship! Must ye then perish, and without me? Am I cut off from the last fond pride of meanest shipwrecked captain?”⁶⁵ Only loyal captains get to go down with the ship. Disloyal ones stand alone, watching as it all happens.

The corporation is the occasion of Ahab’s malfeasance, and facilitates it, but the fiduciary law of the corporation also provides an ethics that might have saved Ahab from himself, and the rest of the *crew* too. In this insight we can see the hint of a broader outline of personal ethics inspired by a corporate conception. Melville is alert to this deeper idea. He sees the practical relationship between corporate organization and destruction, exploitation, and death; this is clear. But he also sees more deeply in the corporation an idea about life that is tender, vitalizing, and rescuing to the

62. *Id.* at 547.

63. *Marchand v. Barnhill*, 212 A.3d 805, 821 (Del. 2019).

64. *MOBY-DICK*, *supra* note 1, at 641.

65. *Id.* at 652.

lost soul within Ahab and all of us.

A REDEEMING CORPORATE CONCEPTION OF THE HUMAN CONDITION

As the corporation began to take its modern institutional form and exert its great economic influence in the nineteenth century, the great literary minds of that era began to grasp its spiritual significance too.⁶⁶ Or, following Oscar Wilde, who insisted the sentiments of an age reflect its artistic achievements rather than the other way around, let us say instead that the spiritual significance of the corporation was first *authored* by the great writers of that day.⁶⁷ Just as the corporate organizational form was not discovered but *made*, so too is the meaning of the corporation a creative, created endeavor.

One kind of familiar spiritual idea of the corporation sounds in warning tones. In his influential 1841 essay *Self-Reliance*, the American transcendentalist Ralph Waldo Emerson rued the turning-over of personal independence to social institutions and tried to rally his readers against it. To draw out his thesis, Emerson took as metaphor for his foil not ancient, obvious curs of individualism like the state, religion, or the family, but invoked instead the deadening communalism of the corporation:

Society everywhere is in conspiracy against the manhood of every one of its members. Society is a joint-stock company, in which the members agree, for the better securing of his bread to each shareholder, to surrender the liberty and culture of the eater. The virtue in most request is conformity. Self-reliance is its aversion.⁶⁸

Emerson's theme is not that corporations are deadening to individuality but rather that *society* is deadening to individuality. The corporation is invoked as a *way of seeing* this damnable truth, in the same way that Plato examined types of cities in the *Republic* as a way to more clearly appraise truths about the individual human soul.⁶⁹ In *Moby-Dick*, published ten years after Emerson's essay, Melville also repeatedly invokes the conceit of the corporation to scaffold his conception of the human situation. However, Melville found in the corporation, or makes from the corporation, a notion of the individual's relationship to society that is

66. See JOHN MICKLETHWAIT & ADRIAN WOOLDRIDGE, *THE COMPANY: A SHORT HISTORY OF A REVOLUTIONARY IDEA* 37-79 (2003) (chronicling the emergence of the modern corporation).

67. See OSCAR WILDE, *The Critic as Artist* and *The Decay of Lying*, in his collection of essays, *INTENTIONS* (BRENTANO'S, 1905) (1891). About William Shakespeare's *HAMLET* (1600), for example, Wilde wrote: "The world has become sad because a puppet was once melancholy." *Id.* at 63. Great artists use archetypes. Geniuses create them.

68. RALPH WALDO EMERSON, *Self-Reliance*, in *THE COMPLETE WORKS OF RALPH WALDO EMERSON* 49 (1904).

69. PLATO, *THE REPUBLIC* (c. 375).

more forgiving, more embracing, than Emerson's declensionary trope. Melville is less interested in independence and more concerned with relatedness and mutuality, which he sees as a means through which we might transcend the belittlement of lonesomeness and place.

When Queequeg first told Ishmael of his travels from his Pacific Island home to the West, he said his early enthusiasm for learning about the bigger world had led him only to the conclusion that "it's a wicked world in all meridians."⁷⁰ Just a few pages past this sad confession comes a scene that at first seems to buttress the assessment but in the end repudiates it. Having met in New Bedford, Ishmael and Queequeg make their way by boat to Nantucket, where they will look to join a whaling voyage. In that course of passage, they encounter a New England rube who racially harasses Queequeg. Unintimidated, Queequeg throws the man in the air, flipping him fully over. This does the rube no physical damage but draws for Queequeg a warning that he will be put off the boat if he does not desist.⁷¹

Soon after, a big wave hits the boat and knocks the rube overboard. Unable to spot the man, most on board quickly give him up for drowned. But Queequeg jumps into the sea, undertakes a prodigious swim, pulls the man up from under the water, and drags him safely back to the boat. In striving to explain the conduct he saw in Queequeg, Ishmael finds a morality rooted in a corporate conception: "[He] seemed to be saying to himself—'it's a mutual, joint-stock world, in all meridians. We cannibals must help these Christians.'"⁷² The idea of the corporation here shepherds the imagination (Queequeg's imagination, as imagined by Ishmael, as imagined by Melville) to a more cooperative, benevolent conception of human relationships, abandoning the "wicked world in all meridians" idea that had been patronized without it just a few pages previously.⁷³

The idea of the corporation facilitates a similar conception of human mutuality, as against rank individuality, later in the book. We find Ishmael on the *Pequod* tethered to one end of a "monkey-rope," the other end of which is tied to Queequeg, who is overboard on the body of a dead whale, preparing it to be hoisted on deck. The work is dangerous for Queequeg and near equally so for Ishmael because of the rope connecting them. If the waves or the sharks feasting on the carcass drag Queequeg under, Ishmael would be pulled under too. Now, it may be otherwise for a monkey, but for a human, to be tied to a monkey-rope is to think about what it *means* to be tied to a monkey-rope. The corporate form aids Ishmael's thinking about it. To forge an understanding of his connection

70. MOBY-DICK, *supra* note 1, at 86.

71. *Id.* at 90-92.

72. *Id.* at 92.

73. *Id.* at 86.

to Queequeg in this moment, Ishmael flies past friendship, marriage, or martial affection, finding the metaphor he seeks in the corporation instead:

So strongly and metaphysically did I conceive of my situation then, that while earnestly watching his motions, I seemed distinctly to perceive that my own individuality was now merged in a joint stock company of two; that my free will had received a mortal wound; and that another's mistake or misfortune might plunge innocent me into unmerited disaster and death.⁷⁴

Ishmael is led by this corporate conception of his situation to a clearer perception of the human condition as a whole, and an understanding of the interconnectedness of his own life. At first he saw the artificial device tying him to his shipmate's fate as abhorrent to the proper state of man as self-reliant: "[H]ere was a sort of interregnum in Providence; for its even-handed equity never could have so gross an injustice."⁷⁵ But thinking it through, he comes to understand the inevitability of human connection:

I saw that this situation of mine was the precise situation of every mortal that breathes; only, in most cases, he, one way or other, has this [conjoined] connexion with a plurality of other mortals. If your banker breaks, you snap; if your apothecary by mistake sends you poison in your pills, you die. . . . [H]andle Queequeg's monkey-rope heedfully as I would, sometimes he jerked it so, that I came very near sliding overboard. Nor could I possibly forget that, do what I would, I only had the management of one end of it.⁷⁶

Ishmael's recognition that he is inevitably *involved* with other people is catalyzed by his first conceiving of his situation as being like a joint-stock company. He builds from that idea to a mature, accepting understanding of the relatedness of all humankind. A superficially more apt business vehicle through which Melville might have exemplified a fated union of two people would surely have been a "partnership," especially in 1851, when partnerships were the most widespread business organization. But the more cutting-edge corporation is the better device for slicing through solipsism into the understanding of inescapable entanglement at which Ishmael arrives. Partnerships are *at-will* arrangements.⁷⁷ They can be dissolved whenever a partner wants to quit and walk away, cutting their losses. But Ishmael is at no such liberty here. In contrast to partnerships, a core feature of the corporation is that once capital has been invested it is "locked-in," and investors cannot demand a corporate dissolution to

74. *Id.* at 376.

75. *Id.* at 376.

76. *Id.* at 376.

77. UNIFORM PARTNERSHIP ACT §31(b) (1914) ("Dissolution is caused . . . by the express will of any partner when no definite term or particular undertaking is specified.")

liquidate their own stake.⁷⁸

Hard as the rule of capital “lock-in” seems, it is not in the end lamented by investors. It is foundational to the efficacy they seek in joining up with corporate enterprise. “Lock-in” is the feature of corporate law that enables commitment of large amounts of capital to complex long-term projects, like building a railroad, putting together a whaling expedition, or creating a social media platform.⁷⁹ Neither does Ishmael rue the depth of his interpersonal commitments, nor should we rue our own inescapable commitments, for these bring life meaning that far surpasses what could be produced in self-reliance. At the start of the book Ishmael was depressed, dour, even suicidal.⁸⁰ But after he meets and becomes involved with Queequeg and the *Pequod*, though he has more at risk, and bears great risk over which he has little control (“management”), he is happier and more complete than ever he was in self-reliance.⁸¹ The abstract nature of the corporation gives Melville the right vehicle to build up his metaphor for this other abstraction, the idea of human relatedness. These abstractions have consequences for our lives that are as real as any brute facts, for nothing is so real as U.S. Steel, Amazon, or human connection.

In literal fact, as opposed to literary idea, Ishmael is free to walk away from the *Pequod*. Capital is locked-in, but labor can exit, and this, as reviewed above, is one of the law’s justifications for shareholder primacy in corporate governance.⁸² (Melville was well aware that sailors could abandon a whaling voyage, as he had done so twice himself). But Ishmael is not concerned here, and I am not concerned here, with locating his technical rights and responsibilities within the legal nexus of the firm. Instead, he and I are concerned with what sentiment of being the idea of the corporation might provide to him, to help him make a gratifying sense of himself, and his relationship to others.

Melville sees in the corporate form a promising way to think about life. What is at issue, and what I want to build on here, is not so much the material effects of the corporate organization of production, but the efficacy of the corporate idea as a means of organizing our self-conception. I am not arguing that inner-peace and personal power are to be found in accepting and internalizing one’s role in the capitalist design. *Moby-Dick* is not a book about a whale. Instead, I am urging us to see

78. See YOSIFON, CORPORATE FRICTION, *supra* note 18, at 10-11 (discussing corporate lock-in).

79. See Margaret M. Blair, *Locking in Capital: What Corporate Law Achieved for Business Organizers in the Nineteenth Century*, 51 UCLA L. REV. 387 (2003). But see Larry E. Ribstein, *Should History Lock In Lock-In?*, 41 TULSA L. REV. 523 (2006) (criticizing Blair’s account).

80. See *infra* text accompanying notes 87-88.

81. See also generally David Yosifon, *Corporate Law as an Existential Project*, 88 FORDHAM L. REV. 1801 (2020) (exploring the corporation as a nexus of meaningful relationships for its participants).

82. See *supra* note 23 and accompanying text.

within the corporate conception a workable approach to self-authorship, personal ethics, and a meaningful life.

We are *inevitably* connected to one another. The corporate idea helps Ishmael to see this. Yet the corporate idea is rooted too in the idea of *willful* connection. A core principle of modern corporate law, and the agency law upon which it is built, is voluntarism. This was not always so. Law is older than liberty, and agency law doctrines once found their justification in the status of persons *designated* into agency relationships. Some of the deep roots of agency law, for example, run through the poisonous ground of slavery: ancient, feudal, and American.⁸³ The slave is subject to the commands of the master because of their socially assigned status. The master exercises control over the slave and answers for the slaves' contracts and torts, because their relative status dictates this result. The modern precepts of agency law repudiate this legacy by making voluntarism not only important but utterly foundational, conceptually and doctrinally: "Agency . . . arises when one person (a 'principal') manifests *assent* to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests *assent* or otherwise *consents* so to act."⁸⁴

Where agency relationships resulted from status, the meaning of those relationships was weighty, and weighed down hard on the people who were cast in them. To be a master or to be a slave was to be subject to the law's power to dictate who you were and how you related to others. Agency law was then an agent of Roman privilege, or white supremacy. Where, however, the agency relationship is formed through assent, the core meaning of the legal relationship abides in the intentionality of the association. Indeed, at the deepest level, voluntarism is not really the justification for the system, it is the *purpose* of the system. Corporations are desirable social institutions chiefly because they are occasions for intentionality. This, more than whale oil or widgets, is the most important thing that the corporate form produces.

Moby-Dick takes the principle of voluntarism seriously. Queequeg, the *Pequod's* master harpooner and friend to Ishmael, was born into a status-based society. His father and grandfather before him were kings of their island nation in the South Pacific, and Queequeg was also predestined to

83. See generally Barbara Abatino et al., *Depersonalization of Business in Ancient Rome*, 31 OXFORD J. OF L. STUD. 365 (2011) (discussing the relationship between slavery and agency law in Ancient Rome); Jenny B. Wahl, *American Slavery and the Path of the Law*, 20 SOC. SCI. HIST. 281 (1996) (examining, *inter alia*, connections between American slavery and developments in modern agency law).

84. RESTATEMENT (THIRD) OF AGENCY § 1.01 (AM. L. INST. 2006) (emphasis added). Agency law is at the heart of corporate governance law, and the conceit of voluntarism is at the heart of prevailing modern justifications for corporate designs. See, e.g., FRANK H. EASTERBROOK & DANIEL R. FISCHEL, *THE ECONOMIC STRUCTURE OF CORPORATE LAW* 12 (1991) ("[T]he corporation is a voluntary adventure.").

be king. But prescription is an unacceptable social description. Born a subject or born a king, a person born for being rather than becoming is closer to death than they are to living.⁸⁵ Queequeg renounces his hereditary throne in order to redeem the only crown worth wearing: volunteer. He leaves the status realm, canoes out to a whaling boat that is sailing by, and signs on. Queequeg gives up his island paradise with its cannibalistic delights for the cramped grind of the whaling ship. Because it is better to reign in hell than to serve in heaven.⁸⁶

Ishmael is also a volunteer. When we meet him in the book's opening passage, he tells us that a gloom had unaccountably come upon him. There is passivity in his self-description. His mouth was growing grim, and he found himself "*involuntarily* pausing before coffin warehouses, and bringing up the rear of every funeral I meet."⁸⁷ He is depressed, we would say, or unwell. His "hypos" were beginning to "get . . . an upper hand" of him.⁸⁸ Ishmael knows that the only way for him to counteract this melancholic, existential angst of *being* human is with the antidote of *becoming* human: volunteering, acting, taking command of his situation. For Ishmael this means going to the sea. Not so much to the sea, in fact, as to the ship. Ishmael escapes his dour drifting life by volunteering into relationships, with Queequeg, and with the nexus of relationships that is the *Pequod*.

Now, we must not, in a romance of voluntarism, lose our heads to the abusive, exploitative labor conditions in the nineteenth-century whale fishery, the twenty-first century gig-economy, or anywhere else. The indecency in capitalism has too often been exonerated by the ideological seduction of choice fetishism. But neither can we allow the sordidness of such mesmerism to make us cynical to truths we want to revere. The reason we are on guard against the toxic use of voluntarism is because we venerate the idea in its unadulterated aspect, which is real. We should take from corporate law's focus on voluntarism a reflection and reminder of how important it really is to us, rather than allowing its fake use by ideologists to subvert our sense of its importance.

85. "From the fool's gold mouthpiece the hollow horn / Plays wasted words, proves to warn / That he not busy being born is busy dying." Bob Dylan, *It's Alright Ma (I'm Only Bleeding)*, on BRINGING IT ALL BACK HOME (Columbia Records, 1965).

86. This is to say something specific about the human spirit, but it is not to say anything in particular about nineteenth-century Pacific Island culture, about which Melville was surely mostly ignorant. See generally, Geoffrey Sanhorn, *Whence Come You, Queequeg?*, 77 AM. LIT. 227 (2005) (arguing that Melville based Queequeg on the life of a real South Pacific whaler named Te Pehi Kupe and assessing nineteenth-century literary treatment of Pacific Island culture). Melville's first book, *TYPEE: A PEEP AT POLYNESIAN LIFE* (1846), was based on his experiences on the Marquesas Islands after deserting a whaling voyage in 1842.

87. *MOBY-DICK*, *supra* note 1, at 27 (emphasis added).

88. *Id.*

Both Queequeg and Ishmael are serious about what voluntarism means to a meaningful life. They are not cowed by industrial conditions into giving up that truth, and we should not be either. Ishmael knows he is coming in for some fairly intense bossing around in signing up with a whaling firm. He explains that, deeply speaking, there is no way around this:

Who ain't a slave? Tell me that. Well, then, however the old sea-captains may order me about—however they may thump and punch me about, I have the satisfaction of knowing that it is all right; that everybody else is one way or other served in much the same way—either in a physical or metaphysical point of view, that is; and so the universal thump is passed round, and all hands should rub each other's shoulder-blades, and be content.⁸⁹

More than personal explanation, this is existential instruction. The truth about ourselves, the meaning of our voluntarism, must be found within the contradiction, the seeming contradiction, between having to serve and being free. Since you are sure to serve in some way, do not shy from the liberating, self-making gusto that comes in volunteering to it. The rule of law, the free society, the just society, neither alleviates us from the burden nor robs us of the opportunity of serving somebody. To be free is not to choose whether or not to serve—as to that, you have no choice. To be free is to choose how you will serve, and what it will mean to you.

As the philosopher John Paul Sartre diagnosed it, more (or worse) than being free to choose, we are compelled to it. “I am condemned to be free,” Sartre wrote.⁹⁰ To be human is to confront contingency, there is no exit to necessity. The roughest cannibal must know that he *could* be a vegetarian. He has no choice but to choose cannibalism, or not. Ahab *could* quit chasing the White Whale and be loyal to the stockholders instead. The lying lawyer can stop or keep doing it. The conscript is not a stone or a horse, they could rebel, or try to escape, or acquiesce, but they cannot do nothing, because they are inescapably free to do as they will. The body cannot always be moved as we desire, but we cannot escape the freedom to determine our attitude towards the situation of our existence and how we will behave within the domain of freedom that confronts us. We want to stomp out slavery, rescue the poor, and end invidious discrimination not to make people free, but because human beings *are* free, and it is an abomination to institutionalize any other version of the

89. *Id.* at 30. Ishmael understands that although he may be “living under another name” (“Call me Ishmael,” *Id.* at 27), he’s “still gonna have to serve somebody.” Bob Dylan, *Gotta Serve Somebody*, on SLOW TRAIN COMING (Columbia Records, 1979).

90. JEAN PAUL SARTRE, *BEING AND NOTHINGNESS* 567 (1943, 1992) (“I am condemned to exist forever beyond my essence, beyond the causes and motives of my act. . . . [W]e are not free to cease being free.”).

truth. We do not create the principle of freedom: we *realize* it, we redeem it, and we ramify it. Seeing this conceptually, in law and art, can improve your vision and acuity for freedom in every aspect of your life. The corporate conception of voluntarism draws our attention to this truth, and makes it unavoidable.

But is this how it is or only how it seems? In the inhalation *Moby-Dick* centers and celebrates the reality of human willfulness. In the exhalation it is alert to the worrisome reverse: situational pressures in our social environment combine with unseen features of our psychology to compel our thinking and behavior in ways we only mistakenly perceive as freely chosen.⁹¹ We seem to act but may be merely acting. This is the Janus-truth of the human condition. Corporate theory invites us to elevate our conception of voluntarism and its meaning in our life, but the very emphasis that it puts on the idea leads us to complicate our understanding of it, and leaves us rightly questioning the design of the corporation that inspired the line of thought.

I want to pursue this problem by excavating a crucial ambiguity in a core corporate word: “agency.” It is strange that sometimes words mean both what they mean and also the opposite of what they mean. Sanction means to allow, yet sanction means to punish for having done something forbidden. Stay somehow means both to continue and to stop. Bolt means to secure something from coming loose; it also means to flee fast from something. Linguists call these “contronyms,” or “Janus words.”⁹² The phenomena remains shrouded in mystery, but certainly seems, or sometimes can be made to seem, to hint at something profound. The word “agency” is a contronym. We might see in its two-faces not random variation, but some kind of sublime incantation. We say something has agency when we mean it acts intentionally with its own ends in mind. Yet an agent is someone who works on behalf of and subject to the control of another person. Again and again in everyday usage we trip over these contradictory senses of the word. This linguistic knot is expressive of a core ambivalence we have about ourselves.⁹³

91. See generally Hanson & Yosifon, *supra* note 29 (reviewing psychological studies that assess this outlook).

92. See David-Antoine Williams, *Poetic Antagonisms*, 37 THE COMPARATIST 169 (2013) (poetic analysis of contronyms). According to Williams, “[t]hrough some have described traditions of thought regarding antithetical or self-divided words, not until recently have they been discussed in English, and almost not at all as literary phenomena.” *Id.* The phenomena does not appear to have been directly addressed in legal theory, heretofore.

93. In a brief essay from 1910, Sigmund Freud discussed with enthusiasm the (then) recent discovery of contronyms in Ancient Egyptian. See SIGMUND FREUD, THE ANTITHETICAL MEANING OF PRIMAL WORDS (READ BOOKS, LTD, 2013) (1910). Freud noted the parallels between contronyms and representations in dreams, which often seem both to mean one thing and also the very opposite. Finding contronyms in the earliest recorded human language suggested to Freud that they were related to the emergence of “concepts” in human thinking itself. He speculated that better understanding the mysteries

The ideas and language of agency law give figure to this ambivalence within the text of *Moby-Dick*. A topsy-turvy confusion about who is an agent in command and who is a commanded agent recurs throughout the novel. Nowhere is the ambiguity more precisely expressed than with respect to the whale itself. When first revealing his intention to hunt Moby Dick, Ahab says he does not know whether the White Whale is itself the malevolent force that goads him, or whether the whale is merely serving that force. Ahab cuts through this uncertainty by making it irrelevant: “I see in him outrageous strength, with an inscrutable malice sinewing it. That inscrutable thing is chiefly what I hate; and be the white whale agent, or be the white whale principal, I will wreak that hate upon him.”⁹⁴

While unsure about the status of Moby Dick, Ahab himself at first expresses no doubt in the principle of his own agency. Starbuck, the First Mate, warns Ahab off his quest, saying it is blasphemy to seek vengeance on an animal that acted out of instinct (i.e., blasphemy to endow agency to a mere agent of impulse).⁹⁵ But Ahab is no agent of piety, nor servant even to any general notion of fair play—his agency is unbound, so he says:

Talk not to me of blasphemy, man; I’d strike the sun if it insulted me. For could the sun do that, then could I do the other; since there is ever a sort of fair play herein But not my master, man, is even that fair play. Who’s over me? Truth hath no confines.⁹⁶

But since unconfined truth encompasses ambiguity, Ahab’s doubt about whether the White Whale is principal or agent soon swims round to stove his own self-conception. As we have seen, it is corporate law which serves in the novel to introduce this doubt.⁹⁷ After Starbuck’s “let Ahab beware Ahab” warning, Ahab becomes aware that something other than his own principal purpose may be driving his pursuit of the whale. Thereafter, Ahab is haunted not just by Moby Dick, but by doubts about the basis of his own behavior. Sometimes Ahab thinks he is an agent, other times he suspects that he is merely an agent to some other source of command. The captain of the *Samuel Enderby*, who had lost an arm to Moby Dick, gives

of contronyms might aid in figuring-out how dreams work. To pursue this further here “would be to dive deeper than Ishmael can go,” *MOBY-DICK*, *supra* note 1, at 229. But I will note that Ahab, confused as to the meaning of his agency, has bad dreams. *See MOBY-DICK*, *supra* note 1, at 163, 245 (“exhausting and intolerably vivid dreams”).

94. *MOBY-DICK*, *supra* note 1, at 203. This is doctrinally sound, for one operating on behalf of a hidden principal is liable themselves for business they undertake with third-persons, be they in fact only an agent of that principal. *See* RESTATEMENT (THIRD) OF AGENCY § 6.03 (AM. L. INST. 2006); *see also generally*, Martin Schiff, *The Problem of the Undisclosed Principal and How It Affects Agent and Third Party*, 1984 DET. C. L. REV. 47 (1984).

95. *Id.*

96. *Id.*

97. *See supra* text accompanying notes 56-62.

Ahab prudent advice as to their mutual nemesis: “he’s best left alone.” Ahab sees the wisdom in this but sees too that he is powerless to follow it. “He is,” Ahab says, “But he will still be hunted, for all that. What is best let alone, that accursed thing is not always what least allures. He’s all a magnet!”⁹⁸ And then before the final scenes, before the actual confrontation with Moby Dick, we find the *Pequod’s* captain alone, looking out on the cold sea, desperately asking: “Is Ahab, Ahab?”⁹⁹

As human psychology will have it, the greater the suggestion that the White Whale is pulling him, the more radically does Ahab assert that it is he who is chasing the whale. To satisfy his motive to self-affirm, to view himself as in control, Ahab tries to overwhelm the constant hints of compulsion with the sound and fury of self-assertion. Shouting into a typhoon, he proclaims his willfulness against the unseen force he identifies as tormenting him. Even as the awful inscrutable devouring universe seems intent on controlling Ahab, Ahab refuses the call to agency, insisting instead that he is an agent:

No fearless fool now fronts thee. I own [i.e., I acknowledge] thy speechless, placeless power; but to the last gasp of my earthquake life will dispute its unconditional, unintegral mastery in me. In the midst of the personified impersonal, a personality stands here. Though but a point at best; whencesoe’er I came; wheresoe’er I go; yet while I earthly live, the queenly personality lives in me, and feels her royal rights. . . . Thou canst blind; but I can then grope. Thou canst consume; but I can then be ashes.¹⁰⁰

Ahab taunts the divine with this insistence upon his own autonomy. But even in this moment, Ahab cannot escape the contranymic mystery of agency, and he projects those confusion bolts even at God, saying that he senses, and God must sense too, that there is some force controlling *God*—that *God too* is agent and not Agent:

Thou knowest not how came ye, hence callest thyself unbegotten. . . . There is some unsuffusing thing beyond thee, thou clear spirit, to whom all thy eternity is but time, all thy creativeness mechanical. . . . Oh, thou foundling fire, thou hermit immemorial, thou too hast thy incommunicable riddle.¹⁰¹

By privileging voluntarism, corporate law compels us to interrogate what voluntarism really means. In so doing, we are reminded of why we revere the idea, and are reminded of why we are doubtful about it. But corporate law is finally no philosophical inquiry, and like Ishmael going to the sea we are intent on living our lives, not just thinking them through.

98. *Id.* at 511.

99. *Id.* at 622.

100. *Id.* at 580-581.

101. *Id.* at 581.

Even as it sustains our attention to the deep mysteries, the discourse of corporate law also provides practical wisdom for the pursuit of meaning, excellence, and vitality which must be undertaken in the midst of doubt.

The corporate association is forged in the self-authoring brio of voluntarism. Then, within the corporate association, the law *prescribes* to its agents the imperative to go, to serve the purpose of your association, with verve. The statute says: “[t]he business and affairs of every corporation . . . shall be managed” by the board of directors.¹⁰² Corporate agents cannot be passive; they must *act*. This is an idea about life that is rescuing, it is an imperative to salutary willfulness that cures the “pain of idleness.”¹⁰³ This corporate instruction to act is bound by an obligation not to act *selfishly* but rather *to act selflessly*. Act, with imaginative loyalty to the life projects with which you are engaged. This is an escape from degenerative solipsism into creative involvement with the world. Thus do our obligations become opportunities to transcend our own limitations and become excellent in our lives beyond those responsibilities. I am not suggesting dedicating your life to the pursuit of some corporation’s bottom line, not any more than Melville is telling a story about a whale hunt. I am urging us to see within the corporate idea, with Melville’s aid, the working-out of a framework for personal ethics that can produce meaning worth having.

COUNSELING THE CORPORATE CONSCIENCE: STARBUCK’S FAILURE¹⁰⁴

“Where were the lawyers?”¹⁰⁵ The question is repeated as often as there are new rounds of corporate disasters that could have been averted if corporate lawyers had been on the forward-deck doing their duty. I want to turn now to the role of the lawyer in averting or facilitating corporate catastrophe by assessing the failure of Mr. Starbuck, the First Mate, who

102. 8 DEL. GEN. CORP. L. § 141(a).

103. BOB DYLAN, *Every Grain of Sand*, on SHOT OF LOVE (Columbia Records 1981).

104. Melville named his Starbuck in homage to a venerable American whaling family, the Starbucks of Nantucket. The Starbuck coffee corporation was named after Melville’s character in some sense, although the inspiration appears to have been more about the relatability of word sounds than any characterological connection to the *Pequod’s* First Mate. See HOWARD SCHULTZ, *POUR YOUR HEART INTO IT: HOW STARBUCKS BUILT A COMPANY ONE CUP AT A TIME* 32-33 (1999).

105. This familiar refrain is often connected to Judge Stanley Sporkin’s opinion in *Lincoln Sav. & Loan Ass’n v. Wall*, 743 F. Supp. 901 (D.D.C. 1990). That opinion says plenty about the lapse of lawyers, but the oft-repeated line is actually a paraphrase of Sporkin’s indictment of lawyers, accountants, and other experts generally: “Where were these professionals?” *Id.* at 920. See also, Ed Hendricks & Mary Berkheiser, *Where Were the Lawyers?*, 18 LITIG. 30 (1992) (surveying instances of corporate misconduct that corporate lawyers failed to prevent); Donald C. Langevoort, *Where Were the Lawyers? A Behavioral Inquiry into Lawyers’ Responsibility for Clients’ Fraud*, 46 VAND. L. REV. 75 (1993); Lawrence A. Hamermesh, *Who Let You into the House?*, 2012 WIS. L. REV. 359, 386 (2012).

I will reasonably call the General Counsel of the *Pequod*.¹⁰⁶

Corporate lawyers must comport themselves to the idea that they serve the corporate entity and not the natural persons who are in charge of running it. This is hard. It is hard for the same reason that it is easy for a corporate officer to think of the business as their own: the corporation is abstract, but everyone can see and hear the CEO, and everyone does what the CEO says. It requires an active ethical imagination to keep the lawyer thinking straight about their duties to the firm, and acting accordingly. The rules of professional conduct make clear that if a corporate lawyer knows that an officer within their firm is behaving in a way that threatens to harm the firm, the lawyer must act to protect the corporation.¹⁰⁷

Starbuck is a stiff. A by-the-book man, but not much of a reader of them: “Starbuck was no crusader after perils; in him courage was not a sentiment; but a thing simply useful to him.”¹⁰⁸ This is good enough in the ordinary course, but it is inadequate to the extraordinary. We create corporations because we want extraordinary coordination, extraordinary production, and extraordinary consumption. We want corporate power and the accomplished use of that power. To have this power we must, as part of the corporate project, expand too the ethical capacities of lawyers beyond the ordinary. A dinghy crew might get by with a man of ordinary courage as general counsel. But a large corporation, capable of fantastic wrongdoing, must have a lawyer of fantastic ethical impulse to guide it, or if need be, to grind-up its gears.

At the “all hands” meeting where Ahab makes plain his intention to hunt Moby Dick instead of pursuing the ship’s stated business purpose, only Starbuck offers any resistance to the plan. In fact, Starbuck raises a momentary doubt as to whether it even was that particular whale that took

106. They may try to take away my literary license for this *pro hoc vice* construction of Starbuck, but I will risk it. In defense, I will cite to at least some dicta in John Huston’s estimable film-adaptation of *Moby-Dick* (MGM 1956), which has Starbuck pulling a law-book off a cabin shelf and reading to his fellow officers about their rights and duties in the face of Ahab’s misconduct (a scene which does not appear in the book). To draw out the lessons for corporate lawyering that can be seen in *Moby-Dick*, I deliberately decline to assess Starbuck’s behavior in terms of nineteenth-century admiralty law. In general, it seems that admiralty law requires tremendous deference on the part of all shipboard subordinates to the commands of the captain, except where those orders are clearly unlawful or unreasonable. See *Cyane v. Johnson*, 1 Alaska Fed. 1, 2 (D. Cal. 1870) (“In all cases, obedience is the first duty of the seaman; and it is only when the command is clearly unlawful, or the duty exacted is plainly unreasonable and unnecessary, that a refusal to obey can be for a moment countenanced.”). Cf. *MOBY-DICK*, *supra* note 1, at 480 (“Never jump from a boat . . . except—but all the rest was indefinite, as the soundest advice ever is.”).

107. See MODEL RULE PRO. CONDUCT 1.13(a)-(b) (AM. BAR ASS’N 2021) (“A lawyer . . . retained by an organization represents the organization If a lawyer for an organization knows that an officer . . . associated with the organization is engaged in action . . . that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization”).

108. *MOBY-DICK*, *supra* note 1, at 149.

Ahab's leg in the first place. "Captain Ahab, I have heard of Moby Dick—but but it was not Moby Dick that took off thy leg?"¹⁰⁹ The Captain snaps back: "'Who told thee that?' cried Ahab; then pausing, 'Aye, Starbuck; aye, my hearties all round; it was Moby Dick that dismasted me.'"¹¹⁰ After that, the rest of the firm accepts the Captain's "definition of the situation."¹¹¹

Starbuck tries to dissuade Ahab, first with appeal to self-interest: "How many barrels will thy vengeance yield thee even if thou gettest it, Captain Ahab? it will not fetch thee much in our Nantucket market."¹¹² But Ahab has already done the cost-benefit analysis, and he prefers blood to oil: "my vengeance will fetch a great premium *here!*" he says as he smites his chest.¹¹³ Starbuck also appeals to morality and religion to try to get Ahab to stop: "Vengeance on a dumb brute! . . . To be enraged with a dumb thing, Captain Ahab, seems blasphemous."¹¹⁴ Ahab (like many moderns) is not God-fearing: "Talk not to me of blasphemy, man."¹¹⁵ As we have seen, the *only* thing that moves Ahab for a moment is when Starbuck appeals to fiduciary scriptures, not just the black letter of it, but deeply, first reminding Ahab that he is being disloyal to the ship's owners, and then excavating an idea that in hunting Moby Dick the vengeful Ahab is being disloyal to himself.¹¹⁶ *That* worked. But Starbuck does not sustain that approach. Had he done more he might have gotten through to Old Thunder. Had Starbuck focused his own self-conception deeply in terms of his fiduciary obligations, he might have been better nourished to the task that befell him and might have saved the crew, the ship, and himself. But Starbuck's idea of duty is too thin, and he does not go down deep enough, or long enough, to get what is really needed.

Ahab pulls out every trick in the corrupt CEO's handbook to bend his General Counsel to his will. He ridicules: "Take off thine eye! more intolerable than fiends' glarings is a doltish stare!"¹¹⁷ And flatters: "the best lance out of all Nantucket, surely he will not hang back."¹¹⁸ He uses social-proof to pull Starbuck to his purpose, pointing out that the other ship's officers are with him: "See Stubb! he laughs! See yonder Chilian! he snorts to think of it. Stand up amid the general hurricane, thy one tost

109. *Id.* at 202.

110. *Id.*

111. See STANLEY MILGRAM, OBEDIENCE TO AUTHORITY: AN EXPERIMENTAL VIEW 145 (1974) (classic study of the mechanics of psychological influence).

112. MOBY-DICK, *supra* note 1, at 202.

113. *Id.* at 203.

114. *Id.* at 202.

115. *Id.*

116. See *supra*, text accompanying notes 61-71 (discussing Ahab's own agency problem).

117. MOBY-DICK, *supra* note 1, at 203.

118. *Id.*

sapling cannot, Starbuck!”¹¹⁹ Ahab primes the dissonance avoidance mechanisms standing at the ready in Starbuck’s mind. He urges the First Mate to see the hunt for the White Whale as actually in keeping with the ordinary business of the ship: “‘Tis but to help strike a fin; no wondrous feat for Starbuck. What is it more?”¹²⁰ As Ahab pressures him Starbuck falls into silence, no good habit for corporate counsel facing executive misconduct. Ahab then goads him: “it is thy silence, then, that voices thee. . . . Starbuck now is mine.”¹²¹

It takes a special hubris for an executive to scheme as wildly as Ahab, but just common human frailty for a corporate lawyer like Starbuck to let him get away with it. Subordinate to a charismatic leader, who has the frothy allegiance of the crew, Starbuck is motivated to find reasons not to act against the tide sweeping over the ship. Being creative and intelligent, he is able to find those reasons. He sees that something is seriously wrong but decides that there is still plenty of time before he needs to act, if indeed he needs to act at all. Maybe the problem will work itself out. The harm may potentially be great, but maybe it is not very likely to occur after all. They are perhaps not likely to even find Moby Dick out there in the vast ocean: “Yet is there hope. Time and tide flow wide. The hated whale has the round watery world to swim in, as the small gold-fish has its glassy globe.”¹²² The bullish optimism bias steers Starbuck to figure that things will probably work out alright, as things tend to: “[h]is heaven-insulting purpose, God may wedge aside.”¹²³ Too many fiduciaries – too many general counsels – lose the opportunity to stop festering misconduct by a corporate leader before it metastasizes throughout the firm they are charged to protect, hoping instead that the problem will go away.¹²⁴ Starbuck does not admit to himself what any serious ethical person must know: a person who goes looking for Moby Dick will find him.

The first time the men of the *Pequod* lower for a whale hunt, long before they find Moby Dick, they discover an extra crew that Ahab had stowed-away to aid his secret mission. If one squints, the scene can look enough like normal business to be treated like it. Ahab himself in lowering with this crew, we are told, looks the same as he has in a thousand

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. For touchstone scholarship on cognitive and motivational biases in corporate lawyering, see, e.g., Donald C. Langevoort, *The Epistemology of Corporate-Securities Lawyering: Beliefs, Biases and Organizational Behavior*, 63 BROOK. L. REV. 629 (1997); Marleen A. O’Connor, *The Enron Board: The Perils of Groupthink*, 71 U. CIN. L. REV. 1233 (2003); Sung Hui Kim, *The Banality of Fraud: Re-Situating the Inside Counsel as Gatekeeper*, 74 FORDHAM L. REV. 983, 1004 (2005); Catherine Gage O’Grady, *Wrongful Obedience and the Professional Practice of Law*, 19 J.L. BUS. & ETH. 9 (2013).

lowerings before. The stowaway crew is, after all, pulling alongside him and the others in the hunt. In his dissonance avoidance, Starbuck goes so far as to conclude that Ahab's opportunism might in the end be profitable. Stubb, a junior officer, asks Starbuck what he thinks of the stowaways. Starbuck jibber-jabbers:

A sad business, Mr. Stubb! (seethe her, seethe her, my lads!) but never mind, Mr. Stubb, all for the best. . . . There's hogsheads of sperm ahead, Mr. Stubb, and that's what ye came for. (Pull, my boys!) Sperm, sperm's the play! This at least is duty; duty and profit hand in hand.¹²⁵

And just like that, all can seem right enough to Starbuck. He tries to focus on his work as a way of dealing with the looming institutional disaster. As if he might get away with being blameless when what is called for is to be brave.

Starbuck is overwhelmed by the cult of personality threatening the firm to the point where he *overestimates* the power of the CEO standing in the way of his duty. Starbuck claims that he does not know what to do about Ahab, that he is confused. But there is no cause for confusion.

[I]s there no other way? no lawful way?—Make him a prisoner to be taken home? What! hope to wrest this old man's living power from his own living hands? Only a fool would try it. Say he were pinioned even; knotted all over with ropes and hawsers; chained down to ring-bolts on this cabin floor; he would be more hideous than a caged tiger, then. I could not endure the sight; could not possibly fly his howlings; all comfort, sleep itself, inestimable reason would leave me on the long intolerable voyage.¹²⁶

This is the sum of corporate counsel's cowardice. It would make him uncomfortable. It is not that he worries that he is unauthorized to act. And what to do about the misconduct is not so hard to figure out. He could try to rally the men, or just a few of them, to join him. Ahab has a salty strength no doubt, but he is past 50 years old, and he has only one leg.¹²⁷ Or Starbuck could take a whale boat and set sail for help from other whalers.¹²⁸ It is actually not hard to imagine what he could do. But he cannot, does not, bring himself to do it. Starbuck could have prevented the sinking of the *Pequod*. He knows right from wrong, and he wants to stop the evil he identifies, but he does not. What is missing is the *oomph* to carry him from what he knows he must do to actually doing it.

125. MOBY-DICK, *supra* note 1, at 264-65.

126. *Id.* at 589.

127. Compare Jack London's Wolf Larson, who does have a nearly superhuman strength, and is able to single-handedly put down open-mutiny by his crew. See London, THE SEA WOLF, *supra* note 16.

128. Corporate lawyers, like all lawyers, are bound by a duty of confidentiality. But under the Model Rules of Professional Conduct, a lawyer who knows that a corporate officer is bringing harm on the firm by illegal or fraudulent conduct is permitted to report-out this misconduct, in order to protect their client, the firm. See MODEL RULE PRO. CONDUCT 1.13(b) (AM. BAR ASS'N 2021).

A core text in the study of “situational influence” in human thinking and behavior is Stanley Milgram’s seminal experiments on obedience to authority. You know about those experiments like you know about *Moby-Dick*, whether you have read them or not. Milgram brought people into his lab and demonstrated that they would obediently administer electric shocks to a “student” in a learning experiment when directed to do so by a person in authority, and they would escalate the shocks even with the student crying out in pain and asking for it to stop (the “student” was a collaborator and was not actually shocked, but the “teacher” thought it was real).¹²⁹ A most crucial finding of Milgram’s was that, for the most part, those subjects *knew* they were acting wrongly. They knew they should not be doing what they were doing, but they did it anyway. Milgram said it clearly: “these subjects were not blindly obeying the experimenter’s commands: They were seriously conflicted but unable to transform an intellectual, moral conviction into action.”¹³⁰ It is not that Starbuck’s motivated reasoning runs so deep that it changes his assessment of what he should do. Rather, it puts just enough doubt into the picture to keep him from doing what he otherwise knows he must do.

Earlier we saw that Ahab’s last sorrow is that he is denied the captain’s “fond pride” of going down with the ship (he watches it from a whale boat).¹³¹ Starbuck’s last ignominy is that he is at the helm when Moby Dick finally smashes and sinks the *Pequod*. When a corrupted CEO’s nefarious doings are finally fully revealed, and the festering harm to the firm can no longer be denied, it may often be the salted general counsel who is given hasty field promotion to steward over the firm’s final undoing.¹³² But there is no fond pride in going down this way for Starbuck, for he too is the reason that the ship is sunk. He did not protect it from Moby Dick, because he did not protect it from Ahab. Chisel Starbuck’s name with the rest on the marbled memorial in the Lost Seaman’s Chapel, but scrub his name from the rolls of the Massachusetts Bar.

129. See Jon Hanson & David Yosifon, *The Situation: An Introduction to the Situational Character, Critical Realism, Power Economics, and Deep Capture*, 152 U. PA. L. REV. 129, 150-162 (2003) (reviewing Milgram’s experiments).

130. See Sung Hui Kim, *The Banality of Fraud: Re-Situating the Inside Counsel as Gatekeeper*, 74 FORDHAM L. REV. 983, 1004 (2005) (quoting Milgram).

131. See *supra* text accompanying note 71.

132. Instances abound in the business press and are noted in scholarship and cases. See e.g., Christine Hurt, *The Undercivilization of Corporate Law*, 33 J. CORP. L. 361 (2008) (“prosecutors indicted Richard T. Nelson, the company’s general counsel who was appointed interim CEO for approximately a month following the May 6, 2002 announcement that the company would restate its finances.”).

CONCLUSION

Big winds toss both to and fro. Melville is unembarrassed to present the corporation in contradictory aspect and we should take instruction from that. Dogmatic celebrations or condemnations are for paperback writers. *Moby-Dick* understands corporate corruption, alienation, and exploitation, and it sees depth, relatedness, and promise of transcendence in the corporate idea. This is a truthful, full telling, that can guide assessment both of prevailing institutional arrangements and perennial existential problems.

We can enchant our conception of the corporation and find in it an invitation to a deeper understanding of ourselves and a better living of our lives. I have been concerned here with finding meaning not in our lived-experience of corporate conduct, but in our imagination of what the corporation is and what about life it describes. Art and literature can inspire this imagination. A book like *Moby-Dick* can be as important to our conception of the corporation as is the Delaware corporate code, Chancery's next opinion, the quarterly statements of Amazon, or Google's next Super Bowl commercial. It can help us to understand how corporate law works, and make for us what corporate law means.

In a remarkable, challenging passage, Ishmael reflects on Starbuck's shortcomings but insists that he would not have written the book if its only utility was to expose human frailty:

Men may seem detestable as joint stock-companies and nations; knaves, fools, and murderers there may be; men may have mean and meagre faces; but man, in the ideal, is so noble and so sparkling, such a grand and glowing creature, that over any ignominious blemish in him all his fellows should run to throw their costliest robes.¹³³

We know about the lout in us. We recognize too well Ahab's selfish madness and Starbuck's cowardice. But we know deep inside too that this is not the last word about us and not the best word. Yet, where are we to find the material with which to stitch together a robe to throw over ourselves that could bring-out our proper sparkle? I think we may find some useful cloth in that same corporate shroud in which we see the image of our self-condemnation. Had Starbuck or Ahab found the redemptive instruction available in fiduciary scriptures, either of them could have saved that ship, the men aboard, and themselves. The corporate ideas of mutuality, care, deference, loyalty, and good faith might help us make the robe we need to cover-up our meagerness and become more than what we were. Attired in such purple, we might then turn our attention back to the corporate form itself, and make it function better too.

133. MOBY-DICK, *supra* note 1, at 149.