Executing Character:
Of Sympathy, Self-Construction and Adam Smith, in
Early America, 1716-1826

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ABSTRACT

This PhD thesis asks the following question: how does Adam Smith’s moral sense philosophy, particularly his notion of sympathy, as articulated through his *Theory of Moral Sentiments* (1759) and his *Lectures on Rhetoric and Belles Lettres* (delivered 1762-63), rationally and relationally inform an understanding of socio-political character in Early America? Prioritising the American Revolutionary period, broadly marked by the years 1716 and 1826 (introduced by the opening of the first theatre in Williamsburg, Virginia), my analysis employs Smith’s theory as a rhetorical device for understanding discursive fields of human interconnection, wherein “sensible” selves are being rationally constructed and theatrically conceived.

I read the culture of sensibility and the language of sentiment as underpinning legal and logical intellectual development within this context (drawing upon scholarship by Andrew Burstein, Gary Wills, Sarah Knott and Nicole Eustace in this regard), where sympathy is foregrounded as one particular aspect of sensible self-construction. I understand the sensible self within this environment as a conceit that is always already theatrically informed and performed: this character is ever responsive to surrounding audiences and ‘interpretive communities’ (à la Stanley Fish, and Rhys Isaac in his dramaturgic and ethnographic approach to *The Transformation of Virginia*), and is bound up in underlying rhetorics of costume, composition and comportment (engaging with Jay Fliegelman’s study concerning the performative underpinnings of American Independence: *Declaring Independence: Jefferson, Natural Language, & the Culture of Performance*).

I develop this thesis through the course of four illustrative case studies wherein sensible American characters (in principle) and American characters (in fact) are standing trial. With respect to these, I enact a series of rhetorical executions, engaging with Adam Smith’s notion of sympathy—which is itself theatrically informed—alternately as follows: as a dialogue of conviction; as a grammar of œconomy; as a translative rhetoric of passage; and as a rhetorical conceit of logic and law. Each study depicts a different historical narrative relative to specific modes of sensible self-construction and “transformative” character development, and I treat each scenario with the same tool in order to effectively delineate and examine the original point. This approach is timely insofar as it qualifies Jonathan Lamb’s investigation into *The Evolution of Sympathy during the Long Eighteenth Century* (2009): it usefully extends Lamb’s work on sympathy more generally by prioritising Adam Smith’s theory in particular, and by reading Smith’s paradigmatic conceit (distinguished via the impartial spectator) into legal and logical fields of “lived interactions”. This thesis argues that Smith’s sympathetic system offers a uniquely incisive mechanism for engaging with the socio-political processes whereby American characters are being transformed into “sensible” American citizens.
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Now to Him who is able . . . all honour, all glory.
Declaration

My signature certifies that this thesis represents my own original work, the result of my own original research, and that I have clearly cited all sources and that this work has not been submitted for any other degree or professional qualification except as specified.

Kristin A. Cook

*I have chosen to use the MHRA Style Book, 5th edn, as my citation scheme throughout.
*Eighteenth-century spellings are true to text. Please note the occasional use of the long ‘s’ [ſ] [in chapters I, V and VI].
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1 See bibliography for citations in full.
PT. I: EXECUTING CHARACTER
[DICK]: “What do you do in life? What does anyone do? They act—face, voice, words—the face shows sorrow, the voice shows shock, the words show sympathy.”

[ROSEMARY]: “Yes—I understand.”

[DICK]: “But, in the theatre, No. In the theatre all the best comédiennes have built up their reputations by burlesquing the correct emotional responses—fear and love and sympathy.”

[ROSEMARY]: “I see.” Yet she did not quite see.

Losing the thread of it, Nicole’s impatience increased as Dick continued:

[DICK]: “The danger to the actress is in responding. Again, let’s suppose that somebody told you, ‘Your lover is dead.’ In real life you’d probably go to pieces. But on the stage you’re trying to entertain—the audience can do the responding for themselves. First the actress has lines to follow, then she has to get the audience’s attention back on herself, away from the murdered Chinese or whatever the thing is. So she must do something unexpected. If the audience thinks the character is hard she goes soft on them—

if they think she’s soft she goes hard.

You go all out of character—you understand?”

[ROSEMARY]: “I don’t quite,” admitted Rosemary. “How do you mean out of character?”

[DICK]: “You do the unexpected thing until you’ve manoeuvred the audience back from the objective fact to yourself. Then you slide into character again.”

F. SCOTT FITZGERALD’S 1934 ROMANCE, TENDER IS THE NIGHT

DOCTOR DICK DIVER IN CONVERSATION WITH AMERICAN STARLET ROSEMARY HOYT,

WHilst BEING OBSERVED BY HIS WIFE NICOLE …

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2F. Scott Fitzgerald, Tender is the Night, ed. by Arnold Goldman (New York: Penguin, 2000), pp. 309-10. Further references are given after quotations in the text.
This scene—taken from F. Scott Fitzgerald’s 1934 Romance *Tender is the Night*—introduces character as a complex, theatrical construction, shaped at a post-war intersection between notions of sympathy and moral judgment. Fitzgerald’s ‘Romantic’ conceit prioritises the believability of human communication and fictionalises the fluid interplay between conduct and reputation, objectivity and the subjective response. At the heart of this social matrix persists a complex “science of expression”, where the truth-value of human interaction is made subject to a growing desire for creative authorship and self-possession.

In Fitzgerald’s conceit, character construction denotes a slipping out of oneself into a different persona, an act of social bartering with the tools of figure and form—‘face, voice, words’—that solicits moral judgment in the course of discursive interchange (Fitzgerald 309). His post-war expatriate is here represented as a maturing character, exquisitely self-aware and increasingly self-conscious of his/her individual autonomy. As Doctor Diver instructs a new generation in the art of bringing home all situations and all scenes to oneself, his modern ‘burlesque’ offers a finely tuned interpretation of self-realisation for the acting-American (309). The actress is here enlightened to the fact that she can shift the meaning of an entire scene simply by taking on a reaction. She is able to both fill her plot function (‘the actress has lines to follow’), whilst at the same time detaching herself from the prescribed role so as to purposefully redirect her audience to a subjacent plot (309). In such fashion she is able to manoeuvre around the ‘objective facts’ (the integrity of the script) and dexterously resituate both set and scene—on terms of her own making (310). The irony of course is that this effort to realign matches Dick’s intentions exactly. He turns attention away from his own blatant weakness (his chief character flaw as revealed only a few lines earlier) by ‘qualify[ing] everything unpleasant he had said’ to an audience who can still be persuaded of his vital worth (309). He feeds Rosemary’s emotional bias (her, ‘I can’t imagine anybody not forgiving you anything, …’ declared only moments
earlier) so as to shift her focus away from the objective truth and subsequently win her continued favour (309). Dick’s manoeuvrings suggest that a moral judgment can be solicited simply by reading one’s audience aright and by then ‘burlesquing’ a ‘correct emotional response’ (309). An irreverent rejoinder, perhaps, to Rosemary’s earlier query, ‘Do you practise on the Riviera?’ (307, emphasis mine). Doctor Diver knows the game. He is able to both win the attention of his onlookers (‘manoeuvre the audience back’) and to then (s)educe their applause for his own self-construction: ‘In the theatre’, as Fitzgerald writes, ‘all the best comédiennes have built up their reputations’ (310, 309, emphasis mine). Diver builds himself up, as it were, increases his social self-worth and sells himself to the first unsuspecting bidder. And to this end, interestingly enough, a complex form of sympathy is found complicit with the enactments of his worldly burlesque. Nicole Diver, on the other hand, watches the scene from a position of almost detached observation—and sees clearly through the plot. Growing impatient with the ploy she knows too well, she perceives the truth of a new reality rising before her, allowing it to propel her towards a radical change: ‘Why, I’m almost complete’, she thinks, ‘I’m practically standing alone, without him’ (311). And a mere chapter later, refusing any longer to play satellite to Dick’s sun, Nicole, ‘achieve[s] her victory and … cut[s] the cord forever’ (324). Dick is left to seek affection elsewhere. Turning his inclination to another more willing spectator (who, like Rosemary, proves ripe to believe him), ‘His eyes … asked her sympathy and stealing over him he felt the old necessity of convincing her …’ (336, emphasis mine).

I

The transformative Power of Sympathy, to invoke William Hill Brown’s 1789 publication, falls within a cultural trajectory that emphasises the American character as a radical conceit crafted at the interstices between rational thought and emotive expression.3 From Fitzgerald’s Modernist post-war perspective, so myopically concerned with dislocation and loss, it is possible to read a notion of transatlantic sympathy back to the “transformative” War for American Independence, which enacted, in its aftermath, similar forms of rootlessness.

Idealised as through the youthful Rosemary Hoyt, Revolutionary America was likewise called to distinguish itself from the parental authority, to tear itself from the maternal bosom so as to play a heightened role in a scene of its own making. And indeed, as with Dick and Nicole Diver (players alike on their “battlefield of love”), the reality of the revolutionary and early republican periods yielded similar efforts to *practise character*, and to ‘manoeuvre’ observers away ‘from the objective fact[s]’ of wartime loss, towards a range of new sympathetic affinities that would sever old bonds and tighten fresh cords of socio-political connection (310).^4^

A notion of “transatlantic sympathy” thus becomes apparent via intricate patterns of discursive interchange that run in crossings and overlappings throughout Atlantic space. Affective ties create vast networks of sympathetic connections that find their philosophic (if somewhat tangled) roots at the heart of Scottish moral sense philosophy, French moral pragmatism and *sensibilité*, Stoic intellectual thought, and at the crux of early Christian ethics. From within this matrix, a transatlantic notion of sympathy might be read into the transnational “charactering” of the United States—where sympathy runs contiguous with the manner in which identity is shaped and tried in networks of human sociability. Sympathy, character and moral judgment come together in the Early American moment to bear upon sensible self-construction, where a notion of sensible citizenship unfolds relative to sympathetic imaginings: as writes J. C. Bryce in his introduction to the Glasgow edition of Adam Smith’s *Lectures on Rhetoric and Belles Lettres*, ‘The narratives of history “interest us [engage us] greatly by the Sympatheticall [sic] affections they raise in us”’ (ii.16)’ (Intro, *LRBL* 19).^5^

**Transatlantic Sympathy: Enlightenment – America**

America’s early intellectual growth is characterised by sympathy as one transatlantic current of Enlightenment thought and moral philosophy. Due to the fluid nature of its American reception

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and cross-Atlantic contingency, sympathy offers scholastic opportunity for interrogating countless processes of discursive interchange as they intersect with, and in so many ways develop coextensive with, early American socio-political development. Immortalised in 1771 by Mackenzie’s “empathic” character-type and evolving as the outgrowth of R. S. Crane’s instructive genealogy, sympathy is increasingly emphasised—via feeling expressed by logic—as a rational and judicious quality of the sensible mind.⁶ Informed by Scottish moral philosophers Francis Hutcheson, Adam Smith and David Hume, sympathy achieves its moral frame through carefully nuanced psycho-philosophical renderings, and functions as an imperative for establishing imagined networks of fellow-feeling, national unity, and republican order.

This thesis highlights Adam Smith’s notion of sympathy within the Early American context, arguing along with D. D. Raphael and J. C. Bryce that Smith’s unique system of moral sense philosophy registers a radical shift in Enlightenment thought concerning the role of sympathy in human interactions; and further to this, that Smith’s use of the impartial spectator and the sympathetic imagination illuminate complex transformations in “sensible” self-construction within America’s revolutionary environment. Above all else, this thesis employs Smith’s sympathetic system as a literary tool for understanding the transformation of sensible subjects into sensible citizens—by way of transformative character development. It reads Smith’s notion of sympathy into a transitional moment when the sympathetic imagination is itself taking on an increasingly practical, almost ideological significance for individual and national self-conception.

II

This thesis asks the following question: how does Adam Smith’s moral sense philosophy, particularly his notion of sympathy, as articulated through his Theory of Moral Sentiments (1759) and his Lectures on Rhetoric and Belles Lettres (delivered 1762-63), rationally and

relationally inform our reading of socio-political character in Early America? Qualified by readings of his *Lectures on Jurisprudence*, my analysis explores his theory as both a philosophical apparatus and rhetorical device for understanding human interconnections within the Early American scene. It concentrates, even more particularly, on the crafting of *sensible selves* within the revolutionary period, broadly marked by the years 1716 and 1826 (introduced by the opening of the first theatre in Williamsburg, Virginia).

I situate my inquiry within a critical frame that approaches the American Revolution as a performative expression of sensible culture. My argument concerning the relevance of Smith’s system for interpreting “sensible” discourse, prioritises Jay Fliegelman’s seminal investigation into ‘declarative’ acts of independence, and draws as well upon Rhys Isaac’s work in *The Transformation of Virginia, 1740–1790*, where Isaac discusses the conceptual dramaturgy underpinning Early American life.\(^7\) I suggest that a reading of Smith’s moral sense theory into this highly performative and dramaturgical context is imperative to understanding the cultural and intellectual nuances underpinning sensibility in Revolutionary America—and for considering the sensible self as a ‘reasonable’ conceit (to draw upon Andrew Burstein) being constructed therein.\(^8\) In such manner I complicate Sarah Knott’s recent engagement with *Sensibility and the American Revolution*, which prioritises the War itself as both ‘emanat[ing] … from cultural commitments to sensibility’ and as politicising the sensible landscape. While Knott grapples with the ‘social, cultural and political history’ of Philadelphia in her wider account of national transformation (thematising Atlantic influences, class struggles and the ‘voice of sensibility’), I particularise Smith’s formulation of sympathy as a means of discerning the *performative* make-up of figures who are contending with this shifting environment—and who are negotiating sensible self-construction as a particular mode of citizenship. In order to read my way into this field, I draw upon Odai Johnson’s historiographical and anthropological

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approach wherein he pursues the ‘theatrical trace’ to uncover the hidden dramaturgy of the colonial environment.  

Advances in the field of transatlantic literary studies offer a theoretical frame for doing this effectively, particularly with respect to sympathy’s role in ‘thinking across’ (texts and interactions) so as to apprehend what Arjun Appadurai calls the ‘collective [global] imagination’.  

This project is rooted in a school of thought that conceives eighteenth-century Atlantic space as a territory mapped by permeable boundaries, rhetorical interconnections and flexible networks. The fluidity of this space, when contextualised by more rigid social, economic, and political histories, charts liquid patterns of consonance and conversion that are integral to comprehending various modes of self within Atlantic society. By the many theatrical “texts”, dramatic scenes, literary and performance narratives exchanged therein are expressed mutable representations of the individual self in social discourse. I comprehend Smithian sympathy within the framework of this narrative imagining, reading it into the cross-Atlantic context identified by scholars of the ‘Atlantic Enlightenment’, and more particularly by James Chandler in his literary reading of William Hill Brown’s The Power of Sympathy. Although I depart from Chandler in his emphasis on the ‘transatlantic novel’ (prioritising instead a notion of “texts” more broadly), I pursue the more concrete impulse of transatlantic literary studies by seeking to conjoin a reading of Smith’s theory in principle with a testing of it in practise, in a manner that not only supports Smith’s own preference for application, but which contributes to work being conducted by scholars on both sides of the Atlantic.

Although this thesis draws attention to Smith’s use of the impartial observer and the sympathetic imagination within this transatlantic frame, it differentiates its analysis from other

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critical engagements by contending with Smith’s notion of sympathy as composed in one system across both his *Theory of Moral Sentiments* and his *Lectures on Rhetoric and Belles Lettres*, supporting J. C. Bryce’s view; and further to this, by reading his system as a literary device into fields of *lived interaction* in Early America, where, in keeping with eighteenth-century conception, there is little difference drawn between fact and fiction, reality and imagination, the lived and the written. As a literary study, therefore, it re-enters an ‘eighteenth-century literary domain’, as Mark Salber Phillips calls it, that is not yet formally divided between ‘literary’ and ‘non-literary genres’. Of Smith’s *Lectures on Rhetoric and Belles Lettres*, as he reminds us, Smith’s ‘most extended formal analysis concerns historical narrative, not the novel’.

Constrained only by the terms set forth in Smith’s system, therefore, this thesis elaborates a conjectural history within the Early American context, where discursive self-conception extends beyond traditional narrative and national bounds to encounter a world configured by alternating modes of subjectivity and objective response. In his work on character development in humanist technique (an ‘avant-garde’ practise learned by Smith during his earliest schooling under David Miller), John Frow suggests that ‘the expressive conception of literary character underpinning humanist theory [invariably] leaves the question of the writtenness of character as its major problem’. Smith effectively resolves this by treating dramatic characters and real persons as equally valid subjects—no matter whether on the page or off—consequently extending the theoretical scope of ‘writtenness’ as a literary conceit. He folds the two ideas together through a philosophy of sympathy that readily conflates the real with the imagined and the ‘written’ with the ‘expressive’ in character construction. A character ‘written’ in the fictional/dramatic world is thus no more artificial than a character ‘written’ in the real world, discursively construed by interpretive spectators who must enter continually into foreign identities via sympathy as a
primary means of communication exchange. No matter the form of his composition, the sensible character—who is here becoming a citizen—is invariably conceived in relation to both surface “type” and inner psychology, and is always already bound up in theatrical rhetorics of costume, composition and comportment. Smith’s Lectures on Rhetoric and Belles Lettres functions in tandem with his Theory of Moral Sentiments to construct a coherent system that prioritises the ‘writtenness’ of narrative across these different forms.

EXECUTING CHARACTER

Taking as its point of departure Jonathan Lamb’s excellent work on The Evolution of Sympathy in the Long Eighteenth Century, this thesis draws upon Lamb’s five-part analysis—his cognition of sympathy as at once mechanical, social/or moral, theatrical, complete, and horrid—and undertakes to translate certain of these notions within a field of “lived” interactions, testing sympathetic discourse through networks of cross-Atlantic encounters and interpersonal exchange.17

I open my thesis, therefore, by reading Adam Smith’s allied constructions of sympathy and the impartial spectator within the context of Scottish moral sense philosophy. I introduce Smith’s system as an instructive paradigm for testing the limits of spectatorship relative to the ‘sympathetic imagination’.18 Having established this as my point of departure, I then transplant Smith’s system to Early America through four distinct case studies, wherein I concentrate on the rhetorical composition of sympathetic/sentimental discourse in order to examine narrative situations wherein American characters (in principle) and American characters (in fact) are standing trial. Within these engagements, I test the value of Smith’s system for reading into—and indeed entering into—specific narrative accounts concerning sympathy and moral judgment. This section enacts a series of rhetorical executions, employing Smith’s system

alternately as a dialogue of conviction; a grammar of œconomy; a translatable rhetoric of passage; and a rhetorical conceit of logic and law. Although these investigations proceed in roughly chronological order, with a consideration of Williamsburg beginning in 1716, Sheridan and Tyler in 1778, the Asgill Affair in 1782, and the Batture trial in 1810, the seeming disjuncture between them is obvious, if largely aesthetic. Regardless of individual distinctions, however, what I would wish to emphasise as the point of harmony among them is an overarching concern with Smith’s sympathetic system acting as a literary device, equipped to unlock the narrative process of becoming sensible citizens.

These treatments appear as individual case studies in Chapters III-VI of the thesis, reflecting four ‘stages of execution’ that act as ‘set-pieces’ for an investigation into dialogical sympathies, and as discursive sites whereon characters are routinely exchanged, affections won and sentiments trafficked.19 These studies provide illustrative arenas wherein Smith’s notion of sympathy might be applied as a philosophical construct, and wherein his rhetoric might be critically employed as a tool for unlocking socio-linguistic transactions and complex cultural transmissions ongoing between language (composition); persons (character); and narrative history (sentimental testimony). Each category is itself subject to an evolving engagement with the sympathetic imagination as a psycho-philosophical realm of creative mobility, and is configured in relation to local modes of propriety and prevailing standards of taste. Attention throughout my analysis is thus continually drawn to performative expression, or to that inventive quality by which a plurality of selves are being tried (and tried on); and to moral judgment, by which all categories of self must then ultimately be read and assessed, examined and ruled upon by an impartial observer. Informing my choice of “texts” for this purpose is a consideration for those histories wherein Smith’s system will not only qualify the overarching investigation, but where it will clarify obscure areas within the plots themselves. More particularly: the colonial Virginian negotiation of sensibility relative to Jack P. Greene’s behavioural models of identity; Royall Tyler’s re-figuring of impartial judgment relative to Sheridan’s sentimental comedy of manners; Captain Asgill’s military release relative to Sarah

19Lamb, Evolution of Sympathy, p. 63.
Knott’s sentimental coteries; and Livingston v. Jefferson’s almost impenetrable lawsuit relative to wider debates over sensible law and governance.

My methodology throughout this second section is informed in part by Rhys Isaac’s emphasis on dramaturgical platforms, or *tableaux*—including the pulpit/the courthouse/the marketplace/the theatre—as interpretive stages whereon ‘knots of dramatic encounter’ qualify modes of sociable interaction.20 That Isaac’s definition of ‘dramaturgy’ here includes ‘[t]he whole congeries of social-dramatic devices through which interaction communication—expression, direction, and ultimately coercion—may be accomplished’, readily invites Smith’s construction of sympathy to weigh in, I argue, on dialogical processes of self-presentation and representation.21 This determination maps up well with inquiries into sympathy more broadly. In their own philosophical grappling, as Jonathan Lamb reminds us, ‘When Hutcheson, Burke and Ferguson imagined the possibility of a scene of public sympathy, they chose a large open space where a state criminal, or a victim of state, was about to be executed.’22 In keeping with their general approach, I too have chosen the ‘large open space’ as my platform for trial. My analysis in this second section thus broadens traditional disciplinary bounds so as to explore a Foucaultian ‘configuration’ of ‘texts, literary and aesthetic debates with which … particular’ figures (*figures* here encompassing eighteenth century writings and more broadly conceived notions/notations of character, both real and imagined) ‘enter into relation and resonance’.23 In such regard it tests, in an expressly Smithian manner, ‘the true basis for’ achieving narrative ‘singularity’ and ‘real originality’ in relevant literary-historical contexts.24 Each of my case studies, therefore, is not only situated at the site of an execution, but becomes itself the dramatic platform upon which Smith’s rhetorical system is tried.

21 ibid., p. 350.
22 ibid., p. 37.
24 ibid.
Understandably, then, this thesis welcomes the fluidity among disciplines. As Susan Manning writes in her Introduction to *Fragments of Union: Connections in Scottish and American Writing*, ‘The transmission of structural and taxonomic features from one domain of study to another as a tool of inquiry was a particular feature of the Scottish Enlightenment study of the mind or consciousness, which was interdisciplinary in a thoroughly modern sense’. In keeping with this mode of inquiry, my work takes part in a small way with the intellectual process employed by the Scottish *literati*, who sought a ‘holistic approach to intellectual problems’. This work is weighted always towards the study of language in dialogic literary exchange. At the same time, however, it does not shrink from conventional disciplinary bounds, particularly in the fields of literature and history, but rather challenges them, converses with them and indeed privileges the merit of cross-disciplinary exchange for both arenas. In this way my work advances scholarship in its own time—in a manner that is commensurate with the intellectual approach practised in Enlightenment circles. It is my particular hope that the linkages explored might draw us another step closer to reconnecting the literary with the historical in Early American studies.

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Adam Smith’s notion of sympathy is bound up in rhetorical figures of character and moral judgment that are always already theatrically informed—and that are complicit with emergent vocabularies of ethical behaviour. As this thesis will argue, Smith’s notion of sympathy provocatively maps onto, and indeed arises from within, a socio-political landscape of sensible affections and alliances that chart the revolutionary and ultimately westward progress of ‘Becoming American’.

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27I am indebted to the work being conducted by the Colonial Williamsburg Foundation in this regard, and to generous support made possible by the John D. Rockefeller Library and numerous research historians and actor-interpreters throughout the Williamsburg area. Research by such notable scholars as Rhys Isaac and Odai Johnson conceives the theatrical undercurrents upon which Colonial Virginians undertook their self-construction. Although this thesis is not solely concerned with Virginia, the Virginian process of ‘Becoming American’, as considered by these scholars, offers an interesting starting point and counterpoint to analogous narratives of self-construction being lived out along the eastern seaboard during the American revolutionary period. The Early American process of sensible self-construction presents itself in a visible fashion through the *Revolutionary City* programming currently being
directed under the oversight of James Horn, by the Colonial Williamsburg Foundation, Williamsburg, Virginia. This initiative, which essentialises performative engagements with the political outworkings/declarative acts of independence, highlights a wide range of social identities that are available for sensible, revolutionary-minded Virginians. This thesis sets its own scene in a manner that supports Rhys Isaacs’s excellent scholarship concerning ‘Transformation’ as a socio-political and dramatic process of re-characterisation—for colonists who are becoming citizens during revolutionary upheaval: Isaac, *Transformation of Virginia*. 
II

TRANSFORMATIVE RHETORIC IN EARLY AMERICA

\‘CONSIDER ALL THE DIFFERENT PURSUITs AND EMPLOYMENTS OF MEN AND YOU WILL FIND HALF THEIR ACTIONS TEND TO NOTHING ELSE BUT DISGUISE AND IMPOSTURE; AND ALL THAT IS DONE WHICH PROCEEDS NOT FROM A MAN’S VERY SELF IS THE ACTION OF A PLAYER. FOR THIS REASON IT IS THAT I MAKE SO FREQUENT MENTION OF THE STAGE….\’

Joseph Addison as Mr. Spectator, No. 370

PROLOGUE: YE BEAR AND YE CUBBE, 1665

In an article concerning ‘The Site of the First English Theatrical Performance in America’, written exactly three hundred years after the event itself, Susie M. Ames transcribes the events surrounding Ye Bear and Ye Cubbe as the first English play to be performed in Accomack County, Virginia, on August 27, 1665. Although Ames writes little about the play itself, she reveals an interesting theatrical “point” in the details of an affair that followed. Deriving much of her evidence from the Accomack County Court Records, she contextualises her geographical research by situating the performance relative to a subsequent court order, dated November 16, 1665, demanding that Cornelius Watkinson, Philip Howard and William Darby appear before authorities ‘to answere at his Majestie’s Suit for being actour[s] of a play commonly called the Beare and the Cubb’. Acting on the criticism of one Edward Martin and on the formal accusation of his Majestie’s Attorney, Mr John Fawsett, the court saw ‘fitt’ to then arrest Darby, and to hold Watkinson and Howard in custody pending their guarantee to appear at a subsequent court session. What proves most striking in all of this, however, is not so much the

case in fact (players regularly stood at odds with the law), but rather the peculiar nature of the demand itself (citing the Court Order):

Whereas Cornelius Watkinson Phillip Howard and William Darby were this Day accused by Mr John Fawsett his Majesties Attorney for Accomack County for acting a play by them called the Bare and the Cubb on the 27th of August last past. Upon examination of the same The Court have thought fitt to suspend the Cause till the next Court and doe order the said Cornelius Watkinson Phillip Howard and William Darby appeare the next Court in those habiliments that they then acted in, and give a draught of such verses or other Speeches and passages, which were then acted by them, and that the Sheriff detaine Cornelius Watkinson and Philip Howard in His Custody until they put in Security to perform this order. 30

Interestingly enough, this presentation, as the earliest of its kind on record, is distinguished here not by virtue of its primacy or even by the fact of its legal end, but by the expression of the court in response to Martin’s allegations: a demand, by formal injunction, for the actors to “perform” their case for defence. 31 The theatrical performance, in other words, substantiates their means of acquittal; and because the re-enactment wins subjective applause (convincing the court to then rule objectively in their favour) the defendants are let off the hook. Thus it is that the theatre, and its underlying logic of performance, enters southern colonial American culture, cutting across moral stigmas by winning an initial stamp of socio-legal consent. The court’s ruling on the subject affords perhaps the earliest verdict concerning the moral question of the stage itself, overturning habits of intolerance and positing a new “ethics of character” for the New World. 32 The court’s decision to nullify Martin’s complaint (and to burden him, in the end, with legal expenses) is based on the simple fact that the court is convinced of and subsequently

30ibid.
31Perhaps the earliest evidence to support Odai Johnson’s claim that American performance arrived through the courtroom: see, Odai Johnson, Absence and Memory in Colonial American Theatre: Fiorelli’s Plaster (New York: Palgrave Macmillan, 2006).
32From this point on, it would seem that Virginians were noticeably liberal in their regard for the stage. Opposition to Lewis Hallam’s troupe arriving in Virginia in 1752, as Odai Johnson indicates, was financially rather than morally driven: Johnson, Absence and Memory, p. 74.
approves of—sympathises with—the characters on trial. When tried as an entertainment, the performance lands on its feet, securing the first decision to sanction theatricality as itself an agent of credibility, and prioritising combined aspects of character, sympathy and moral judgment as integral to logical self-fashioning: the live performance must win faith, and by that faith prove true—an early indication, perhaps, that in the new world things would be done differently.

THE LOGIC BEHIND “SENSIBLE” SELVES

Introducing his work entitled Sentimental Democracy: The Evolution of America’s Romantic Self-Image (1999), Andrew Burstein suggests that Adam Smith’s Theory of Moral Sentiments (1759), ‘produced what was perhaps the most thorough work codifying the culture of sensibility into which eighteenth-century Americans and Britons alike came of age.’ He argues relative to this that a Romantic ‘imaging’ of America took place throughout the Revolutionary period via a host of sentimental impulses intent upon ‘fashion[ing] the dictates of sensibility within a republican frame’, and wherewith ‘shared sympathy’ and ‘enlightened feeling’ found place normalising codes of sensible self-construction, fraternal obligation and moral behaviour. Within this frame, Burstein describes the “pursuit of happiness” as itself a delicate (behavioural) balancing act, ‘at once [both] sentient and rational’.

33 Ames, ‘Site of First English Theatrical Performance.’
35 ibid., p. 10.
FIG 1: William Hogarth, The Bench, William Hogarth’s “Works”

(London: Baldwin and Craddock, [1835?]).36

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Throughout his study, Burstein situates the culture of sensibility—its preoccupation with passions of heart—in relation to the revolutionary context of republican intellectual growth, revising his work in a later publication so as to examine the ‘political character’ of sympathy contained within republican speech. This supplement bears particular reference, once again, to Smith’s moral sense theory, where the two pieces together distinguish an emotional history of sensibility that identifies ‘reasonableness’, expressed via common sense and plain speech, as a socio-political imperative.  

Relative to this history, the word “sensible” is understood in accordance with the meanings supplied by Samuel Johnson in the third edition of his Dictionary (1766), and with a particular view to the following subscriptions: ‘Sensible: “Having quick intellectual feeling; being easily or strongly affected” Dryden’, and, ‘Sensible: “Convinced; persuaded” Addison’. The term is employed throughout this thesis as a modifier to characterise those persons, processes, or faculties that are perceiving the world ‘by either mind or senses’, and that are exercising moral judgment by counterbalancing rational thought with emotional commitment. The sensible man or woman is capable of engaging with society in such a manner as reflects a mature level of social responsiveness and ethical consideration, and in such manner as demonstrates a sound intellectual understanding of the societal norms regulating one’s cast and conduct. More precisely, s/he is capable of moderating the passions with regard to rational thought—and of thinking, in turn, quite rationally about the passions.

The logic behind sensible selves in this regard is tri-fold, substantive because at once: 1) emotional as well as rational, 2) personal as well as public, 3) executive as well as performative. In relation to the first, the sensible self is construed through an ongoing dialogue between emotional responsiveness and rational consideration. With regard to the second, the sensible self


\[38^{Samuel} \text{ Johnson,} \text{ A Dictionary of the English Language in which the Words are deduced from their Originals, explained in their different meanings and authorized by the names of the writers in whose works they are found,} 3^{rd} \text{ edition, 2 vols, vol. 1 (London: for A. Millar, and others, 1766), ‘sensible’.}\]
is construed through principles of self-reference and community conception. And with regard to the third, the sensible self is construed as a figure of dialogical execution, constructed through fraught dialectics of executive authority and independent self-assertion, personal agency and social accountability.

Further to this, these logical dichotomies are rendered coherent within a wider transatlantic frame, where, as Catherine O’Donnell Kaplan suggests, the early American positioned himself relative to the world via different ‘models of intellectual engagement’. Focusing on the years following the Revolution, Kaplan asks whether intellectuals in the early national period, ‘Could … create a vantage point from which they could usefully think about, criticise, and affect the New Republic’? As this thesis will argue, it is through the construct of the impartial spectator and the practise of the sympathetic imagination (before the war and after) that such a vantage point is secured. It will contend that Adam Smith’s moral sense theory provides an apt system for assessing such models of intellectual engagement and for contending with a host of imaginative figures underpinning critical conceit. Smith’s sympathetic system affords a means of not only tracing discursive patterns of intellectual growth, but of understanding sensible self-construction and moral judgment as integral to republican self-fashioning. Although ‘the general ideal of sympathy had long entwined reason and feeling’, as Kaplan notes, the lived reality of sympathy in practise was a more complicated polemic. This is the transformative field, as I will argue, wherein Early Americans began to negotiate the identities available to them as sensible subjects, characters and citizens. This is where Smith’s system becomes vital to the current analysis.

Returning then to Burstein’s impressive statement concerning Adam Smith, this thesis chooses to prioritise Smith’s sympathetic theory insofar as it uniquely qualifies (and quantifies, or gives value to) sensible self-construction and dialogical exchange, sharing Burstein’s understanding.

39ibid., p. 12
41Kaplan, Men of Letters, p. 27.
of his system as a rhetorical and philosophical apparatus that intricately codifies this linguistic and behavioural terrain. This thesis particularises Burstein’s cultural investigation by employing Smith’s theory as a specifically literary device for analysing character, sympathy and moral judgment as triune aspects of discursive self-conception. Sensible citizenship, as I read it by relation, denotes a civilised capacity to reach outwards from the self so as foster bonds of logical affection and to administer complex interactions within national community.

This thesis does not purport to locate every instance of Smith being read in early America, and neither does it intend to chart paths of influence. It builds off of groundwork completed by Samuel Fleischacker in this regard and directs readers to Fleischacker’s foundational work concerning Smith’s reception among the American Founders. Two points that prove critical for the present engagement include: 1) the likelihood of Smith’s philosophical thought filtering to the Colonies through the work of Henry Home, Lord Kames, who sponsored and was profoundly impacted, as Fleischacker reminds us, by Smith’s Edinburgh lectures (1748-1750); 2) and the presence of Smith’s Theory of Moral Sentiments in private American libraries and revolutionary/post-revolutionary college curriculums (Jefferson recommended Smith’s TMS to a friend in 1771).

Moving past any deliberate engagement with these concerns, then, I wish to emphasise Smith’s sympathetic system here as neither “more important” nor “more influential” than other contemporary views, but as providing a critical apparatus that is more particularly suited to reading into the transformative interstices—the lived reality—of social and moral life throughout the Revolutionary period (thanks to its systematic array of dialogical and performative components). Scholarly works such as Gary Wills’s Inventing America: Jefferson’s Declaration of Independence lean quite heavily on Francis Hutcheson’s “benevolence theory” for drawing connections between Scottish moral sense philosophy and the American Revolutionary period.

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43 For a discussion of the impact of Hutcheson’s “benevolent thought” on Early American thinking see Gary Wills, Inventing America: Jefferson’s Declaration of Independence (New York: Doubleday, 1978); see also Ron Hamowy’s critique of Wills in
Hutcheson and Smith, this thesis suggests that Smith’s sympathetic philosophy offers another critical means of interpreting the discursive processes of American self-construction. In keeping with Smith’s *Rhetoric*, this study comprehends sympathy ‘as a rhetorical instrument’, in J. C. Bryce’s words, that acts in concert with a logical ‘vision of speech and personality as an organic unity…’ and which perceives that vision as an aesthetic union manifesting itself across a range of literary representations and republican character forms (*LRBL* 19). Writing of Adam Smith’s introduction to his *Lectures on Rhetoric and Belles Lettres*, editor J. C. Bryce reflects that ‘Words are no mere convenience [for Smith]; they are natives of a community, as citizens are—and … of a particular part of the community’ (Intro, *LRBL* 15). In such manner, the very language that supports sympathetic interconnection in Early America is bound up in local dialects of costume, composition and comportment—informing the ‘natural theatricality’ (of Fliegelman’s view) that promoted cultural sensibility via affective/‘reasonable’ ideals of individual and national construction.

**ADAM SMITH’S SYMPATHETIC SYSTEM**

In his work on ‘Sympathy and the Impartial Spectator’, Alexander Broadie distinguishes Smith’s notion of sympathy relative to the construct of the impartial spectator, distinguishing it from foregoing moral philosophies such as those advocated by Francis Hutcheson and David Hume.44 Throughout his moral sense theory, Broadie argues, Smith pushes the theoretical bounds of his contemporaries by developing a notion of sympathy that goes beyond Hutcheson’s (arguably) incomplete formulation, and beyond the notion of sympathy as a simple (almost mechanical) device for communication (à la Hume). He extends it away from traditional modifiers such as ‘pity and compassion’, suggesting instead that sympathy proves far more inclusive in its scope, capable of ‘denot[ing] our fellow-feeling with any passion whatever’ (grief, joy, anger, etc.) (*TMS* I.i.1.5). In this way he develops a more thorough idea of sympathy

in practice—conceiving it as both a rational construct and as a fluid intercourse marked by associative change and exchange. It is in this manner that Smith’s concept of sympathy, as Broadie suggests, connotes an entire method of human interactions, one that matures moral philosophical thought relative to the intricate inner-workings and outworkings of human sociability.

With regard to spectatorship as an undercurrent to sympathy more broadly, both Hutcheson and Hume consider the spectator as a more generalised construct, where ‘the perspective of the spectator [is dialogically set] as against that of the agent observed.’45 In Smithian theory, however, Smith actually conflates the person of the spectator with the subject in view, prioritising a notion of spectatorship over postural opposition. He challenges Hume’s reading of ‘sympathy as a [mere] principle of communication’, proving instead that a sympathetic spectator can actually enter into a much more psychologically complex engagement with an agent: ‘it is [altogether] possible’ in Smith’s system, as Broadie contends, ‘for a spectator sympathetically to have a passion that he does not believe the agent to have, or even knows that the agent cannot have.’46 As a supplement to this, Smith likewise conflates the seemingly distinct roles of “subject as actor” and “spectator as judge” so as to render them equally present within separate persons (such that each individual is able to function—at all times—in the role of both observer and observed). Smith understands “the actor” and “the judge” not as dichotomous identities, but as invariably present one within the other, conceived by a continual interchange of perspectives along the course of discursive transaction: in other words, each person/or actor plays the part of both spectator and judge at any given moment, modifying his temper, tone and spectatorial position constantly in relation to those around him—so as to best regulate the propriety of his own conduct, to establish fellow-feeling and to judge rightly of social behaviour.

45Ibid., p. 159, emphasis mine.
46Ibid., p. 163.
At the heart of his theory, Smith constructs an imaginary ‘impartial spectator’ to act as both mediator and judge over/within human interactions. His construction is somewhat different from that of the real bystander or observer identified by Hutcheson and Hume (who remains a real figure in the most literal sense): Smith’s ‘impartial spectator’ is imaginatively construed, and is thus almost always situated at some degree of distance from the agent. This spectator functions as an unbiased arbiter of discursive interchange and a ‘well-informed’ judge of character (*TMS* VII.ii.1.49). In Smithian conceit this ‘indifferent’ observer fills a sort of third-party function: the actor ‘brings home to himself’ the judgments of the imaginary observer when weighing the propriety of his actions (entering by sympathy into an objective stance, as it were) in order to separate himself from the power of his own bias and offset his selfish passions. Unlike the general spectator, or simple ‘bystander’ who serves as a real, ‘immediate’ judge over individual conduct, this ‘disinterested’ or impartial spectator is raised to a higher plane of arbitration, and by virtue of his perceived distance from the subject, represents a superior jurisdiction:

…but though man has, in this manner, been rendered the immediate judge of mankind, he has been rendered so only in the first instance; and an appeal lies from his sentence to a much higher tribunal, to the tribunal of their own consciences, to that of the supposed impartial and well-informed spectator, to that of the man within the breast, the great judge and arbiter of conduct. The jurisdictions of these two tribunals are founded upon principles which, though in some respects resembling and akin, are, however, in reality different and distinct. The jurisdiction of the man without, is founded altogether in the desire of actual praise, and in the aversion to actual blame. The jurisdiction of the man within, is founded altogether in the desire of praise-worthiness, and in the aversion to blame-worthiness (*TMS* III.2.31-2).
Throughout Smith’s system, as evidenced here, the ‘impartial spectator’ is frequently referred to as the ‘man within the breast’, or the ‘inner man’—representing a sort of inner conscience against which one is able to weigh the propriety of his own conduct, discerning its merit or demerit/praiseworthiness or blameworthiness, and to then judge of himself rightly. He (for in Smith’s theory it is always “he”) is an arbiter of human interactions, sitting at the centre-point, or pivot (as I view it in Chapter IV), of conciliation, discursive compromise and imaginary interchange. As regards the temper of this authority, Smith binds a principle of moderation to his persona: ‘The propriety of every passion excited by objects peculiarly related to ourselves’, he writes, or ‘the pitch which the spectator can go along with, must lie, it is evident, in a certain mediocrity’ (TMS I.ii.INTRO.1). And this mediocrity, as it were, to a continually shared dialogic intent. Thus, for example, I modulate my ‘pitch’ to suit your ear, you incline your understanding to meet my tone; you lower your passion to suit my temper, I lift my temper to meet your spirit; I moderate my grief to suit your understanding, you incline your imagination to meet my grief; I raise my passions to suit your anger, you amend your fury to meet my restraint—and on it goes between us until we discover a point of communicative ‘agreement’ (determined as against the impartial observer) where, perhaps, we stand the best chance of effecting mutual sympathy and meeting with reciprocated approval. This dialogue of negotiation and moderation reveals Smith’s idea of ‘complete’ (or mutual) sympathy as itself an ongoing contrivance, distinct from an idealised notion of ‘perfect’ sympathy by comparison. This is, at least in part, what it means to consider Smith’s theory as always already theatrical, equally dependent upon role-play (conduct), observation (spectatorship) and critical/impartial judgment (approval or disapproval/praise or blame) as a vital means of regulating both the ends and the means in dialogic exchange. Regular or habitual interactions between/among spectators and agents in this regard, relative to the continual presence of the ‘man within’ (and oftentimes, as well, to a shared understanding of the impartial man without, who is different in that he provides an analogue, as Vivienne Brown notes, to a ‘dispassionate’ divine Being), leads to the formation of discrete audiences and groups.47 These are interpreted throughout this thesis as ‘discursive

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communities’ that share communicative patterns relative to this conceit, and that are organised according to uniform judgments. These shared patterns and perceptions are gradually reconfigured by force of habit, over the passage of time, into constructive rules and regulative, social norms.

Offering an important qualification to Smith’s imaginary observer, however, as he notes in Part III of *TMS*, concerning ‘the Sense of Duty’, is the degree to which the impartial spectator stands under constant threat of the ‘partial judge’ within—i.e. the judge conceived by an ‘eagerness of [selfish] passion’, or by a ‘fury’ that leads to all manner of self-justification and vice (*TMS* III.4.3). This passion arises at the moment when one is either about to act, or in the moment after one has acted, and in either case leads to all manner of warped judgments and self-deceit (4.3). The very force of emotion in either case is oftentimes ‘sufficient’, as Smith records, ‘to induce the man within the breast to make a report very different from what the real circumstances of the case are capable of authorising’ (4.1). This altogether ‘indulgent and partial spectator’ thus corrupts ‘the propriety of our moral sentiments’ and overthrows the power of an objective conceit (III.3.41). And it is only when the action is over, as Smith contends, that ‘we can enter more coolly into the sentiments of the indifferent spectator. What before interested us is now become almost as indifferent to us as it always was to him, and we can now examine our own conduct with his candour and impartiality’ (III.4.4).

THE SYMPATHETIC IMAGINATION

Having reflected upon Adam Smith’s ‘impartial spectator’ as both mediator and judge, it seems useful to now briefly introduce the ‘sympathetic imagination’ as it relates to this construction. In Part VII of his *Theory of Moral Sentiments*, Smith launches into a discussion concerning ‘Systems of Moral Philosophy’, wherein he unfolds particular accounts given to the ‘Nature of Virtue’, the ‘Principle of Approbation’, and the authorial treatment of the ‘practical Rules of morality’. Each section highlights a series of approaches, questions and moral considerations that bear more generally upon the overarching notion of a ‘Theory of Sentiments’; and it is the
second of these (concerning approbation) that I would like to single out for establishing Smith’s sympathetic (or moral) imagination as it informs his theory on whole.

In his discussion ‘Of the different Systems which have been formed concerning the Principle of Approbation’, Smith prioritises ‘three different sources’ of approval: ‘[s]elf-love, reason, and sentiment’ (*TMS* VII.iii.INTRO.2). With regard to the first of these, ‘self-love’, Smith contends that the true ‘system of sympathy’ is often misconstrued as a selfish and self-centred conceit, where the tendency is to ‘deduce[e] all sentiments and affections [as resulting] from self-love’ (VII.iii.1.4). This is especially true, he argues, when it comes to considering how emotions are exchanged and how another person’s position is brought ‘home to [one]self’: ‘When I sympathize with your sorrow or your indignation,’ Smith writes,

it may be pretended, indeed, that my emotion is founded in self-love, because it arises from bringing your case home to myself. But though sympathy is very properly said to arise from an imaginary change of situations with the person principally concerned, yet this imaginary change is not supposed to happen to me in my own person and character, but in that of the person with whom I sympathise (ibid.).

On the basis of this principle of *change*, therefore, as underpinning transformative acts of emotional exchange, Smith argues that an ideal of sentimental concord and selfless affection is entirely conceivable (if but ‘momentary’ in conception) (I.1.4.7). The sympathetic imagination is here enlivened, he contends, not merely by stepping into another’s situation *as oneself*, but by stepping into another’s situation *as that other person*, entering fully into their very being so as to ‘deduce’ a thorough understanding of their physical condition, psychological or physiological state—without any regard for oneself: ‘Sympathy’, as Smith writes, ‘cannot, in any sense, be regarded as a selfish principle’ (ibid.). It is only a notion of ‘indirect sympathy’, or a sympathetic imagining of what ‘might redound to us’ by association with the welfare of society (either gain or suffering), that at times causes confusion by drawing self-love in its train: if self-
love accedes to its own ends, it is then, as Smith notes, that a false sympathy comes to the fore, lending its rather backwards applause to virtue and vice (VII.iii.1.3-4).

As concerns Smith’s second systemic account, regarding ‘reason’ as ‘the Principle of Approbation’, Smith situates his own perspective relative first to ‘the doctrine of Mr. Hobbes’, which espouses the notion that ‘men are taught to applaud whatever tends to promote the welfare of society and to blame whatever is likely to hurt it’; and second to the logic of Dr. Cudworth, who argues against ‘law’ as ‘the original source’ of a moral distinction between different qualities of right and wrong (instead viewing ‘law’ as the necessary outworking of natural inclinations) (TMS VII.iii.2.1). In situating himself relative to these, Smith locates the ‘popular’ doctrine of ‘reason’ as underpinning both positions, going on to then nuance his own claims by contending, as against these determinations, that:

Though reason is undoubtedly the source of the general rules of morality, and of all the moral judgments which we form by means of them; it is altogether absurd and unintelligible to suppose that the first perceptions of right and wrong can be derived from reason…. These first perceptions, as well as all other experiments upon which any general rules are founded, cannot be the object of reason, but of immediate sense and feeling (TMS VII.iii.2.7).

Interestingly enough, if read into Smith’s system as a whole, it seems likely that this ‘immediate sense and feeling’ must itself be understood as an imagined reaction, arising from patterns of habitual (sympathetic/imagined) response that then give form to ‘reason’ in practise (granting it logical shape). This ‘habitual sympathy’ introduces a notion of ‘sympathetic reasoning’ (as Mark K. Moller describes it) as the cognitive by-product of a ‘sense’ of ‘pleasure and pain’ (a sense that here accompanies ‘first perceptions’): ‘It is [thus] by finding in a vast variety of instances’, writes Smith, ‘that one tenor of conduct constantly pleases in a certain manner, and that another as constantly displeases the mind, that we form the general rules of morality’
Individuals are trained up, as it were, by natural sympathies, and by immediate (if imaginary) feelings and moral sense, to reason in a certain way; to ‘enter into’ a situation in a certain way; and to respond justly to right and wrong conduct (with either approval or disapproval).

With regard, then, to the third account, concerning sentiment as ‘the Principle of Approbation’, Smith deliberates the case via two systemic classes. The first of these founds ‘the principle of approbation’ upon a new ‘moral sense’, that is to say upon a ‘reflex, internal sense’, or upon a ‘power of perception exerted by the mind at the view of certain actions or affections’ (as argued by Hutcheson). And the second of these founds itself in both ‘Nature’ (acting ‘with the strictest œconomy’) as well as in ‘sympathy, [as] a power which has always been taken notice of, and with which the mind is manifestly endowed’—or, in other words, in a system ‘which places virtue in utility’ (a construction of sympathy as conceived by Hume) (TMS VII.iii.1-6, 17).

Arguing against the first, Smith suggests that because approbation can arise from a sympathy with dissimilar emotions (‘tender’ feeling in one instance, and grand awe in the next), it need not (and indeed cannot possibly) consist in a single ‘peculiar sentiment’ (ibid., 2). He argues, for example, that ‘If we attend to what we really feel when upon different occasions we either approve or disapprove, we shall find that our emotion in one case is often totally different from that in another, and that no common features can possibly be discovered between them’ (ibid., 13). Considering the second class, and returning to Part IV of his Theory, ‘Of the EFFECT of UTILITY upon the Sentiment of Approbation’, Smith distinguishes that sympathy ‘by which we enter into the motives of [an] agent’ from a sympathy that ‘places virtue in utility’, a notion that alternatively ‘accounts for the pleasure with which the spectator surveys the utility of any quality from sympathy with the happiness of those who are affected by it’ (ibid., 17). This kind of sympathy does not derive from an imaginary change of place with the agent (so as to stand in another’s shoes), but from an imagining of what it must be like to stand in another’s shoes; what it must be like to enjoy his material comforts; what it must be like to enjoy the ‘condition[s] of

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the rich and the great’—and to experience the satisfaction attending their station. In other words, it is based on a sympathetic deception: ‘Our imagination, which in pain and sorrow seems confined and cooped up within our own persons, in times of ease and prosperity expands itself to every thing around us. We are then charmed…. It is this deception’, as Smith writes, ‘which rouses and keeps in continual motion the industry of mankind’ (TMS IV.i.9-10).

The sympathetic imagination as it is employed throughout this thesis accommodates this distinction and discovers within it a key figure for grappling with the ongoing juxtaposition between sympathy in its highest form (with the potential for selfless interaction) and sympathy as regrettably contrived by all manner of artifice and deceit. Smith raises the sympathetic imagination to view as an integral component in the process of learning to ‘act as a spectator to oneself’ and in the process of learning to weigh personal feelings (of all types) against those of the impartial spectator; and as integral as well to then reading one’s judgments against the needs of “listening spectators” in wider community. This sympathetic imagination thus becomes the moral imagination, enlivening important distinctions between the fundamentally “good” or “bad” feelings that underscore what one approves.

THE SYSTEM

Throughout this thesis I read Smith’s theory as positing a rhetorical system for human interconnections, supporting J. C. Bryce’s contention that Smith’s Theory of Moral Sentiments and his Lectures on Rhetoric and Belles Lettres read as ‘two halves of one system, and not merely at occasional points of contact.’ The construct of the impartial spectator, as described above, acts in concert with the sympathetic imagination so as to provide compositional structure and theoretical form to both ideas, thus enriching Smith’s system relative to dialogic transaction and socio-political exchange. Adam Smith’s moral philosophy develops an entire system of sensible/sociable interactions (one that can be read across all of his works, though it falls

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49This notion of “listening spectators” is introduced relative to Laura Heymann’s ‘transformativeness inquiry’, indicated in the brief that precedes Part II of the thesis.

outwith the scope of this thesis to do so) and that takes into account numerous socio-political and socio-economic themes across a wide range of fields. This thesis will not attempt to engage with all of them, but will prioritise only those that arise naturally from within the case studies themselves, particularising certain aspects from his *Rhetoric* (reading them as contained within the same scheme) so as to draw particular attention to transformative aspects of sensible self-conceit in Early America. The term “socio-political” is thus used to denote those colonial actors who, by virtue of transformative character development (relative to revolutionary and post-revolutionary changes in self-governance), take on new meaning and impress new meaning upon political scenes. Smith’s system is understood as political in itself only within this frame—as enlivening socio-political contexts through the characters it reveals. To put it another way, this thesis understands Smith’s theory as normative only insofar as it purports to structure human encounters (and to prescribe the basic functioning of certain legal and logical arenas), and as political only by its inclination to enhance those characters who then, themselves, enrich political dramaturgy. It falls outwith the scope of this inquiry to examine his system as a political theory in itself.

This thesis does, however, read Smith’s system as *theatrical*, as bearing within itself self-evident principles of dramatic connection and contrivance, and as suggesting a logical means of reading ‘the fiction of sympathy’, as David Marshall calls it—or of identifying the *theatrical trace* in Odai Johnson’s view, whereby sympathy is being continually conceived in human interplay upon the rather self-conscious air of its own illusion.\(^5\) Although Marshall’s author-based study recognises Smith as among those concerned primarily with ‘the theatre outwith the playhouse’, or with the theatre of daily life, Smithian theory suggests that the theatre outwith the playhouse, cannot be disengaged from the theatre *within* the playhouse—that the two are, for all intents and purposes, indistinguishable. Nonetheless, Marshall’s investigation offers an apt summation of both the lived and literary turn towards theatricism, arguing that ‘Theatre, for these authors [including Smith], represents, creates, and responds to the uncertainties about how

to constitute, maintain, and represent a stable and authentic self. Lisa A. Freeman further emphasises this point in her study of *Character’s Theatre: Genre and Identity on the Eighteenth-Century English Stage*, identifying the eighteenth-century ‘process whereby a theatrical logic comes to be internalised and naturalised as the private individual observes and apprehends the self as other, that is, as an object itself’—and learns to then interact with the world through mechanisms of performed response. She reads this idea as germane to enlightenment discourses of self-representation and character construction, elaborating a complex grammar of theatrical logic across the long ‘arc’, as she calls it, of eighteenth-century representation, subjectivity, authentication and concealment.

Smith’s sympathetic system accentuates this ‘arc’ through a rhetorical and philosophical approach that concedes theatricality as underpinning multi-layered networks of human sociability and variability. Further to this, it conceives a theory of moral development that is both universal and local in its view of dialogical interaction, conceptualising sympathy itself as a sensible and interactive discourse, capable of fostering ties of commonality, whilst at the same time cutting cords of unwanted connection—and in so doing, of reshaping the political parameters that govern society on whole. It is in this manner that Smith’s theory offers itself as an incisive literary tool for engaging with transformative dialogues of Early American self-construction and for engaging within the psycho-physiological undercurrents that inform individual actions in performed community. Smith’s notion of sympathy productively supports and ascribes value to the process of imaginative transformation, while the following case studies particularise moments of discursive and trans-relational refashioning. They reveal the degree to which sensible American selves (and a sensible American nation) are being conceptualised always with regard to other characters *en scene*. And as with the ‘words’ that shape their interactions—(words that are intensely purposeful in composition)—their goal in this process is to become now ‘natives of [a new] community’—to become citizens (Intro., *LRBL* 15).

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52 Marshall, *Figure of Theatre*, p. 1.
PT. II: STAGES OF EXECUTION
*Specific references to ‘new message, meaning and character’ are read through Laura Heymann’s socio-legal ‘transformativeness inquiry’ in order to test the implications consequent upon interpreting Smith’s theory within the Early American scene.\textsuperscript{55} In discerning her approach within the scope of Smith’s system, I highlight the manner in which her logic dovetails with particular notions of empathetic expression, sympathetic reasoning and moral response in judgment. Her inquiry offers a supplemental and incisive vocabulary for assessing developmental changes in American self-construction, relative to networks of sympathetic interchange and socio-political conceit. The following case studies prioritise “listening spectators” and the single field of enquiry (described earlier as that wide open space) wherein individual/national narrative is being theatrically conceived via sympathy acting as a transformative rhetoric, tracing its way through ‘interpretive communities’ and sensible human relationships.\textsuperscript{56}"


\textsuperscript{56}Citing Stanley E. Fish on ‘interpretive communities’, ibid., p. 455.
'It is reason, principle, conscience, the inhabitant of the breast, the man within, the great judge and arbiter of our conduct. It is he who, whenever we are to act so as to affect the happiness of others, calls to us, with a voice capable of astonishing the most presumptuous of our passions, that we are but one of the multitude....'

(TMS III.3.4)
III

FIGURES OF SPEECH

‘THIS REMOTE AMERICAN CONTINENT SHARES IN THE LOYAL SYMPATHY.
THE WIDE INTERMEDIATE ATLANTICK ROLLS THE TIDE OF GRIEF TO THESE DISTANT SHORES.’

Rev. Samuel Davies, 1761

(DIALOGUES)

TRANSATLANTIC SYMPATHY

‘As the following Discourse naturally calls the Tears of unfeigned Loyalty to flow from our Eyes, and opens the Springs of undissembled Sorrow in every generous Heart, so the sudden unexpected Death of the worthy Author must add new Weight to our Affliction, and give a double Emphasis to all our Expressions of Grief’: So begins a preface written by David Bostwick, A. M., Minister of the Presbyterian Congregation in New-York, on 13th February 1761, upon the death of long-time friend and fellow minister, the late Reverend Samuel Davies, A. M. In his prefix concerning the ‘Life, Character and Death’ of the Reverend Davies, Bostwick eulogises on the ‘untimely Fall’ of one most dear to the very heart of creation, a man imbued with such affable qualities as to furnish the world with a visible representation of circumspect judgment and sound moral impartation. Bostwick reflects with heartfelt lamentation upon the loss of a man so ennobled by the divine ‘Author of Nature and Grace’ as to be fitted with apt qualities for enlivening truth to mortal minds, and for encouraging secular service in all the Branches of Science. Bostwick’s preface introduces the publication of Davies’ final published work, ‘A Sermon Delivered at Nassau-Hall, January 14, 1761, On the Death of

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His Late Majesty King George II.  

An eloquent exposition on the life and reign of that British sovereign, Davies’ sermon intends, by way of an *emphatic meditation* and a then critical instruction, to admonish his hearers to reflect wisely upon the virtues of modest rule. Davies’ emotive emphasis on piety and authority is unexpectedly doubled by Bostwick’s then woe-filled prefix, urging this selfsame audience of listeners to weep in community for the death of the author himself, and to ‘Stand ready’ as men who must in turn respond to ‘the final summons’:

‘Lament, O ye Residents of Nassau-Hall! … Lament and mourn, ye Ministers of Religion, ye Heralds of the Great God, and Messengers of the Lamb … Lament, O bereaved Congregation of *Prince-town!* … Lament, with sympathizing Tears, ye Men of Learning, Genius or Piety, and all ye noble Patrons of Human Literature….’

Conveyed through these woeful expressions, however, is at the same time a reasonable effort to effect a more practical sympathy among fellow-congregants: ‘General lamentations, which express nothing but the anguish of the sufferer’, as Adam Smith states, ‘create rather a curiosity to inquire into his situation, along with some disposition to sympathise with him, than any actual sympathy that is very sensible’ (*TMS* I.i.1.9). Indulging therefore in what Bostwick calls ‘the swelling Tide of Grief’, these fellow-authors usefully augment morose circumstance through expressive recollection and passionate address, as much concerned with figures of the dead as with the characters and characterisations of the living. These are raised to view as dual logics enlivening a uniform fiction, pleading for moral uprightness. While Bostwick concedes his own limitations, his incapacity to capture the true stature of his friend (‘I am however truly sensible’, he writes, ‘that, to exhibit a just Portraiture of President *Davies*, and draw the Lineaments of his amiable Character at large is a Task too arduous for my unpractised Pen...’), he nevertheless recalls in his Reverend Brother a man who could hold his ‘Audience entirely at his Command’ and who blessed the ‘Republick of Letters’ with the highest forms of industrious taste and affection. He bypasses grief in the main so as to accommodate a range of other passions—reading these as together composing, by very force of contrast, Davies’ own sensible figure. Commending his superior talents he writes:

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59Davies, Sermon.
60ibid., p. viii.
61ibid., p. viii.
His Language was surpassingly beautiful and comprehensive, tending to make the most stupid Hearer sensibly feel, as well as clearly understand. Sublimity and Elegance, Plainness and Perspicuity, and all the Force and Energy that the Language of Mortals could convey, were the Ingredients of almost every Composition. His Manner of Delivery as to Pronunciation, Gesture, and Modulation of Voice, seemed to be a perfect Model of the most moving and striking Oratory.\(^\text{62}\)

Even as he imaginatively enters into and sympathetically laments the death of his friend, Bostwick’s recollection discursively resists the resignation of sympathy to grief. Smith’s philosophic view likewise challenges this reduction. His broader formulation of sympathy accommodates a complex theory of expression relative to dialogic interchange, human conduct and sociability. Of the definitional shift he writes:

Pity and compassion are words appropriated to signify our fellow-feeling with the sorrow of others. Sympathy, though its meaning was, perhaps, originally the same, may now, however, without much impropriety, be made use of to denote our fellow-feeling with any passion whatsoever. (\textit{TMS} I.i.1.5)

Smith’s moral system recognises—invites and cancels out—the overt theatricality that underpins Bostwick’s discourse, comprehending it 1) as demonstrating a newly intricate science of expression and 2) as always already bound up in a figurative exchange, where the passions are carried upon imaginative airs, as Charles L. Griswold contends, of ‘artifice’, ‘division’ and ‘contagion’.\(^\text{63}\) These are triangulated in Bostwick/Davies through lexicons of kinship that take shape via dialectical patterns reflecting shifting hierarchies of loyalty and alignment. It is possible in these dialogues with Great Britain to identify a notion of imaginative sympathy running through imperial bands, and to discern changes in sympathy itself (as a moral

\(^{62}\text{ibid., pp. ii, vii, iv.}\)

philosophic discourse) as undercutting affective ties in such manner as to expose the compositional pressures straining colonial bonds.

In Davies’ eulogy the sensible colonial subject is pictured as a loyal reflection of the monarchy, characterised by habits of sincere reliance and by genealogical cords of consanguinity. ‘Let not our Obedience be a fervile Artifice’, Davies implores, ‘… not the mercenary Cringing of Ambition or Avarice, not the fulsome affected Complaifance of Flattery, but the voluntary offering of an honest and sincere Heart’ (26). Whilst he admonishes his hearers to volunteer themselves to the service of the King so as to avoid ‘turn[ing] Rebels against your own Hearts and Consciences’, the practise of imperial submission (without ambition, avarice or ingenuity) depends upon an imaginary change of place with the King himself—the adoption of his wishes and ways, and the continual imagining of oneself as a ‘Fellow-Subject’ with transatlantic brethren (27). This interchange is contingent on the continued subjugation of the conscience (and the affectation of ‘disinterestedness’, as Davies argues) that underpins ‘Sincere Loyalty and Gratitude …’ (10). It succeeds through imaginative identification with monarchical interests—and by a notion of shared grief as running by ‘Succession in the Hanover Family’ (27). Imperial sorrow is thus conveyed to the new world through means of a blood “transfusion”, where genealogical succession is ensured by force of sympathetic contagion: England mourns, and so her colonies grieve (TMS I.i.1.6). Davies ultimately suggests that his listeners are predisposed to favour that which runs in their blood, conceiving them as long habituated to the (behavioural and postural) practise of filial attachment and thus inclined—no matter ‘Whatever Character [they] may hereafter sustain’—to behave in accordance with those affinities (ibid.).

The Reverend Davies emphasises this reaction through frequent allusions to the stage, whereby he dramatises empirical connections. He aims to effect a discursive transference of loyal alignment and logical affection from the reign of King George II to the government of King George III: ‘While I invite you to drop your filial Tears over the sacred Dust of your common Father’, Davies says, ‘I cannot but congratulate you once more on your being Coevals with
George III’ (23, 26). He urges his audience to see clearly its position in the realm and “stamps” his approval (as by theatrical muscle) with concrete instruction for demonstrating filial affection in practise: ‘Civil society’, he remarks, ‘is [now] to execute all [George III’s] Patriot Designs’ (27). Despite his earnest intent, however, it is the quality of propietas, bound up in Davies’ thespian manner of expression, that undercuts (even as it underscores) his theoretical aim; it is this quality whereby, as J. C. Bryce suggests, each thing begins to be ‘called by its own, its properly belonging name’ (J. C. Bryce, Intro., LRBL 15). This attribute of perspicuity, of being seen through, is increasingly apparent in the style and language of sensible communication, where, as demonstrated here, discursive transparency depends not only upon a classical execution of declamation and speech, but upon ‘what it is that language [verbal and gestural] allows to show through it and how.’

Two years before the publication of these eulogies, in 1759, the Reverend Samuel Davies accepted a new position as President of the College of New Jersey, leaving behind a thriving ministry to colonists and slaves in Hanover County, Virginia. In that same year, across ‘the wide intermediate Atlantick’, Scottish moral philosopher Adam Smith, then Chair of Moral Philosophy at the University of Glasgow, published the first edition of his Theory of Moral Sentiments. Viewing them together in a moment of transatlantic correspondence, the two dovetail neatly through their shared cognition of sympathy as both an associative conceit and a shifting imperative—as signifying a now richly empathetic, compositionally intricate science of expression: in Smith’s Theory, a traditional notion of sympathy in grief is replaced by a philosophy that reconceives sympathy in relation to numerous other emotions (joy, anger, pleasure, etc.); his system not only reads sympathy by affiliation with other passions but, perhaps more importantly, considers sympathetic interaction relative to the manner in which those emotions are expressed. Samuel Davies’ sermon illustrates the significance of this

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64 J. C. Bryce, Introduction, LRBL, p. 15 (emphasis mine).
65 Now Princeton University.
66 Davies, Sermon.
philosophical change in practise: where sympathy is at once ascribed its traditional role (as correspondent with grief), it is at the same time stretched to accommodate a host of alternate passions and declarative forms. Relative to Smith’s theoretical conceit, the Davies/Bostwick pairing reflects the beginnings of an ‘emergent personality as concept’, as Jay Fliegelman contends, where ‘the quest for a natural language’ journeys ‘paradoxically [towards] a greater theatricalisation of public speaking, [towards] a new social dramaturgy, and [towards] a performative understanding of selfhood.’

A clue to the radical and substantive nature of this shift is discovered in a small announcement placed in the 1763 *Virginia Gazette*, written by a man named Reverend James Waddell. Almost entirely overlooked in Early American historiography, Waddell is a central figure, I would argue, through whom the rhetorical history and oratorical revolution of Early America gains its momentum, a pivot man between Samuel Davies and Patrick Henry, whose life qualifies rich aspects of colonial identity and ideological sentiment in pre-revolutionary America. I cite his notice in its entirety, directing attention to one short line in the second paragraph, which sets the parameters for this investigation:

LANCASTER, October 15, 1763

As the gentleman who teaches the grammar school in this county has concluded to discontinue that employment next Christmas, I take this method of giving timely notice to the gentlemen who have their children or wards under his tuition, and to others who may be disposed to have their youth instructed in all, or in any one of the branches of education specified, that I design to continue it, at the same place, from the first of the year.

The Latin and Greek languages, and Hebrew (if required) will be taught, agreeable to the most approved modern methods.

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Instructions upon English grammar will be given, in leisure hours, to the Latinists; which they will soon apprehend to be a pleasant, and very advantageous, amusement.

The rudiments of geometry and surveying, plain trigonometry, logick, ontology, ethics, rhetoric, geography, and the use of the globes, will be taught at reasonable prices.

**I hope to introduce with success declamations and select pieces of dramatick compositions, for the improvement of my pupils in pronunciation, ardent [sic], emphasis and gesture.** I expect a well qualified assistant from Pennsylvania; and gentlemen may depend on having their children tutored with great care, and much I hope to their satisfaction, as my scholars shall be carefully proportioned to the number of their instructors.

And I can assure them that they need not fear the discontinuance of my school, which I am persuaded must not [illegible] contribute to their encouragement.

JAMES WADDEL 68

This brief advertisement grants insight not only into the social interests governing colonial Virginia, but bears particular reference as well to the drama—the practise of the theatrical arts—as implicated in rhetorical instruction and genteel self-conceit, interlacing key compositional themes informing intellectual modes of colonial self-fashioning. This broadens Jay Fliegelman’s view of the ‘elocutionary revolution’ underpinning colonial American sentiment in the 1760s and 1770s—destabilising conventional bounds of oratory and speech by drawing a new character to the fore of group interest. 69

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69 Fliegelman, Declaring Independence, pp. 28-35.
**Character and Conviction: 1763**

*When we consider the character of any individual, we naturally view it under two different aspects, first, as it may affect his own happiness; and secondly, as it may affect that of other people. (TMS VI.INTRO.1)*

In this first case study, I intend to read Smith’s sympathetic system as a dialogue of conviction relative to the eighteenth-century colonial American confluence between the real and the imagined; the theatrical and the lived; the ‘true figure’ of dramatic theory and the sensible self as a then autonomous political conceit. Localising this inquiry in colonial Virginia, where the city of Williamsburg offers an illustrative set-piece for these particulars, I read Smith’s sympathetic logic into inventive spaces of colonial and revolutionary transformation, using it to refract “sensible” aspects of character-construction into a variable range of discursive and compositional components.

Throughout my analysis, I use Smith’s notion of sympathy in order to read landscapes of dialogical exchange, entering into socio-political arenas within the city where the “sensible subject” (as colonist) is actively negotiating character identities and social posturings. I want to suggest a notion of *sensible citizenship* as arising out of these mediations, identifying the “sensible citizen” as a critical posture on trial at the space between social models. I will argue that this figure is conceptualised (tried and tried on) prior to the Revolution in specific areas of discursive character change, weighing the ‘transformativeness’ of his self-development (the extent to which his representation takes on ‘new message, meaning and character’ in Revolutionary Virginia) against the backdrop of a two-toned paradigm shift in sympathetic and theatrical Enlightenment thought.70 I employ Smith’s system (which comprehends these shifts) as a literary device for reading into specific dramaturgical contexts and productions (identified by Rhys Isaac), employing it as a dialogue of conviction that readily identifies and contends with the transformative practise of sensible self-conceive; I comprehend Smith’s notion of

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70Heymann, ‘Everything is Transformative’. 
sympathy as an associative construct, conversant by means of natural correspondence and persuasion.

Within the scope of historiographical debates concerning republicanism and self-construction (such as those advanced by Joyce Appleby and Robert E. Shalhope), this sensible citizen figure emerges following the Revolution as the maturation of ‘two rather distinctive types’ as Sarah Knott suggests, haunting the contentious middle ground between republicanism and liberalism, self-abnegation and self-centeredness.\(^71\) It is not my intention in this study to grapple with these debates directly, but rather to emphasise the dramaturgical points at which this figure is wrestling with his own features (moral and theatrical) at an earlier frame in the historical narrative. Where Douglas Bradburn’s study of the ‘citizenship revolution’ begins in 1774, with the meeting of the First Continental Congress, my treatment contends with the “sensible citizen” as a conceit emerging prior to this, drawing the narrative backwards to 1716 so as to consider him (a mask of masculine gentility) in affective dialogue/negotiation with the imperial metropole and with fellow colonial subjects.\(^72\) My primary source material includes local Virginian diaries and correspondence, with a focus on The Diary of Colonel Landon Carter of Sabine Hall, the Journal and Letters of Philip Vickers Fithian, and the Correspondence, Books and Accounts of Thomas Jefferson, along with newspaper reports drawn from the Virginia Gazette, and numerous other eighteenth-century theatrical records, broadsides and publications.\(^73\)


By manner of progression, I develop this chapter through four stages of inquiry. In the first section concerning ‘character and conviction’ I focus on the dialogues taking place between/among genteel colonists in Virginia and on the “sensible subject” undergoing character change in the space between identity models. In the second section concerning the presentation of a ‘true figure’ I highlight the tools (theatrical and moral) whereby the “sensible citizen” figure becomes identifiable in Williamsburg, and where it is possible to see him vying for power and jockeying for place among other character forms. In the third section concerning Mr. Jefferson, I particularise the ambiguity attendant upon that position, where the social and moral goal of natural representation must at all times contend with a form of equitable observation that virtually cancels out his character even in the act of its construction. And in the fourth section I locate the sensible citizen as a political stance and rhetorical device, useful for persuading others to align with the revolutionary cause. I open my discussion, therefore, by identifying social models of character construction with reference to dramatic platforms of action. Following this, I emphasise the manner in which upper middling and elite Virginians are beginning to assert personal autonomy and self-direction—by sympathy—within that space.

**Social Models**

In a collection of essays on *Imperatives, Behaviors and Identities in Early America*, Jack P. Greene distinguishes two prevalent social models governing colonial American cultural identity throughout the 1760s and 1770s, arguing that these prevented colonists from ‘developing either an appropriate sense of their own identity or a new set of values that would more accurately correspond with prevailing modes of behaviour’. Although Greene rightly identifies a growing disconnect between identity in theory and behavioural “modes” in actuality, he perhaps disqualifies self-construction in the 1760s and 1770s far too quickly, by looking for identity at discrete moments of arrival rather than discerning it at points of transformation en route. I prioritise instead the space of negotiation between these models, where I believe that a

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correspondent and ‘appropriate sense’ of identity is being continually achieved through the discursive emphasis on posture (presence and positioning) as a rhetorical determinant behind individual and group formation. The Colonial American—as ‘an emergent personality’—is here always already negotiating a transformative space, where the dialogical process of becoming a character, in both moral and figurative terms, bears significantly upon sensible self-construction.

In an essay entitled ‘Search for Identity: An Interpretation of the Meaning of Selected Patterns of Social Response in Eighteenth-Century America’, Greene distinguishes these two models as follows: he constitutes the first in an idealised and ‘spiritual energy’ that looks backwards to early settlement and that calls for a ‘reformation of [the current social] character’ to ensure the “moral” continuity of society; and he discovers the second in an ‘idealised image of English society and culture’, manufactured through representations of London as the standard “by which men and events were judged” and as the norm for “approved canons of taste and behaviour”. Although Greene argues that colonists were developmentally hindered by these options, Smith’s theory introduces a means of examining innovative self-conception at the overlap between the two: his system caters to both incentives, whilst at the same time offsetting ideological limitations by inviting individual self-assertion to contend in complicated ways with both imitative and “devout” modes of social behaviour. Insofar as Greene’s models are being mediated throughout the colonies, albeit with different emphasis and effect, I choose Virginia’s capital city as a locus for highlighting the relevance of Smith’s system as a tool for reading into any number of trans-relational scenes and differences. There are significant disparities from north to south, city to city, relative to the manner in which these models are being enacted and negotiated. My treatment here does not intend to overlook these (largely theological/philosophical dichotomies), but it is for another project to treat points of comparison more explicitly.

75ibid.
In Book 1 of his *Theory of Moral Sentiments*, Adam Smith lends precision to Greene’s analysis in a discussion ‘of the corruption of our moral sentiments’ pertaining to ‘the origin of Ambition’ and ‘the distinction of Ranks’, delineating his theory in a string of similarly doubled observations:

Two different roads are presented to us, equally leading to the attainment of this so much desired object; the one, by the study of wisdom and the practise of virtue; the other, by the acquisition of wealth and greatness. Two different characters are presented to our emulation; the one, of proud ambition and ostentatious avidity; the other, of humble modesty and equitable justice. Two different models, two different pictures, are held out to us, according to which we may fashion our own character and behaviour; the one more gaudy and glittering in its colouring; the other more correct and more exquisitely beautiful in its outline: the one forcing itself upon the notice of every wandering eye; the other, attracting the attention of scarce any body but the most studious and careful observer. (*TMS* I.iii.3.1-2)

Drawing his analysis from a complex reading of human motivations, Smith underpins his logic with an emphasis on propriety as constituting the right measure of social performance. Three priorities invite our attention (to be considered more fully in subsequent chapters): the ‘practise of virtue’, the importance of ‘equitable justice’ and the industry of ‘careful observation’ (ibid.). Smith’s “crossroads” depiction maps onto Williamsburg’s behavioural terrain so as to morally codify, as Andrew Burstein suggests, its coordinates of purpose and pleasure. Locating geo-theatrical spaces throughout this environment (the coffeehouse, marketplace, church, court and stage—focusing on the latter), and reading them as by the ‘theatrical trace’ that Odai Johnson suggests, it becomes possible to interrogate the complicated manner in which sensible subjects of the crown are negotiating new forms of expression.77 Johnson reads the cityscape using a conceptual ‘trace’ that facilitates Smith’s interweaving of the real with the imagined. Each

interactive arena constitutes a dramaturgical platform, invoking Rhys Isaac, whereon colonists are becoming naturally conversant with identity options as they learn to train and moderate their passions. Acting in everyday relation to these rhetorical training grounds (as Fliegelman reads them), Colonial Virginians visibly negotiate Greene’s models in such manner as to belie executive authority through increasingly performative means of self-realisation.

Perhaps the most instructive arena wherein to illustrate the dialogue that is ongoing between these models is the eighteenth-century theatre itself, where these ‘two characters’/‘two pictures’ appear together in fictional representations onstage and in social re-orderings in the house. A host of changes in acting theories, dramatic methods and theatrical directions bore discernible risks for those attaining to more “devout” models (principled on Virtue) — particularly with regard to the moral make-up and compositional norms of society. The potential for sympathetic artifice, many believed, posed a threat to social conduct, sensible feeling and right conviction — a strong delusion that might upset the delicate balance of the senses. The uncomfortable interconnection between theatrical manuals, public speech and codes of behaviour illustrated the deception, some argued, of vain pursuit. ‘From whence, then, arises that emulation’, Smith concedes,

which runs through all the different ranks of men, and what are the advantages which we propose by that great purpose of human life which we call bettering our condition? To be observed, to be attended to, to be taken notice of with sympathy, complacency, and approbation, are all the advantages which we can propose to derive from it. It is the vanity, not the ease, or the pleasure, which interests us. (TMS I.iii.2.1)

Offering a platform for these vanities of self-display, the dramatic landscape of Colonial Williamsburg essentialised an ongoing dialogue over self-construction, transfiguring the art of genteel sympathy within various public arenas so as to redefine the parameters (merits and

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78 Isaac, Transforming Virginia.
79 Fliegelman, Declaring Independence; Greene, Imperatives, Behaviors, & Identities.
80 Fliegelman, Declaring Independence, pp. 79-94.
demerits) of the public order. By 1763, the mechanical/prescriptive practise of such stage actors as Lewis Hallam (arriving in Virginia with the London Company of Comedians in 1752) contended with a dialogical and expressive reshuffling—onstage and off—unsettling local patterns of authority, complicating traditional modes of gentility and suggesting a levelling of the city’s social terrain.\textsuperscript{81} Upon Hallam’s death in 1756, David Douglass took charge of the troupe, transforming the ‘London Company of Comedians’ into his very own ‘American Company’—and promoting London actor David Garrick’s newly natural style of acting. William Verling’s \textit{Virginia Company of Comedians} succeeded these efforts in 1763, practising similar methods by altering expression on the face of it (as per Garrick), and by conveying that expression via waves of natural sympathy to audience spectators.\textsuperscript{82} English actor Richard Cumberland captured the importance of this historical progression in his own declarative response to Garrick’s live performance:

heavens—what a transition! —it seemed as if a whole century had been stept over in the transition of a single scene: old things were done away, and a new order at once brought forward, bright and luminous, and clearly destined to dispel the barbarisms and bigotry of tasteless age, too long attached to the prejudices of custom, and superstitiously devoted to the illusions of imposing declamation.\textsuperscript{83}

Accordingly, Adam Smith’s theoretically doubled perception (approached via ‘two roads’) renders legible not the static dialogues of surface encounters (the mechanical principles of human communication, in Humean terms), but the more fluid expressions of sympathetic exchange. Greene’s models fold inward towards a common interior, where a “sensible citizen” figure is found negotiating the dramaturgical space between contrasts. This persona is characterised by three convictions: 1) a growing sensibility to social posturing and positioning

\textsuperscript{81}Charles P. Daly, \textit{First theatre in America: when was the drama first introduced in America? An Inquiry by Hon. Charles P. Daly, LL.D. including A Consideration of the Objections that have been made to the Stage}, no. 1 (New York: Dunlap Society, 1896), pp. 31-32, (p. 1), JDR Special Collections, Williamsburg, Virginia.


\textsuperscript{83}ibid., p. 10, citing Richard Cumberland, \textit{Memoirs} (1806), pp. 59-60.
as matters bound up in the fact of one’s being observed, 2) a preference for the pursuit of personal autonomy, as Knott argues, and 3) a growing awareness of the risks attendant upon individual representation—the dangers of effecting a posture before a critical social world.\textsuperscript{84} Referring to an emerging “performative” order in Virginia, Rhys Isaac binds this figure (conceived generically) to the principle of a rising autonomy, reminding us that “the individual” in Williamsburg ‘[was] no less a metaphor applied to the interpretation of social realities than hierarchies of ruling fathers have been. The principle of individual autonomy, only just establishing an ascendancy destined to last until the present, was reorganising late eighteenth-century Anglo-Virginians’ perceptions of their world and the expectations they had of it.\textsuperscript{85} From the theatre to the coffeehouse, then, the practise of gentility acquired a new theatrical air, partaking in a spectatorial project that was sympathetically driven and morally bent, as Charles A. Knight suggests, on civil improvement.\textsuperscript{86}

\textit{Acting Spectators}

In Charles L. Griswold’s work on \textit{Adam Smith}, Smith’s enlightenment notion of sympathy is understood as a ‘spectator-centred’ rather than an ‘agent-centred’ theory, with emphasis placed on the spectator’s reception and judgment over and above the actor’s presentation in the main.\textsuperscript{87} Complicating this somewhat, is the fluid interchange of sympathy across this polarity, where it becomes apparent that the (active) performer is at once both actor and spectator, and that the (passive) “listening spectator” is at once his own declarative figure in the main. Remarking on this in his eighteenth-century dramatic theory, Sir John Hill reflects that the sensible actor at all times ‘lives not acts the scene’.\textsuperscript{88} This is borne out in the ‘Unity of Interest’ that Smith describes as the main continuity in dramatic presentation (\textit{LRBL} ii.81). The actor, although always

\textsuperscript{84}Knott, \textit{Sensibility and the American Revolution}, p. 21.
\textsuperscript{85}Isaac, \textit{Transformation of Virginia}, p. 311.
literally separate from his audience, is continually interchanged with spectators in an ongoing
dialogue compelled by force of the sympathetic imagination. And it is this “living” of dramatic
interchange, the real dependence upon natural sentiments and spectatorial responsiveness (i.e.
audience approval) that codifies the cast and conduct of colonial life. Spectators and agents are
connected to one another out of mutual concern for credibility and malleability—bound together
through the continual moderation/modulation of the passions (the raising and lowering of self-
expression) so as to attend the tastes, tempers, tones and capacities of one another in society.

Frustrating this dramatic unity, however, is a fear of complete sympathetic exchange, lest
virtuous observers should “enter into” the natural vices of an actor who has, in fact, become an
immoral part. Admitting a threat to the production by default, Sir John Hill remarks as well
upon the performance hazards of a strong sensibility, where the ‘nervous vibration’ of the
actor’s passions might so ‘interrupt [his] delivery, and his whole frame … be so disturbed, that
he shall not be able to pronounce the words articulately.’ Should the actor’s passions be so
mastered, he suggests, a sympathetic transference might contaminate the performance (and the
performance the audience, and the audience the outside community). James Boswell responds to
these concerns with the following speculation: ‘If I may be allowed to conjecture’, he says,
‘what is the nature of that mysterious power by which a player really is the character which he
represents, my notion is, that he must have a kind of double feeling. He must assume a strong
degree the character he represents, while he at the same time retains the consciousness of his
own character.’ Supporting this with his own theory of the ‘impartial spectator’, Adam Smith
commends the self-regulating power of this ‘double[d]’ perception. While the primary concern
for Sir John Hill is physiological, for Smith it remains (as with Boswell) a psychological
concern, rooted in the conscience. His actor and audience might be lulled to sleep if the
impartial spectator falls out of view, thereby inculcating wrong principles in the minds of
listening spectators. Relative to these enlightenment dialogues, colonial fears surrounding the

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actor and his stage contended (in at least some degree) with various uncertainties surrounding the person of the actor himself. If a sensible people needed to be sympathetic, and if sympathy demanded spectators to ‘keep perfect time’ with the feelings of others, then it stood to reason (arguing via Smith) that for a sensible people to remain sensible—i.e. full of *propriety*—then it needed to ‘keep time’ with agents who were themselves practising *right* principles of action and judgment (*TMS* I.iii.1.8).

A 1798 text published by American author, Charles Brockden Brown, registers the threatening nature of sympathetic change. In his gothic novel, *Wieland; or, The Transformation: An American Tale*, sympathy’s theatrical potential is raised to view as an agent of psychophysiological control. Similar to sympathy’s contrived role in the introductory passage by F. Scott Fitzgerald, its relationship to both character and judgment here gives the lie to traditional notions of sympathetic sorrow, highlighting instead sympathy’s increasingly dangerous science of expression as constituting a threat to the moral constitution. Written in a post-revolutionary moment, Brockden Brown’s narrative reads its account back into the colonial scene, opening with a definitive gesture towards sympathy as correspondent with grief: ‘You know not fully the cause of my sorrows’, the narrator writes, ‘You are a stranger to the depth of my distresses’ (Brown 5). No sooner does the text introduce its point of sorrow, however, than it concedes sympathetic failure, robbing the speaker of even the small comfort she might glean from another’s solace: ‘… your efforts at consolation must necessarily fail’ she states (5). Detaching herself from any right to the reader’s affections, she distances herself from any form of kindred bond or emotional connection: ‘the tale that I am going to tell is not intended’, she resolves, ‘as a claim upon your sympathy’ (5). Her narrative stance reflects a callous disavowal, a renunciation of distress and misfortune. It enacts a discursive severance, not only from the stranger who might lament alongside her, but from sympathy itself, as a notion fit to assuage: mutual grief will not suffice. In such fashion she begins to dispossess, to disengage from the tragedy she intends to relate. From this opening passage the plot then broadens, retrospectively,

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to unfold a peculiar variation of the sentimental journey, wherein natural ‘tears of delicious sympathy’ are translated into ‘unbidden tears’ of agony—and wherein delicate affections are overthrown by the violence of ‘involuntary and uncontrollable’ emotion (26, 59). Thus it is for the narrator that the ‘[k]nowledge of the plot of a tragedy’ proves beneficial to imparting her account—an impartial ‘advantage’, à la Smith, that leaves her ‘free to attend to the Sentiments.’

It is from this “sensible” vantage point that the narrator exposes the power of sympathy as a dangerous game indeed, characterised by verbal manipulations, doublings and deceit. Although her aloof formality stands from the start as an intriguingly stable posture, it is hardly apathetic, and indeed participates in the very duplicity she undertakes to reveal; it is a pose in the truest sense, a cold deceit that has been adopted only after lengthy conflict. And although her sentiments are hardened towards the realms of futurity and fate, as her profession suggests, her indifference continually gives itself away (as with the pose that yet bears movement) and finds an interesting counterpoise in the very first words she utters: ‘I feel …’ (5, emphasis mine).

NEGOTIATIONS

PRESENTING A ‘TRUE FIGURE’

‘BY SYMPATHY’ (LRBL i.v.52)

In his introduction to The Diary of Colonel Landon Carter, dating from 1752-1778, Jack P. Greene cites nineteenth-century scholar Arthur Lovejoy in order to emphasise, as with Col. Landon Carter himself, a discursive environment wherein it is essential to the good of all—to come up with a ‘good conceit’ of oneself. Imperative to this, as Aaron Hill reminds eighteenth-century stage actors, is the two-strand imagination: the ‘plastic imagination’

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92J. C. Bryce, Intro, LRBL 19; quoting Smith, LRBL ii.30.
93As J. C. Bryce remarks in a footnote to Smith’s Rhetoric; this is one of the few lines to be underscored by the scribe.
Fig. 2: Transformation: ‘Frontispiece, William Hill Brown, *The Power of Sympathy* (Boston, 1789).’

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*In Fliegelman, *Declaring Independence*, p. 136.*
whereby immediate response proves the hallmark of natural expression, and the ‘intent imagination’ whereby the actor transports listening spectators to new realms of rational conceit.\textsuperscript{96} In order for the impression to succeed, this imagining depends upon a lexical kinship among three figurative interests: costume (deportment), composition (utterance) and comportment (action). In order for ‘the part’ to be played well, Hill argues, it ‘must be properly imagined.’\textsuperscript{97} The principle of likeness that supports his contention, suggests that the deception itself gives pleasure: it is enough that we conceive each other to be the same for the impression to succeed. Departing from this slightly, Smith prioritises correspondence, rather than likeness, as the dialogical imperative whereby the agent crafts himself relative to other actors: we must not only conceive, in his view, but believe the sentiments to be true, weighing their merit against our own senses. It is necessary in Smith’s view to counterbalance the passions (which are prone to profess false similitude) with an equivalent degree of logic, and to match imaginative role-play with equitable judgment. We are never thus deceived, Smith says—but are intently aware of the fact that we are in a playhouse, as spectators, watching a false display: ‘No one ever imagined that he saw the Sacrifice of Iphigenia;’ Smith states, ‘no more did any one imagine that <he> saw king Richard the Third; Ever<\textless y>one knows that at the one time he saw a picture and at the other Mr Garrick or some other actor’ (\textit{LRBL} ii.86). And insofar as we are called to judge the character of the man or representation in view (onstage or off) the pleasure of the experience comes not from any deception, but from reading figures rightly: interpreting motives and passions equitably by testing the degree of correspondence between the characters on trial and our own private sentiments. In Royall Tyler’s American play \textit{The Contrast} (1787), Tyler’s ‘Yankee’ character Jonathan enacts this principle when he attends a production (notably Sheridan’s \textit{The School for Scandal}) without ever realising that he has entered a playhouse. Although he seems at first to derive pleasure from the deception (is drawn in to laugh, to smile, and to ‘applaud that which must grieve the judicious’) his enjoyment is limited by an inability to match his moral sentiments with those expressed by the characters

\textsuperscript{96}Aaron Hill, \textit{Prompter}, pp. 85, 88.

\textsuperscript{97}ibid., p. 82.
before him. Expressions of hasty approval slide by elision into moral comment: ‘I liked the fun—’, he says, ‘but I thought he need not swear so, and make use of such naughty words’ (C, iii. 1. 72). In the end, it is only because he reads the playhouse as a domestic space, binding the morals of “real life” to his reading of its fiction, that spectatorial response overrides the false pleasures of delusion.

With a view to effecting correspondence, then, the following discussion builds off of the genteel “character of conviction” so as to ask: what constitutes a sensible presentation within this colonial world? What are the features of the “sensible citizen”? And how are his features clearly expressed without either understating or overstating his (ideological) purpose—robbing him of declarative power, or else rendering him a caricature of himself? I employ Smith’s sympathetic system as a dialogue of conviction in order to examine how sensible selves are taking on meaning, asking how they are being discursively fitted for right alignment with spectators in the world.

*Corresponding Sentiments*

On the subject of colonial self-fashioning, Kenneth A. Lockridge writes the following: ‘As Virginia planters’ aspirations to gentility rise, they find themselves trapped on an accelerating treadmill. The standards of genteel display—in goods and in intellectualisation—are constantly rising. Further, no matter how hard they try, elite Virginians’ efforts to achieve this rising standard of gentility are doomed to failure, because the very intensity and visibility of their efforts—their desperate orders of fashionable goods, their accumulating libraries—mark them as imitations.’ What amounts to mere imitation in the dialogue with Great Britain, however,
translates into a source of creative power among Virginia’s elite. The energy behind the “planter’s revolution” is bound up as much in political discontent as in polite refashioning—designed to circumvent “anxieties and confidences” in the dialogue with Great Britain and in the dialogue with fellow Virginians. This involved the development of a new social/moral position characterised by the ability to mediate extremes. An impartial ‘arbiter of the breast’, so-called by Smith, here offsets the inherited ‘signs of civility’ and offers a new intellectual basis for privilege—a ‘new vantage point’ (to qualify Catherine O’Donnell Kaplan) created by the Virginia gentry so as to secure their own means to political right and power.100 Resisting pressures from below, as explained by Woody Holton, Virginia’s planter class secured its place at the top of the colonial pyramid by adopting the social features of London counterparts—as to dress, manners and speech—whilst at the same time striving (because of their failure to succeed in this) to supplant external signifiers with new internal “anchors” of identity.101 Privileging these over and above stock codes of “visible” interaction, elite social actors increasingly counterbalanced the trends of self-display with a determination to observe differently—and thus to see, measure and judge according to the moral conscience of an “inner man”: ‘Always in your Leisure hours’, admonished Col. Landon Carter, ‘regard the inward Man’.102

In his reading of genteel identity, Lockridge extends the importance of self-reflection so as to consider the signs of Virginian civility. With reference to Fleigelman’s ‘quest for a natural language’, Lockridge invokes Clifford Geertz’s interest in ‘gain[ing] access’ to societies in order to justify his own departure from ‘the generalised truism of the dialogic self’.103 He turns instead to “the civilising process” theorised by Norbert Elias in the 1930s and 1970s, in order to deepen his engagement with the colonial American ‘pursuit of the signs of civility’ that might

100ibid., (p. 281); Kaplan, Men of Letters in the Early Republic, p. 4.
102Greene, Diary of Landon Carter, citing Landon Carter, letter to George Washington, October 7, 1755, pp. 15-16.
compose a ‘personality’ that is ‘always and inevitably nearly out of control.’ Adopting Elias’s regard for ‘civility’ as a cultural objective and as a ‘model of elite behaviour’, Lockridge interprets genteel self-fashioning in this view as a purposeful compulsion, hardly ambivalent to its situational dilemma. Substantiating his critique, he identifies ‘the intensities of colonial self-construction’ as legible within ‘the realm of personal literary productions’—an area that might be stretched to include, in Fliegelman’s broader sense of productions, ‘emotional credibility’ as a rhetorical focus of genteel self-conceit. As a dialogue of conviction that goes beyond conventional discourse analysis, therefore, so as to contemplate the social dramas of life, Smith’s Enlightenment notion of sympathy enters into this reading of colonial self-construction by accentuating a psychologically complex science of expression that not only designates new ‘signs of [Virginian] civility’ but that depends upon imaginative transference for its enactment. In this way it heightens the importance of the dialogical self (the self in dialogue), whilst addressing the sensible signs/expressions of civic sociability. As these signs of civility turn inwards, priority falls to natural expression and credible representation. Once again, the Williamsburg theatre proves a focal point for prescribing the sympathetic conveyance of these essentials.

**Natural Features: Lambranzi and Garrick**

The London stage ‘was the standard or model for dress and manners’, Charles P. Daly writes, ‘and these social habits and tastes were transported across the Atlantic, at least to Virginia, as appears from the account which Jones gives to the people of Williamsburg, and we know from other sources that among the better classes, not only in Virginia but in many of the other colonies, great attention was paid to dress, to the cultivation of manners, and to the art of conversation.’ Dating his dramatic Inquiry back to the early eighteenth century, Daly records an interesting theatrical trajectory concerning the role of the stage in acquainting audience...
spectators with the manners and means of polite society: ‘In the colonial society, or “people of figure”, as they were then called in New York’, Daly writes, a great deal ‘depended upon manners, well-arranged apparel and a flowing wig….’\textsuperscript{108} Linda Baumgarten supports this with her modern critique of colonial dress in Williamsburg, identifying the wide range of social markers and status symbols composing fashionable self-display.\textsuperscript{109} As these studies (and numerous others) suggest, Virginians sought material signifiers that would allow them to keep pace with the imperial metropole and that would permit them a degree of ascendancy in their own colonial world. Such rhetorical markers identified colonists as related to Great Britain whilst sliding inherited grammars of self into local dialects of selfhood, ‘indicating instead’, as Dror Wahrman writes in a similar vein, ‘the mutable and non-essential nature of what can be assumed or shed at will.’\textsuperscript{110} In an effort to take on meaning through the “symmetry” of costume, composition and comportment—and in keeping with a desire to reflect the London scene—sensible Virginians turned to the playhouse to receive lessons in acting the part. ‘[A] good play’, Daly allows, ‘acted before a well-bred audience, must raise very proper incitement to good behaviour’, and is ‘the most quick and most prevailing method of giving young people a turn of sense and breeding.’\textsuperscript{111} Complicating this didactic aim, however, was an increased emphasis on natural representation as the primary means of communication and character-conveyance—on notions of feeling and presence as compositional attributes with the propensity to undermine behavioural codes of sensibility. Within Williamsburg theatrical circles, two figures contributed meaningfully to these ideas: choreographer Gregorio Lambranzi and stage actor David Garrick.

Seventeen-sixteen marked the opening of the first English theatre in British America, built by William Levingston on the Palace Green in Williamsburg, Virginia; along with the publication

\textsuperscript{108}ibid., p. 46.
\textsuperscript{111}ibid., citing Joseph Addison, p. 31.
of a short but significant choreographic text composed by an Italian man named Gregorio Lambranzi.\textsuperscript{112} With the opening of the theatre, the drama joined hands with the dance as a common diversion and a form of genteel instruction. In Virginia it was not in words [alone]’ Rhys Isaac contends, ‘but in vivid dance forms that the meaning of life was fully expressed’; ‘Historians’, he suggests, ‘must seek to “read” these kind of statements also.’\textsuperscript{113} Moving away from Isaac’s consideration of the dance as a feature of polite assembly, however, and bringing it back to the stage itself, it is worthwhile to mention the importance of Lambranzi’s text as enunciating a new manner of self-conceit. Lambranzi’s literary influence in Williamsburg theatrical groups indicates yet another manner by which Virginians were becoming conversant with the identity models available to them—and the importance of attending both the theatre (and the dance) as much for performance entertainment, as Patricia Twining suggests, as for lessons in the dramatic methods therein.\textsuperscript{114} Lambranzi’s choreographic technique radicalised traditional stage direction by elasticising dance arrangements to include the performer as a self-directed agent. Instead of restricting players to his own managerial/compositional style, Lambranzi intentionally left space in his methods for personal invention and improvisation. The text itself, Lambranzi’s \textit{New and Curious School of Theatrical Dancing}, contains a series of clever plates captioned by choreographic direction and interpretive suggestion. Despite specifications within these (“the sailor enters with his hands behind his back”, for instance), there is space within each theatrical manoeuvre for actors to qualify their treatment of the dance plot to suit personal inclination and audience interest. In this way Lambranzi extended the concept of narrative ‘Character Dances’, such as those practised by Nancy Dawson at Sadler’s Wells, London, so as to formally combine directed action with the art of theatrical invention.\textsuperscript{115}


\textsuperscript{115}Nancy Dawson’s most famous \textit{entr’acte} was her “sailor’s” ‘Horn Pipe’.
Refining this concept in practise, David Garrick “arrived” in Williamsburg with his own radical style, as Allardyce Nicoll suggests, prioritising natural expression in dramatic presentation.116 Adopting a present-tense reflection on the subject, one Williamsburg interpreter recovers his impact in brief: ‘Garrick’s presence’, she says, ‘is felt here.’117 His natural acting style marked a departure from mechanical practise and threatened the very core of social arrangement, demonstrating to colonists the potential for social mobility by inviting anyone to call for an encore—and anyone to play a part. Garrick’s view of natural expression identified the acting agent as both performer and judge, advocating Smith’s dialogical imperative, as it were, that 1) in order to convince with conviction, communication must be natural, not artificial or contrived—though dependent on the rules of the stage, and 2) that individual identity must meet with audience (or community) approval. For the actor’s ‘modulation of the passions’—his pitch, temper and tone—to succeed, his expression needed to capture a natural response to his circumstances, arising from within his “true” self relative to the ‘pitch’, ‘tone’ and capacity of those around him (TMS I.i.4.7; VII.iv.28). Garrick’s actor thus discovered an authorial function, as Julie Stone Peters suggests, by writing himself into a narrative interchange with audience spectators, whilst declaring (and controlling) his voice as a natural testimony to his own inner passions.118 This evolution of dramatic theory problematised theatrical address by casting the performer always against a world of conflicted sentiments, where he could win credit only by constant proofs of right response to a cast of fellow actors. Writing of acting theorist Aaron Hill’s four stage system of dramatic interpretation, detailing the rules of cadence, gesture and ‘muscular stamping’, Allardyce Nicoll suggests that Hill’s eighteenth-century theory envisioned a theoretical change where, rather than ‘putting stress on the words, the actor should start with the concept of character’—carrying his audience along with his figural transition.119

116See, Nicoll, Garrick Stage.
117Interview with theatre-interpreters directing Colonial Williamsburg live programming.
119Nicoll, Garrick Stage, p. 13.
FIG 3: NATURAL CHARACTER: ‘DAVID GARRICK AS RICHARD III.
OIL PAINTING BY FRANCIS HAYMAN, DATED 1700.’

This imperative reflected a moral shift in the presentation of genteel colonial identity—a movement away from external signifiers (the material ‘library’ by which the traditional self was read) towards inner attributes that could reflect more meaningfully upon the surface identity.\textsuperscript{121}

In Book VII of his \textit{TMS}, Smith captures the importance of ‘distinguishing’ these ‘invisible’ features, writing:

\begin{quote}
It is impossible by language to express, if I may say so, the invisible features of all the different modifications of the passion as they show themselves within. There is no other way of marking and distinguishing them from one another but by describing the effects which they produce without, the alterations which they occasion in the countenance, in the air and external behaviour. \textit{(TMS VII.iv.5)}
\end{quote}

The Actor’s Art, or his ‘Epitome’, as Aaron Hill calls it, identifies this ‘marking’ as an intellectual practise, ‘For thought will find / The art to form the body by mind’\textsuperscript{122}. The acting persona is here imaginatively conceived through a strong critical stance, where it is essential to support one’s outward persona with an integrity that is properly ‘weigh[ed]’ and sincere in its passionate display.\textsuperscript{123} The rational “inner” nature must recommend itself to the audience by imprinting itself upon the actor’s physical body as a sensible response to the inner workings of his spirit. This imperative is characterised by a sublime ‘mediocrity’ (moderation and modulation), self-command and critical balance: ‘Nor straining mad, nor negligently faint’, Hill writes, ‘in every start, ascend’ \textit{(TMS I.ii.INTRO.1)}\textsuperscript{124} These acting principles particularise self-construction as a practise of right alignment, where the inner man must match his outward representation, and where his outward representation must weigh its position rightly against fellow-observers: ‘meeting eye with eye.’\textsuperscript{125} This dramaturgical practise is folded into the

\textsuperscript{121}Lockridge, ‘Colonial Self-Fashioning’, p. 300.


\textsuperscript{123}See Appendix I: \textit{from Aaron Hill’s The Prompter}.

\textsuperscript{124}ibid.

\textsuperscript{125}ibid. (See discussion of ‘The Impartial Spectator’ at pages 34-35).

\textsuperscript{127}ibid.
powers of eloquence enumerated by Smith in his Lectures, moving away from traditional figures of speech and complicating the dialogical imperative to ‘Be like yourself’, that J. C. Bryce suggests, by inviting the “better yet” that Hill unknowingly avers: correspond with yourself, stretch beyond mere likeness: ‘Be what you seem’.\textsuperscript{126}

The Virginian ‘Symmetry of a gentleman’ that Louis B. Wright depicts is supported by a notion of propriety that functions via sympathy in human interactions.\textsuperscript{127} By adopting a new mask of masculine gentility, feeling and presence become essential features of the sensible self. The colonial gentleman is being theatrically constructed at all times as against his private nature— with reference to his conscience—where the tools of the theatre (the costume, the gesture, the dialogue, the script) are adopted in order to check the temper of his passions and achieve a greater degree of harmonious correspondence between his inner sentiments and his outward actions. Leaning towards Greene’s more “devout” model and yet troubled by the theatrical undercurrents of such characterisation, one such gentleman, Colonel Landon Carter of Sabine Hall, derided Williamsburg stage actors (in 1752) as ‘Walking Statues’ who lacked genteel conviction.\textsuperscript{128} Although he refused to endorse the deceptions of the stage (and denounced its vanities of costume), he at the same time aspired towards that turn of mind that characterised the more “performative” inclinations of Philip Vickers Fithian, a comparably more liberal Old Dominion tutor. Two men, devout in distinct ways, separated by gradations of class and rank— and yet both aspiring to right self-assessment, the approval of “listening spectators” and the natural rules of self-presentation. Although ‘applause was [not] worth the forfeiture of integrity’ to Carter, as Jack P. Greene contends, he nevertheless courted praise through the strict regulation of his social expression and enterprise; likewise, Fithian sought approval by attending carefully to his own performative display, invoking the language of Smith’s ‘invisible features’ so as to assess himself rightly upon reflection:

\textsuperscript{126}ibid.; Bryce, LRBL, Intro., p. 37.
\textsuperscript{128}Landon Carter, Diary, ed. by Greene, Wednesday, April 15, 1752, vol. 1, p. 103 (it is not clear that this performance was directed by Hallam).
—I spoke in great Fear & Dread—I was never before so nice an Audience—I never
spoke on so solemn a Day—In spight [sic] of all my Fortitude & Practise, when I begun,
my Lip’s quivered; my Flesh shrunk; my Hair rose up; my Knees trembled—I was
wholly confused, til’ I had almost closed the Sermon.129

Sceptical of his capacity to transport his congregation (in the manner of a Samuel Davies),
Fithian eventually discounts his performance as a mere physical sensibility (falling short of a
more sublime correspondence between body and mind): ‘Perhaps this Feeling was occasioned
by entirely Fasting’, he concludes, ‘as I had taken nothing.’130 The tri-fold tension between
playwright and actor / actor and audience / audience back to playwright announces itself in both
men’s efforts at self-crafting, where imaginative transport desires to effect a private sympathy
within the personal physical and psychological frame, whilst at the same time reaching
outwards to court harmony with the public world.

Figured then as through the acting methods announced à la Garrick on the Williamsburg stage,
the genteel Virginian is here being reconceived as a careful and studied observer, resisting the
metaphoric ‘treadmill’ that Lockridge identifies by learning to activate natural sympathy and
impartial judgment.131 The Virginian gentleman sought to rectify his material faults by adopting
a higher moral ground, characterised by a highly performed notion of propriety as qualifier to
self-display. Not unconnected to this growing confidence, however (and yet notably without
unhinging it), as Greene suggests elsewhere, is an attendant anxiety among Virginia’s gentry
lest these new “moral” markers travel as by a sympathetic ‘mimesis’ to the lowering sorts,
resulting in imitative modes and manners (among slaves and poor whites) that might challenge
genteel patterns of authority.132 This theatrical apprehension stands easily among a host of other

129Greene, Diary of Landon Carter, p. 28; Fithian, Journal, Thursday July 20, 1775, p. 64.
130ibid.
fears (financial and social) so cogently assessed by Woody Holton in his “grassroots” reading of the Revolution in Virginia.¹³³

Conceiving the ‘double role’ of the theatre as a figurative frame for both ‘disorder’ and ‘cooperative enterprise’, Christopher Bigsby and Don B. Wilmeth identify relational restructurings within dramatic practise as accentuating a host of compositional tensions informing not only such local arrangements, but a larger national conception—highlighting discursive and socio-political negotiations as reflexive dialogues ongoing between *individual action* and *group collaboration*. These scholars localise the pressures of sympathetic exchange in the person of the actor himself, writing that the ‘actor expressed a similar ambiguity. Always on the fringe of society, never wholly assimilated to its values, never quite governed by its principles, the actor was an embodiment of that freedom announced as a national birthright if denied by social constraints.’¹³⁴ That the actor came to embody—through his testimonial function as both performer and judge—the intrinsic rights and responsibilities of a new citizenship, usefully underscores for our purposes the manner in which the sensible subject is here becoming a declarative figure more generally. Within this colonial cityscape the actor/agent resists traditional representation, as by classical declamation (in Ciceronian tradition), or mechanical response (as per Lewis Hallam or David Hume), whilst becoming a newly *natural* figure first and foremost (à la Garrick): a complex character who both *precedes* and *succeeds* his elegant rhetoric of words—a Smithian summation of acting theorists Sir John Hill and Aaron Hill.

Adam Smith’s analysis of ‘natural approbation’ (applause and censure) sustains this rising autonomy in a complex discussion of moral criticism. His investigation goes hand in hand with Jonathan Lamb’s interpretation of sympathy’s ‘dialectic of immediacy and artifice’, where

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audience approval is won by a turning inwards so as to weigh imaginative presence and empathetic connection: ‘We begin, upon this account, to examine our own passions and conduct’, Smith argues, ‘and to consider how these must appear to [other people], by considering how they would appear to us if in their situation. We suppose ourselves spectators of our own behaviour, and endeavour to imagine what effect it would, in this light, produce upon us. This is the only looking-glass by which we can, in some measure, with the eyes of other people, scrutinise the propriety of our own conduct’ (TMS III.i.5).  

Smith’s remit of approval captures the dramatic interplay of a colonial society demanding that visible signs and gestures correspond with internal passions. ‘We can be more indifferent about the applause, and, in some measure, despise the censure of the world;’ his logic runs, ‘secure that, however misunderstood or misrepresented, we are [convinced in ourselves that we are] the natural and proper objects of approbation’ (ibid.). For internal passions to be deemed virtuous—praiseworthy, in this regard, they must be held at all times in check by the private self, reflecting outwardly the fruits of a spirit always at balance with itself and expressed by a spirit of moderation that might temper social exchange. To be natural in a moral sense, then, genteel self-display needed to subsist in principles of propriety and candour; where the language of sensible interchange could temper the passions and processes of self-construction—by inclining a mirror to reflect the “true” inner man before the eyes and ears of the listening world.

**MR. JEFFERSON AS “MR. SPECTATOR”**

‘... Mr. Spectator’s attention to the world is marked by instants of perception. Within these instants he exhibits two types of response which become increasingly important in the eighteenth century: he responds with immediate sympathy and with critical judgment, and his psychology combines sentiment with scepticism about the impostures of social languages.’

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Pivotal to negotiating these social models/identities successfully is an increasingly complex form of self-witnessing, outworked through what Fonna Forman-Barzilai identifies in Smith as a practise of observation and self-study that results in right social ‘surveillance and [moral] discipline’.

In an article examining Smith’s notion of sympathy relative to (physical, affective and historical) proximity, Forman-Barzilai frames her argument concerning sympathy in space(s) with a view towards ‘Smithian sympathy … as a social practice through which morality is intersubjectively produced in shared physical spaces.’ Implicating Smith’s “mirror of society” as essential to what she calls the ‘self-referential’ practises of the actor in social engagement, she identifies ‘dramatic activities of surveillance and discipline’ as essential to Smith’s ethical structuring of propriety in practise (TMS III.i.3). This propriety is outworked through adherence to the impartial spectator and through a host of immediate sympathies that are then critically assessed.

With reference to these practises, this section narrows the scope of the foregoing inquiry to discern Thomas Jefferson as a sort of case study within Williamsburg—where, as with ‘Mr. Spectator’ himself, Jefferson’s early character is formed in continual dialogue with a theatricised field of lived interactions. Jefferson’s interest in self-examination here underpins a performative effort at “sensible” self-display, where through a complex and multi-layered rhetoric (his internal monologue, his live performance, his written review) he virtually cancels out his character construction by writing himself into a double bind, betraying the postural ambiguity that attends his social status. An analysis drawn from his early attempts at courtship demonstrates this point more fully.

In a letter addressed to John Page, dated October 7, 1763, Williamsburg, Jefferson laments his failed suit to Rebecca Burwell:

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137 Forman-Barzilai, ‘Sympathy in Space(s)’, pp. 189-217.
138 ibid., p. 194.
I was prepared to say a great deal. I had dressed up in my own mind such thoughts as occurred to me, in as moving language as I knew how, and expected to have performed in a tolerably creditable manner. [But] good God! When I had an opportunity of venting them, a few broken sentences, uttered in great disorder and interrupted with pauses of uncommon length, were the too visible marks of my strange confusion.139

Of immediate interest here are the theatrical concepts that grace Jefferson’s vocabulary: the rehearsal before the scene, the costuming of his thoughts, the desire for credibility and his focus on affective language—followed by the self-conscious delivery of his lines. Herein consists a series of failed utterances, lengthy pauses and pathetic display—Jefferson’s “Stoic mask” (as it is sometimes read) is removed, as in Smith’s Rhetoric, to disclose a vexed form of apathy.140 Within Jefferson’s social grammar is a keen awareness of verbal and visual technique, along with a resolve to affect both creditable speech and authentic self-presentation. His “eloquence” is theatrical in its rhetorical consideration for conviction and cadence, for the role being played and for the normalising power of observation. As evidenced by a determination to align his inner self with his outer man, effective role-play for Jefferson is the reality of a successful negotiation between fact and fiction. Having imagined an appropriate character for the scene (one drawn from an understanding of polite social conventions) he then makes every effort to step into his role—to affect it truthfully in real life by enacting it in such a way as reflects the genuine face of his inner nature. As Michael Ketcham contends of The Spectator papers, ‘A distinction between the “inward” and “outward” man is perhaps the single most important metaphor in self-fashioning, but this opposition is mediated through the observation of manners … the private thoughts of the social actor become public in his outward gestures; the social observer looks outward toward his own reflection which are his attempts to understand the actor’s inward motives.’141

139ibid., Jefferson to John Page, Williamsburg, Va., October 7, 1763, in Papers, I, p. 11 (emphasis mine).
140Smith discusses Stoicism and apathy in Book VII of his TMS (TMS VII.i.1.46).
141Ketcham, Transparent Designs, p. 9.
Douglas Wilson captures something of this negotiation in his interpretation of Jefferson’s *Literary Commonplace Book*, which ‘reveals’, as he argues, ‘the early directions and tendencies of Jefferson’s inner life as no other document is able to do—its fantasies, its posturing, its varying attempts to find, in the situations and utterances of imaginative characters, suitable images for the self. Adam and Satan, Caesar and Casius, Coriolanus and Falstaff are but a few from the varied host that present themselves.’ 142 Although Jefferson’s presentation to Ms. Burwell fails to elicit sympathy, it succeeds in sympathetically conflating his failed imaginings with his lived reality: he learns from both the “performance” in fact and from the character he attempts to be. In the space of his failure, Jefferson finds opportunity to objectively consider his performance and to reflect upon it as through the eyes of any impartial observer. In the doubling—even tripling—of his character he is compelled, to paraphrase Adam Smith, ‘to become spectator to his spectators and thereby spectator to himself.’ 143 In that space where fact and fiction becomes blurred is created an “imaginative field” for personal growth and character construction. By stepping back to observe his failure, Jefferson simultaneously steps deeper into the crafting of his own sensible persona. He reflects upon himself objectively, seeks the sympathies of a friend, and then invites that friend to observe his situation in turn—and to enter with him into the reality of his disappointment.

Furthermore, this negotiation betrays the ambiguity of Jefferson’s social positioning. Concerning the man ‘of inferior rank’ who must hope to distinguish himself by ‘the more important virtues’, Adam Smith writes that: ‘Probity and prudence, generosity and frankness, must characterise his behaviour upon all ordinary occasions; and he must, at the same time, be forward to engage in all those situations, in which it requires the greatest talents and virtues to act with propriety, but in which the greatest applause is to be acquired by those who can acquit

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themselves with honour’ (TMS I.iii.2.5). The ‘man of rank and distinction’ on the other hand, as Smith describes him, ‘is unwilling to embarrass himself with what can be attended either with difficulty or distress’: ‘To figure at a ball is his great triumph, and to succeed in an intrigue of gallantry, his highest exploit’ (I.iii.2.5). That Jefferson aspires to this ‘man of rank’ is clear, but his means of self-assessment reveals a certain probity and prudence—a degree of propriety characteristic of the ‘man of inferior rank’ who is seeking to acquit himself with honour. Even as he aspires to become a man of public distinction, Jefferson succeeds only in returning to himself, cancelling out his efforts at social advancement even in the act of his self-construction: his rhetoric sets him at once above his companions (he overcomes his artifice to reflect wisely on his actions), and below Smith’s gentleman of ‘intrigue’ (because he is unable to play the gallant). Jefferson’s determination to enact a more reasoned and thus a more natural self at the (ambiguous) place between these postures, mirrors the eighteenth-century dramatic transition from the “actor as automaton” (a player contriving to meet fixed standards of expression), to the actor as interpreter, capable of well-reasoned reflections and spontaneous, personalised response: ‘To act a passion well’, writes Aaron Hill, ‘the actor must attempt its imitation, till his fancy has conceived so strong an image or idea of it, as to move the same impression springs within his mind, which form that passion when ‘tis undesigned and natural.’ Through practised affectations—by sympathy—the actor calls into being a new role, one designed not to conceal any intrinsic deficiency, but to create and reveal an inner reality that usefully supports his polite engagements. In crafting his own character, Jefferson attempts to align his inner man with his outward persona, seeking a credible pose that might sustain Sir John Hill’s belief: ‘[that] the player of true spirit is no longer himself, when he assumes his character he lives not acts the scene.’ Jefferson draws this out in a letter to another ‘Virginia Gentleman’, Robert Skipwith, where he recommends that his friend read a selection of dramatic works by Otway, Rowe, Farquhar, Vanbrugh, Congreve, Garrick, Steele and Addison (including their Spectator

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144 Hill, Prompter, p. xiii.
In this message he ascribes the value of lived reality to the natural correspondence between the real and the imagined:

We are therefore wisely framed to be as warmly interested for a fictitious as for a real personage. The spacious field of imagination is thus laid open to our use, and lessons may be formed to illustrate and carry home to the mind every moral rule of life. Thus a lively and lasting sense of filial duty is more effectually impressed on the mind of a son or daughter by reading *King Lear*, than by all the dry volumes of ethics and divinity that ever were written. This is my idea of well-written Romance, of Tragedy, Comedy, and Epic Poetry.147

Situating himself within this dramatic character space, Jefferson’s self-referential practise (in correspondence, literary ‘commonplacing’, and life) reflects the interests of the ‘Silent Man’, the ‘Looker-on’, the ‘Spectator of Mankind’, as Joseph Addison (i.e. Mr. Spectator) calls him, whose ‘written’ life resembles, in no small part, that character so carefully delineated in Addison’s inaugural *Spectator* entry: ‘Thus I live in the World’, Addison writes,

rather as a Spectator of Mankind, then as one of the Species; by which means I have made my self a Speculative Statesman, soldier, merchant and Artizan, without ever meddling with any Practical Part in Life. I am very well versed in the Theory of an Husband, or a Father, and can discern the Errors in the Oeconomy, Business, and Diversion of others, better than those who are engaged in them, as Standers-by discover Blots, which are apt to escape those who are in the Game…. In short, I have acted all the parts of my life as a Looker-on, [and this] is the Character I intend to preserve….148

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147 ibid.
He continues:

… it is Pity, that so many useful Discoveries which I have made, should be in the Possession of a Silent Man. For this Reason therefore, I shall publish a sheet-full of Thoughts every Morning, for the Benefit of my Contemporaries, and if I can in any way contribute to the Diversion or Improvement of the Country in which I live, I shall leave it, when I am summoned out of it, with the secret satisfaction of thinking that I have not lived in vain.

Jefferson’s self-analytical practise, together with his flair for written rhetoric over speech, constitutes an integral aspect of Jefferson’s genteel composition. In his investigation of the ‘spectatorial frame of mind’ relative to ‘sympathetic relations’ in eighteenth-century Scotland, John Dwyer writes that: ‘Mr Spectator played the role of the sensitive but calm social observer, gently but firmly correcting the behaviour of his countrymen whenever it wandered too far from the norms of sociability and politeness.’ Assuming a similar guise, Jefferson’s private self-fashioning broadens outwards to participate in a colonial cityscape where the impartial spectator—as an intellectual vantage point—is offering a natural corrective and provocative counterpoint to rising political disorder. Via exhortations to thoughtful self-conceit, “Mr. Jefferson as ‘Mr. Spectator’” wears the features of a larger group interest, implicating his ‘self-referential practise of social surveillance’ in the larger pursuit of moral discipline (and negotiating his own social standing in the process).

In later entries to The Spectator, Joseph Addison draws an important distinction between the lazy or “idle” spectator, and the man who uses his observations for proactive ends. Spectatorship, Addison indicates, is a tool, and he who observes others must recognise that he is, by reverse, the very object of scrutiny. It is this space between the act of observation and the fact of one’s being observed that opens a door in this instance for both personal and public

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instruction. It is the moment of Jefferson’s failure that becomes for him the open door, the rhetorical gap and the pause in a continuing performance. It becomes the place wherein the actor/agent becomes spectator, observing and reflecting upon the authenticity of his own presentation, and recalling his discoveries in such a way as to evaluate and redeem the space for instructive possibility. And it is in this constructive space of self-conception wherein language itself (the expression of sympathy) is realigned, transliterated ‘away from British culture’ so as to register what Kenneth Silverman calls the ‘prophetic awareness’ of colonial growth; it is this transformative space that registers the sensible self as an emerging political conceit.\footnote{Kenneth Silverman, \textit{A Cultural History of the American Revolution: Painting, Music, Literature, and the Theatre in the Colonies and the United States from the Treaty of Paris to the Inauguration of George Washington, 1763-1789} (New York: Thomas Y. Crowell, 1976), p. 10.}

\textbf{CANDID “CITIZENS”: 1774}

‘All History shows, that it is no easy Matter to excite a large People into any vigorous and continued opposition to the Government they have been long habituated to respect and obey. Nothing can bring them to this but a clear Conviction and strong Feeling of some real and important Injury.’\footnote{Citing Boston preacher, Samuel Cooper, in Gordon S. Wood, \textit{The Radicalism of the American Revolution} (New York: Alfred A. Knopf, 1992), p. 159 (emphasis mine).}

In his \textit{Transformation of Virginia}, Rhys Isaac advocates a method of discourse analysis that prioritises a reading of history through the lens of theatrical perception. He bases his approach on two principal directives: 1) ‘Actions must be viewed as statements’, and 2) ‘Translation’ must be undertaken relative to the ‘total communications repertoire of a society’.\footnote{Isaac, \textit{Transformation of Virginia}, p. 325.} This latter point, he contends, is the primary task of the historian/ethnographer: for any culture to be fully known, one must first know its language. And for any language to be fully known, continuing with Adam Smith, it must be \textit{perspicuous}—clearly legible, routinely practised. ‘If we ask how we get to “know” a language’, Isaac writes, ‘we see that it can only be accomplished by repeated exercise in the handling of particular words and sentences, until we have learned and
internalised both their individual meanings and the syntax by which they are strung together into intelligible statement. Much the same is true of the process of mastering the paralinguistic forms of expression—deportment, costume, buildings, etc.—that make up the total communications repertoire of a society.\textsuperscript{153} Despite this perception, however, supported as it is by a sound dramaturgical method, Isaac closes his study without any direct engagement with the eighteenth-century philosophical underpinnings/theatrical discourses that make it right, indeed necessary to approach the narrative history in this way. As the current study suggests, the dramaturgy of the colonial Virginian scene, with its emphasis on sensible citizenship and character (re)construction, is rendered legible—its language becomes known, as it were—through Smith’s sympathetic system acting as an interpretive device for investigating the ‘collective psychology’ of a self-conscious people.\textsuperscript{154} Patterns of order and control are uncovered, as Forman-Barzilai suggests, because ‘Smith’s perceptive description of our various attachments and affections, and the inevitable conflicts among them, draws us into the rich spatial texture of sympathetic response and stimulates further inquiry into a variety of spaces in which sympathetic activity takes place.’\textsuperscript{155} Of particular interest relative to this is the degree to which changes in the Williamsburg cityscape essentially ‘keep time’ with the onstage transfigurations of the actor—with the political drama accelerating towards Independence just as the “automaton actor” finds himself liberated into self-direction, compositional autonomy and his own spirit of theatrical response. The sensible citizen figure in Virginia thus takes on a political posture—becoming both a lived reality and a uniform conceit. He is aware of his rising autonomy, sensible to his position, and equipped to become politically engaged. The chief concerns surrounding his figure are rhetorically bound to notions of speech, representation and affiliation, where the rights of his citizenship are secured via persuasive strategies and affective commitments.

By 1774 the “sensible citizen” is bound in new ways to the oratorical practise of conviction, qualified to play his role (at least in theory) by a growing ability to lead others towards moral

\textsuperscript{153}ibid.
\textsuperscript{154}ibid.
\textsuperscript{155}Forman-Barzilai, ‘Sympathy in Space(s)’, p. 190.
responsibility and uniform action. ‘The desire of being believed, the desire of persuading’, writes Smith,

of leading and directing other people, seems to be one of the strongest of all our natural desires. It is, perhaps, the instinct upon which is founded the faculty of speech, the characteristical faculty of human nature. No other animal possesses this faculty, and we cannot discover in any other animal any desire to lead and direct the judgment and conduct of its fellows. (TMS VII.iv.25)

Maturing by degrees, then, the “sensible citizen” is crafted by his “speech” to become at once a uniform fiction (aspiring towards right feeling and judgment), and a political stance (determined to be convinced by, and to convince others to believe, the merits of the patriot cause). This does not mean to suggest of course that the “sensible” (as a modifier) became the sole property of Patriots—or that all Virginia gentlemen aligned themselves with revolution. Jefferson’s cousin John Randolph, for instance, declared his Loyalist leanings without losing his sensible features, choosing to leave Williamsburg in August 1775 to support the crown in England. Exchanging the old tokens of civility, music for literature (reassurance of a pledge made between them in 1771), the two parted as friends, lending Jefferson’s hope of a future harmony with Britain a doubled affective weight: ‘Looking with fondness towards a reconciliation…’ he writes.156 The “sensible” stance thus measures more broadly the ability to weigh a cause rightly and to judge equitably—via sympathy acting as a declarative feature of masculine propriety and resolve. That the position is appropriated by Patriot leaders and pronounced as at once an expression of harmony and a rhetoric of rebellion, only problematises the degree to which colonial self-construction designates a contested middle ground, returning to Knott, that matures at the place between distinct socio-political types.

This sensible position, once it is assumed, is not without its theatrical risks: ‘[h]is whole ambition’, as Smith writes, ‘is to obtain the approbation of his own fellow-citizens; and as they are all animated by the same hostile passions which animate himself, he can never please them so much as by enraging and offending their enemies. The partial spectator is at hand: the impartial one at a great distance’ (III.3.42). What becomes apparent through this then is the extent to which the “sensible citizen” figure—in acceding to his fiction—is continually troubled by the complexities of his own artifice, bound by theatricality (the tools of the stage) even in his attempts at authenticity. It is for this reason that the “sensible citizen” remains a privileged stance, (the practise of rhetorical right and power); and it is for this reason as well that the “sensible citizen” succeeds as the face of a more common identity: for the fiction of his persona is bound to a rising notion of autonomy where genteel sensibility (at times manipulative and false) is being continually offset by the motives and means of other acting spectators.

Relative to this then, the performed role of Virginian gentlemen (the practise of polite sensibility) becomes necessarily bound up in efforts to administer a host of “divided” political sympathies. In public assembly, for instance, rhetorics of candour and conviction are prioritised so as to establish trust and likemindedness among fellow colonials. ‘Frankness and openness conciliate confidence’, argues Smith, as a third road between pictures/characters and models becomes clear. Pointing the way towards a sensible middle path, the genteel figure accedes to a mediating role, where the signs of his civility bear reference to the moral outworkings of moderation, propriety and concord.

We trust the man who seems willing to trust us. We see clearly, we think, the road by which he means to conduct us, and we abandon ourselves with pleasure to his guidance and direction. Reserve and concealment, on the contrary, call forth diffidence. We are afraid to follow the man who is going we do not know where. (TMS VII.iv.27-28)

Andrew Burstein suggests the political nature of sympathy, in this regard, as forthright and sincere—a dialogue of “candid” assurance that supports republican efforts at social
‘transformation through moral persuasion.’ Virginian gentlemen such as Patrick Henry sought to embody these ideas in full: ‘[Henry’s] personal conduct developed with sensitivity’, Isaac writes, ‘to the popular moral concerns of the time and achieved a harmony above the clashing discords of the old traditional culture.’ It is possible to qualify Isaac by viewing Henry’s ‘personal conduct’ as a theatrical point—his gentlemanly deportment, utterance and action as together constituting/indicating what he later refers to as a ‘new model of patriot rebellion’. In a manner reminiscent of Davies—and more particular, perhaps, to Waddell—Henry rallies his audience around a common cause, gesturing towards a notion of sensible citizenship as an associative conceit. Although radical in his determination to break from England, Henry’s expression remains tempered, as Edmund Randolph recalls, by the ‘power of self-command’. His personal conviction ‘so transfused into the breast[s] of others the earnestness depicted in his own features, which ever forbade a doubt of sincerity.’ This image of a Smithian ‘transfusion’ reveals the force of his oratorical power: Henry employs frank speech and affective logic in order to persuade fellow-citizens to discover a correspondence between their sentiments and his own—and to respond with right approbation to his patriotic appeal. The call to associate here proves a declarative act, rhetorically bound up in the “anxieties and confidences” of masculine self-conceit.

Following the Boston Port Act of March 1774, Colonial Virginians united in a Day of Fasting and Prayer to demonstrate support for the citizens of Massachusetts-Bay. The Royal Governor Lord Dunmore responded to this by dissolving the Virginia legislature, at which point members of the Virginia House of Burgesses (including both Jefferson and Henry) assembled in secret at the Raleigh Tavern in Williamsburg (the scene of Jefferson’s failed courtship). Out of sympathy for Massachusetts (and fear for Virginia) the members created a Committee of Correspondence so as to enhance trans-colonial relations. In September 1774, delegates to the General

158 Isaac, Transformation of Virginia, p. 268.
159 Ibid.
161 Ibid., emphasis mine.
Continental Congress then signed a Continental Association, banding together against Great Britain and supporting, somewhat ironically, a double measure to ‘discountenance and discourage’ plays and diversions, and to subsequently create more committees of observation ‘to observe the conduct of all persons touching this association.’

Association orders such as the one composed by the citizens of New-Bern, North Carolina in 1775, capture the performative nature of this stance. In its order, the colony counterbalances its assertion of affective allegiance to King George III with a reasonable determination to ‘assert our Rights as Men.’ This masculine posture endorses imperial rule only so far as ‘Execution[s]’ of the crown safeguard colonial rights by Law. Despite a resolution to ‘endeavour to continue the Succession of his Crown’ (should these terms be met), the New-Bern Association executes a contrapositive pose that is rhetorically expressed in a ‘sensible’ reversal of the terms of loyal affection—cancelling out even ‘due Allegiance’ in the end, by privileging sentimental union over consanguinous bonds. The decision to ‘agree and associate’ as a local political body, as well as to subscribe to a new corporate resolve, ‘adopt[ing] and endeav[our]ing] to execute the Measures [of] the General Congress’, is predicated on a ‘steady spirited Observation’ of both the ‘Scene’ at Massachusetts-Bay and the ‘Resolutions of the General Congress.’ This self-reflexive posture finds declarative purchase (the force of its conviction) in the features of a masculine gentility, communicating its message through a vocabulary of virtue, ‘equitable justice’ and critical observation. In Williamsburg of that same year, Philip Vickers Fithian would assert his own position likewise, uniting himself by force of declaration to a host of community measures: ‘If Grief and Sympathy will not do, I stand ready, & am willing to hazard Life & Credit, & Property, in the general, and needful

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163 See Appendix II.


165 ibid., emphasis mine.

166 ibid., emphasis mine.
Contest for what is our *All.* To Arms! To Arms!’ he declares, ‘Is the language here!’ Although he discountenances sympathy by its correspondence with grief, his declaration renders it visible in the language of political resolve, a “muscular” stamp to certify that: ‘the same arguments which convince you convince me likewise [and] I necessarily approve of your conviction’ (*TMS* I.i.3.2).

Smith’s system thus supplies a means of identifying a new ‘model of patriot rebellion’, as Isaac calls it, in the gap between identity models—offering a sensible and ‘manly’ alternative to Jack P. Greene’s earlier identity options. Smith’s notion of sympathy here enters into the space between “devout” preferences and imitative modes in order to engage with the “sensible citizen” who is becoming an independent actor, whilst negotiating the rhetorical difference between ‘true’ figures and false. Through an awakening of sympathetic “division” among acting spectators, sympathy is here re-deployed for patriotic ends, no longer in the service of the King, as per Davies, but as a means of re-inscribing colonial subjects with newly autonomous features—in order to vest them with personality, performative agency and declarative purpose within the space of revolutionary upheaval. This divided imagining as Smith describes it, and as Davies’ rhetoric concedes, is embedded in conscience, composed through individual moral assessment and collective group reasoning, and is predicated upon self-evident principles of Virtue and Justice as joint sensibilities empowering the seat of conviction. By way of transformative character development, sensible subjects are encouraged to envision their own refashioning—to contend with identity options in such a way as to justify Gordon S. Wood’s comment that ‘Americans did not have to invent republicanism in 1776, they only had to bring it to the surface’—. This idea of pulling character from within, as advocated by eighteenth-century dramatic theory, wrestles in interesting ways with the comment by Jefferson that supports Wood’s view, a statement professing the postural ambiguity that troubles the composition of his own sensible persona: within this liberal environment, republicanism

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166 Fithian, *Journal*, July 1, 1775, p. 44.
168 ibid., p. 266.
169 Smith complicates the idea of a ‘divided’ sympathy in Book 1 of his *TMS*.
surfaced, he says, ‘—with as much ease as would have attended their throwing off and putting on a new pair of clothes.’

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Within Virginia’s colonial environment, Smith’s philosophy offers an analytical mechanism for discerning the manner whereby individuals are learning to become ‘naturally theatrical’, as Jay Fliegelman contends, in both trans-personal conduct and political action—figures fit for self-governance; where self-construction and personality are being determined, as I argue by extension, at the interstices between Greene’s proposed models of social identity, in such a manner as reflects the fluid negotiation of a more complex discursive environment (conceived through localised notions of costume, composition and comportment). For good and ill’, as Sarah Knott argues, ‘sensible selfhood—socially constituted, socially turned—shaped the American founding.’ Continuing with this, Smith’s notion of sympathy declares its transformative power for individual agents who are discovering themselves naturally sanctioned to be political actors and moral arbiters: the colonial character (by conscience) is here becoming a veritable practise of conviction.

What does it signify, then, that the Reverend James Waddell, a rural Virginian practitioner, emphasised a theatrical form of tutorial instruction? In brief, it attests to the rising importance of the dramatic principles contained therein: not just the “how to speak”, but the “how to hear”—to weigh/to respond rightly—of theatrical practise. Among the Virginian elite, such principles enumerated essential performance features for retaining, advancing and announcing a secure position in socio-political arenas. It is not without effect that Waddell signs off on his “application to gentleman” with a sentence that enunciates the diacritical purpose of his practise: ‘I can assure them’, he says, that ‘I am persuaded….’ The “sensible citizen” who

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172Fliegelman, Declaring Independence, p. 79-94; Greene, Imperatives, Behaviors & Identities, pp. 143-73.
emerges from this context is always already theatrically bound up in the so-called *dream of sympathy*, grappling with his own artifice and characterised as by Mechal Sobel’s historical assessment (through Ernest Rossi)—as a self-regulating conceit, bearing the capacity to exceed basic ‘soliloquy and dialogue’ to participate in a more complex, dramatic “dream” space, as both an active agent and distant (reflective) observer.\(^{175}\) As a “uniform” fiction, this “ideal” citizen enters the colonial psyche as a character fit for declarative acts, subscribing to a new model of self-governance whilst functioning constructively within revolutionary spaces as an independent actor, militating against filial affections and irrational fears that might prolong the association with England.

The science of expression that underpins these changes contains an invitation not to simple affective transference, as encouraged by Samuel Davies, but to sensible reconstruction—to feeling new, to imagining “citizenship” in a larger cause; to yielding old grievances and adopting new loyalties; and to reaping the cultural benefits of transformative character-change. Reflecting upon *Conviction* as an expressive force of History, the Reverend Samuel Cooper, as Gordon Wood notes, comprehends the fury of the transatlantic storm. In his sermon of April 7, 1776 he emphasises ‘strong Feeling’ as a current able to rise against great tides of socio-political habit, illustrating the ‘clear Conviction’ of ‘Injury’ as a powerful sentiment rolling to shore, compelled as by the force of sympathetic contagion: ‘... The Waves do not rise’, he says, ‘till the Wind blows.’\(^{176}\)


\(^{176}\)Wood, *Radicalism*, p. 159 (emphasis mine).
FIG 4: ASSOCIATION: “THE ALTERNATIVE OF WILLIAMSBURG”
(R. SANGER AND U. BENNET, LONDON, FEBRUARY 16, 1775)177

IV

COPY-WRITING CHARACTER: FEELING THE PINCH IN

SHERIDAN’S SCHOOL FOR SCANDAL AND ROYALL TYLER’S CONTRAST

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‘THE WORDS OF A TALEBEARER ARE LIKE TASTY TRIFLES,
AND THEY GO DOWN INTO THE INMOST BODY.’

Proverbs 26. 22

‘THUS AT OUR FRIENDS WE LAUGH, WHO FEEL THE DART;
TO REACH OUR FEELINGS, WE OURSELVES MUST SMART.’

Prologue to The School for Scandal, written by Mr Garrick

A TRANSATLANTIC DISCOURSE

In 1778 and 1782, as David Francis Taylor records, a group of British “Military Thespians” staged two of Richard Brinsley Sheridan’s most famous plays, The Rivals and The School for Scandal, as a means of reinforcing imperial control whilst occupying the American scene. In an article that investigates political parody as a means of registering the ‘trauma of war’, Taylor exposes the ‘variety of masks’ that served to regulate and at times disarm notions of ‘nationhood and citizenship in the conflicts of the 1770s.’ Within this context he reads Sheridan’s School for Scandal (and relevant derivations) as exemplifying a form of theatre that ‘elicits and satirizes the difficulty of negotiating a society which fetishizes the ornamental surfaces of commodities, texts, and individuals’ and which confronts such issues as


179ibid., p. 388.

180ibid., p. 392.
‘misrepresentations of/in discourses, [and] imperial culture.’ Of first order among such surfaces is the fixation on self as a principal (and even principle) commodity to be negotiated, bartered, bought and sold—exchanged as a substantive commercial product. Within this environment social interaction bears all the trappings and masks requisite for players who are seeking to move “upstage”—where the outward cost of costume, composition and comportment sheds light on the value of one’s ‘inner man.’ Individual net worth (a composite figure reflecting both inner and outer character traits) is assigned according to transpersonal conceit and stands contingent upon one’s ability to sensibly negotiate the transactions of society at large. The surface self here represents both a fixed denomination and a hidden market potential, transferable by person and price.

This chapter intends to explore the linkages between reputation, sympathy and moral judgment within this commercial and discursive environment, concentrating on Sheridan’s *The School for Scandal* (1777) and Royall Tyler’s subsequent work, *The Contrast* (1787). It proceeds by grappling first with language and second with the (subjective) rules of social engagement in order to read towards a dénouement at the space between plots. It situates these plays in transatlantic dialogue with one another, exploring the morally credible and financially creditable right to reputation as a literary device by which both authors engage with complex patterns of economic and discursive interchange in the late eighteenth-century world. More particularly, it employs Smith’s sympathetic system as a grammar of economy in order to unlock pertinent points of contrast between the two plays, arguing that a notion of “sympathetic” transcription lends itself to Tyler’s re-working of sensibility for an original investigation into dialogic points of American self-construction.

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182 Ibid., p. 393.
THE COMMERCE OF FEELING

If our own misery pinches us very severely, we have no leisure to attend to that of our
eighbour: and all savages are too much occupied with their own wants and necessities, to give
much attention to those of another person. (TMS V.2.9)

CREDI(TA)BLE EXCHANGE

Adam Smith’s notion of sympathy can be read into both plays as a grammar of social and moral
economy, where the traffic of moral sentiments and sympathetic conceit constitutes an
inherently rational structuring for uniform transaction, permitting and perpetuating the
legal/logical functioning of transatlantic market exchange (and involving, by definition,
‘psychological processes of critical thought rather than emotions’), and an emotive vehicle for
transporting individuals through overlapping networks of social interaction, private friendship,
and public responsibility. Determining the space between these two is a contest over
reputation. Best expressed through an examination of Sheridan’s School for Scandal (1777)
from which Tyler’s Contrast takes its cue, we recognise reputation as that ‘right which avails
against the world at large’, the loss of which is sufficient to deprive one of that ‘mass of
contingent enjoyments’ which may derive from the ‘general approbation and sympathy’ of a
concerned public; although positioned ever so slightly outwith the four corners of the law, it yet
bears upon its enactment in such a manner as influences and qualifies innumerable acts of social
judgment, and as pervades the very process of establishing the peaceable character of an
ordered (republican) society. By relation, the morally credible and the financially creditable
are nominally distinguished only by the ‘TA’ that stands between them—the trans-Atlantic, as it
were—that transitional, transformational space whereby new world prospects diverge from old
world investments.

184Encarta World Dictionary, ‘rational’.
185John Austin, Professor Austin’s tables of Jurisprudence for the use of his class at the University College, London, [London?],
Although literary scholarship addresses similar thematic issues in both texts, and treats the contrasts within Tyler’s work as expressing a dialogic interplay between European mendacity and American candour, critical focus is generally concerned with the juxtapositions that Tyler delineates within his text (Billy Dimple as against Yankee Jonathan; fashionable decadence as against “homespun” simplicity; the city as against the country) rather than with those he draws in dialogue with other works. Most of Tyler’s comparisons, as Cathy N. Davidson notes, offer weak dichotomies at best. The most obvious reason for this censure is that Tyler’s play, in many respects, falls short of the structural, thematic and dramatic complexity of the high comedy of manners—it ‘owe[s]’ something to Sheridan’s work, as Arthur H. Nethercot concedes, but is rarely seen to contend with it. Although its dramatic plot, as Davidson argues, scrutinises social/generic oppositions, it resolves its ‘capitalist critique’ by confirming a predictable ‘superstructure of [sentimental] values.’ Nevertheless, I believe it is possible to appreciate something more of Tyler’s construction by considering The Contrast in more purposeful connection with—and in opposition to—Sheridan’s School for Scandal, arguing that the conversation between the two comedies unfolds a more nuanced response to transatlantic sentiments (and transferable assets) than Tyler’s plot, on the face of it, suggests.

Within this dialogical frame, sympathy is employed in two ways, signifying a correspondence between the two works relative to eighteenth-century economic growth: firstly, it operates outside of the marketplace as a vehicle for moving one into associative networks of commercial transaction; and secondly, it operates within the market as an agent of social mobility, rhetorical right and power—administrating the boundaries that keep that system in place and yet permitting a fluid interchange of identities to render those boundaries porous. Both functions tend, via intersecting trajectories, towards the same point of socio-political judgment (one is

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188 ibid., p. 307.
moved in, or kept out of the system by the verdicts rendered). From this site provocative questions become apparent: ‘who has the right to judge?’ — ‘what are the rights of the judged?’ and ‘to what extent is the relationship between actor and judge always already reciprocal?’

Relative to this interrogatory field, feelings are granted financial credit, or pecuniary substance, in direct relation to their moral credibility, via practical determinants that are themselves socially and theatrically contrived. As David Taylor remarks concerning Israel Pottinger’s *The Duenna* (a political satire of Sheridan’s earlier piece by the same name), the moral meaning (and comedic plot) of *The School for Scandal* ‘is partially located in the very act of inversion, at the point of space at which the language of feeling becomes the language of interest.’\(^{189}\) The same can be said for Royall Tyler’s own ‘contrapuntal strategy’ in *The Contrast*, though notably tempered by reverse, where the language of interest becomes a promissory guarantee to the republican right of “good” feeling, with the right to that feeling markedly quantified (and herein critically sanctioned) by the reciprocity of moral virtue, the mutual benefit of free-market exchange, and the “lived” experience of democratic self-governance.\(^{190}\) Figurative conceits in both plays are thus routinely traded either for fiscal profit or moral acclaim. And somewhat ironically, this is, indeed, how the ‘killing of character’ proceeds (S, v. 3. 74).\(^{191}\)

**FEELING THE PINCH**

Act I, Scene I of Sheridan’s *School for Scandal* introduces a full range of subjects to be learned in ‘Scandal’s school’: complex patterns of intrigue mixed with ‘industry’; lessons in wounding and verbal affliction—as by the ‘envenomed tongue’; declarations of candour and partiality; dialogues of business and sentimental transaction, material interest and commercial benefit; the art(ifice) of caricature and detraction; the affects of collusion and conceit; and a final instruction in the power of friendship, as against all of these, which resides in the heart and foils ‘Scandal’s reign!’: ‘against [this]’ as Lady Sneerwell implies, ‘we must direct our schemes’ (S, ‘A

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\(^{190}\) Ibid., p. 384.

\(^{191}\) Ibid., p. 355.
The stage is here set for a dramatic sequencing of literal and figurative ‘executions’, the circumstances of which, as Sheridan relates, unfold via three comedic devices: linguistic confusion and wordplay; the use of “sympathetic reasoning”, wherein points of plot consist in frequent upsets over supposed “promissory” acts; and imposture (via sympathetic conceit and transitive role-play), in order to affect contrived ends (S, l. 1. 3).\(^{193}\) The negotiation of feeling in each instance prompts a multifaceted, sentimental comedy of manners, theatrically expressed via verbal and gestural conceits that are regulated in every respect by Jessamy’s dramatic call (in *The Contrast*) for ‘affettuoso!’ (with feeling!), as an interpretative air underlying stage direction. Cutting sarcasm, caricature-sketche and a rhetorical sleight of hand mark the theatrical terrain of Sheridan’s discursive economy, the barb hitting closer to the mark the nearer one draws to a victim. In analogous manner, such devices find an interesting counterpoise in Tyler’s later re-working of the plot, where ‘The School for Scandalization!’ becomes a literary point of departure for inverting such didactic moral categories into contrastive ‘textures, tones’ and “points” for sensible self-improvement (C, III. 1. 73).

In *The School for Scandal*, linguistic confusion reveals mercantile self-interest as a primary factor behind sympathetic discourse, where commercial activity provides a rich catalyst for malice and an outlet for moral depravity, rendering figures of financial credit almost indistinguishable from those of moral credibility. Directing an underhanded conversation with Snake on the industry of character *reduction* (‘I know no pleasure equal to reducing others to the level of my own injured reputation’), Lady Sneerwell steers her student in Act I Scene 1 of the play through a course in lexicology, training Snake’s *listening ear* to *perceive* discursive fields of commercial ‘interest’, ‘profit’ and ‘confidence’ as correspondent with social principles of ‘mutual attachment’, ‘sensibility and discernment’, cleverly instructing him in the art of insidious manoeuvring by teaching him to understand human sociability as a craft in dialogic deceit (S, l. 1. 2-3). Thus it is that her conversation with Snake slides readily into a moralising

\(^{192}\)This ‘Portrait’ opens the play as an address by Sheridan to Mrs Crewe (S, ‘A Portrait: Addressed to Mrs. Crewe, with the Comedy of the School for Scandal’, ix-xii).

(if immoral) frame, wherein she is able to practise her poison (in a sort of live demonstration to her student) via consensual dialogue with Joseph Surface. This elder Surface proves Master at the game. He commences with flattery for the present company (‘Madam, it is impossible for me to suspect a man of Mr. Snake’s sensibility and discernment’), continues with gossip over the absent (‘I am told he [Charles] has had another execution in the house…’), and closes with an affectation of concern that subtly aligns his persona with the sympathetic values of any impartial observer (‘…one can’t help feeling for him. Poor Charles! I’m sure I wish it were in my power to be of any essential service to him; for the man who does not share in the distresses of a brother, even though merited by his own misconduct, deserves—’). Lady Sneerwell here interrupts, ‘O Lud’! you are going to be moral, and forget that you are among friends’—but the interaction provides a case in point (S, i. 1. 3, emphasis mine). Her lesson to Snake, in sum: cut the costs. In Scandal’s School morality has no place among friends, and friendship no share in morality.

Within all of this, it is clear that Joseph’s sympathetic scheme vigilantly safeguards his own social position, relative to the scandal crew. By professing sympathy for Charles, he is at once able to keep his literal rival out of the circle (setting his brother’s fictional character out with the popular acclaim); to direct audience attention towards his own social “merit” (using his brother’s commercial indiscretion as a theatrical point for highlighting his own supposed virtues by comparison); and to represent himself as a man of feeling before the eyes of the watching world. His stratagem is deftly figured, bearing within it the air of intentional collusion—a sympathetic contrivance, or trace, by which he draws the audience (actors and playgoers alike) into his private cause. He is careful in this way to affect consideration for the audience to whom he plays, inclining his sympathies to suit Lady Sneerwell’s malevolence and employing his sentiments as a means of ensuring his own social conveyance—transporting himself by shades and degrees into the company of their confidence.

The nature of Lady Sneerwell’s sympathy, however, although it reads second to Joseph’s more obvious manoeuvres, proves even more slippery, sliding as it does in altogether invidious
fashion from one individual to the next—Snake to Joseph to Maria—in such manner as to preserve those connections already designed, whilst securing additional credit and assurance. Upon Joseph’s entrance, for instance, her supposed friendship with Snake takes a deft turn, so delicately directed that even he fails to perceive it. She draws Joseph to her side by objectifying Snake for his ‘material’ worth (being careful to flatter Snake as she does so), and in this way forges a stronger connection with Joseph by relegating Snake to position of servitude that proves almost incidental relative to their larger scheme, his presence being of chief interest to her plot (as she seems to assure Joseph) only insofar as he continues to enrich ‘our mutual attachment’, ‘our real views’, and proves useful ‘to us’ (S, t. 1. 3). Her sympathy as a means, in the end, proves false, contingent upon an ongoing dialectic of whims and self-interest, as dual points of pleasure facilitating her larger aim. Her rhetoric takes a similar shift upon Maria’s entrance, when she uses her art in analogous manner: upon hearing Maria’s story, she swiftly downplays the girl’s distress, discrediting her before Snake and Joseph so as to assert her influence over them and strengthen the cord of their now three-strand alliance. Although Maria refuses to be swayed by the ploy, she suffers for her rectitude, victimised by condescension, contempt and ridicule as Lady Sneerwell ‘plants [the] thorn’ and seeks the ‘barb’ that will ‘stick’; and it is only by adopting a posture of staunch resolve that Maria upholds her integrity, refusing to buy her reputation (or sell another’s) when backed by depreciable credit (S, t. 1. 4-5).

This opening scene in The School for Scandal finds an interesting analogue in Act I Scene 1 of Royall Tyler’s The Contrast, when Tyler introduces Charlotte Manly discussing a piece of scandal (dressed as ‘intelligence’) with her friend Letitia (C, t. 1. 45). Charlotte’s momentary confusion over scandal’s chief objective, verbally expressed by an inability to distinguish between ‘credit’ and ‘discredit’ (an inadvertent but telling linguistic error), discovers the heart of the matter: ‘Though I cannot charge myself’, she says, ‘with ever having discredited a tea-party by my silence, yet I take care never to report any thing of my acquaintance, especially if it is to their credit, —discredit, I mean, —until I have searched to the bottom of it’ (ibid.). Charlotte’s profession might be understood not only as a declaration of innocence (upon
weighing her conduct she decides that, ‘I cannot charge myself’, or hold ‘myself’ guilty), but also as a valuation of her social worth: her financial credit, as it were, is good (ibid). Her declaration proves apposite for defending her place in the system. Similar to the scandal plot above, however, it is friendship that again ties the knot (and foils the plot), providing security against otherwise careless transaction. Charlotte is thus among the first in Tyler’s piece to be corrected for misconstruing friendship’s aim relative to credibility: ‘Scandal’, she mistakenly suggests, ‘is but amusing ourselves with the faults, foibles, follies, and reputations of our friends’ (C, II. 1. 52, emphasis mine). Although her profession is not rooted in the same malice as characterises Lady Sneerwell, her amusement reflects the habit of something far worse in Tyler’s mind: ignorant consumption. ‘Oh, how delicious’, she says,

to go and condole with the friends of some backsliding sister, or to retire with some old dowager or maiden aunt of the family, who love scandal so well that they cannot forbear gratifying their appetite at the expense of the reputation of their nearest relations! And then to return full fraught with a rich collection of circumstances, to retail to the next circle of our acquaintance under the strongest injunctions of secrecy, —ha, ha, ha! ….’ (C, I. 1. 45)

Charlotte’s interest in the circumstances of her friends is here likened to a gross materialism, a commercial interest in unreserved (immoderate) accumulation: brocades, hoops, caps or characters … each to be purchased in bulk, like newly imported goods for collection. And thus it is only through sympathetic language itself, as a dramatic plot device, that Tyler succeeds in unveiling such stark cupidity. Through it he unravels scandal’s plot, rescues a notion of honest friendship from acquisitive collectors and false practitioners, and redefines it for the American scene. He uses Sheridan’s plot as a theatrical “point” for indicating the muddled dichotomy between financial credit and moral credibility, and for testing the profound implications of debauched and indiscriminate speech. In this scene between Charlotte and Letitia, Tyler begins to effect a subtle inversion, not only of those lessons taught by Lady Sneerwell’s school for ill-repute, but of gossip-mongering, full-stop, a “tasty trifle” as it appears in Garrick’s Prologue to
The School for Scandal (‘Strong tea and scandal—’ [says Lady Wormwood], ‘Bless me, how refreshing!’) (S, Prologue, xiii). Although ‘refreshing’, perhaps, in the deed, the practise proves destructive by habit, and Tyler sets out to reveal its consequences as inimical to the character of the new nation. Indeed, by the end of the play he has re-conceived scandal’s school as a moral lesson for Charlotte’s set, advocating principles of good conscience, sincere friendship and moral responsibility as attending the republican rights of liberty.

As it plays out in The Contrast, sympathetic artifice is geared not only towards leading with conviction (i.e. with feeling), but more importantly, perhaps, to leading/convincing with haste. The interaction between two servants in the play (although Jonathan calls himself a ‘waiter’) provides a case in point. Jessamy’s instruction to Jonathan has, as its primary objective, the swift attainment of ignoble ends. This depends upon his denying the audience any time for independent thinking. He contrives a sympathy between them via false candour, sly insinuation, and phoney gestures towards morality; this plays out in short barbs and verbal quips that are geared towards undermining Jonathan’s credibility in the eyes of “listening spectators” (thereby facilitating his disgrace before Jenny, for instance, in the course of romantic pursuit) and towards then transferring Jonathan’s lost credit to himself (hoping that Jenny will make repair by turning her attentions towards him).

Despite these rhetorical stratagems, however, it is through such executions that the socio-economic market in both worlds continues to function: social interaction assumes a figurative rate that supports the logical outworking of commercial transaction. Self-love, as Adam Smith suggests, here proves the mainspring of human industry and invention. Individuals interact with one another by carefully manipulating networks of entrance and exit, manufacturing their affections and goading profitable sympathies so as to work the system to advantage; individual characters are consequently upheld and denounced in such manner as to create new points of entry for individuals seeking to join the club. But the system is tight. Who has the right to judge of the observed? As Sheridan portrays it: only those individuals who preside over scandal at the seat of power and who retain an authoritative vantage-point from which to discern—and
critically establish—the value of “good” credit (where “good” acts as modifier, of course, both to the commendation that ushers one into the system and to the victimisation that keeps him there). The right to remain, as it were, is itself the costume for cast. Argues Sir Peter to Lady Teazle in Sheridan’s following scene: ‘Yes, egad, they are tenacious of reputation with a vengeance; for they don’t choose anybody should have a character but themselves! —Such a crew! Ah! many a wretch has rid on a hurdle who has done less mischief than these utterers of forged tales, coiners of scandal, and clippers of reputation!’ (S, II. 2. 15). The lesson, in other words: one must be sensible to the company. The market proves a logically affective design, structured so as to keep one playing his part before a strict tribunal—where the rights of the judged are theatrically secured by the act and air of “good” repute.

AFFECTIVE CONSIDERATION

So what, then, of the “security” underpinning uniform transaction? In an article investigating ‘love and affection’ as a basis for moral consideration, Mark K. Moller interprets Smithian sympathy as a ‘donative promise regime’ for assessing contractual liability. He argues that the ‘faculty of emotion stands at the centre of Smith’s account of moral deliberation’ and establishes, by way of this interpretation, an argument that logically upholds ‘sympathetic reasoning’ as legal grounds for enforcing a promissory exchange. He derives this concern from Smith’s moral sense theory, understanding sympathetic reasoning as a cognitive form of decision-making, where empathy proves vital to rational thought and where affective enterprise/commercial agreement is found binding in long-term habitual relationships. He nuances his analysis by first distinguishing sympathetic reasoning from analogical reasoning, in which subsists, as he states, a comparative form of logic ‘involv[ing] imagination to an extent that analogical reasoning does not’, and depending much more particularly upon the routine practise of sympathetic interchange (218). Moller draws attention to Lord Mansfield’s

195ibid, pp. 237, 217.
196ibid., p. 218, emphasis mine.
eighteenth-century interpretation of the idea of ‘love and affection’ as a ‘valid consideration’ for enforcing promissory commitments (as advocated in Hawkes—the Hawkes rule), and as suitable grounds for legal action.197 His analysis of Smithian sympathy as a ‘donative promise regime’ (defined in brief as a cognitive system for assessing executory gift-giving) informs the current analysis only insofar as it accentuates Smith’s “grammar of œconomy” as a literary device for evaluating the substantive worth of affective, commercial agreements (expressed at comedic points of promise in both plays), and of then weighing those valuations relative to the characters exchanged.198 I argue that ‘affective contracts’ are sequentially secured through both narratives as characters are intricately networked via commercial agreements and moral consent, and as they are moved into tight spots (at once both commercial and ethical) due to financial assurances and promises of goodwill. Adam Smith’s grammar of sympathy affords a gratuitous ‘regime’, as in Moller’s analysis, that tears these theatrical promises apart at the seams, unravelling material bonds of Sheridanian self-fashioning and distinguishing Tyler’s Contrast by comparison.

The principle that substantiates these claims appears in Book VI of Smith’s TMS, where a discussion of ‘the Order in which Individuals are recommended by Nature to our care and attention’ lends itself to the following deliberation:

What is called affection, is in reality nothing but habitual sympathy. Our concern in the happiness or misery of those who are the objects of what we call our affections; our desire to promote the one, and to prevent the other; are either the actual feeling of that habitual sympathy, or the necessary consequences of that feeling. Relations being usually placed in situations which naturally create this habitual sympathy, it is expected that a suitable degree of affection should take place among them. We generally find that it

197 ibid., p. 214, citing Hawkes v. Saunders, 1 Cowpr 289, 98 Eng Rep 1091, 1091 (KB 1782). Within judicial realms of ethical theory, as Moller rightly suggests, early common law courts held ‘love and affection’ to be ‘valid consideration’ for enforcing promissory commitments; Lord Mansfield was not entirely successful in securing this. Moller’s analysis endeavours to defend ‘love and affection’ as relevant to contemporary contract law.

198 As Moller notes, Smith’s argument is developed in greater detail in his Lectures onJurisprudence.
actually does take place; we therefore naturally expect that it should. (*TMS* VI.ii.1.7, underscore mine)

Actuated on the view that ‘[e]very man feels his own pleasures and his own pains more sensibly than those of other people’, Sheridan’s plot develops in such manner as to continually confuse the affections, ‘the substance’ with ‘the shadow’, as Smith puts it, in the minds of listening observers (ibid.). Sheridan’s intricate ‘disguise motif’, delineated so carefully by Leonard J. Leff, unfolds along a train of false sympathies masquerading as genuine, whole-hearted commitments, where strategic wordplay and contests of wit mark the lie behind sympathetic interchange.199 Perceptibly genuine assurance, even when it exists, arises as from a Chesterfieldian counterfeit—where ‘a notion of virtue’ between people acts only a springboard as Glen McClish contends, upon which a ‘more public, artificial notion of character is built.’200 By contradistinction, Tyler endeavours to safeguard sincere commitment (and selfless exchange) as the cultural outworking of ‘much experience and long acquaintance’, extending as from that ‘natural sympathy’ that exists ‘only among men of virtue’ (*TMS* VI.ii.1.18). It is in this place of variance, then, relative to the discrepancy over virtue, that the sympathetic imagination functions most forcefully so as to power relational conceit. Affections are first imagined, and are then discovered to be “true” or “false”—considerable or inconsiderable—according to the virtue that subsists within the transaction.

Where the sympathetic imagination is concerned, then, and particularly through an examination of its contra-textual workings, it becomes possible to discern a subtle generic shift marking the theatrical and affective difference between the two plays. Responding to Allardyce Nicoll’s search for the ‘spirit’ of the Restoration comedy of manners, for instance, Andrew Schiller cuts through surface analysis of the genre so as to grapple with the structural specifics of Sheridan’s

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The School for Scandal.\textsuperscript{201} He questions ‘the basic force, the conflict which generates the motion that keeps [its] world spinning.’\textsuperscript{202} Supplying an answer by inquiry, Schiller investigates the force of conflict as proceeding from ‘the struggle between the socially elect and the parvenus’, elaborating on Sheridan’s ‘translat[ion] so to speak’ of certain plot devices (the Teazle marriage plot, for example) ‘into terms that were significant and acceptable to his own times.’\textsuperscript{203} In a later reading of the play, Leonard J. Leff accommodates this possibility by identifying ‘a fully developed disguise motif’ as the driving force behind relational conflict, arguing that Sheridan’s plot is internally structured (and unified) according to complex patterns of maskings and unmaskings that, when read in a broader view, confuse the basic boundaries separating the two groups.\textsuperscript{204} That Sheridan ‘did not in any proper sense of the term, write a Restoration Comedy’, as Schiller finally asserts, is apparent in his softening of wit throughout the play, through discursive acts of concealment that are made to appear virtuous because thoroughly domestic in both form and impression. These appearances are bound up in contemporary views concerning “acceptable” lived morality. The fact that these cultural views anticipate a levelling of the behavioural terrain provides the dramatic source of conflict—with the ‘spirit’ of the comedy consisting in a theatrical engagement with the terms and conditions of this social reshuffling. Individuals are pulled into emotional/commercial relationship as much by imaginative commitment as by sympathetic appeal. The traditional comedy of manners, as Sheridan conceives it, is thus connected to a ‘domestic morality’—where the Restoration Comedy of manners consists in household interactions and lends itself to what Lisa A. Freeman calls an emergent Comedy of Good Breeding (a suitable label for Schiller’s ‘Unrestored’ School for Scandal), which then lends itself, as I would argue, to a new world Comedy of Right Feeling (dramatically expressed by Tyler), where the sentimental comedy of manners achieves its new point of ridicule, and an original type of stage humour, through the re-branding of virtue via ‘affective consideration’ acting as an imaginative foil to corrupt dealing.\textsuperscript{205}

\textsuperscript{202} ibid., p. 695.
\textsuperscript{203} ibid., pp. 695, 704.
\textsuperscript{204} Leff, ‘Disguise Motif’.
\textsuperscript{205} Freeman, \textit{Character’s Theatre}, p. 9.
Reading towards an examination of these promissory ‘considerations’ in detail, then, it proves useful first to distinguish the parameters of affective deliberation through those characters who themselves substantiate and enter into sympathetic claims. Applying Moller’s critique to the texts, then, and with a view towards Robert Mitchell, affective agreements can be evaluated in both plots through a host of figures exchanged, where characters (either figurative or monetary) ‘become currency only to the extent that debt is created.’ Thus it is that a subtextual field of obligation and dependency becomes perceptible beneath promissory commitments, supporting habitual power structures (in Sheridan), whilst at the same time inviting the sympathetic imagination to envision stronger indebtedness to a new authority (in Tyler). Discursive fields of financial credit and moral credibility as discussed earlier, in this way regulate and comically confuse a host of promises exchanged. In order to resolve these confusions, the sincerity or contrivance of discernible contracts is outworked/or negotiated in both plays through the figure of moral judgment acting as a transformative literary device—an impartial arbiter through whom the plot must pass in order for right resolution to be effected. Further to this, it becomes apparent, particularly with regard to such issues as hereditary interest and donative investment, the extent to which character transaction functions as a deliberately commercial operation, where a notion of transferable reputation underscores public mediation.

**The Figure of Moral Judgment**

**SIR PETER** You are wrong, Master Rowley. On their father’s death, you know, I acted as a kind of guardian to them both, till their uncle Sir Oliver’s liberality gave them an early independence; of course, no person could have more opportunities of judging of their hearts, and I was never mistaken in my life. Joseph is indeed a model for the young men of the age. He is a man of sentiment, and acts up to the sentiments he professes; but for the other, take my word for’t, if he had any

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206 Mitchell draws these ideas out more fully in his study of sympathy and state financing. In this discussion he draws upon monetary theory to consider the image (and its capacity for movement) as a form of currency when debt is created: Robert Mitchell, *Sympathy and the State in the Romantic Era: Systems, State Finance, and the Shadows of Futurity* (New York; London: Routledge, 2007), p. 150.
grain of virtue by descent, he has dissipated it with the rest of his inheritance.

(S, ii. 2. 11)

Despite Sir Peter’s “guaranteed” credibility (‘I was never mistaken in my life’), the true figure of moral judgment in Sheridan’s School for Scandal appears in the person of Sir Oliver Surface, who enters the plot in such manner as to expose the error in Sir Peter’s discernment. Sir Oliver not only holds the Surface family accountable for executory investments made in his absence (returning home from the East Indies to check the state of his assets), but also returns, more importantly, to weigh the hearts of his relatives—as against their inheritance—in order to test the intrinsic worth of their moral figures. He thus positions himself at a distance from the others so as to observe the conduct of those around him. In so doing, he upturns the family roots, exposing his sons as heirs alike of contrivance (although Charles eventually wins his approval) and revealing his relatives as joint-successors in a long line of conceit.

The figure of moral judgment in Tyler’s Contrast, on the other hand, is set outwith the natural family, and is reconceived, via both “Yankee” Jonathan and Colonel Henry Manly, as a now composite blend of both the relative by blood and the stranger who becomes friend. In this dual-conception, Jonathan and Col. Manly together insist upon the idea that fellow-Americans must be set apart as the heirs of a new morality, where cords of sympathy must be entirely disconnected from proofs of ancestral right and where sincere affection must underscore relational guarantee. Further to this, the subtle reassurance of democratic equality is suggested through reputation acting as a right complement to moral security. Sensible citizens are transfigured into social contenders, no longer the ignorant heirs of a mercantilist servitude: the “servant” in Tyler’s piece, for instance, is re-figured as an integral part of his master; and the Sheridanian stock type is transformed into an autonomous actor, subject only to the impartial virtue that rises naturally within the republican breast. This section concerning the “Figure of Moral Judgment” thus treats the thematic and discursive elements whereby this “objective” figure is dialogically constructed/construed, via both imposture and moral doublings, and it
delineates the contrastive manner whereby he proves himself vital to commercial aspects of modern market exchange.

**IMPARTIAL HEIRS**

**SIR OLIVER**  ‘Ah! we shall never see such figures of men again.’ (S, IV. 1. 41)

So says Sir Oliver as he surveys ‘the family of the Surfaces’ in a series of portraits displaying the family line ‘up to the Conquest’ (S, IV. 1. 41). Posing as ‘Master Premium’ before his son Charles, Sir Oliver partakes in this auctioning off of the family pictures, whilst Charles ascribes a value to each and submits them for public sale under the ‘hammer’ of a man named Careless (the hammer itself replaced by a written copy of ‘the family tree’ (ibid.)). A discussion of ‘feathers’, ‘wig[s] and regimentals’ composes the scene, whereby a ‘false theatre’ of external signifiers locates the individual self—by title and lineage—within a flat genealogy (IV. 1. 42).

As Michael Ketcham describes it in his reading of Cowley and Swift, ‘the source of virtue [here] lies in a traditional past, represented by the inherited self-sufficient estate’: ‘A range of social gestures takes on a grammar of its own, but the whole fabric of words, gestures, clothing, manners, and money is a false theatre that dissipates the “natural” and “interior” self. The true self is defined not by exchange but by the estate and the inheritance.’

‘What a domestic character I am’, sighs Charles, reflecting upon the pictures as a ‘catalogue’ of postures, valued by principle of likeness—‘resemblance’ over personality, wherein individual features are ever subject to a higher direction, and bear no independent quality of conception: ‘these are done in the true spirit of portrait painting’, Charles reflects,

—no volontier grace and expression. Not the like the works of your modern Raphaels, who give you the strongest resemblance, yet contrive to make your own portrait independent of you; so that you may sink the original and not hurt the picture. —No, no;

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the merit of these is the inveterate likeness—all stiff and awkward as the originals, and like nothing in human nature beside. (S, iv. 1. 41)

The ‘merit’ that ascribes value to these unnatural frames is earned via visible markers of costume and composition, where personal virtue consists in status symbols that together construct the public persona. Throughout this makeshift auction, these symbols are discredited one by one so as to depreciate the individual and fragment the persona displayed: the ‘true spirit’ of self-portrayal, as Charles conceives it, is literally selling out to the needs of market transaction. This family sale supports Ketcham’s contention that: ‘The self can be preserved in the securely bound realm of the estate but it can only be lost in the multifarious encounters of the city with its profusion of signs and social symbols, mere tokens which turn all men into merchants’. Under economic duress, therefore, these Surface symbols lose all inheritable pretence and are devalued in light of new social codes; and through the actions of an imprudent son, the current generation is called to account for its share in the larger commercial interest.

Adopting an impartial posture throughout the scene, Sir Oliver retains his chameleon-figure in a manner that upholds Chesterfieldian tradition. Act III of The School for Scandal opens with his choice to seek truth through artifice and disguise: ‘[L]et Sir Oliver assume his character’, his servant Rowley says, ‘and he will have a fair opportunity of judging, at least, of the benevolence of their dispositions…’ (S, iii. 1. 25). He thus ‘assumes a character’ for the express purpose of exposing moral constitution, adopting the persona of an impartial and disinterested observer not only to test his sons, but to undermine the lies being circulated by scandal’s crew. Characterised by “airs of impartiality”, therefore, Sir Oliver portends his own family’s demise. Although deceitful on its surface (a distinguishing feature, as Leff argues, of Sheridan’s sentimental maskings), Sir Oliver’s preparation is actually revealed as a moral good because it tests the true motives of the heart and breaks the bonds of complexity, complicity and vice that

208Ibid.

ensnare his friends. It is in such manner, as Jack D. Durant suggests, that Sir Oliver releases those around him into the simplicity of a happy ending, in which his deception is found admirable because of its charitable, supposedly Christian design. Just the fact that he ‘needs’ instruction in roguery (receiving it, of course, from a man named Moses) situates him always one degree away from complication and evil. Virtue uncovers more virtue, Durant argues, and thus “Mr Premium” calls forth Charles’s ‘spontaneity and directness’—his true simplicity and clarity of speech—whilst drawing out Joseph’s deceit. The virtue of the charitable man calls forth moral rectitude in “right” company, whilst unveiling malice in those of blackened heart.

Throughout his scheme, therefore, Sir Oliver employs a rhetoric that translates the simple out of the complex, in the manner advanced by Durant, endeavouring to strike the terms of his negotiation in a convincingly neutral tone, so as to dissociate his interactions from value judgments. His ‘impartial observer’ is well versed both in the practical economy and in the moral company of the society into which he treads. His frequent ‘[asides]’ are thus repeated cues by which he establishes a relationship with the audience. He tries to convince general spectators to approve his efforts to discover the true nature of his sons, and urges them to applaud the deeper purpose behind his actions and the valuable roots of his moral goodness. Supporting this onstage endeavour is the surprisingly civil dialogue of those who remember him whilst he is away. In a society that is frequently vicious towards those ‘characters left behind’ (as Sir Peter understands) this tribute speaks volumes. Sir Oliver’s impersonation thus provides a positive device that makes use of role-play so as to undermine routine assumptions and affect contrived ends. The fact that Charles sanctions this pretence by retaining the characteristic (‘disinheriting’) frame, as it were, refusing to sell Sir Oliver’s portrait, is as much an indication of his own faithfulness to his uncle, as it is an indication that Sheridan, as per Sir Oliver, intends to do the same (S, IV. 1. 43).

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212 ibid.
In *The Contrast*, by comparison, Royall Tyler reveals such ingenuity as a meaningless and affected trope: the traditional markers that signify genealogical distinctions are here replaced and displaced (falling over themselves at times) in a plot that revisions the social marketplace as a site for reclaiming the *natural* self. Painting this slightly different picture, Tyler fills otherwise hollow signifiers (represented in Billy Dimple’s “European” dimples, ‘an ornamental but empty space’, as Cynthia A. Kierner suggests) with newly natural, behavioural ‘airs’ and graces.\(^{213}\)

Act I Scene I of the play opens, for instance, with direct reference to the ‘bewitching’ graces that might beguile unsuspecting spectators to ‘applaud that which must grieve the judicious’—(it is a ‘bewitching *false* step’ by which Charlotte is introduced (C, I. 1. 41, emphasis mine)).\(^{214}\)

In this same scene, Charlotte ridicules Maria for her ‘affected indifference’, and for playing a ‘dear sentimentalist’—whilst she at the same time defends those visible signifiers that constitute her own dependency on European models of self-display:

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**LETITIA**

Why, who should we dress to please, but those who are judges of its merit?

**CHARLOTTE**

Why, a creature who does not know *Buffon* from *Soufleè*—Man!—… for whom we dress, walk, dance, talk, lisp, anguish, and smile. Does not the grave Spectator assure us that even our much bepraised diffidence, modesty, and blushes are all directed to make ourselves good wives and mothers as fast as we can? (C, I. 1. 43-44)

These ‘directed’ airs are disclosed by Tyler as false affectations, predicated on an empty form of virtue (ibid.). The ‘high head-dress’, ‘coat’, ‘hoops’ and ‘ribbons’ that declare the prevailing ‘mode’ of a subject (the *outré* fashion as Letitia reads it), are replaced in the end by polite ‘homespun arts’ (C, III. 1. 59, prologue, 38). Tyler qualifies the moral undertones of the *School*

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\(^{214}\)Citing Samuel Foote, in Alan Downer, ‘Nature to Advantage Dressed’, p. 1014.
for *Scandal* by advocating new principles of spectatorial response and recognition, endeavouring to challenge old world assurances (as by ‘the grave Spectator’) that codify praise and recognition (ibid.). Self-display must instead pass, as he suggests, through an unbiased judge ‘of merit’ who can naturally reflect—and fulfil—a different moral frame (ibid.). In order to construct this, Tyler supplies Colonel Manly as a figurative translation of Sir Oliver (the relative who returns to check his family’s moral worth), whilst suggesting that his role must be doubled in the person of a complete stranger, “Yankee” Jonathan. In this way he removes judgment one step beyond the literal family so as to include the nation more widely. Jonathan and Col. Manly are resolved into one objective stance—strangers alike to circumstance, but friends to propriety and virtue. Tyler employs their dual figure in order to demonstrate a new form of virtue that arises naturally—from adherence to ‘the inner man’, as it were—and that plays out in acts of service and self-sacrifice. Sir Oliver Surface and the Jonathan/Manly duo are similar in that each represents a sort of transcendent justice, acting as an “impartial” arbiter over the foibles of mankind, whilst receiving continued qualification from “listening spectators”. Each draws to light the true value of promises rendered, characters credited and reputations exchanged—where the difference between the two figures, as will be discussed, is the manner in which that truth is drawn to light: Sir Oliver affects a scheme (puts others on trial) whilst Jonathan and Manly suffer for a scheme (are themselves tested and tried).

**CANDOUR CARES**

*Mrs Candour* ‘To be sure, tale-bearers are as bad as the tale-makers—’tis an old observation, and a very true one…. ’ (*S*, l. i. 6)

The distinguishing factor of these heirs/airs, of course, is “objective” Candour herself, functioning as the discursive undercurrent of moral judgment. A reading of the interplay between Sheridan and Tyler reveals the difference between a Candour who must impose herself on surrounding company (insinuating her way into private opinion), and a Candour who arises
altogether naturally from within the speech patterns and discourses of a sensibly disinterested and sincere people.

The disconnection between candour in principle and candour in fact, as illustrated in Sheridan, is featured through the character of Mrs Candour herself, who bears critical weight as the most credible, if at once the most ingenuous figure onstage. Through sly insinuations Mrs Candour plants the barb—and then sits back to let others carry the tale, stating simple facts and leaving others to exaggerate her claims. From a wealth of company response she then transcribes particular reactions, taking a mental copy of the scene in order to paint it again in another drawing room, with another set of listeners who can themselves be profitably observed. Her approach is best exemplified in her reply to Sir Benjamin when he delivers an epigram on ponies and macaronis: ‘I must have a copy’, she says (S, II. 2. 10).215 Despite her reputation, therefore, for being the ‘best-natured’ and ‘best sort of woman’, her manner suits her for quite opposite company, aligning her with Lady Sneerwell and her protégée Snake who are pretenders in the first degree. Candour’s feigned concern leads to ill-health and moral depravity (Maria actually becomes sick at Mrs Candour’s intimation concerning Charles), whilst the rest of the company appears insensible to her surveillance: ‘To be sure…’ as Mrs Candour confesses, ‘tale-bearers are as bad as the tale-makers—‘tis an old observation, and a very true one…’ (S, I. i. 6).

A reworking of candour for Tyler’s purpose is recognisable not through a blunt characterisation in fact, but through the very grammar of sympathy by which the comedy unfolds. As indicated in the earlier analysis concerning the language of feeling, Tyler’s cast is both composed and exposed relative to the space at which the language of interest becomes something else. Each of Tyler’s characters is qualified by a notion of candour that bolsters personal/national confidence, behavioural expectation and commercial transaction, expressing a dialogical restructuring of

215 The eighteenth-century macaroni was a caricature depiction of stock types.
speech patterns within the American scene. In Tyler’s depiction, candour bears an honest material front that must be authenticated by sincere discursive depth.

THE CONTRAST: GIVING DEPTH TO THE SURFACES

We have observed that the Ridicule of Commedy [sic] consists in the Ridiculousness of the characters and not of the circumstances. It will be necessary therefore that the characters should be changed. We can not always be laughing at misers, or fops, we must have a variety of characters, to make the pieces agreeable. (LRBL ii.92)

In his study concerning Circum-Atlantic Performance, Joseph Roach contends that ‘[g]enealogies of performance attend not only to “the body”, as Foucault suggests, but also to bodies—to the reciprocal reflections they make on one another’s surfaces as they foreground their capacities for interaction.’ It is in such manner that bodies reflect upon one another throughout these plays, acting either as mirrors to one another, reproducing character surfaces, or as lenses, refracting inner attributes and inviting transparency. Just as there are those within each play who reveal hidden truths (functioning in this latter manner), there are those within Tyler’s American cast who, by way of transatlantic contrast, refract and resolve Sheridan’s dramatic forms. In a comment that describes these external points as well as the contrasts internal to Tyler’s work, one scholar comments that ‘The contrast between the plain and simple honesty of purpose and breeding of our American home life and the tinselled though polished hypocrisy and knavery of foreign fashionable society is finely delineated, and no doubt suggested the name of the play. Thoroughly natural in its plan and characters, it was a bold venture of a young writer in a new literary domain.’ Qualifying this somewhat, through a delineation of the characters themselves, Cynthia A. Kierner suggests the purpose behind his plan: ‘Tyler wrote The Contrast’, she says, in order ‘to address … the future of manners.

216 For a full discussion of Tyler’s contribution to American speech patterns, see Roger B. Stein, ‘Royall Tyler and the Question of our Speech’, New England Quarterly, 38.4 (Dec., 1965), 454-74.


218 See, Prologue to The Contrast, Written by a Young Gentleman of New York, and spoken by Mr. [Thomas] Wignell, 1790.
morals, and authority in post-revolutionary America. He asks his audience to consider ‘[w]hat models’ Americans should ‘find worthy of emulation’ and invites his observers ‘to scrutinise his characters’ before asking them to consider whether it ‘was attainable or even desirable’ to pursue a ‘uniquely American civic virtue.’

Unravelling this inquiry, The Contrast employs a language of sentiment and sympathy that gently reworks Sheridan’s restoration comedy of manners, subverting a dialogue of routine types by transforming recognisable stock characters, by varying shades and degrees, into a host of now sensible citizen figures. Tyler displays the identities now available for (and indeed most suitable for) representatives of a new republic. His piece in this way serves as a sort of acting-manual, instructing fellow-citizens in the honest art of separating out, wheat from chaff, as it were, from European sensibilities, so as to become virtuous patriot-citizens and denizens of a culture marked not by artificial contrivance (in Sheridan’s Chesterfieldian sense), but by sincere profession and the natural laws of sympathy. Although the play ‘strikes an ambivalent note’ and resists an outright rejection of European models, as Kierner avers, it is clear that the moral of the tale, when read against Sheridan, encourages the creation of a social order substantiated by/structured upon new ideals of affective self-governance. The sensible citizen in Tyler’s piece is market-wise but uncorrupted—can be trusted with self-determination because concerned with the interests of the group over and above the benefits to himself. Character is an appreciable asset—reputation a right security.

TRANSFERABLE TYPES

SNAKE ‘Now, on the face of these circumstances…. ’ (S, I. 1. 2)

In Act I Scene 2 of The Contrast, a notion of character change accompanies commercial transfer. At the end of a telling conversation with her father, Van Rough, immediately after

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220 ibid., p. 25.
221 ibid., p. 21.
Maria humbly submits her personal desire to his paternal will (whilst he admonishes her to ‘mind the main chance’—and praises the cost of Madeira), a servant interrupts their exchange: ‘Sir’, he says, ‘Mr. Transfer, the broker is below’ (C, l. 2. 50). This theatrical cue provides the most obvious indicator as to Tyler’s literary intent. The ‘true self’, traditionally marked ‘not by exchange but by the estate’, as Ketcham suggests, here metaphorically acquires its own material substance. It becomes a discursive entity, substantiated through its own commercial manufacture and constructed through a “natural theatre” of authority—by way of “stock” exchange, rather than by means of inheritance. It is at this moment that Sheridan’s old world repertoire is transferred to the new American polity: Tyler’s cast acquires full ownership rights over its character-constructions—and from this moment begins to discover its unique capital worth within a new national plot. Tyler begins to transpose appreciable types (the Yankee citizen, the manly soldier, the flippant coquette) into mature social deliberators, educating them for social action. Each surface type is thus exposed according to its discursive consonance (or inconsonance) with inner motives and means, and is re-evaluated/reconstructed based on the substance of its total net worth (and social utility)—with a view towards the role that must now be played. In a manner salient to the argument proposed by Deirdre Shauna Lynch in her book *The Economy of Character*, therefore, Tyler’s *Contrast* grants depth to flat *Surfaces*.

In the 1777 showing of *The School for Scandal*, Sheridan’s cast boasted an assortment of actors reflecting a range of figures and skills—representing a host of stock types as they appeared both in the dramatic repertoire and in society at large. It is no surprise that Christian Deelman can write so convincingly about Sheridan’s interest in specific actor-types relative to his writing of the play, arguing that the Surface brothers, for instance, were ‘drawn to some extent from the actual life and personality’ of prominent actors (notably John Palmer, “Plausible Jack”, and William “Gentleman” Smith). Other characters, as Deelman notes, were inspired by the acting abilities of star players such as Thomas King, who played Sir Peter Teazle; Mrs. Frances

Abington, as Lady Teazle; Richard Yates as Sir Oliver Surface; Miss Priscilla Hopkins as Maria, and Miss Jane Pope as Mrs Candour.\footnote{ibid.} As one critic reflects of Pope’s Candour: ‘the natural tone of her voice so hid the affected sentiments she spoke that it was not wonder her scandal carried perfect conviction on stage.’\footnote{ibid., p. 263.} Through a process of careful typecasting, then (shaping the roles to fit the actors), Sheridan’s plot manages to rise and fall in almost Hogarthian manner—through a dramatic sequencing that can be read as caricature sketch.

Tyler’s re-casting of these types for his own play, on the other hand, is noteworthy by comparison—not because his characters are any more fully-constructed (in many ways his figures are overly simplified, even underdeveloped), or because they are free from typecasting (he created the role of Jonathan, for instance, to suit actor Thomas Wignell); but because in his \textit{Contrast} Tyler conceives these routine types with direct reference to the motives and manners by which they should be construed.\footnote{Nethercot, ‘Dramatic Background’, p. 439.}

Within this didactic frame, Tyler vests stock types with moral responsibility, qualifying sensible characters to sustain republican citizenship (in forums of social judgment) through adherence to ethical codes of social conduct. The characters that succeed in this are, in the end, found competent to serve their country and to fill such admirably Stoic roles as soldier and statesmen. The socio-political servant is able, in Jeffersonian manner, to practise the lessons of natural law and to carry them into the modern marketplace: it is possible for the simple “ploughman” to become as morally astute in this context as the learned “professor”.\footnote{See, Burstein, considering Jean Yarbrough, in ‘The Political Character of Sympathy’, \textit{Journal of the Early Republic}, 21.4 (Winter, 2001), 601-31 (p. 612); see Thomas Jefferson, \textit{Notes on the State of Virginia} (London: John Stockdale, 1787), ed. by William Peden (Chapel Hill, N.C.: 1954).} Not unrelated to this, Tyler’s work introduces a controversial reshuffling of the social order, where hierarchical structures of rank and distinction (relative to the estate) are unsettled as authority is reconceived within a horizontal (if not yet egalitarian) re-patterning of the public/political interest. Tyler harnesses his act of rewriting with a view not only towards criticising ignorant consumerism, but towards at the same time redeeming wanton consumption by impressing its more productive
character forms (creativity, innovation and self-discovery—notions accessible to all) upon the face of a maturing citizenry—granting a new depth of interest to the American cast: ‘The imprinting of a surface and the acquisition of characters’, as Lynch argues, ‘produce “character”, or personality, where before there was a blank.’ Whilst ‘empty’ Dimple describes his deportment as carrying the positive difference between ‘a gentleman who has read Chesterfield … and an unpolished, untravelled American’, Col. Manly professes to learn instead the moral lessons of ‘probity, virtue, honour’ that will deepen and ‘secure’ the ‘honest American’ interest (C, v. 2. 98, 100). He credits propriety as essential to thoughtful autonomy, where the rights of the judged are secured relative to the moral substance of internal worth. Tyler thus grants psychological depth to Sheridan’s otherwise surface types by following a line of integrity through to the ‘inner man’, weighing individual consumerism and conduct as against the conscience that directs it. The “right to reputation” that then underpins individual character constructions safeguards more than mere commercial transaction, or the categorical distribution of self within a fixed socio-economic frame; instead, it usefully protects democratic (and transformative) principles of individual autonomy and original self-conception, relative to the needs of a wider society.

REPUTATION AS RIGHT

A nineteenth-century definition of this ‘right to reputation’ reads as follows, taken from Professor John Austin’s ‘tables of Jurisprudence’:

‘(c.) It is said in a proceeding section … ‘that of rights which avail or obtain against other persons generally, some are rights over or to persons, and some have no subject (person or thing).’ Examples of the former, have been given in the last section … I will now produce, as briefly as I can, a few instances of the latter.

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229 Lynch, Economy of Character, p. 34.
1. The right to reputation, —The scope or end of this right, is the esteem and good will of the public: of that indeterminate number of indeterminate persons, by whom the person in question may happen to be known. And here, it is manifest, there is not the shadow of a subject, over which the right can be exercised, or in which it can be said to inhere or exist. It is merely a right to that mass of contingent enjoyments, which the person may chance to derive from general approbation and sympathy. And yet this is a right which avails against the world at large: every false imputation, thrown upon the person in question, being an injury affecting or committed against it.²³¹

It is reputation’s vast scope as a ‘right which avails against the world’ that is of greatest interest to us here. Consider the following conversation from Act II of The School for Scandal:

LADY TEAZLE But Sir Peter is such an enemy to scandal, I believe he would have it put down by parliament.

SIR PETER ‘Fore heaven, madam, if they were to consider the sporting with reputation of as much importance as poaching on manors, and pass an act for the preservation of fame, I believe there are many would thank them for the bill.

LADY SNEERWELL O Lud! Sir Peter; would you deprive us of our privileges?

SIR PETER Ay, madam; and then no person should be permitted to kill characters and run down reputations, but qualified old maids and disappointed widows.

…

MRS CANDOUR But, surely, you would not be quite so severe on those who only report what they hear?

SIR PETER Yet, madam, I would have law merchant for them too; and in all cases of slander currency, whenever the drawer of the lie was not to be found, the

²³¹ Austin, Jurisprudence (bold mine).
injured parties should have a right to come on any of the indorsers. (S, II. 2. 19-20)

Sir Peter here makes a case for protecting reputation by law because he understands character as ‘currency’ amidst a ‘sporting’ (gossip-mongering) elite (ibid.). As he exits the stage he allows the fact that—never fear—‘I leave my character behind me’ (ibid. 20). His own reputation is similarly subject to ‘every false imputation’, in Austin’s words, ‘that might rob him of those ‘contingent enjoyments deriving from the general sympathy.’ But quite unlike its appearance in this definition by Austin, whose idea of ‘reputation by right’ concedes sympathy as a generalised, almost offhand reaction (and reputation as a substantive ‘right’ by default), sympathy in Smith’s formulation is hardly an arbitrary conceit: ‘Sympathy defines what is proper or ethical;’ as Moller contends, citing Martha Nussbaum, ‘the sympathetic stance is the ethical stance.’

Sympathy thus bears the responsibility of governing rightly, of securing good will and continued esteem for sustaining the natural ‘right to reputation’. To the extent that sympathy contains within it, as Smith envisions, the potential for selflessness and self-sacrifice, underscored by principles of moral approbation as natural testimony to the merits or demerits of a subject on trial (its praise-worthiness or blame-worthiness), it is elevated in social interactions to play the role of judge advocate. It thereby directs a case (alternately as both defence counsel and prosecution) for those unable to represent themselves (those whose characters have travelled too far beyond them), so as to successfully moderate the injuries of ‘false imputation.’ ‘As, of all the external misfortunes’, writes Smith, which can affect an innocent man immediately and directly, the undeserved loss of reputation is certainly the greatest; so a considerable degree of sensibility to whatever can bring on so great a calamity, does not always appear ungraceful or disagreeable. We often esteem a young man the more, when he resents, though with some degree of violence,

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231 ibid.
233 Austin, *Jurisprudence*. 
any unjust reproach that may have been thrown upon his character or his honour. (TMS III.3.19)

Smith refines this view in a later Jurisprudential Report, dividing his definition according to perfect and imperfect rights (à la Hutchinson), distinguishing those rights we ‘have a title to demand and if refused to compel another to perform’, from those we do not.235 ‘The end of justice’, he says, ‘is to secure from injury. A man may be injured in several respects … As a man, he may be injured in his body, reputation, or estate’: ‘These rights which a man has to the preservation of his body and reputation from injury are called natural. Or as the civilians express them iura hominum naturalia.’236 Whereas reputation in Sheridan is still to a large part bound up in the estate, however, and any injury to the former endorses the dissolution of the latter (as Sir Peter concedes when comparing slander to ‘poaching on manors’); reputation in Tyler is distinguished as its own appreciable asset, distinct from heritable succession and capable of levelling the geo-theatrical territory of market exchange. As Tyler’s crew perceives (and Sheridan’s crew protests), the idea of reputation as a legal right implies a shuffling of rank and class distinction that unsettles sensible discourse. As it appears in Sheridan, the ‘dignity of rank’ is expressed using external modifiers; whilst in Tyler it is supported by internal commendations. Relative to this, then, the “sensible” judge is transformed from an affected type, who retains power by principle of either emulation or imitation, into a sincere moral deliberator, who retains a position of authority by embodying sound conscience.

In both works reputation provides a form of social security, or a positive guarantee in the first instance, that ensures one’s right to enter the market exchange (hence letters of introduction that attest to character and credibility): ‘Compare the characters of the Just and Good Man’, as writes George Stephens, ‘…Set them in Contrast with one against the other. That indeed strikes

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235 LJ [A], i.14 (i.e. Hutcheson).
236 LJ [B], 6 & 8.
us with Awe and Reverence. This attracts our Love and Admiration.\textsuperscript{237} As stated in Smith’s 1762-63 Report on Jurisprudence,

A man thus injured in his reputation, when one endeavours to bring his character below what is the common standard amongst men. If one calls another a fool, a knave, or a rogue he injures him in his reputation, as he does not then give him that share of good fame which is common to almost all men, to perhaps 99 of 100. But, again, if one calls another an honest good natured man, tho perhaps he deserved a much higher character, he can not complain of any injury being done him, as that is the character due to the generality of men.\textsuperscript{238}

This ‘common standard’ (or reasonable view) preserves the general economic welfare and ensures the transatlantic exchange of cultural commodity. A good character retains the right to speak—to carry a voice within the market. And so power falls to a series of sympathetic, dialogic encounters as a means of both preserving and increasing one’s reputation, and of persuading the community as to its market worth; it then falls to the individual to conserve that position through the careful manufacturing of oneself relative to surrounding observers. As both playwrights suggest, one must convince “listening spectators” that one’s vocal autonomy and personal identity are \textit{worth} retaining for the purposes of market exchange. Sympathy at this point concedes its moral function. The moment sympathy fails, or one’s sensible reputation takes a stumble—either by failure to read the crowd rightly and to interact accordingly, or because scandal has destabilised myriad attempts at sympathetic connection—is the very moment that one loses discursive power: vocal authority, social credibility, financial credit and moral self-worth.

Thus it is that the right to reputation is re-conceived by Royall Tyler as a sympathetic right of the sensible nation, where the finest way to achieve and maintain a character is to seek

\textsuperscript{237} Citing George Stephens, \textit{The Amiable Quality of Goodness as Compared with Righteousness, Considered} (1731), in R. S. Crane, ‘Suggestions Toward a Genealogy of the Man of Feeling’, \textit{ELH}, 1.3 (Dec., 1934), 205-30 (p. 213).

\textsuperscript{238} LJ [A], i.13-14.
reputation not in the company one keeps, or in the social/moral law in fact, but to seek it as a truism within oneself: ‘Be what you seem’, as it were. In this return to ‘The Actor’s Epitome’, as introduced in Chapter III, a notion of integrity proves the key to good credit: ‘I now find’, Charlotte moralises, ‘that the heart of any worthy man cannot be gained by invidious attacks upon the rights and characters of others; —by countenancing the addresses of a thousand; —or that the finest assemblage of features, the greatest taste in dress, the gentlest address, or the most brilliant wit, cannot eventually secure a coquette from contempt and ridicule’ (C, v. 2. 100). In order to grow beyond unthinking stock types—her propensity to be the “social coquette”, for instance—the outward figure must undertake internal change. An 1808 letter written by Thomas Jefferson to his grandson, Thomas Jefferson Randolph, addresses this point in a query that underscores reputation as invariably bound to character-type, and that juxtaposes it (by principle of manifestation) with ‘the steady pursuit of what is right’. He writes:

From the circumstances of my position, I was often thrown into the society of horse racers, card players, fox hunters, scientific & professional men; and many a time have I asked myself, in the enthusiastic moment of the death of a fox, the victory of a favorite horse, the issue of a question eloquently argued at the bar, or in the great council of the nation, well, which of these kinds of reputation should I prefer? That of a horse jockey? a fox hunter? an orator? or the honest advocate of my country’s rights? Be assured, my dear Jefferson, that these little returns into ourselves, this self-catechising habit, is not trifling nor useless, but leads to the prudent selection & steady pursuit of what is right.

This maps up as well with Smith’s admonition ‘to become’ what one appears to be: ‘the best, the surest, the easiest, and readiest way of obtaining the advantageous and of avoiding the unfavourable judgments of others, is undoubtedly to render ourselves the proper objects of the

241 Ibid.
former and not of the latter. “Do you desire”, said Socrates, “the reputation of a good musician? The only sure way of obtaining it, is to become a good musician…” (TMS VII.ii.2.13). Although in The School for Scandal Snake responds to Lady Sneerwell’s scandal practise with the reassurance that ‘Nothing can be more natural’, Tyler’s plot suggests that the natural practise of sympathy must first consist in propitious interaction (S, i. 1. 2). His new message to Americans is that all responsiveness, even to malicious injuries, must be met with a considerable ‘degree of … actual sensibility’ as Smith indicates: wrongdoing must be acknowledged with proper judgment, but must then be tempered by constant referral to the impartial ‘inmate of the breast’, who functions at all times as the great arbiter of outward conduct (TMS VII.ii.1.47). Tyler’s underlying concern is with the permanency of moral character—and with reputation as a sensible right of the masses: which character, he seems to ask, would most truly bear up under honest scrutiny? Or, to put it another way, which reputation would win the moral approbation—and financial backing—of a just and impartial tribunal?

PARTIAL ACCOUNTS: COLLUSION AND CONSENT

A comic writer should make all the parts tend to excite our sense of Ridicule and at last conclude the work with the highest piece of Ridicule which all the Rest pointed at or tended some way to bring about. (LRBL ii.82)

A reading of the two plays in transatlantic dialogue with one another demands at this point an analysis of plot construction, particularly with regard to the affective securities put up for personal reputation and gain. Smith’s sympathetic “grammar of œconomy” is here key to distinguishing the social market frame and investment interests governing transpersonal transaction and affective alliance.
There is a dramatic scene at the height of each play when characters are shuffled into hiding places on stage—shoved into closets or pushed behind screens—strategically manoeuvred from one place to the next via witty dialogue and persuasive suggestion, leading to a climactic moment when truth is finally revealed and the game meets its match: falsehood is unveiled, vice is exposed, the plot is untied and those in hiding are unmasked in full view of all. Leading up to this point, however, the blocking of both plots becomes increasingly complex (particularly in Sheridan). Affective alliances are manipulated in such fashion as to structure/restructure the stage—individuating the players as, with each verbal agreement, the narrative plot thickens. Reputation here underpins theatrical points of both discovery and disguise, whilst mutual sympathy (acting as its “moral” guarantee) becomes increasingly necessary to safeguarding self-interest. The degree of necessity in any given habitual relationship, as Smith argues, intensifies the deliberative effort to reach mutual sympathy: ‘the higher the cost of exiting the relationship’, as Mark K. Moller contends, ‘the greater the need for mutual sympathy within that relationship.’

Thus it is that accumulative points of promise complicate the habits of infamy—and reciprocal sympathy between actors becomes imperative. Further to this, affective promising supplies a compositional signal, or theatrical cue, for dramatic (re)-configuration.

As players are repositioned onstage, singled out and manoeuvred from one position to the next, they are yet joined together by invisible bands of affective alliance. In Sheridan’s much celebrated library “screen scene”, for instance, these sympathetic connections are put to the test as Joseph Surface outworks a series of affective agreements (established prior to the scene). In order for these to succeed, he depends upon the security of space between people. Persons are thus individuated before the watching audience as Joseph’s selfish motives become clear. Self-interest is set in motion and the figurative trial is prepared on all fronts, readied for moral judgment both onstage and off. Although each character chooses his/her own place of concealment, as it were, Joseph literally masterminds individuals into different positions on the

stage (Lady Teazle behind a ‘veil[ing]’ screen; Sir Peter into a listening closet—each one
described as ‘[Peeping.]’ from time to time at the events on stage), their characters are
metaphorically arranged in such fashion as described by Deirdre Shauna Lynch, each individual
countenance holding a ‘determinate place on the moral map’ (S, iv. 3. 46-57).²⁴³ Joseph takes
his own stage direction from the character-points around him (namely those that improve his
objective), with his own features qualified by the reputable worth of those who reflect on his
surface: ‘Charles’s imprudence and bad character’, he states, ‘are great points in my favour’ (S,
iv. 3. 46). He designs his performance to advantage by initiating a sort of chess-match,
chequered by role-play, strategically ensuring that any underlying/internal fragmentation (not
least his own) remains dramatically concealed by invisible networks of sympathetic attachment,
and by delicate patterns of mutual, sympathetic expectation. Relative to this blocking, Joseph’s
deliberate effort to secure sympathetic exchange is strategically outworked through the
use/abuse of reputation relative to the objects of his ambition. He practises the ‘scandal’ craft
and the company is convinced: ‘I knew you would sympathise with me!’ Sir Peter exclaims
(before hiding himself in a closet). By relation, then, each designing character finds his position
in the end (on the stage and in society) relative to his own conniving practise—entering into the
very ‘place(s) of ambition’ as it were, where false affection proves the path to disillusion (TMS
I.iii.2.7).²⁴⁴

RISE AND FALL: CONSCIENCE

As the introduction to ‘affective consideration’ suggests, the comedy in both plays inheres in
theatrical points of plot conceived via interpersonal upsets over supposed “promissory” acts.
These are unravelled through a series of questions, read as through Smith’s ‘donative promise
regime’: What, in each case, is the sympathetic expectation? Why is it understood as “binding”
by the characters involved? And how does this yield the intrinsic confusion and uncertainty that
constructs the comedy of manners? The crisis of conscience that structurally supersedes

²⁴³Lynch, Economy of Character, p. 33.
²⁴⁴Smith here cites Lord Rochfaucault: ‘Love is commonly succeeded by ambition; but ambition is hardly ever succeeded by love’
(TMS I.iii.2.7).
theatrical blocking becomes apparent through a reading of Sheridan’s Teazle plot (managed by Joseph above) as against Tyler’s Dimple scheme—the Comedy of Good Breeding, as it were, against the Comedy of Right Feeling.

Turning to the latter, it is clear that from the very moment Van Rough learns from Mr Transfer of Billy Dimple’s debt, the Contrast’s plot begins to unravel. As with Joseph’s plotting in The School for Scandal, sympathetic expectation is conceived along a train of false promises: ‘I was drawn in to listen to him by his assuring me…’ Letitia laments (C, v. 2. 96). Using false professions of honour and obligation, Dimple attempts to seduce unsuspecting parties—drawing people into his power using reputation, insinuation and false address as a means of securing his own ends. Once Col. Manly is stowed in a closet, Dimple enters the scene ‘leading’ Letitia (93). She eventually slips out the back door (remaining there to listen), while Dimple turns his preferment again to Charlotte, whose honour he ‘lull[s] to sleep’ as he attempts to make good on their affective contract (95). Underscoring these obvious seductions is a train of commercial transactions that remind the audience that money is still changing hands. Agreements are thought binding by ‘sympathetic reasoning’ posing as a moral virtue, thus exposing the dangers of false relationship: ‘you all along deluded me by saying you would…’ Letitia protests (93). Maria, on the other hand, is singled out in the narrative by her ability to check the power of the sympathetic imagination and to safeguard genuine affective agreements: ‘whither has my imagination transported me?’ she proclaims. In this manner she checks its progress so as to ensure that honourable (in this case filial) considerations remain her primary objective duty (I. 2. 48).

Execution at this stage becomes critical as enterprising individuals in both plots vie for status amidst a pre-fabricated “elite”. The plot in both comedies reaches its culmination when sympathetic expectation virtually demands objective intervention: as Mark K. Moller contends in his defence of affective consideration, the primary importance of ‘promising in this context’ is not that it ‘forge[s] new lines of mutual sympathy, or create[s] new expectations, but rather [that it] signals to outsiders when a mutual sympathy expectation exists and gives outsiders an
objective ground for intervening.’ This is the point at which the eighteenth-century audience might ‘call aloud’ as false benefactors are revealed and character-conscience is visibly displayed. For this is the very moment when the ‘hurtfulness of the action is joined with the impropriety of the affection from whence it proceeds’, as Smith contends, ‘when our heart rejects with all abhorrence all fellow-feeling with the motives of the agent [i.e. Joseph/Dimple], [and] we then heartily and entirely sympathise with the resentment of the sufferer. Such actions seem then to deserve, if I may say so, to call aloud for, a proportionable punishment….’ (TMS II.i.4.4, emphasis mine). Ridicule thus proceeds from the circumstances in fact, but only insofar as the characters themselves give rise to their own strange and laughable positions: this marks the comedy of conscience which plays out at the point of reveal, unmasking false personæs and exposing patterns of fragmentation below the surface. The notorious screen as it appears in Sheridan, boasts a pattern of ‘ill-concealed joints’, as Leonard J. Leff suggests, interlinked by the serial hinge. And symbolically, in the end, its partitions prove a poor guarantee—it stands all the time ready to collapse: the screen falls, the plot breaks, and the characters are exposed: any form of security, personal or commercial, is ready paid by the revelation of false credit.

In the end, Sheridan’s characterisation of Joseph Surface, mastermind behind the scandal plot, proves a telling variation of Smith’s ‘man of system’—whose poor “stage-management” fails to allow for individual action, causing him to fall victim to the weak points that support his political design: ‘The man of system’, Smith writes, ‘is apt to be very wise in his own conceit; and is often so enamoured with the supposed beauty of his own ideal plan of government, that he cannot suffer the smallest deviation from it’ (TMS VI.ii.2.17). ‘A curious dilemma my politics have run me into!’ Joseph exclaims (S, II. 2. 22). Smith’s carries this description some degree further in Book VI of his TMS, when he features him in a critical discussion of social beneficence. The man of system, he says,

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… seems to imagine that he can arrange the different members of a great society with as much ease as the hand arranges the different pieces upon a chess-board. He does not consider that the pieces upon the chess-board have no other principle of motion besides that which the hand impresses upon them; but that, in the great chess-board of human society, every single piece has a principle of motion of its own, altogether different from that which the legislature might chuse [sic] to impress upon it. If those two principles coincide and act in the same direction, the game of human society will go on easily and harmoniously, and is very likely to be happy and successful. If they are opposite or different, the game will go on miserably, and the society must be at all times in the highest degree of disorder. (TMS VI.i.2.17)

In Joseph’s hands, it is the disharmony of his game that proves his undoing. His arrogance alone, read as per Sir John Hill and Aaron Hill, both precedes and succeeds his intent: ‘Sincerely I begin to wish I had never made such a point of gaining so very good a character for it has led me into so many cursed rogueries that I doubt I shall be exposed at last’ (S, II. 2. 22). His appearance goes before him, and his true character follows. Although this statement certifies the final result, in his language rests the lie, linguistically expressed in the ‘I doubt’ that substantiates his concern.

*Objective intervention*

Although the audience can see these patterns of intrigue quite clearly (functioning as the ‘well-informed’ judge), both plots nevertheless build towards a moment of comic disclosure, when the force of sympathetic expectation onstage meets the sympathetic expectation offstage—requiring, and even demanding, objective intervention. Although Charles Surface ‘throws down the screen’ in Act IV of *The School for Scandal*, his discovery is, in itself, a false reveal: ‘Now, I believe’ Sir Peter cries, ‘the truth is coming indeed!’ (S, IV. 3. 56). This dramatic scene paves the way for Sir Oliver’s final judgment, when conscience will have the last word. Act IV notably closes (preceding this) with the following interchange:
NOTWITHSTANDING all this, Sir Peter, Heaven knows—

That you are a villain! and so I leave you to your conscience.

You are too rash, Sir Peter; you shall hear me. —The man who shuts out conviction by refusing to— [and the reveal comes to a halt] (IV. 3. 57)

Turning then to conscience, which follows Joseph into Act V, it becomes possible to compare Sir Oliver’s measure of right judgment as against the Jonathan/Manly settlement by contrast. In keeping with a villain whose guilt is only skin deep (‘I must try to recover myself’, Joseph reflects, ‘and put a little charity into my face…’), Sir Oliver, despite his better motives, depends similarly on affective contrivance. His aim to reveal truth relies upon a deceptive scheme for its enactment, as against Tyler’s moral arbiters who depend upon innate proclivities to defend the honour in jeopardy. Jonathan’s honest ‘inner man’ draws the truth to light in such a way as to disqualify false pretenders from playing any role in moral judgment. His practise of conviction is objective by its very nature, geared not towards convincing spectators (i.e. playing the crowd) but towards standing firm in his own moral integrity. Although in his ignorance Jonathan is played the fool, the truth-value of his character at last stands for itself when his figure is moved “centre-stage” (with Manly) in the dramatic disclosure—into an unarmed position, as it were, without any commercial accessories of dress (in contrast with Charlotte’s excessive costuming), or military accoutrements (such as Manly’s sword): he bears only his own natural strength in a brave show of fists. Manly complements this stance with a theatrical tribute that is yet prepared to combat (and pay for) the criminal wrongdoing.
FIG 5: ‘FRONTISPIECE TO ROYALL TYLER’S THE CONTRAST, ENGRAVED BY WILLIAM DUNLAP. THOMAS WIGNELL AS THE YANKEE JONATHAN IS PICTURED AT CENTRE. DON B. WILMETH COLLECTION.’

Conscience is thus drawn to the centre of both plots in duelling moments of reveal, weighing the trials set and setting the trials right through contrary figures of moral judgment. False benefactors are themselves dispossessed as true ones are recovered, whilst a host of transferable assets are (re)settled upon sound investors. Pertaining to this climax, as Smith suggests in Lecture XXII of his *Rhetoric*:

—The character of a man is never a very striking thing taken merely by itself. It then only appears in perfection when it is called out into action. We are not then generally to begin our panegirick with a character of the man whose Reputation we are to raise; but are rather to begin with an account of here mere actions commencing from his birth and tracing them on in the order in which they happened.... Having thus as it were conjoin'd the Manners of describing a character made use of by Theophrastus and La Bruyer, we recapitulate (or tell over a 2d time) the character of the person, in the manner of the Abbe Rhetz. (*LRBL* ii.107)

Royall Tyler’s Yankee Jonathan, when contrasted with Sheridan’s Sir Oliver Surface, fits this narrative bill precisely, his character appearing to higher advantage when ‘called out’ to dramatic intervention. Although he does nothing at all in one sense, his objective posture (*by sympathy* achieved) proves the very source of his practical power. He supplies a figurative vantage point from which to observe transactions of the surrounding company. And in this way it becomes clear, in opposition to Cathy N. Davidson’s view, that the ‘play that takes [Jonathan’s] part’ *does* in fact ‘privilege his role.’ Royall Tyler’s Yankee Jonathan, when contrasted with Sheridan’s Sir Oliver Surface, fits this narrative bill precisely, his character appearing to higher advantage when ‘called out’ to dramatic intervention. Although he does nothing at all in one sense, his objective posture (*by sympathy* achieved) proves the very source of his practical power. He supplies a figurative vantage point from which to observe transactions of the surrounding company. And in this way it becomes clear, in opposition to Cathy N. Davidson’s view, that the ‘play that takes [Jonathan’s] part’ *does* in fact ‘privilege his role.’

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We may observe then that when a man’s designs have for the most part proved unfortunate, when he has been baffled in his chief and favourite Schemes, his actions are to be either passed over or but slightly touched, and the character or disposition of the man is chiefly to be insisted upon. (LRBL ii.100)

Recalling Smith’s insistence upon a ‘variety of characters’ as imperative to the Ridicule of Comedy, it becomes clear once again, further to a wealth of earlier transfers, that actions come second—in both works—to characters who must first be changed. The primary point of plot in both plays is the revelation that sensibility is the key to credit, an affective estimate of moral and material worth. But where Tyler’s drama envisions fundamental character-change, which lends itself to ‘new message, meaning and [national] character’ (i.e. the conversion is transformative), Sheridan’s design reflects only surface change, a conversion that yet retains its Chesterfieldian frame. Although Leonard J. Leff’s interpretation contends that at the end of the play ‘the reader suspects that Joseph, the scandalmonger and Lady Sneerwell, and Snake will once again disguise themselves, and that Sir Oliver and the Teazles will avoid disguise’, a reading of their unmaskings, as against those in Tyler’s Contrast, would seem to suggest otherwise. As Thomas Wignell declares in his Prologue to the latter, ‘vice trembles, when compell’d to stand confess’d’ (C, Prologue, 39).

Illustrating this point of contrast between the two plays is a brief scene between Jessamy and Jonathan at the close of Act I in The Contrast. Jessamy here undertakes to confuse and humiliate the newcomer by misleading him in the arts of courtship, urging him to assume impolitic ‘graces of person’ and the practise of false morality: ‘Grace!’ Jonathan responds, ‘… does the young woman expect I must be converted before I court her? … don’t I laugh natural? … Mercy on my soul!’ (C, v. 1. 90). Jonathan’s reference to conversion with regard to self-expression confirms his original stance (his ‘natural theatricality’) as already representing the

Heymann, ‘Everything is transformative’.
highest moral good. Any affected change will only destabilise his position and set him backwards on outmoded forms of conduct. Jessamy’s debauched etiquette and advice is again predicated on false standards of advancement: ‘The external graces, the frivolous accomplishments of that impertinent and foolish thing called a man of fashion’, as in Smith’s view, ‘are commonly more admired than the solid and masculine virtues of a warrior, a statesman, a philosopher, or a legislator’ (TMS I.iii.3.6). It is thus the principles of admiration (those which a sensible man is taught to revere), as Tyler reveals, that must be altered in order to benefit the greater good. He points towards a higher form of virtue as consisting in sympathetic integrity and impartial/benevolent wisdom. His admonition at the end of the play is in keeping with Smith: ‘never come within the circle of ambition; nor bring yourself into comparison with those masters of the earth who have already engrossed the attention of half mankind before you’ (I.iii.2.7). ‘People of sense’ as Smith suggests, ‘indeed despise place…’ (I.iii.2.7).

Secondarily, then, actions might be ‘slightly touched upon’ only at the point of virtue, by questioning the affections and motivations that give rise to the features of comedy. A delicate line is seen to distinguish those ‘habits of oeconomy, industry, discretion, attention, and application of thought’, that, despite self-interested motives, are nevertheless approved (such as in Sheridan’s case for Sir Oliver’s beneficence, or in Tyler’s case for Col. Manly’s self-command); and those habits whereby ‘the mixture of a selfish motive … seems to sully the beauty of those actions which ought to arise from a benevolent affection’ (such as in the case of Van Rough, who is more interested in profit than his daughter’s happiness; or in the case of Charles Surface, whose actions are accompanied, quite literally, more by carelessness than by any ‘proper attention to the objects of self-interest’) (TMS VII.ii.3.16). This line is made visible by affective connections that expose collusion and consent.

There is direct use throughout Sheridan’s play of intentional collusion as a means of undermining social interaction. In The Contrast, on the other hand, conspiracy is an almost

250 Fliegelman, Declaring Independence, pp. 79-94.
accidental device, resulting from ignorant social manoeuvrings and commercial misunderstandings; it is employed as a sympathetic means of disclosing (via moral instruction and acts of then mutual submission) particular aspects of moral design and national redemption. Affective blocking exposes a ‘crisis of confidence’ among individuals (in groups) that materialises in Col. Manly’s worthless promissory notes—military notes that he keeps out of a sentimental attachment to duty and as a benevolent gesture to the privilege of serving his country (‘without reaping any reward’) (C, III. I. 56). Those who are mendacious by design (such as Jessamy) are almost entirely dropped by the end of the play and figure hardly at all in the final ‘lesson in morality’. Those who cannot learn to be interested in others (to grow beyond stock types) cannot be credited. Jessamy thus serves merely as a foil to ‘the main chance’, in Van Rough’s words, whilst Dimple remains a Chesterfieldian impostor. Jonathan, on the other hand, though bumbling throughout the text as a humble Yankee servant, nevertheless represents a host of new world ideals and the possibilities of an emerging group interest: the honest original is thus uplifted as the most valuable among models of sensible temperance and good-breeding, against which other imitative categories of self-construction can be discerned and discredited by relative degrees. In such fashion, Jonathan’s Yankee cast supports an idealised conceit of the ‘impartial spectator’ (supported by Manly’s honour in practise), where his partiality is governed by a notion of truth in its highest form. And through this development, somewhat ironically, Jonathan folds back into the theatrical repertoire as the first among American ‘types’, introducing the original ‘Yankee’ figure to the American stage. Although he is manipulated by Jessamy to act against the conscience of his ‘inner man’, Tyler uses the final sequence to demonstrate the manner in which even his mistakes, in the end, bear integrity, thereby promoting the virtues of a natural (uncontrived) overthrow of persuasion and bias. The price of collusion bears an admonition to convert, to be changed as it were—but only by virtue of the most natural airs and graces.

ROWLEY    Sir Oliver is arrived, and at this moment in town.

SIR PETER    How! you astonish me! I thought you did not expect him this month.

ROWLEY    I did not; but his passage has been remarkably quick (S, i. 2. 12).

That Sir Oliver’s return from the East Indies precedes this dénouement (in Sheridan) and that both Jonathan and Manly arrive as strangers to town (in Tyler) usefully underscores a notion of distance as integral to the success of figurative transaction, where proximity itself ensures (alt. insures) the swift sympathetic passage that structures interpersonal manoeuvring (S, t. 1. 9). Further to this, distance acts as a reveal to expose complicity at sites of dramatic transformation.

While the traditional comedy of manners is ‘quadrilateral’ in form and structured upon ‘antithetical pairs’ in the way that Andrew Schiller suggests, the distance motif, as I will call it, affords a triangulation of the plot in both Sheridan and Tyler that supplies three bases for performative action, and that at the same time so destabilises these foundations as to pull the three towards an essential point of judgment (collapsing them inward on one another): distance (whether real or imagined) facilitates a structural blocking of persons that keeps sympathies in place; it supplies a host of stage positions, relative to this blocking, that encourages independent surveillance and personal autonomy; and it establishes, by way of both, complex patterns and asymmetrical forms of figurative alliance. These three bases are then powerfully overcome by nearness acting as a foil to the narrative scheme, where friendship and affection effectively topple scandal’s reign in a reveal wherein ‘the highest piece of Ridicule is achieved’—and ‘all the parts [that have] excited’ our passions, meet the same end (LRBL ii.82). As the structural design falls inward, ‘the character or disposition of the [scheming] man’ is, as Smith says, ‘chiefly to be insisted upon’ (ii.100).

Unlike Sheridan who predicates this dissolution on disguise, however, Tyler upholds nearness in his work as a means of offsetting falsehood, promoting it as an “honest” republican conceit.
He uses it to suggest a profitable means of securing, or ‘bringing home’ to oneself, the benefits of trans-national transaction, interpersonal and commercial exchange. In this way, he gestures towards sympathy as a new ethics of transatlantic investment, increasingly contingent upon proximity, either real or imagined, as the driving force behind sensible (morally credible and financially creditable) economic exchange. Conceiving *his crew* into now honest originals, Tyler invites his cast of American citizens to market themselves with the interests of a new community in mind, reinventing traditional “stock” codes of self-display within the moral framework of republicanism.\(^{252}\)

An example from Act II of *The Contrast* depicts the transformation of the marketplace itself: standing at New York’s Mall immediately prior to his first meeting with Yankee Jonathan, Billy Dimple’s servant Jessamy describes the scene as ‘a very pretty place’, discovering quite happily that, ‘it’s a fine place for a young fellow to display his person to advantage’ (*TMS* I.iii.2.5). Criticising those ‘cits’ (or citizens) who would diminish the air of polite pretence, Jessamy proceeds to flaunt himself by bumbling into the dire consequences of his own social and moral folly, fulfilling Smith’s characterisation of the ‘coxcomb, who imitates their manner, and affects to be eminent by the superior propriety of his ordinary behaviour, [but who] is rewarded with a double share of contempt for his folly and presumption’ (*TMS* I.iii.2.5). ‘Why should the man’, Smith asks, ‘whom nobody thinks it worth while to look at, be very anxious about the manner in which he holds up his head, or disposes of his arms while he walks through a room?’ (ibid.). Yet true to form, Jessamy adopts himself to suit the company, attending to his figure in all the wrong ways, and failing to perceive the national transformations putting his own art out of fashion. Although he concedes that it would not do, of course, to ‘speak of [the spectacle] in the same day’ as one might the pleasure gardens of a Vauxhall or Ranelagh, he nevertheless aligns his own commercial self-interest with its gauche, affected appeal: ‘I hope’, he says, ‘the cits won’t ruin it by repairs’ (*C*, II. 2. 60).

\(^{252}\)Sheridan opens his play with a prologue ‘Portrait’ addressed to Mrs Crewe who serves as both his model and muse (*S*, ix-xii).
The School for Scandal thus figures its “sensible” characters à la mode, as it were, whilst The Contrast begins to refigure such imitative, artificial personæs into naturally sensible citizens and moderate (because now modified) rational observers. ‘Are you in earnest resolved’, asks Adam Smith, ‘never to barter your liberty for the lordly servitude of a court, but to live free, fearless, and independent? There seems to be one way to continue in that virtuous resolution; and perhaps but one. Never enter the place from whence so few have been able to return; never come within the circle of ambition; nor ever bring yourself into comparison with those masters of the earth who have already engrossed the attention of half mankind before you’: the ‘circle(s) of ambition’, in other words, are the root of intrigue (TMS I.iii.2.7). Further to this, and relative to comedy writing in fact, Smith counsels his students in Lecture XXI of his Rhetoric as to the manner of satisfying this resolve: ‘There is one thing however that must always be observed’, he states, ‘otherwise the piece [a ‘Dramaticall work’] can never produce any great effect; it is the Propriety of character’ (LRBL ii.90, emphasis mine). Within this ‘propriety’ subsists the ‘Unity of Interest’ that supports the overall ‘drammatic performance’ (ii.81, ii.88). As The Contrast suggests, it is virtue alone whereby such propriety takes shape, denoting a civilised capacity to overcome the ‘demon of inconstancy’ (in Letitia’s words) that otherwise tallies an artificial and dangerous ‘sum congruent with the activity that [is] defining [the] modernizing marketplace’ (C, 1. 1. 43).

Throughout Tyler’s so-called work of ‘American Genius’ the dramatic consumer become citizen quickly outgrows his two-dimensional plot function (where he is defined solely by the choice/or right to buy or sell). His sensible persona assumes an increasingly three-dimensional capacity as it breaks from its traditional subjugation to stock types, depicted in Hogarthian terms, and is vested instead with sympathetic (cognitive) reasoning, autonomy and self-direction. Citizenship

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233 Deirdre Lynch here cites John Locke who suggests that societal practises of acquisition offer a ‘sum congruent’ with this modernising marketplace, in Lynch, Economy of Character, p. 34.

234 In his dedication of the play, dated 1 January 1790, Tyler refers to the piece as ‘the First Essay of American Genius in the Dramatic Art’, p. 37; see Deirdre Shauna Lynch, Economy of Character.
is here characterised by a deepening psychological intensity, in the manner described by Deirdre Shauna Lynch, and is qualified by affective consideration, sound critical judgment and new virtuous motive. Tyler’s American citizens are rendered virtuous within this frame because they have successfully considered an impartial ‘inmate of the breast’—and via constant consultation have constructed themselves more thoughtfully/and affectionately relative to the community in whole. This principle is perhaps best borne out in the marriage plot of Tyler’s *Contrast*, identifiable in Maria’s sacrificial resolve and Col. Manly’s masculine reserve. Their joint decision to honour Maria’s filial duty and to lay aside personal desire for the sake of uniform integrity (via moral uprightness), offers an apt illustration of sympathy being successfully reconciled to the greater needs of society (justifying their later union in the eyes of the impartial world). Manly’s initial response to Maria’s engagement with Dimple even reflects some horror lest he has invaded the ‘rights of another’ by inadvertently transgressing the social mores upon which that integrity depends (mores that were wrongly concealed, he believes, because of his professing ‘partiality’ to Maria) (*C*, IV. 2. 89). Nevertheless, as Smith avers:

> … there is nothing which is more apt to raise our admiration and gain our applause, than the hardships one has undergone with firmness and constancy, especially if they have at last been surmounted … [for this ability to surmount] demands all the attention and best endeavours of the Sufferer. (*LRBL* XXII. 100-101. 129)

Audience applause affords the primary indicator, then, of moral approbation and success: granted when the author (through his characters) trumps scandal in its rise to the top and defends the ‘modish’ world from its great and monstrous ends. Furthermore, the final union between Maria and Manly in *The Contrast* affords a picture of republican propriety that supplies a *just* portrait of sensible self-governance. Their selfless commitment (to one another and to the group) trains listening spectators to render right judgments amidst the pressures of false company. The scene between them is convincing—and convicting—winning sympathy at times

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255 Sheridan, *School for Scandal*, Prologue written by David Garrick, p. xiii. Smith writes: ‘Approbation, mixed and animated with wonder and surprise, constitutes the sentiment which is properly called admiration, of which, applause is the natural expression…’ (*TMS* l.ii.1.12).
even from their chief detractors. Returning to the importance of ‘love and affection’, then, as valid consideration for contractual liability, it becomes clear, as in Cindy Weinstein’s view concerning later sentimental novels, that within the (national) family, ‘individual family members have rights that must be guaranteed and protected and that [those] rights [must] increasingly come to be understood in affective terms.’ It is no surprise that sympathetic benevolence, at the end of Tyler’s play, still stands.

A notion of integrity thus proves essential to the health of the body politic. Tyler reminds readers that wrong motives and artificial sympathies are bound up in commercial self-interest—and that they travel to the ‘inner man’ of the republican nation as by the psychosomatic/symptomatic force of sympathetic consent. ‘This natural disposition to accommodate and to assimilate, as much as we can’, as Smith suggests, ‘our own sentiments, principles, and feelings, to those which we see fixed and rooted in the persons whom we are obliged to live and converse a great deal with is the cause of contagious effects of both good and bad company’ (VI.i.1.17). Citing James Crawford’s ‘Practical Remarks on the Sympathy of the parts of the Body…’ Alexander Broadie carries this a degree further, interpreting sympathy as a physical conceit, and reading it, via Crawford, as an analogue to physiological compliance, where ‘when the Part in itself is yet whole and sound, and is only affected by the fault of some other Part … Diseases by Consent [or by Sympathy] are propagated from a Distance, … either by long Muscles or Nerves.’ In order for the body politic to remain pure, in Tyler’s view, it must not consent to (agree with/offer guarantee for) corrupt dealings, underhanded designs, vicious or self-interested motives: ‘bad company’ as the saying goes (and as Smith concedes), ‘corrupts good character.’ Self-love may fuel the industry of mankind, as Smith allows, but its ambitious undercurrent still carries the complaint. Offering a sensible form of redress, then, Tyler suggests integrity and sacrifice as twin antidotes to ‘savage’ self-interest:

258 A paraphrase of the Apostle Paul’s instruction to the church at Corinth: ‘Do not be deceived, “Evil company corrupts good habits”’, 1 Cor. 15.33-34, NKJV.
‘And hence it is ... that to restrain our selfish, and to indulge our benevolent affections, constitutes the perfection of human nature; and can alone produce among mankind that harmony of sentiments and passions in which consists their whole grace and propriety’ (TMS I.i.5.5). Through a purposeful directive, therefore, to ‘love one’s neighbour as one’s self’ (to guard another’s reputation as one’s own), the sensible citizen offers redemptive purchase to socio-economic affairs otherwise sullied by Sheridanian duplicity: ‘the wise and virtuous man’, as read through Smith, ‘is at all times willing that his own private interest should be sacrificed to the public interest of his own particular order or society’ (VI.ii.3.1).

The contest of (promissory) wit that underscores character-valuation in sentimental comedies is thus supplemented in Tyler’s Contrast by the contest over right feeling (loyalty and affection)—as a levelling dispute. This is fuelled by the logical right to claim a host of particular (commercial) benefits that are contained within reputation as a democratic right. In order to overcome the limitations of sympathetic reasoning, especially imaginative distance and community bias, fellow-strangers must become friends, reasonably concerned at all times with right conduct towards one another. Interactions among fellow countrymen must, in Tyler’s view, become habitual, thereby validating the strength of the polity by virtue of nearness as a now affective and normalising republican conceit. Although corruption may be ‘Propagated by a Distance’ it must be countered by routine civility, cutting across immoral connections. Relative to this, the national citizenry must unite on the principle that others are to be treated not as the means to an end, but as ends in themselves—where transpersonal interactions are to be not only virtuous by design, but to arise from a genuine and mutual regard for other individuals as ‘object[s] worthy of sympathy’. Habitual sympathy, as Moller contends, is defined not by traditional ancestry (as distinguishes Surface ties), but ‘requires [instead] habitual interaction, not merely a blood relationship. It is only through continuous, intimate and necessary association that expectations are assimilated, and that, therefore, gratuitous promises can be

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259Smith writes: ‘As to love our neighbour as we love ourselves is the great law of Christianity, so it is the great precept of nature to love ourselves only as we love our neighbour, or what comes to the same thing, as our neighbour is capable of loving us’ (TMS I.i.5.5).

fully deliberative’. A reading of this sympathetic reasoning into Tyler’s play strengthens the idea that intimate, routine interactions provide the strongest moral framework for character-commitments and commercial enterprise. Individual promising via habitual interactions (marked by the natural affections that craft them) are credited (and remain standing at the end of the play) because they are honourable: virtuous, by design, because the group interest is always already taken into account in the act of their construction. Where sympathetic reasoning (as by the imagination) fails, Tyler suggests, natural sympathy among friends must supply the affection that backs the commitment. He thus conceives an harmony between the individual and the nation, where the wealth of nations œconomy becomes, in its very self, a sympathetic system and rational conceit—a substantive form of guarantee, a good deal.

AFFETTUOSO

The grammar of a sympathetic œconomy thus participates in a narrative unravelling of complex discourses over cultural authority, where the success or failure of sympathy in practise acts as a pivot in the most choreographed sense, operating less as a fixed point against which two positions vie to change places, and instead as a position that is itself constantly giving way as the weight of contest shifts from one counterpoise to the next in a dialogue of give and take, ebb and flow—where reputation functions, more often than not, as the propelling force effecting dialogic shifts in contestation. The weight of socio-political discourse is thus constantly shifting from actor to audience, bias to objectivity, as a means of balancing and counter-balancing socio-economic exchange. Discursive momentum finds motion as against reputation and gleans transformative energy by travelling back and forth along horizontal networks of natural affection, commercial interest and practical/political alliance.

Returning to the initial inquiry—‘who has the right to judge?’ ‘what are the rights of the judged?’ and ‘to what extent is the relationship between actor and judge always already

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261 ibid.

262 Smith’s Wealth of Nations (1776) supplies another obvious means of analysing these points; it falls outwith the scope of the current analysis, however, to draw on this directly (WN).
reciprocal?—it becomes apparent, through a reading of these plays in dialogic relationship to one another, that the answers proceed as follows: s/he has the right to judge who is first deemed “sensible”; the rights of that sensibility necessarily extend to her/him who retains a sensible reputation in the eyes of “listening observers”; where the interrelationship between actor and audience/observer and observed reflects a complicated sequence of dramatic blocking and an intricate interchange of fact for fiction, integrity for pretence, honesty for dissimulation. Actor and judge are routinely conflated into one and the same character, where a characteristic rise and fall depends on securing (in every sense) right footing: the performance must land on its feet. To this end, it is the traditional affettuoso that remains the governing conceit—with feeling denoting a host of sympathies won and credits secured. It is thus by theatrical œconomy that Tyler begins to transpose an idea of affettuoso for his American “heirs of grace”—as the most natural means of attaining a transatlantic distinction.
In the autumn of 1781, following the Siege of Yorktown, the Continental Army stood at long last on American ground, executing its seaside finish to the flourish of French sails and the surrender of British arms. This ‘upside-down’ surrender resulted in the formal severance of the American colonies from Great Britain, bringing the War for American Independence to an end. The campaign concluded with a flurry of signatures and a prisoner exchange as British Lieutenant General Lord Cornwallis capitulated to articles set forth by General George Washington and his French ally the Comte de Rochambeau. As Washington records in his intelligence report to Congress, the ‘reduction of the British army’ met with a ‘singular spirit of emulation which animated the whole’ of the combined force, leading him to thereafter praise ‘the zeal of [America’s] allies’ for effecting an ‘imitating spirit [among] the American officers’

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James Thatcher, *A Military Journal During the Revolutionary War, 1824* 263

James Thatcher, *A Military Journal during the American Revolutionary War, from 1775 to 1783* (Boston, 1827), from October 1782, p. 386.

Voltaire 264

263 There is necessarily, in a history as in a dramatic presentation, an exposition, a knotting up of the plot, and an unravelling’ (trans. mine), Voltaire, letter to the Marquis d’Argenson, January 26, 1740 (Correspondence, ed. by T. Besterman, xxxv, p. 373), cited in J. C. Bryce, Intro, LRBL, p. 20.

264 Legend has it that British troops surrendered to the sound of an English ballad, ‘The World Turned Upside Down’.

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and for bringing about a decisive victory over their mutual enemy. With the end of the Siege, this ‘imitative’ spirit endeavoured to translocate its energy away from the military arena to new fields of republican self-construction, liberating the now independent American to craft his/her own original, self-made and autonomous character. The nation began to test its bonds of creative cohesion as ‘these United States’ sought to project a coherent identity as a unified citizenry, *E Pluribus Unum*, for the first time on the world stage.

Several months after the Yorktown surrender, as Congress took initial steps towards federation, Washington found himself swamped in a host of post-war affairs: marshalling travel visas, prisoners of war and the regrettable circumstances surrounding the murder of Capt. Joshua “Jack” Huddy. The crime itself, which forms the root of this chapter, took place on 12 April 1782, in Monmouth County, New Jersey, perpetrated by a group of Associated Loyalists under the command of Captain Richard Lippincott. “Jack” Huddy’s hanging raised an immediate outcry from a shocked national public, resulting in impassioned pleas for military justice and retribution. In his *Military Journal*, dated July of that year, James Thatcher records that, ‘The wanton execution of Captain Huddy so exasperated the inhabitants of that part of New Jersey, that they presented a respectful memorial to General Washington claiming justice for the murder of one of their fellow citizens, or retaliation in case justice should be refused.’ In a subsequent and rather heated letter addressed to Sir Guy Carleton (blaming him for the ‘reprobate conduct’ of those officers involved—and demanding his immediate intervention by way of reprisal), Thomas Paine recounts the horrid details of the crime:

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266 General George Washington, dispatch to Congress, Head-Quarters, near York, October 9, 1781, Official Intelligence from Virginia, (Philadelphia, Printed by John Carter, October 24, 1781), Alderman Library Special Collections, University of Virginia, McGregor Broadside 1781 .W3.

267 In his *History of the American Revolution*, William Gordon records that ‘On the 20th of June [1782] it was concluded that the device for an armorial achievement and reverse for the great seal for the United States in congress assembled should be as follows—

ARMS—[an] American eagle displayed, proper, holding in his dexter talon an olive-branch … and in his beak a scroll inscribed with this motto—“Epluribus Unum”: William Gordon, *The history of the rise, progress, and establishment, of the independence of the United States of America: including an account of the late war; and of the thirteen colonies, from their origin to that period* (London, 1788), p. 323.

268 The Associated Loyalists, led by Capt. Lippincott, sat under the authority of Benjamin Franklin’s son, William Franklin.

Captain Huddy of the Jersey militia, was attacked in a small fort on Tom’s river, by a party of refugees in the British pay and service, was made prisoner together with his company, carried to New-York and lodged in the provost of that city: about three weeks after which, he was taken out of the Provost down to the water-side, put into a boat and brought again upon the Jersey shore, and there, contrary to the practise of all nations but savages, was hung upon a tree, and left hanging until found by our people, who took him down and buried him.\textsuperscript{270}

Shortly after Capt. Huddy’s murder, on 26 May 1782, a group of British prisoners of war (of equal status and rank) were drawn together in Lancaster, at which time, according to Thatcher, ‘a fair and impartial lot was drawn’\textsuperscript{271}. The lot (inscribed, ‘\textit{Unfortunate}’) fell to nineteen-year-old Captain Charles Asgill who was signalled out as a victim for reprisal: ‘doomed to death for a crime not his own’, as Paine laments, in ‘—A sentence so extraordinary, an execution so repugnant to every human sensation…’ that Asgill must surely become ‘a martyr to the general wickedness of the case he is engaged in…’\textsuperscript{272} Thus commenced the Asgill Affair.

Following this tragic lottery for life, Charles Asgill was arrested and immediately subject to confinement in a New Jersey prison (locked in a ‘Jersey prison-hut’, as Katherine Mayo records) to await government intervention.\textsuperscript{273} A drawn out dialogue thereafter commenced which sought at once to liberate the unwitting victim and to bring justice upon those rebels who were truly responsible for the crime. In a bold hand Paine criminalises Carleton and that British ‘barbarism’ which undergirded the act: ‘AN OFFICER HAS BEEN TAKEN FROM HIS CONFINEMENT,’ Paine states, ‘AND MURDERED AND THE MURDERER IS WITHIN YOUR LINES.’\textsuperscript{274} He then goes on to incriminate the entire force under British command:

\textsuperscript{271}Thatcher, \textit{Military Journal}, from July 1782, p. 377.
\textsuperscript{272}ibid.; Thomas Paine, letter to Sir Guy Carleton, p. 275.
\textsuperscript{274}Thomas Paine, letter to Sir Guy Carleton, p. 278.
Your army have been guilty of a thousand instances of equal cruelty, but they have been rendered equivocal, and sheltered from personal detection. Here the crime is fixt; and is one of those extraordinary cases, which can neither be denied nor palliated, and to which the custom of war does not apply; for it could never be supposed, that such a brutal outrage would ever be committed. It is an original in the history of civilized barbarians, and is truly British.  

Concluding with a then plain-dealing plea for justice, Paine closes his letter as follows: ‘The task before you though painful is not difficult, give up the murderer, and save your officer, as the first outset of a necessary reformation’ (signed COMMON SENSE). Despite Paine’s common sense intervention, however, Asgill’s release stemmed from an altogether different entreaty, brought about not by any compliance with the common call of justice, as here sought by Paine, but by the comparably more emotional, transatlantic pleadings of his own flesh and blood: his mother, Lady Thérèse Asgill.

Perhaps the leading aspect of the case, therefore, is to be found not in the bare facts of Charles Asgill’s confinement, but in the sympathetic features of various intermediary epistles that, in the end, managed to secure his release. Following young Asgill’s arrest, a series of complex negotiations commenced at some length between General Washington; the Secretary of War, Benjamin Lincoln; and Congress. Their correspondence was qualified by several emphatic (and empathetic) interjections from abroad, conveyed via the Comte de Vergennes (representing King Louis XIV, Queen Marie Antoinette and the Court of France) on behalf of Englishwoman Lady Thérèse Asgill (mother to the unfortunate prisoner). Of the letters sent by Vergennes, Washington reported to Congress that: ‘they contain[ed] a very pathetic and affectionate Interposition in Favor of the Life of Capt Asgill.’ Consulting his ‘own feelings’ on the subject he added, that ‘The Case of Capt Asgill having, before the receipt of these Letters, been

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275 ibid., pp. 278-79.
276 ibid., p. 279.
submitted to Congress, I have immediately transmitted to that Hono Body, Copy of the Count[‘]s Letters to me and have permitted myself to sollicit [sic] from them, an early decision of his Fate; which, judging from my own feelings, I persuade myself cannot be an unfavorable one. 278

From this early decision proceeds the case in fact. Herein subsists a transatlantic affair that is ripe with travelling sentiments, where what is on trial is not so much the person of Asgill himself, but the validity of a host of sentimental responses to post-war embassy and execution, exchanged via sympathetic conceits shifting back and forth across the Atlantic. It is this transnational discourse that here proves both defence and prosecution in the case against Charles Asgill. And interestingly enough, it is a host of then fictional representations and interpretations of key figures in the case, such as Washington, Asgill’s friend Major Gordon and Asgill himself, that are shipped back and forth as catalysts for political action, so that what begins as a sort of epistolary narrative burgeons into a complex sequence of diplomatic manoeuvres—enacting a sort of *stage novel* for the Atlantic theatre. The facts of the matter are transliterated out of their originary form (as articulated in a large body of cross-Atlantic correspondence), and projected into a series of then cross-national guises, reflected in fluctuating display across numerous French, English and American literary derivations.

This is the governing narrative, and what happens to the story from here is the primary subject of this chapter. The principle role of Smithian sympathy as a translatve rhetorical device (operating as a literary tool for unlocking this progression) offers a theoretical construction for considering the sensible, socio-political terrain underpinning this multi-layered dispute. Smith’s notion of sympathy, which here functions by way of imaginary impartial observers and in reference to numerous spectator communities, supplies a transformative discourse for examining sensible self-construction and for exposing the transnational contest over personal and national representation that sits at the heart of these shifting scenes.

In this chapter I intend to argue the manner in which Adam Smith’s sympathetic system functions as a rhetoric of passage that is useful for unlocking certain thematic issues that are central to the Asgill case and that press it towards an eventual dénouement: national/individual character and sentimental expression; impartial judgment, retaliation and justice. Subsequent to this, I intend to assert its applicability as a literary device for assessing the ‘logics of cohesion’ (relative to Sarah Knott’s examination of the sentimental ‘minding’ of America) that create, unify and subsequently politicise surrounding ‘interpretive communities’.279 This analysis will qualify Andrew Burstein’s investigation into ‘The Political Character of Sympathy’, wherein he addresses the ‘revisioning’ of American republicanism that is contained within sympathetic speech (an engagement whereby Burstein substantiates his earlier work on American Sentimental Democracy).280 Dialogues of American sympathy, he argues, bolstered republican notions of (and here he cites David Waldstreicher’s formulation from his work In the Midst of Perpetual Fetes) ‘patriotic feeling’ and ‘self-regard’ that underpinned American revolutionary thought.281 This chapter employs Smith’s concept of sympathy in order to pull apart the manner in which such ideas, as sensible constructions, are imaginatively conceived in relation to moral republican ideals and in dialogue with transatlantic sensibilities. In such manner it prioritises the degree to which a language of sympathy effectively politicises the American character during this period, democratising traditionally exclusive notions of sentiment by opening up a legal and logical terrain of sentimental expression to a wider citizenry, and by at the same time continuing to privilege those élite philosophic discourses at root behind liberal, republican self-invention.

*Citations throughout this chapter will be presented in either French or English according to the document being used. Lady Asgill’s letter will be cited in French when quoting Grimm and in English when quoting Thatcher, etc.


281ibid., p. 632.
My text for reading Smith’s notion of sympathy into this environment consists of the Asgill Affair in its entirety. I read it as a sentimental narrative that not only ‘connect two or more points in time’, in Ronald Paulson’s understanding of narrative progression, but that when read in the fullness of its historical, literary and theatrical aspects, traces the progress of characters who are caught up in the transnational politics of a critically modern plot.\(^\text{282}\) To this end, I have chosen to focus on the particular epistolary, dramatic and literary compositions by which the history of the case is written (prioritising Washington’s military correspondence; the letters of Friedrich Melchior Grimm, Lady Thérèse Asgill and the Comte de Vergennes; William Gordon’s *History of the American Revolution*, James Thatcher’s *Military Journal ... 1775-1783*; M. J. L. Barbier, le Jeune’s *Asgill*: a drama in five acts, 1785; among others) in order to highlight patterns of new meaning that are taking shape along unique narrative folds.

With regard to the historiography of the Affair, what little documentation there is proves revealing. The case receives interesting critical attention, for instance, from literary scholar Jack Iverson, who reads the political impasse of its exposition as initially translated through two editions of Charles Joseph Mayer’s 1784 French novel, *Asgill, ou les désordres des guerres civiles* (*Asgill, or the Disorder of Civil Wars*), situating the American Affair, in relation to its French reception, as something of a dramatic *Pièce de Théâtre*. By introducing it as a reality-based plot that slides readily from fact into fiction, he illustrates a growing interest in the complex interconnections between “real life” and “imaginary conceit” among those affiliated with late eighteenth-century French print culture.\(^\text{283}\) Scholars such as Kenneth N. McKee (writing decades before Iverson) focus similarly upon this French revolutionary preference for securing a ‘real chronology’ in order to underwrite theatrical productions, with McKee going one step beyond Iverson’s engagement by highlighting the frequent dramatisation of the Asgill Affair (across numerous stage adaptations) as evidencing the inherent marketability of popular


American ‘types’. This chapter will pick up on both notions through an investigation into sympathy as a rhetorical vehicle that at once defines Asgill’s chronological history and that offers a means of then fictionalising, exchanging and commercialising its sensible forms.

The dramatic figuring of stock types in the Asgill case is contextualised with reference to the historical Siege at Yorktown, where the Affair is situated relative to the particulars of post-war hostage exchange and military administration—and is narrated as the final act in a series of unwarranted executions and retaliative disruptions characterising ongoing hostilities between Loyalist sympathisers and Patriot troops: the placard hung round Huddy’s neck is inscribed, for example, with the following justification: “We the refugees, having with grief, long beheld the cruel murders of our brethren, and finding nothing but such measures daily carrying into execution—we therefore determine not to suffer without taking vengeance…. Up goes Huddy for PHILIP WHITE.” Early military histories such as this one discovered in William Gordon’s account of the American Revolution, and others such as appear in David Ramsay’s History of the American Revolution and in the Military Journal of James Thatcher, record abbreviated chronologies of the Affair relative to sweeping (and at times inaccurate) overviews of wartime events, and Katherine Mayo’s later interpretation, as reported in a 1938 history entitled, General Washington’s Dilemma, remains the single most complete study concerning Asgill’s misfortune. Set in relation, of course, to the Yorktown Siege, it contextualises the case with regard to subsequent military dispensations, following its practical outworkings in a rather sentimental manner from the American victory through to Washington’s post-war negotiations, up to the point of Asgill’s release. Apart from this, however, the Affair surfaces only as a subsidiary to treatments of Benedict Arnold’s scheme against West Point; as a footnote to the American victory at Yorktown (with reference to Asgill as a prisoner of war under the ‘Articles of Capitulation’); or in relation to the military correspondence that secures his release (with scholarly focus generally falling upon Washington’s actions as Military Commander and his

285Gordon, History, p. 293.
negotiations with a fledgling Congress). More often than not, however, the case is either
demilitarised by an overemphasis on its pathetic resolution, or categorically overlooked in
favour of Arnold’s treason. One notable exception to this can be found in a slow-growing regard
for such secondary figures as Secretary of War Benjamin Lincoln and Tory commander
William Franklin, whose supplemental involvement lends the Affair a bit more critical
weight. But similarly to other treatments, investigations here tend to prioritise individual
contributions (Lincoln’s advice to Washington concerning Asgill’s release; William Franklin’s
actions as a Loyalist sympathiser; Thomas Paine’s interposition to Sir Guy Carleton, etc.),
overlooking the fundamentally more complicated (and indeed more interesting) drama of the
case in full.

Of particular interest as a point of departure for this chapter, however, is a singularly new
approach to the case in relation to the American cult of sensibility. The Asgill Affair here stakes
a more substantial claim in cross-Atlantic historiography via Sarah Knott’s groundbreaking
work on Sensibility and the American Revolution, wherein she identifies the Affair in
association with the infamous trial (and eventual hanging) of Major “St.” John André, for
‘assuming the character of a spy’ (as a co-conspirator with Arnold), in 1782. Knott’s critical
engagement triangulates British, French and American political thought (and military
interdependence) through a substantive analysis of the “sentimental” trial of Major John André.

Gesturing towards numerous epistolary correspondences, theatrical representations and literary
renditions of the affair, Knott implicates the intrigue of the Huddy-Asgill plot in the sentimental
“charactering” of early America, opening a door for further investigation into the dramatic
circumstances surrounding its arguably empathetic resolution. For Knott, the execution of John
André illustrates a concrete example of the ongoing negotiation between sensibility as a

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287 On Washington’s involvement in the Yorktown victory more generally, see Richard Ketchum, Victory at Yorktown: The

288 The Massachusetts Historical Society highlighted ‘The Huddy-Asgill Affair’ in October 2007 upon receiving a new letter for its
collection of Benjamin Lincoln’s papers. The document, dated 5 June 1782, is written by General George Washington and implores
Lincoln to offer advice concerning how best to respond to the Asgill situation: Benjamin Johnson, ‘The Huddy-Asgill Affair’,

289 Knott, Sensibility and the American Revolution, pp. 153-93; see also, Andy Trees, ‘Benedict Arnold, John André, and His Three
Cook 155

moderating, social expression and those legal strictures that define the practical outworkings of a national (and rational) military force. In her study of the Revolution, she prioritises the role of sensibility in ‘arranging minds’ throughout the war, using Huddy’s hanging and Asgill’s subsequent confinement as productive counterpoints for claiming the war’s pivotal role in shaping sentimental discourses relative to the practical struggle for independence.\textsuperscript{290} Her concentration on these twin “executions”, relative to the language of affection, illustrates a unique juxtaposition between the ‘lively sensibility’, as she identifies it, of virtuous, patriotic fervour, and the otherwise stark mandates of military principle and law.\textsuperscript{291} I would like to further extend her analysis by here investigating, in greater detail, the Asgill reprisal that closes her study of the André execution, offering a close reading of this sublunary narrative (via Smith) in order to investigate how that juxtaposition succeeds, and to somewhat qualify her account concerning the vexed interrelationship between sensibility and the military tribunal. I argue that the Asgill case can be read through the lens of Adam Smith’s notion of sympathy in such a way as sheds new light into the squaring of these two seemingly irreconcilable ideas. In this manner it illuminates Burstein’s evocation as well, by conceding sympathy as integral to the discursive (re)-formation of political actors across a range of republican “trials”. The particulars of the Affair raise a host of such vexed issues as character construction and impartial judgment, spectatorship and moral conduct—whilst Smith’s sympathetic system operates as a rhetoric of passage through both language and community, offering an incisive tool for unlocking its governing matrix of sensible sympathetic exchange.

\textbf{NATIONAL CHARACTER AND ILL-FEELING}

Thomas Paine’s letter to Sir Guy Carleton, cited above, offers both a provocative remonstrance in favour of Asgill’s release and a harsh denunciation of the British character. Throughout the letter Paine criticises the violent practice of British authority and makes an emphatic appeal urging Carleton to support \textit{justice} over and above a realm of corrupt loyalties. In particular,

\textsuperscript{291}ibid., p. 153.
Paine calls him to rise above those immoral bonds that, in the name of military alliance, bind him to such a criminal as Captain Richard Lippincott, imploring him to ensure that retaliation be enacted upon Lippincott (now hiding behind British lines) as the officer truly responsible for Huddy’s hanging, demanding that he deliver him to the American army so as to save another innocent man from death. Using forceful invective, delivered via precise emphasis and logical passion, Paine renders Carleton complicit with the crime, entreat ing him to consider carefully his own accountability in the affair so as to subvert the furtherance of unwarranted violence by choosing (in the eye of all civilised, impartial observers) to openly denounce ‘an[other] execution so repugnant to every human sensation’. 292

Paine’s letter to Carleton initiates its objective by counterbalancing a firm moral address (marked by a strategic plea for justice and a final injunction to seek ‘necessary reformation’) with the softer bonds of human emotion: ‘It is the nature of compassion to associate with misfortune…’ he begins. 293 Compassion here directs him to ‘address [his entreaty]’, as he states, ‘even in behalf of an enemy’, and thus by emotive manoeuvres begins to draw cords of connection between such judgments as ought to be rendered by sensible men (those representing a moral chapter in civil development) and the national character as a reasonable conceit by relation. 294 A grammar of polite sensibility thus accentuates rhetorical gestures towards American civility and virtue, whilst being at times thrown into stark relief by a correspondent grammar of ‘black business’ that frustrates these constructions: Paine’s sentimental discourse, here marked by criminal allegations of disavowal and insentient governance, runs concurrent with grim illustrations of British savagery and vice. 295 His use of the first grammar conceives General Washington as a Commander-in-chief who is sensibly ‘[s]truck, as every human breast must be, with such brutal outrage’; Charles Asgill as a voluntary ‘martyr’ to ‘the general wickedness of the case’; and virtuous spectators as now enlightened observers, able to perceive moral depravity: ‘whereas we, whose eyes are open’,

293 ibid., pp. 275, 281.
294 ibid., p. 275.
writes Paine, ‘can declare to the world … that there is not a more detestable character … than the present British one.’ A second grammar thus interjects its converse dialogue so as to adumbrate sentimental display, delineating the enemy as ‘disown[ing] or affect[ing] to disown and reprobate’ criminal conduct; as partaking in ‘the horridness of diversion’ where ‘death [is] made a matter of sport’; and as becoming ‘like men practised in executions, [until] they feel not … ’

Paine’s initial gesture towards compassion as emotive forerunner to this linguistic field, introduces a letter ripe with socio-political sentiment, wherein the “savage” modifier is continually offset by the “civil” imperative, and wherein the loss of polite feeling results from the routine practice of iniquity—from the wrongdoing that by its very rehearsal has extinguished any moral pretence. Patterns of immoral performance are thus bound up in localised notions of honour and dishonour, depraved action and ethical duty; where virtuous determinations, or expectations of right and wrong, approval and disapproval, social behaviour and moral conduct, are always already understood as governed by community conceit, and as underlying individual, moral and ethical actions in such manner as to be read into expressions of the national character more broadly. The British character in this affair is repeatedly condemned by Paine for disavowing its noble lineage, for disclaiming its genteel heritage and for deceiving the world with exploitative rhetorics of false honour, false generosity and false clemency: ‘The British generals who have succeeded each other, from the time of General Gage to yourself’, writes Paine to Carleton,

have all affected to speak in language they have no right to. In their proclamations, their addresses, their letters to General Washington, and their supplications to Congress (for they deserve no other name), they talk of British honour, British generosity, and British clemency, as if those things were matter of fact; whereas we, whose eyes are open, who speak the same language with yourselves … can declare to all the world, that so far as our

\[\text{ibid.,} \ \text{pp. 276, 277.}\]

\[\text{ibid.,} \ \text{pp. 278, 277-76, 281} \ \text{(emphasis mine).}\]
knowledge goes, there is not a more detestable character, nor a meaner, or more barbarous enemy, than the present British one. With us, you have forfeited all pretensions of reputation ….

The letter ends with a sharp stab at the transgressors, criminalising Asgill’s “executioners” as men who ‘have [thus] been trained like hounds to the scent of blood’, insensible to transgression because so long accustomed to notorious habits: ‘Their ideas of right and wrong’, argues Paine, ‘are worn away in the constant habitude of repeated infamy …’. The very right to language, and to sensible discourse in particular, here depends upon the truth-value contained in one’s “reputable” (or “credible”) character, where the privilege of sensible speech is intriguingly contingent upon the fact of moral constancy in practice. Habits of villany among Carleton’s principal officers have, to Paine’s mind, so destabilised this genealogy, and have so offset even the ‘pretentions of reputation’, as to negate even the sensible affectations of moral dignity by which civilised selves might be construed. Through cruel habits ‘of repeated infamy’, evident in the sordid particular’s of Huddy’s case, the British character has nullified its linguistic right, as Paine contends, to the foundational language upon which its civilised manner depends. Those observing such infamy (Paine and his court of fellow-citizens) are necessarily transposed into rational protectors and progenitors of sentimental justice; and as such are guaranteed not only the right to continued speech, but also the responsibility, that comes with that right, of declaring—and indeed of proclaiming, with eyes wide open—the substantive facts ‘to all the [watching] world’.

Extending these allegations as to moral/ethical heritage, Paine conceives the ‘constant habitude of [British] infamy’ as an inheritance passed along from one generation to the next. He suggests, as with Smith (and indeed, some degree more), that ‘[t]hose who have had the misfortune to be brought up amidst violence, licentiousness, falsehood, and injustice, lose … all sense of [a crime’s] dreadful enormity, or of the vengeance and punishment due to it. They have

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298ibid., p. 277.
299ibid., p. 281.
300ibid., p. 277.
been familiarised with it from their infancy, [and] custom has rendered it habitual to them…” (TMS V.2.2). Inverting the rhetoric slightly, Paine then generates an antonymic field of dialogue that distinguishes American republicanism and patriotic ‘self-regard’, as David Waldstreicher defines them, from this corrupt descent.301 Using benign descriptors denoting virtue, good sense and sensibility, he differentiates the creditable (self-fashioned) American from a supposedly ill-mannered and fraudulent British counterpart. And on the basis of a now split heritage between them, upholds the merits of the former, whilst nullifying the sensibilities of the latter—demanding immediate rectification of the case in point: ‘There is no declaration you can make’, writes Paine to Carleton, ‘no promise you can give that will obtain credit. It is the man and not the apology that is demanded.’302

That a view of national character is in both contexts tied to philosophic dialogues distinguishing the civil from the barbaric, recalls Smith’s stadal, or sociological model of societal progression, which exposes the manner by which a reputedly “savage” culture matures by sympathetic degrees into a culturally refined and civilised society. Paine’s approach to his invective reflects this literary-philosophic method of differentiating between nation-strengths, by relegating sensible capacities, tastes and persuasions, to discrete stages in societal development. The language of “just” sympathy that Paine invokes to support this, which includes, as in Smith’s system, an entire lexicon of impassioned sentiment (moderately expressed), is employed throughout his letter as a civilised and civilising discourse that intends to distinguish the polite from the barbaric, the sensible self (characterised by moral judgment and self-command) from the insensible savage.303 Finding it difficult to situate—let alone adjudicate—the crime within this trajectory, however, Paine comments upon its unique features: “[t]he history of the most savage Indians does not produce instances exactly of this kind. They, at least, have a formality in their punishments. With them it is the horridness of revenge, but

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303 For a breakdown of this vocabulary more generally (without a direct emphasis on Smith), see Nicole Eustace, Passion is the Gale (2008), wherein she breaks down the terms/definitions of sentimental discourse.
with your army it is the still greater crime, the horridness of diversion.’ As if to accentuate the consensual nature of this ‘outrage’, he composes his letter in a plain language, arranging his declamation as a sort of epilogue to his 1776 *Common Sense* pamphlet, subtly defending the honest, civilised nature of his fellow-countrymen as against the ‘savage’ character of British oppressors; in such manner he supplies yet another rationale for American independence, accommodating Smith’s philosophical distinction between ‘[a] polished people [who] … become frank, open, and sincere’ and ‘[b]arbarians [who] necessarily acquire the habits of falsehood and dissimulation’ (*TMS* V.2.11).

At the end of his dispatch to General Carleton, Paine concludes with what he terms a ‘lesson of morality’ wherein he offers Carleton one blunt opportunity to save his own reputation and to effect a ‘necessary reformation’ in the ‘habitude’ of British infamy: ‘But if your attachment to the guilty is stronger than to the innocent’, he warns, ‘you invent a crime that must destroy your character, and if the cause of your King needs to be supported, for ever cease, sir, to torture our remembrance with the wretched phrases of British honour, British generosity, and British clemency.’ He takes this one step further by making an even finer gradation within the case for character itself, as if to draw out aspects of compositional confusion as underpinning the issues on trial: ‘Though I can think no man innocent’, Paine declares,

who has lent his hand to destroy the country which he did not plant, and to ruin those he could not enslave, yet abstracted from all ideas of right or wrong on the original question, Captain Asgyll, in the present case, is not the guilty man. The villain and the victim are here separated characters.

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305 ibid., p. 276.
306 ibid., pp. 281, 277; Giving Carleton some benefit of the doubt, William Gordon concedes the slim possibility of his just advocacy in this regard: ‘From his [Carleton’s] tried and known humanity’, Gordon writes, ‘it may be concluded that no acts of barbarity will be supported by his countenance’ (*Gordon, History*, p. 293).
307 Thomas Paine, letter to Sir Guy Carleton, p. 278.
If Carleton is to cast his own character aright, as Paine suggests, then his personal reformation stands contingent upon an ability to discover, discriminate and discern between separate casts of character—and to then respond with right judgment, not upon the ‘original question’ (of Huddy’s murder), but upon the truth-value underpinning Asgill’s selection for reprisal.\textsuperscript{308}

Paine’s concern for the American character reads subject to this (somewhat ironically) by default. His moral instruction to General Carleton offers a cautionary reminder to American lawmakers to guard national reputation as the moral security behind the constitutional frame: the execution of character, he reminds them, bears both profit and price. Supporting this admonition, at least on the surface, is a letter written by Alexander Hamilton to General Henry Knox in 1782 (appearing in Katherine Mayo’s 1938 account):

Dear General: We are told that there is a British officer coming on from Cornwallis’ army, to be executed by way of retaliation from the murder of Capt. Huddy. As this appears to me clearly to be an ill-timed proceeding, and if persisted it will be derogatory to the national character, I cannot forbear communicating to you my ideas upon the subject. A sacrifice of this sort is entirely repugnant to the genius of the age we live in….

Hamilton’s concern again registers the degree to which America’s moral conduct must be in keeping with ‘the genius of the age’, warning that any sacrifice (‘of this sort’) must necessarily depreciate national justice, credibility and integrity. His admonition concedes the delicacy of the international situation, prioritising the necessity of sound credit and consistent character-projection on the face of the world stage: ‘nor can [the execution] fail to be considered in Europe’, he continues, ‘as wanton and unnecessary…. encourag[ing] an opinion that we are, in a certain degree [ourselves], in a state of barbarism.’ Complicating this somewhat, is his counsel for then resolving the affair, bearing an “ends justify the means” mentality that suggests a literal actor-exchange to cover the execution (a short-cut that inadvertently undermines Paine’s ethics of “right” repair): if ‘retaliation is necessary’, Hamilton suggests, ‘let another mode be chose.

\textsuperscript{308}ibid.
Let under actors be employed, and let the authority by which it is done be wrapt in obscurity and doubt.’ Arguing with an almost Sheridanian air that the ‘ceremony’ is of a ‘complexion entirely out of season’, he argues that ‘Inconsistency in this case would be better than consistency.’

Running alongside these dialogues is a band of psycho-physiological descriptors that transfigures these transnational events into discursive mechanisms for training the “listening ear” towards morality. Underlying grammars of wellness here complicate, destabilise and at times even reverse sensible categories, substituting physical weakness for moral strength, and physical strength for moral weakness. And in keeping with a notion of sensibility that is intimately bound up with eighteenth-century medical fields of nervous sensation, this grammar draws attention to mental health and physical strength as moral indicators reflecting sensibility or insensitivity, character or contrivance. Grammars of wellness (recurring throughout the affair) map up with Paine’s intent to qualify his appeal to Carleton: wherein he considers societal growth; interprets national sensibilities; and discerns the civilised and mature, as against the savage and underdeveloped. Such wellness devices function as metonymic tools, inverting moral categories: references to good health and physical strength disguise the corrupt man’s conduct, whilst sickness and ill-feeling overwhelm the man of virtue (bearing a stout admonition, as per Sir Oliver himself, that one is not to be fooled by appearance). Thus, as with General Washington, the virtuous citizen might suffer internally for those “right” feelings that must be sacrificed to the call of duty, whilst his enemy boasts strength and good health, even despite his wrongdoing (Carleton is here discursively cast as man immune to distress—hardened to the noble effects of right sentiment). Thus, as in the case concerning Lippincott and his Loyalist refugees (men grown strong, in Paine’s view, so as to ‘fit them for the master’s purpose’), physical and mental fortitude must themselves be judged moral, lest they prove smokescreens to cover internal corruptions and wrong motivations. Paine’s attempt to save...
Captain Asgill consequently turns, itself, upon the figurative trial: his petition affords General Carleton a final opportunity to distinguish himself—and his fellow-countrymen—as sensible citizens among men.

**Impartial Judgment, Retaliation and Justice**

Throughout the Affair, Washington’s adjudicatory role as chief military official becomes apparent through his determinedly impartial stance, as well as through his deft negotiation of sentiment relative to the strictures of normative justice. Faced with the question of retaliation, as James Thatcher records, Washington’s first action is to address his fellow-officers and solicit their candid views on the matter:

> In order that each officer should be free from all bias and uninfluenced by each other, General Washington ordered that, without conversing on the questions, each one should write his own opinion and address the same sealed up to the Commander in Chief.312

Washington’s impartial practice here relies upon moderation as a principal means of tempering excessive, sentimental reaction, reflecting a Smithian awareness of the diachronic relationship between mediocrity and propriety as a dialogue that understates prescriptive forms of moral judgment. Moral determination, in other words, comprehends the need to moderate, insofar as possible in criminal affairs, any ‘weakness of fury’, or any potential ‘insensibility, [or] want of spirit’, by reverse; whilst it at the same time depends upon the right to gracefully express those natural passions that, though delivered either with extreme excitement, or incredible reserve, yet fulfil the key ‘point[s] of propriety’ that support just determination (*TMS* Lii.1.intro). Thatcher goes on to say that:

> By this method his Excellency obtained the spontaneous expression of the feelings of each officer, and they were unanimously of opinion that retaliation ought to be resorted

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to; that it should be inflicted on an officer of equal rank with Captain Huddy, and that victim be designated by lot.313

The ‘spontaneous feelings’ that here elicit ‘instinctive response’ (and that consequently defend those ‘principles of nature’ which, as Smith says ‘interest one in the fortunes of others’—an idea similarly explored by Sheridan, as Jack Durant argues, in his characterisation of Sir Charles Surface) are important for weighing retaliation as a normative form of Justice (TMS I.i.1).314 As Smith contends in Book II of TMS:

And with regard, at least, to this most dreadful of all crimes [murder], Nature, antecedent to all reflections upon the utility of punishment, has in this manner stamped upon the human heart, in the strongest and most indelible characters, an immediate and instinctive approbation of the sacred and necessary law of retaliation. (II.i.2.5)

Washington’s military practice here invokes/gives credit to ‘spontaneous feeling’ as a valid republican sentiment in the uncertainty over just retribution. Each individual is thus granted the opportunity to present an immediate (genuine, unpractised and uncontrived) opinion in the case; this offsets the potential for verbal manipulation, premeditated decision-making and excessive emotion. The voice of justice, here drawn from a uniform, unanimous response, thus upholds sentimental expression as a democratic imperative, and as necessary for determining the means of fair reprisal.

The General’s moral conduct in this regard, his adherence to impartiality and strict justice, is interestingly counterbalanced, and even substantiated, by numerous proofs of his tender benevolence: ‘Next to the execution of Major André’, as Thatcher records, ‘this event occasioned the most painful sensations to the mind of the benevolent and humane Washington;

313Ibid., p. 377.
his anxiety and poignant distress it is said were very visible'. Although troubled at Brigadier General Moses Hazen’s inability to find an ‘unconditional prisoner’ (someone secured apart from the Yorktown Siege) for satisfaction, Washington’s conscience nevertheless remains sensitive to his military duty: ‘…I never had a Doubt on the general propriety of the Measure…’ he writes:

…I feel myself exceedingly distressed on this Occasion: but my resolutions having been taken upon the most mature Deliberation … cannot be receded from. Justice to the Army and the Public, my own Honor, and, I think I may venture to say, universal Benevolence, require them to be carried into full Execution. It rests, therefore, with the British Commander in Chief to prevent this unhappy Measure taking effect.  

Although General Carleton proves to be an insensible judge (unable to sympathise rightly with and to judge impartially of the case placed before him—despite Paine’s interposition), Washington’s ‘mature deliberation’ grounds itself in the moral propriety of Asgill’s confinement. His firm ruling, followed by his benevolent care for Asgill as a prisoner, reflects the complicated manner in which the general virtues of propriety (including, per Smith, ‘the offices of prudence, of charity, of generosity, of gratitude, of friendship’) are seen to interact with strict Justice itself, so as to enable the rendering of sensible moral judgments (TMS III.6.9). Justice here stands as its own virtue, in keeping with Smith’s system, substantiating a system of propriety wherein ‘the [military] rules … are accurate to the highest degree, and admit of no exceptions or modifications’ (ibid.10). The fact that Washington’s process is able to later check itself, as it were, by allowing sympathy to argue for Asgill’s rights as a ‘conditional’ prisoner under the Articles of Capitulation at Yorktown (thereby defending the

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316 Regarding Washington’s discontent over Hazen’s inability to produce an unconditional prisoner, see: George Washington, letter to Brigadier General Moses Hazen, Head Quarters, June 4, 1782, Writings, vol. 24, 305-06; George Washington, letter to President John Dickinson, Head Quarters, June 19, 1782, Writings, vol. 24, 364-66 (p. 365).
317 Of Lippincott’s court martial, drawn out at some length behind British lines, James Thatcher writes, ‘Never was there a more complete burlesque in all the courts of justice!’ Thatcher, Military Journal, from July 1782, p. 378.
318 The strategic interplay between reason and emotion in the law is examined in greater detail in the following case study, Chapter VI, where Smith’s notion of sympathy is understood to negotiate the difference between the two.
‘conditional’ clause that is not accommodated in those spontaneous opinions expressed by his officers), only highlights the just and balanced manner of his juridical procedure.

Of particular interest throughout this progression, however, are certain secondary arguments that qualify his determinations and nuance their complexity, including numerous discussions among other political actors concerning the power of the sympathetic imagination as it informs the cause of military justice. The sympathetic imagination is here conceived in relation to both distance and the art of ‘lively conception’, raising to view the potential dangers of engaging too closely with another man’s (political) suffering. One example of this appears in epistolary dialogues over the issue of reprisal. Retaliation, as in the manner conceived by Smith, is a character ‘indelibly[ly]’ marked upon the human heart, and is contested in Asgill’s case with direct reference to physical and imaginative nearness, or to proximity, as correlating factors that must be strategically considered as factors in military response. Although as David Hume observes, ‘sympathy … with persons remote from us [is] much fainter than with persons near and contiguous’, Smith’s theory unsettles this view by power of the imagination, which renders physical/geographic distance, almost, if not entirely, irrelevant.

Further to this then is the extent to which such geo-theatrical determinants are again rhetorically interlinked with dialogic castings of character. In his letter to Henry Knox, Alexander Hamilton distinguishes rigid justice (when the law must override mere sentiment) from “flexible”, retaliative justice (when sympathy must become, as it were, a law unto itself). In the former case, it would be wrong for personal empathy to override strict justice, whereas in the latter it proves only right, by a sort of normative inversion, for sympathetic observers to draw near to the one who suffers. He separates the two as follows, warning that any decision to enact rigid justice against Asgill (in the same way it was enacted against Major André) would detract from Washington’s otherwise ‘respectable’ (national) character:

The death of André must be viewed at a distance as an act of rigid justice. If we wreak our resentment on an innocent person, it will be suspected that we are too fond of executions. I am persuaded it will have an influence peculiarly unfavourable to the General’s character… Let not the Commander-in-Chief—considered as the first and most respectable character among us—come forward in person and be avowed author of an act which every humane feeling revolts.320

As Hamilton’s correspondence reveals, distance serves as both geographical referent and imaginative conceit, inviting impartial spectators to enter into Asgill’s plight so as to safeguard both military interests and the delicate feelings of humanity. And it is these universal principles of benevolence that are called upon to reform present circumstance, and to ensure the continued approval of the onlooking world. Just as Smith’s notion of sympathy is fit to sever old imperial cords and establish new bands of domestic connection, it is at the same time capable of conceiving fresh bonds of transatlantic cohesion: the human imagination is empowered by its ability to sympathetically cross—over any distance—into innumerable scenes and situations that are presented to the imagining eye. Smith’s ‘worlds in the moon’ rationale (‘To what purpose’, he asks, ‘should we trouble ourselves about the world in the moon?’), which supplies a sort of geo-philosophic defence for Paine’s Common Sense advice concerning the island that must cease to govern the continent (‘Even the distance at which the Almighty hath placed England and America’, Paine writes, ‘is a strong and natural proof, that the authority of the one, over the other, was never the design of Heaven’), is at this point re-envisioned as containing the potential for transatlantic reconnection via sympathetic conceit (TMS III.3.9).321 It is an understanding of the sympathetic imagination within this frame that now lends itself to a uniquely critical reading of the ‘interpretive communities’ that form in relation to the case.322

320ibid., pp. 182-83.
THE F(R)ICTI0N OF FRATERNITY

As we have no immediate experience of what others may feel, we can form no idea of the manner in which they are affected, but by conceiving what we ourselves should feel in the like situation ... By the imagination we place ourselves in his situation.... (TMS, I.i.1.2)

SYMPATHETIC PASSAGE

In one sense, the Asgill Affair reads as a variation of ‘[that] situation in Mackenzie’s Man of Feeling (1766)’, as Ronald Paulson describes it in a different context, ‘... in which the reader is a spectator to an editor, who responds to the author of the manuscript, who responds to the manuscript’s protagonist Harley, who himself is responding to [the] people and events he encounters ([in order] to understand which he sometimes needs an interpreter).’323 In many ways, this is how Asgill’s narrative succeeds: the public ‘reader’ watches and waits with nervous expectation as the editor (General Washington) considers his corrective duty—deciding whether or not to enforce retaliation (by executing the letter of the law) in response to the demand for military satisfaction. Washington’s determination in the field, however, awaits instruction from Congress which proves the overseer and author of his actions in the military arena; and Congress, acting in a position of creative authorship, ultimately weighs and authorises its directives based on the plight of the protagonist himself … assessing Asgill and his woes via external interpreters that include such transpolitical figures as Lady Thérèse Asgill, the Comte de Vergennes, the Counte de Grasse, Benjamin Franklin, General Henry Clinton and Brigadier General Moses Hazen.324 The sole variance in the formula arises from the protagonist’s inability to respond in any meaningful way to the persons and events he “encounters”. Captain Charles Asgill is bound and fettered by the law—utterly dependent on outside interpreters to come forth from communities that bear weight and influence with the authors and editors of his fate.

324Benjamin Franklin’s Loyalist son, William Franklin, was arguably responsible for authorising Huddy’s death.
As a governing notion for inquiring into these interpretive relationships, my theoretical focus perceives Adam Smith’s notion of sympathy in relation to *le passage*, in the French formulation, which offers ‘a place where there is a way through’\(^{325}\). This concept of passage herein reflects progressive transition and translation, indicating both change and *ex*-change, or an inherent compulsion to move out of an originary/or former condition so as to take on new critical and social value (in a manner that destabilises the economic worth of the original); and it denotes actual points of *place*—fixed positions along the way that are enlivened by a quality of independent movement. Sympathetic passage within and among these communities is tremendously localised and interpretive; and the very act of passing is dependent upon community approval as its motivating impulse. This usefully qualifies Sarah Knott’s cognition regarding the principles of group cohesion and the amicable bonds of sentiment that organise groups in rational form. If, as Knott argues, sentimental friendship and exchange in Revolutionary America was often about ‘the amity of small internal groups’ and *coteries* (autonomous units capable of translating their interests into political activism and public alliance), then my chief interest is in employing Smith’s notion of sympathy as a literary device for reading those groups in relationship to one another; for questioning and analysing their sources of power; and for situating them in appropriate (geographic and social) proximity to the military scene at hand.\(^{326}\) I herein argue that the parameters of Smith’s sympathetic theory offer an incisive means of entering into various overlapping interpretations of the case—a comprehensive discourse for assessing the persuasive manoeuvrings exercised by parties on all sides of the affair, and for comprehending the complicated interplay between those emotional contributions that seem at once to win out over military satisfaction (thereby securing the young man’s release) and to at the same time subject themselves to the strict demands of military justice. Smith’s notion of sympathy offers a critical tool for cutting into this rationally and emotionally charged arena. As with the case of Arnold and André, and in keeping with Smith’s imaginative system, the “trial” of Charles Asgill proceeds via social (and moral) rights of

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\(^{325}\) *OED*, ‘passage’.

\(^{326}\) Knott, *Sensibility and the American Revolution*, p. 163.
passage that are normatively exchanged by conflating the factual with the fictionally conceived, the national reality with the transnational ideal—along a narrative that succeeds (according to both mode of resolution and manner of progression) by continually translating its key players out of the real into the imaginary, and back again.

In Smithian philosophy such ‘interpretive communities’ (à la Stanley Fish) are portrayed as spectator assemblies viewing the man ‘upon the rack’ (*TMS* I.i.1). They are continually situated always in relation to one another and at varying distances from the scene of martial execution: ‘Though our brother is upon the rack’, Smith writes, ‘as long as we ourselves are at our ease, our senses will never inform us what he suffers…. [But if by] the imagination we place ourselves in his situation, we conceive ourselves enduring all the same torments, we enter as it were into his body, and become in some measure the same person with him…’ (*TMS* I.i.1).

In relation to Asgill, whose character is here discursively stretched, these interpretive bodies take on Asgill’s form in principle, and are conceived via two prevailing figures of rhetorical persuasion: uniform agreement (or mutual understanding in terms of judgment over conduct and response to that judgment) and sympathetic conceit (so as to convince and persuade). Eugene Heath introduces the first of these in an article concerning ‘The Commerce of Sympathy’, wherein he identifies a two-pronged psychological account underpinning Smithian requirements for sympathetic exchange. He suggests that two underlying conditions must be met in order to effect a uniform judgment of propriety between any two spectators: 1) the passions of the central actor(s) must be mutually understood by the parties involved, and 2) in accordance with those understandings there must be a shared cognition of an appropriate response to the actor(s), relative to then shared passions. Although Heath concedes this formula as insufficient for the intricacies of Smith’s theory, he manages to highlight, albeit indirectly, the primary manner in which interpretative communities are then trans-relationally self-fashioned. Discursive groups form relative to these unifying conditions when passions are effectively coordinated among group members, with regard to shared group interests.

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327 Fish, ‘Interpreting the *Variorum.*’

Equally important, therefore, is the manner in which these spectator communities are imaginatively conceived via unifying rhetorics of sentiment and sympathy. Group ‘conception’/or ‘conceit’ is articulated with direct reference to taste as an organising facet of the sympathetic imagination, established via creative processes whereby ‘idea[s] [are] born in the mind through patterns of logic that give rise to opinions and judgment’—and where a ‘quality of taste’, echoing Hugh Blair, is found resident in ‘sentiment as distinguished from [mere] imagery’.\(^{329}\) It is this ‘quality of taste’, itself a sensible behaviour, that permits groups to sympathetically identify with the sentiment of suffering, as opposed to its mere image on display.\(^{330}\) Succeeding by force of the imagination (and approved by local cultures of opinion) this quality actively directs the course of passage, shaping the contours of intentionality and response. In this way it permits a creative crossing of the seemingly impassable distance between the spectator in his secure position and the tortured sufferer on the rack, bridging the space between the two by passing the reality of the sufferer through a sequence of ‘transformative variations’ that enables the observer to draw as close as possible into the physical and emotional experience of another man’s pain.\(^{331}\) This is accomplished not as Roberto Unger suggests (cited in Rubenfeld), by causing the spectator to ‘imagin[e] [the pain of the sufferer] as other than what it is or seems to be’ (by inviting him to ‘understand a portion of reality’ by transforming it into something else in his mind, resulting in a flat conception of the man ‘on the rack’) but, as Smith contends, by inviting him to imagine the fully-rounded, psychological torment of the sufferer—as it is, comprehending it as closely as is possible to what it is or seems to be—settling for nothing less than a complete identification with an entire range of emotions and experiences, both physical and psychological, as contained within a sentimental view of the image (I.i.1).\(^{332}\) A quality of taste thus supersedes mere image preference as a means of social-affective engagement; it here affords a sensible, behavioural response to the ‘complete’ experience of suffering. Wherein, to quote Smith’s view at some length:


\(^{330}\) Ibid.


\(^{332}\) Ibid., p. 37.
… the spectator must, first of all, endeavour, as much as he can, to put himself in the situation of the other, and to bring home to himself every little circumstance of distress which can possibly occur to the sufferer. He must adopt the whole case of his companion with its minutest incidents; and strive to render as perfect as possible, that imaginary change of situation upon which his sympathy is founded. (*TMS* I.i.4.6)

To this end Smith’s logic nears a point of realisation where, in order to succeed, as David Marshall suggests, the imagination must virtually cancel out the ‘theatricality’ of the scene (itself a product of imposed distance, artificial bias and tragic display) so as to permit sober judgment based on total identification and complex observation.\(^{333}\) Smith’s reasoning capitalises on a sentimental drawing together, where imagination must function via sympathy as a transative rhetoric of passage in such manner as to offset its own limitations; taken on its own terms, without any reliance on sympathy acting as a conduit through to the heart, the imagination otherwise retains (and at times even increases) the gap between the observer and the observed: the theatrical “fourth wall” remains in place. An ideal of uniform agreement between any two actors must therefore penetrate this artifice via diffuse forms of figurative and dialogic exchange. Group membership, which reflects a networked composition of these more personal interconnections, is, practically speaking, as fluid and indeterminate as the notion of sympathy itself, reasonably ‘illusory’, to quote Smith, at times fractured, ever incomplete (*TMS* I.i.1.13).

Despite the propensity for revision, however, a number of discrete communities can nevertheless be identified as determinate forms and spaces surrounding the Asgill case; and it is their very flexibility, in the end, (subject to local patterns/parameters of inclusion and exclusion), that directs the matter to resolution. The legal inquest that frames their formation accommodates a notion of uniform agreement and imaginative group conception through a two-pronged inquiry into 1) military satisfaction (questioning whether retaliation is the appropriate

judicial response) and 2) victim choice (asking whether Captain Asgill is the suitable sacrifice for military reprisal). Community cohesion relative to these concerns depends upon establishing uniform agreement (in both judgment and response) via the conceit of the impartial spectator; and upon the outworking of group interests relative to this figure—acting as an invisible representative who might convincingly “embody” (in Asgill’s stead, as it were) the group’s moral or political stance.

The community that is most capable of imaginatively passing through to the rack, in this sense, is Captain Asgill’s family; his blood relatives being, despite the physical constraints of distance, best able to change places in the imagination with him, and thus to adopt his pain as their own. Operating in effect through what Smith calls a sympathetic transfusion, whereupon, as he contends, ‘sympathy may seem to arise merely from the view of a certain emotion in another person’ and ‘may seem to be transfused from one man to another, instantaneously, and antecedent to any knowledge of what excited them in the person principally concerned’, this identification among family members requires little by way of explanation, and relies most forcefully upon a ‘view’—even from afar—of Asgill’s features. This identification is modified, only insofar as it must be submitted to competing group interests (TMS I.i.1.6). So although the family can best identify in one respect with the victim, it must, for the sake of ensuring Asgill’s literal release, translate its primary sympathetic conceit one degree away from Asgill himself, modifying the image of its ‘brother upon the rack’ in order to communicate their sufferings more sensibly to disinterested communities (I.i.1.2). To put it another way, it must moderate ‘its pitch’ to such a level that any impartial observer might successfully enter into the family cause, adopt the sentiments of its members, and sympathise with its overarching position: the family must successfully (re)-align the sympathetic imagination of surrounding parties (influence their “listening” strategies) so as to make disinterested imaginings correspond with its group interest (Asgill’s discharge) (I.ii.intro.1). Represented in the main by Asgill’s mother, Lady Thérèse Asgill, this small family unit submits its case for Asgill’s release to surrounding communities via two sentimental letters addressed to the French Court, directed en route to the American
Congress. And it is the contents of these, as will be discussed shortly, that accentuates the process of its uniform conception.

Continuing a step beyond Heath’s formula, then, I would like to suggest a notion of *sympathetic conceit* as a third interpretative imperative. Uniform agreement as understood here is dependent not only upon a shared determination within the group, but also upon a uniform approach to persuading others outside the group to unite with its principal cause: ‘Interpretive communities’, writes Stanley Fish, ‘are made up of those who share interpretive strategies not for reading (in the conventional sense) but for writing texts, for constituting their properties and assigning their intentions … The assumption in each community will be that the other [group/person] is not correctly perceiving the ‘true text’, but the truth will be that each perceives the text (or texts) its interpretive strategies demand and call into being.’

The Asgill Affair, which here represents the ‘true text’ in question, locates Asgill at its discursive centre and is composed of concentric circles vying for public attention and moral/ethical clout, demanding the opportunity to be heard in relation to the primary case; Washington, as impartial military judge, is situated at the place of overlap among them. It is thus interesting to note not only the manner of individual group conception and the principles of community cohesion, but to then read each group, in the light of Asgill’s final release, as discursively crafted in relation to these other circles pressing in on the results, and to note how *character* itself is forced to travel and change as a sympathetic conceit from one community to the next.

Inherent in the above definition by Fish is the idea that ‘interpretive strategies’ are themselves responsible for interpretations rendered, and that those strategies must be discursively moulded, shaped and informed—so as to enliven, or call into view (through practical enactment), right sentiments and perceptions. When introducing his first chapter, ‘Of Sympathy’, in the *Theory of Moral Sentiments*, Adam Smith qualifies this compositional process by turning to certain self-evident principles of human nature: ‘How selfish soever man may be supposed’, Smith writes,

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334 Citing Stanley E. Fish, in Heymann, footnote 49, p. 455; see also Fish, ‘Interpreting the *Variorum*’. 
there are evidently some principles in his nature, which interest him in the fortunes of others, and render their happiness necessary to him, though he derives nothing from it, except the pleasure of seeing it. Of this kind is pity or compassion, the emotion we feel for the misery of others, when we either see it, or are made to conceive it in a very lively manner (TMS I.i.1, emphasis mine).

The ability for any one group to effectively persuade its onlookers, thus depends in the first upon raising to view a ‘lively conception’ with which “listening spectators” can engage; upon enlivening a conceit that will not only re-make their interpretive strategies for determination, but that will allow observers to bring the situation home to themselves in an exchange of mutual sympathy. So although Asgill is ever at the centre of the Affair, individual communities at times deflect attention away from him and redirect it elsewhere, in order to emphasise a separate scene that might garner more genuine sympathy from those outside the group (a scene that can be more convincingly imagined). This tends to occur either when Asgill’s plight simply stretches beyond the point of imagination (though our brother is on the rack, we cannot, after all, know his sufferings), or because there is some doubt as to whether or not there will be moral agreement over retaliation as a military action, and therefore over Asgill’s fate by default. The sympathetic conceit depends very much, in other words, on who is listening—and, perhaps more to the point, on how one is ‘made’ to hear: “sympathy is in the ear of the listener”. At the close of her article on transformativeness in law, Laura Heymann gestures towards Jane Tompkin’s explication of textual meaning, which upholds ‘what a text does’ over and above what it says; and which suggests that a text’s meaning is bound up in its ability ‘to effect a certain kind of change in its reader’. Relative to this, Heymann concludes her own analysis by hinging her ‘transformativeness inquiry’ upon the importance of ‘ask[ing] the right question—not “Who is speaking?” but “who is listening?”’. And it is with a view to this that certain inquiries herein become central: What emotion will raise the liveliest conception before “listening spectators”? What communication will persuade persons to become so concerned for

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335 With particular thanks to Sarah Sholl—for lending her own ear on this.
336 Heymann, ‘Everything is Transformative’, p. 466.
337 ibid.
the ‘fortunes of others’ that their ‘happiness [proves] necessary to [themselves]’? What will draw cords of new sympathy between agents and spectators? And what manner of expression will best relay the group cause to the ‘inner man’ of the natural, moral conscience?

It is these questions acting together with a grammar of sympathy that are of greatest interest here, each community making an appeal that is sensibly designed to draw observers into Asgill’s plight (its means of persuasion intent upon drawing spectators as close as theoretically possible to the psychology of the rack). By way of Smith’s system it becomes possible to read individual groups according to their uniform judgments (asking what gives rise to these?), their methods of sensible self-construction and their modes of sympathetic persuasion. For this analysis I prioritise three primary interpretive communities (those directly involved with the case itself): i) the Asgill family, ii) the American military tribunal, and iii) the political and international community, gesturing only in brief towards other communities that bear significantly upon the case, namely iv) the Associated loyalists, and v) the press.

INTERPRETIVE COMMUNITIES

i) Asgill family

In his analysis Of Systems of Moral Philosophy, Adam Smith establishes a proof against those systems which would ‘deduce the Principle of Approbation from Self-love’, illuminating his point through the following concrete example:

When I condole with you for the loss of your only son, in order to enter into your grief I do not consider what I, a person of such a character and profession, should suffer, if I had a son, and if that son was unfortunately to die: but I consider what I should suffer if I was really you, and I not only change circumstances with you, but I change persons and characters. (TMS VII.iii.1.4)
Lady Asgill rests her case on this principle. Turning first to the English Court (which ignores her pleadings) and then to the French Court via the Comte de Vergennes, she expresses the uniform grief that is (dis-)composing the Asgill family, seeking political condolence. In her letter to Vergennes she concedes her distress, writing: ‘My sensibility alone could supply me with strength sufficient to address you.’ And it is this sensibility that supplies rhetoric suitable for her pathetic address, masking excessive grief with more moderate forms of appeal. Further to this, an underlying grammar of sympathy supports her request, allowing her to submit herself to the sensible judgments of an impartial court: ‘J’élèverai ma voix’, she writes, ‘devant ce tribunal imposant’. In positioning herself thus, she seeks first to enlist an advocate who will translate and adjudicate her claims. Turning to the Comte de Vergennes, as Grimm records, she opens her letter by flattering his natural sensibility and his fine ability to sympathise with the family sorrow: ‘Que votre sensibilité, monsieur, vous peigne ma profonde, mon inexprimable misère, et plaide en ma faveur … votre humanité laissera tomber une larme sur la faute, et elle sera effacée.’ Insofar as mutual sympathy is secured between Lady Asgill and the Comte de Vergennes, the Asgill family is then able to successfully transmit its case through sympathetic channels with stronger political connections: Comte → King → Congress. Anticipating a transatlantic readership even before the fact, Lady Asgill crafts her missive to Vergennes with this larger audience in mind. She addresses the French Court through the Comte (and en route to the American Congress) using a traditional language of sensibilité that prioritises sympathy as the hallmark of natural love (amour), friendship (amitié) and pain. And further to this, she petitions support through a narrative that invites the very ‘change of persons and characters’ that the loss of a son—and the possibility of his death—regretfully inspires (VII.iii.1.4).

To this end, her correspondence takes shape via four rhetorical figures. Firstly, she argues for a humane response to the family position, painting a dramatic picture of domestic grief before the

338 Citing Lady Asgill, in Thatcher, Military Journal, from July 1782: ‘I will raise my voice before this imposing tribunal’ (trans. mine).
339 Citing Grimm, in Thatcher, Military Journal, from July 1782.
340 ibid., p. 99: ‘In your sensibility, Sir, feel for me deeply, my inexpressible misery, and plead in my favour … your humanity will cause a tear to fall over the fault, and it will be erased’ (trans. mine).
341 Burstein, Sentimental Democracy, p. 7.
eyes of listening spectators. Secondly, she translates the stranger (*l’étranger*) into a friend, negotiating transatlantic distance by establishing affective bonds of connection between otherwise distant parties. Thirdly, she gestures towards an impartial law of benevolence and compassion as arbitrated via an ideal unbiased observer, who must weigh facts in the balance and rightfully discern the case. And fourthly, she petitions the French Court directly, shaping her rhetoric with regard to a notion of French *sensibilité* that usefully triangulates her engagement with Anglo-American sensible ideals; she turns to France as the most likely means of securing Asgill’s release, backing her dramatic interposition with Vergennes’ political clout. In the words of Grimm: ‘Mme Asgill écrivit à M. le comte de Vergennes une lettre dont l’éloquence, indépendante des formes oratoires, est celle de tous les peuples et de toutes les langues, parce que sa puissance est l’effet du premier et du plus puissant des sentiments de la nature.’ Lady Asgill’s ‘incomparably pathetic and eloquent letter’, as James Thatcher records, ‘could not fail of producing the desired effect—it reached the hearts, and Interested the sympathies of those exalted philanthropists to whom it was addressed.’

Underpinning Lady Asgill’s discursive “authority” is her ability to express a level of grief/emotion that would be imprudent for anyone else in the case, and particularly for a man in General Washington’s position: ‘A parent in private life might’, writes Smith, ‘upon the loss of an only son, express without blame a degree of grief and tenderness, which would be unpardonable in a general at the head of an army, when glory, and the public safety, demanded so great a part of his attention’ (*TMS* V.2.5). Her sensible plea offers a moving substitute for those sentiments that the General must suppress. And, further to this, the general spectator—the sensible observer—is in no position to condemn the mother’s grief, but is forced instead to respect, by reverse, her incredible temperance and rational air, admitting that by right of circumstance her expression could justifiably be coloured by emotional excess. In addition to this, the mother’s authority is secured by posture: she submits a plea that at no point oversteps

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342 ibid., p. 98; Friedrich Melchior Grimm and Denis Diderot, *Correspondance littéraire, philosophique et critique de Grimm et de Diderot depuis 1753 jusqu’en 1790*. vol. 12 (Paris: Furne, 1829-1831), pp. 271: ‘Madame Asgill wrote a letter of such eloquence to Monsieur the Comte de Vergennes, independent of oratorical forms, that all people, of all languages, must concede its powerful effect and see that it carries all the sentimental force of nature’ (trans. mine).

the American military tribunal, choosing instead to defer to its normative strictures. At no point does she undermine Washington’s decision to effect retaliation by lot, but rather re-conceives his decision into a sensible proof commensurate with (and justifying) her own supplication for mercy and benevolence. In other words, she is careful not to overstep uniform agreement as established elsewhere, strategically inclining her sympathetic conceit—not towards Asgill’s plight in the main, but towards herself and her family members as fellow-sufferers with him.

It is in a logical manner, then, that Lady Asgill persuades her hearers to sympathise with her plight, inviting the “tribunal of the world”, by both a generalised and particular method, into the very midst of her sorrow. In his *Elements of Criticism* Henry Home (Lord Kames) describes this technique as self-consciously aware of the delicate connection between eye and ear, functioning as partner senses in the realm of imaginative conceit: ‘writers of genius’, Kames contends, ‘sensible that the eye is the best avenue to the heart, represent everything as passing in our sight, and from readers or hearers, transform us, as it were, into spectators.’ The scene that Lady Asgill draws passes in such manner before ‘the eye’ of her readers, finding its ‘avenue to the heart’ via sympathetic translation: ‘Figure to, yourself, Sir …’ she begins (in other words, imagine in your own mind). ‘Figure’ yourself as likewise ‘surrounded as I am with objects of distress …’: ‘mon mari abandonnée de ses médecins … ma fille attaquée d’une fièvre accompagnée de délire.’ Asgill’s plight on the rack is here traded for a different scene, marked by a sequence of pathetic visions through which his mother can argue her appeal: “if the plight of my son cannot move you in its own right”, she seems to say, “then draw near this second scene string of executions: our entire family is suffering the torture of the rack, because, among all mankind, we are the most fully affected by the consanguineous bonds that draw us to our ‘brother’ in his grief. Indeed, we are drawn there to a degree that the rest of the watching world can never experience—see how it translates to the very seat of our health, as well as our affections? The pain of his trial, no matter the distance, translates across the Atlantic as a sorrow

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344Cited in Marshall, *Figure of Theatre*, pp. 10-11.
345‘my husband abandoned his medicines … my daughter contracted a fever accompanied by delirium’ (trans. mine).
that is as deeply his as it is our own. If you cannot be swayed by his circumstance, then might you at least be sensible to our despair?"

Further to this, she achieves her affect by translating the stranger into friend, positioning herself relative to her listeners by first conceding their distance from her cause and by then expressing the reasons for why they, as sensible neighbours, should share in her concerns. In such manner she overcomes relational disconnect by enlivening scenes that will stimulate an empathetic exchange based on universal principles of benevolence and compassion. Her use of the ‘impartial spectator’ relative to such conversion is both absolute in conception (representing a perfect, unbiased judge) and particular (conceived as with regard to the needs of her listeners). She flatters her audience for being able to judge rightly, candidly—as with a view to both this overarching figure and to the impartial spectator within, who governs personal conduct by conscience and conclusion. Spectators to the family situation must be brought ‘near enough to “see”’, as Forman-Barzilai describes it, but this is limited neither by physical immediacy nor geographic proximity—the sympathetic imagination is here capable of translating distant imaginings into immediate realities.346

Stepping back from the petition itself, the family unit benefits, in the end, not only from Asgill’s literal release, but also from the commercial value attending Lady Asgill’s dispatch: there is an appreciable impact upon the transatlantic (theatrical) market thanks to her written intervention. Sympathy for her cause (and it does become her cause) is won, even retrospectively, because it is recognised in large part for its commercial worth. Her response is transliterated into idealised notions of French sensibilité and into American constructions of republican womanhood; whilst her mature emotional response (the tempering of her emotions with reason and logic) is raised to view as a model of propriety and virtue. She cuts a figure that develops her beyond stock types (the female coquette, or the excessive sentimentalist), suiting her to the needs of a wider stage—sociological and theatrical. Secondary communities form around her character in principle thanks to a popular interest not only in the case itself, but also in the outworkings of

346Forman-Barzilai, ‘Sympathy in Space(s)’, p. 198.
her sensible manner; in the American post-revolutionary government; and in the particulars of the affair as they substantiate the French (national) character by international response—privileging France’s intermediary role between the United States and Britain.

ii) *American military tribunal*

Forming a sort of second family to Captain Asgill is the military brotherhood, a fraternity of spectators accustomed to the normative strictures of a wartime command. In its call for retaliation the group draws attention not to Asgill, but to Captain Joshua “Jack” Huddy and the circumstances of his unlawful murder. The group functions with uniform regard to hierarchy, regulation and control, where it is impossible to draw too near to Asgill’s cause because “impartial” observers (both military and civilian) are considered duty-bound to sympathise with martial verdict. The military is bound by the rules of its “family” structure over and above its sympathies for any one member. In considering the case, General Washington reduces the question to one ‘purely of a military nature and reducible to the single point whether the perpetrator of the cruel murder of Huddy is to be given up, or a British officer to suffer in his place.’

Huddy’s execution marks an insupportable transgression demanding swift reprisal. The commander’s first response is thus to solicit the ‘spontaneous feelings’ of his officers (striving in this manner to measure the cause from within), and his second is to fulfil his military duty, despite the cost to personal sentiment: ‘General Washington reflected with keen distress that the sacrifice’, as James Thatcher records, ‘whilst fitting the call of his military stature and duty, was yet a painful blight on his tender feelings.’

The military (and its constitutive force) is here distinguished from other interpretive communities by its mandate of uniform composition and internal design, intensified in the short years following the War for Independence. Where ‘a long peace is … very apt to diminish the difference between the civil and the military character’, as Smith records, a short peace commonly retains stark interpretive distinctions (*TMS* V.2.6). The military imperative demands a particular interpretive frame.

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In an early letter to Brigadier General Elias Dayton, Washington clarifies that his decision on the subject of retaliation denotes a point of military agreement. With reference to Captain Ludlow, who wished to offer a ‘Representation’ of Asgill to Sir Guy Carleton, Washington expressed the following: ‘I would wish you to intimate to the Gentleman’, he writes to Brig. Gen. Dayton,

that although I am deeply affected with the unhappy Fate to which Capt Asgill is subjected, yet that it will be to no purpose for them to make any representation to Sir Guy Carleton which may serve to draw on a Discussion of the present point of Retaliation; that in the State to which the Matter has been suffered to run, all Argumentation on the Subject is entirely precluded on my part, that my Resolutions have been grounded on so mature Deliberation, that they must remain unalterably fixed.349

Pressing upon Washington’s conscience, however, is the public expectation, to such an extent that his responsibility to the military is coloured by his duty in some larger measure to a great “mob” of citizen-civilians. The retaliation under his charge is as much a response to military crimes as to a moral outcry from the public. ‘Even the mob’, as Smith suggests in his discussion of the unsocial passions, ‘…are enraged to see any man [or indeed the military, in this case, as a uniform body] submit patiently to affronts and ill usage. They desire to see this insolence resented, and resented by the person who suffers from it. They cry to him with fury, to defend, or to revenge himself. If his indignation rouses at last, they heartily applaud, and sympathise with it. It enlivens their own indignation against the enemy…’ (TMS I.ii.3.3). Entering sympathetically, as it were, into the public mindset, and considering the case relative to the hanging of Major André earlier in the year, Washington is forced to concede the power of public conviction—and the need to administer either a swift negotiation, or an execution in fact. As he would later reflect in a letter to Captain Asgill, the determination to support retaliation was based not in any sense upon ‘sanguinary motives’, but upon what he perceived was

necessary to securing the national frame—by ‘what I conceived’, he said, ‘a sense of my duty’.350

iii) Political and international community

Painfully aware, however, of the expectations weighing upon the military tribunal, Washington writes in some distress to the Secretary at War, asking his ‘opinion of the propriety’ of taking retaliation out on Captain Asgill. ‘[H]ow far it is justifiable’, he asks, ‘upon an officer under the faith of a capitulation, if none other can be had, is the question?’. Further to this, he emphasises the need to safeguard against an air of contrivance that might undermine military justice: ‘Hazen sending Capt. Asgill on for this purpose [retaliation] makes the matter more distressing’, he writes, ‘as the whole business will have the appearance of a farce, if some person is not sacrificed to the manes of poor Huddy, which will be the case, if an unconditional prisoner can not be found, and Asgill escapes.’351 A series of letters to Congress expresses his growing frustration at the government’s delay in advising him on this point—and reveals the difficulty of petitioning a federal body yet in its infancy. In a letter addressed to the President of Congress, 1782, Washington submits his own judgment again to Congressional decision, defending the necessity of his petition by describing the affair as one of ‘great national concern, upon which an individual ought not to decide.’352 And with reference to Lippincott’s trial (dragging out behind British lines), he registers some alarm lest Asgill be executed before litigation supplies a verdict—at which point criminal restitution might ‘be considered’, he says, ‘by the impartial and unprejudiced World, in an unfavourable and perhaps an unjustifiable point of view….’353

In his correspondence with Congress, Washington’s rhetoric supplies a grammar of sympathy that aligns imagined ideals of human rights, universal benevolence and codes of war, with

351George Washington, letter to the Secretary at War, Newburgh, June 5, 1782, Writings, vol. 24, 319-320, (p. 319).
353ibid., (p. 40).
republican domestic claims concerning national citizenship, moral obligation and transnational responsibility. And further to this, he describes his own sufferings in the midst of the affair as the product of keen emotional sensitivity: ‘When measures, which I might otherwise adopt, are suspended. When my own feelings are wounded, and others perhaps are suffering by the delay, how is it possible for me to forbear expressing my disquietude?’ 354 And further to this, as he writes to James Duane, ‘The letter of Asgill … and the situation of the Father, which I am made acquainted with by the British prints, work too powerfully upon my humanity, not to wish Congress would chalk a line for me to walk by….’ 355

Sympathy is employed throughout these epistles as a vehicle for expressing sensible reflection and for swaying a transnational audience. Where Congress is slow to hear Washington’s complaint, the French court is drawn swiftly into Lady Asgill’s plight, convinced of the genuine sensibility underscoring her appeal. Choosing to invoke its rights via the ‘Articles of Capitulation’ drawn up at the Yorktown Siege, the Court structures its own conceit upon the military alliance conjoining America and France.

iv) Associated loyalists

In Philip Freneau’s Poems on Several Occasions appears the following verse from a Tory spoof entitled, ‘A Renegado Epistle to the Independent Americans’ (1785). Freneau here offers a tongue-in-cheek depiction of the Tory effort to persuade sensible Americans to adopt displaced Loyalists and nurture them within the republican fold. His verse highlights the Huddy-Asgill Affair as exemplifying a capital wartime atrocity:

Old HUDDY we hung on the Neverfink fhore—

But, Sirs, had we hung up a thoufand men more,

They had all been aveng’d in the torments we bore,

When ASGILL to Jersey you foolishly fetch’d,
And each of us fear’d that his neck would be stretch’d,
When you were be-rebel’d, and we were be-wretch’d.\(^{356}\)

The narrative goes on to concede Loyalist ‘villainy’, whilst at the same time pleading the repair
due to those Loyalist sympathisers who are now fellow-citizens of the American nation:

That villains we are, is no more than our due,
And that so may remain for a century through,
Unlefs we return, and be doctor’d by you.\(^{357}\)

In this fictional depiction, the community raises its conceit with direct reference to its own
wartime sufferings, covering a series of military atrocities in a complaint that uses the Huddy-
Asgill Affair to prevail upon public sympathies. The narrative voice characterises Loyalist
‘torments’ according to their just desserts, urging republicans not to change their minds about
the villainy itself, but to reflect upon a more merciful response to Loyalist conviction.\(^{358}\)

v) The press

As is the case for each interpretive community, sympathetic deliberation is problematised by the
influence of the largest audience of all: the public. Riven by splits, fractures and factions, the
public is, itself, the final “listening eye”, and each group heretofore mentioned constructs its
sympathetic conceit with this larger body in view. Capturing the public attention and informing
its declarative view, of course, is the press. As previously noted, the Asgill Affair can be read as
a curious cousin to the calamitous events surrounding the execution of Maj. John André (co-

\(^{357}\)ibid., p. 274.
\(^{358}\)ibid.
conspirator in Benedict Arnold’s plot against West Point). At the time of Asgill’s incarceration, the case of Arnold and André still clung to the social conscience. By means of the press, this later case tightened its fist around Washington in particular, weighing upon him as he sought to stage-manage a now second act in the history of American military treasons. There is much more to be said regarding this community than can be addressed here—particularly with regard to shifting conceits and the manipulation of sympathies. Retaining a focus on primary communities in the case, however, it needs mentioning only that the Affair took shape with reference to the multiple and overlapping narratives circulated by national and international papers. Washington felt this pressure considerably and sought Congress all the more determinedly so as to ward off false reports and protect leading figures in the case: ‘while, I am totally silent to the public’, he writes,

waiting the decision of Congr. on the case of Huddy, I see publications on this head in one of the Pennsylvania Papers, which no man could have made, that had not access to my Official letter of the 19th of August to Congress; and secondly, because I feel, exceedingly, for Captn. Asgill; who was designated by Lot as a victim to the Manes of Captn. Huddy. 359

Thus so many internal bonds, crafted as by ‘a certain modification of reason’, through imagination and taste, yield so many habits of approval and disapproval throughout the case (TMS III.5.5). The result, especially within communities that share a common institutional frame (military or governmental, for instance) is often the translation of such habits into set rules and a then fixed ethics of moral duty (for which there is generally felt some loyalty by group members) (III.5.1). As these institutional groups grow wider (becoming increasingly distant from the case in either fact or feeling) they are liable to become internally conflicted and fractious in complicated ways, largely because there are fewer habits of approbation, fewer

359 George Washington, letter to The Secretary at War, Head Quarters, October 7, 1782, Writings, vol. 25, 239-41 (p. 241).
regulations in place (formal or informal) and an overall lack of uniformity. Imaginary communities that form in this way, upon more general virtues, are more flexible, as Smith suggests, and tend towards frequent modification. With each new conflict or discursive interchange, new interpretive strategies must be learned and new habits applied—with the result that fluctuating points of consultation are manufactured for rendering moral judgments (the voice of the impartial spectator is continually multiplied as the group fractures within itself). The language of sympathy that in one community translates into bonds of affection and mutual confidence becomes, in other company, rhetorically disruptive, resulting in separation and disaffiliation.

‘Interpretive communities’ throughout the case are thus seen to enliven a process of narrative transcription, one that Nicola Lacey and Lucia Zedner describe in similar fashion in their work on discursive communities and criminal justice, wherein interpretive groups (or ‘imagined communities’, à la Benedict Anderson) cohere relative to three sympathetic unities: 1) shared substantive reasoning (or uniform judgment) concerning the crime itself; 2) a focalised ‘mutual sympathy’ for the normative (rule-inducing) impartial spectator; and 3) a collective understanding regarding the potential value (monetary, commercial, personal or otherwise) that might be credited to its members as joint-beneficiaries of a shared interest. As becomes clear not only through “marketable” discoveries among group investors, but through overlapping fields of sympathetic conceit and persuasive manoeuvrings, is the routine passage of fact into fiction that transmits the case itself, as a sort of real life epistolary drama, into a range of then fictional adaptations. Smith’s theory affords the opportunity to read more fully into sensible self-construction as it is taking place for Americans via such interpretative and progressively generic shifts.

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360Nicola Lacey and Lucia Zedner, ‘Discourses of Community in Criminal Justice’, Journal of Law and Society, 22.3 (Sept., 1995), 301-25 (pp. 302-03); this formulation refers, in brief, to Benedict Anderson’s notion of ‘imagined communities’ as conceived relative to group formation in the national mindset: see Benedict Anderson, Imagined Communities: reflections on the origin and spread of nationalism, revis’d and extended edn (London; New York: Verso, 1991).
ASGILL: OR, IMAGINING ABDIR

Smith’s theory of sympathy … attributes such great power to the imagination that no difference is admitted between actual suffering and the theatrical representation of suffering. We feel as much compassion for a character in a play as for a person of our acquaintance.361

In a brief ‘Avertissement’ preceding his script entitled, *Asgill, Drame, En Cinq Actes, En Prose* (c. 1785), M. J. L. Barbier, le Jeune writes as follows: ‘[L]’instant où je scus son heureuse délivrance, me causa une joie si pur, que dans les douces émotions dont mon étoit agiste, je ne cessois de me dire: que cet évènement présente un beau sujet pour le Théâtre!’362 Dedicated in its inscription, ‘A Madame Asgill’, the dramatic narrative proceeds largely in keeping with the history of the military case in fact, whilst at the same time sliding easily into a somewhat larger than life fictional demonstration of moral sensibility in practise. In much the same way as Washington lauds his Yorktown force for its ‘imitative’ spirit (sparked by the French ‘zeal’ of 1781), so in turn does le Barbier here commend ‘les Americains, [pour] leur zèle, leur empressement à venir, du fond de leur Province au passage de l’armée Françoise, lui offris tout ce que la tendre amitié, la reconnaissance inspiroient à ces Infortunes pour des Amis & des Libérateurs généreux…’363 His commendation, which highlights both the tender bond (*la tendre amitié*) of Franco-American revolutionary alliance as well as the outworkings of the ‘inspiring’ calamity in point, sparks a generic shift as authorial innovation undertakes to translate the Asgill Affair into dramatic form. This translative effort is motivated ‘au point que’, as le Barbier records, ‘tout cela … ajouroit encore un couvel intérêt qui enflammammon

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362M. J. L. Barbier, le Jeune, *Asgill, Drame, En Cinq Actes, En Prose*, Avertissement, M. DCC. LXXXV, Vii, Alderman Library Special Collections, University of Virginia: ‘The moment I knew of his [Asgill’s] happy deliverance I was filled with such pure joy, that in all the sweetest emotions that agitated my being, I could not stop saying to myself: that this event would present a handsome subject for the Theatre!’ (trans. mine).
363General George Washington, dispatch to Congress, Head-Quarters, near York, October 9, 1781, *Official Intelligence from Virginia*, (Philadelphia, Printed by John Carter, October 24, 1781), Alderman Library Special Collections, University of Virginia, McGregor Broadside 1781 W3; *Asgill*, Avertissement, Vii: ‘the Americans, for their zeal, their eagerness in coming from the end of their country upon the crossing of the French army, offering to it their most tender friendship, a reconnaissance so inspiring to these fellow-sufferers, for the sake of friends and noble liberators’ (trans. mine).
imagination … j’ai ôse l’entre-prendre.\textsuperscript{364} The author’s inflamed imagination, here captivated by the circumstances surrounding Asgill’s plight (coextensive with his own persuasion as to its sentimental worth, whereby he adjudges Asgill to be the right recipient for sympathy), generates the necessary spark for inspiring le Barbier’s production of his original literary ‘Drame’ (unpublished), wherein key transatlantic figures such as General Washington, Captain Asgill, Lady Asgill and Major Gordon are transposed into ideal embodiments of bravery, honour and sentimental friendship (caricatures drawn large to reflect a French notion of sensibilité relative to Anglo-American sentimentalism). Reflecting on his own authorship relative to these ideals, however, le Barbier concedes that sympathy for the subject can take him only so far in doing justice to the case: ‘Le travail penible qu’il ma couté depuis, m’a fait connoître que les émotions de la sensibilité ne tenoient pas toujours lieu de talent.’\textsuperscript{365}

At this point, my investigation considers how the translation and adaptation of the Asgill Affair takes place in such manner as imaginatively crafts American identity abroad, employing Smith’s sympathetic system in its capacity as both a dialogue of conviction and as a translative vehicle for moving the narrative to eventual dénouement. The overarching notion of passage that informs my reading of Smith here receives further signification as a socio-economic manoeuvre, supported by a later English conceit which qualifies le passage as vested with the very ‘right to pass’, either through or across.\textsuperscript{366} The passage, in other words, requires introduction, the credibility of which is assigned according to the perceived (truth)-value of those personalities that substantiate the presentation. And, ultimately, it is the right that proves essential, not only for bringing the case to completion, by drawing sentimental dialogue together as co-laboureur with military justice, but for exposing the property value of those characters that are transmitted along the way—their commercial worth, as shaped and reconstituted along the course of narrative journey.

\textsuperscript{364}Asgill, Avertissement, Vii: ‘to the point at which’ … ‘[all that] sheds light on a smoldering interest which so ignites the imagination [that] … I dare to take it in hand’ (trans. mine).

\textsuperscript{365}Ibid.: ‘The painful work that it has cost me since, made me realise that the emotions of sensibility do not always take the place of talent’ (trans. mine).

\textsuperscript{366}OED, ‘passage’ (circa 1428).
This right to pass is sympathetically secured, in the first instance, by an earlier introduction of the American character to the French stage. In his study of ‘the “American” on the French stage’ McKee locates a shift in French theatrical tradition as coinciding with the French Revolution of 1789. His argument suggests that a symbolic ‘American personality’ (an idealised construction of the ‘virtuous [credible] citizen’) came into vogue at this time as a marketable commodity in support of the French patriot cause. That the Asgill Affair falls readily into this commercial pocket is unsurprising given its transnational resolution (via Washington’s circumspect diplomacy, the pathetic interjections of Lady Thérèse Asgill and the intervention of the French monarchy); but it is unsurprising, perhaps even more importantly, given its rather secondary affiliation with actor-philosophe, Benjamin Franklin. During his time as ambassador to France, Franklin’s ‘Poor Richard’ character, as McKee recalls, had paved a way for the ‘American personality’—as commercial good—to figure itself as a sound investment in the eyes of the world. Backed by Franklin’s “good” credit, therefore, McKee argues that the events of the Huddy-Asgill Affair proved fit to introduce a new ‘American citizen’ into the French dramatic and cultural repertoire. This citizen-sufferer, chiefly reflected in Washington, proved able to bolster moral dialogues of sensibilité through performative representation, and to garner real sympathies for the French revolutionary cause.

A number of theatrical derivations resulted from the Huddy-Asgill Affair. Included among these were the following variations: M. de Mayer’s novel, Asgill, ou les Désordres des guerres civiles; M. J. L. Barbier le Jeune’s play Asgill, Drame, En Cinq Actes, En Prose (c. 1785); M. Billardon de Sauvigny’s Abdir, a rewriting of le Barbier’s work (‘le mardi 25 janvier, sur le Théâtre-Français, le première représentation d’Abdir, drame en quatre actes et en vers de M. de Sauvigny’, as Grimm records); and Marsollier’s 1793 drama, also called Asgill. Referencing a
newspaper review of this last production, performed at the Théâtre Italien, Paris, McKee writes: ‘L’intérêt qu’inspire le sujet de représailles est d’autant plus vif qu’il retrace des malheurs auxquels désormais nous ne sommes plus étrangers. L’affluence étoit considerable; tout le monde pleuroît, et le succès a été complêt (La Quotidienne, 3 mai 1793).’ Each of these found revision as well through the (at times) imaginative commentary of such writers as Grimm, General James Thatcher, William Gordon and a host of other critics. Asgill in prose gave way to Asgill in drama, which in turn paved the way for its theatrical reconception in Abdir. Within each presentation, an idealised notion of the sensible self is not only sympathetically re-conceived and discursively exchanged, but is granted a certain commercial value, rendering each generic shift a transformative and even marketable opportunity.

Of significance as well in these derivations, are translative re-workings of the War itself. As Jason Shaffer contends in his investigation of propaganda plays during the American Revolution, ‘if war forged the invented eighteenth-century identities of Briton and American, [then] representations of war in the drama helped to fuel their manufacture.’ This proved true both during the conflict and after, both onstage and off. And to the extent that wartime identities (and the war in its own character) were ever qualified by French perception, particularly in the war’s ‘triangulated’ aftermath as Sarah Knott suggests, such representations relied for their social construction and transatlantic projection upon a uniquely generative principle of sympathetic passage. Bringing this to bear upon his treatment of William Hill Brown’s *The Power of Sympathy*, James Chandler asks ‘what and how and why does sympathy’s power enable it to move?’ Gesturing towards the sentimental journey and ‘its notion of virtual movement by means of imaginative sympathy’ he reads sympathy as occupying a ‘field of

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371 McKee, ‘Popularity’, p. 487: ‘The interest that inspired the subject [of the play] has brought to life those unhappy circumstances to which we were strangers. The impact was considerable: everyone cried, and the success was complete’ (trans. mine).


373 Knott, *Sensibility and the American Revolution*. 
[sentimental] forces’ that propel it as a flexible conceit. The representation as has been described (whether of person, place or circumstance—i.e. the War itself) provides a theatrical host, or locus for this field. And by means of its inherent theatricality, enables sympathy to contend with both sentimental crossings and apparent stasis.

As argued in my foregoing analysis concerning Sheridan and Tyler, Smith’s system here once again yields a grammar of social rights, moral œconomy and credibility that is capable of canvassing the (wartime) stage-grid whereupon relevant players make entrance and exit, and of consequently disrupting a host of underlying commercial and political dialogues (theatrically expressed through a range of verbal and gestural conceits); his system, as applied to Asgill’s case, features the individual performer—as both actor and judge—always in relation to group interests. In terms of both blocking and communicative exchange, Smith’s sympathetic system again offers an effective device for mapping the very manner in which individuals are drawn together and granted autonomy, and whereby they are permitted a narrative right of passage always in relation to other character-positionings en scène. Interrelationship is revealed through the very act and art of movement. And it is thus that one’s character and his or her individual narrative is sympathetically conveyed (via Smith’s notion) from one reality to the next; from one genre to the next, from one social community to the next; and that socio-political identity is shaped, in that conveyance, via transpersonal connectedness and social-affective bonding.

It is worthwhile to note, then, that generic/character revision continued well into Asgill’s military career, culminating in his marriage to Lady Jemima “Sophia” Asgill in 1790. Although it falls outwith the scope of this chapter to discuss their union, the marriage bears mentioning only insofar as it was later rumoured that Lady Sophia informed the characterisation of Maria Edgeworth’s ‘Olivia’, in her book, Leonora, published in 1806. Although Edgeworth denied the

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claim, it is clear that Lady Sophia’s social coquetry, in real life, anticipated such fictionalisation—and wore a marketable price.\(^{375}\)

That these adaptations bought *real* stock in Asgill’s fictional life is only in keeping with the *sympathetic passage* that contrived his literal release; his character adopted a life of its own that travelled many leagues beyond him, such that by the time of his discharge his moral and political figure had, in essence, only begun to take shape. Upon exoneration, Captain Asgill received a visa to ‘return to his own friends in England’, his return home requiring a sort of sympathetic passage through France, via his mother’s interposition. Her pleadings acted as a sentimental vehicle for effecting “complete” dialogic exchange, striking the perfect sympathetic cord, as it were, with a world of listening spectators: ‘Sir’, wrote Washington to Asgill, ‘It affords me singular pleasure to have it in my power to transmit you the inclosed Copy of an Act of Congress of the 7\(^{th}\), instant, by which you are released from the disagreeable circumstances in which you have so long been; supposing you would wish to go into New York as soon as possible, I also inclose a passport for that purpose … I beg you to believe, that my not answering [your letter] sooner, did not proceed from inattention to you, or a want of feeling for your situation….‘\(^{376}\)

**SENSIBLE CITIZENS: LADY ASGILL AND GENERAL WASHINGTON**

*If distinct discursive communities can be identified surrounding each copy, that fact should lead us to think that the meaning of the expression has been transformed, even if the expression itself has not.*\(^{377}\)

My analysis at this point goes on to question the implications for understanding sensible self-construction relative to this use of Smith’s system. To this point, Smith’s theory has been read


\(^{376}\)George Washington, letter to Captain Charles Asgill, Head Quarters, November 13, 1782, *Writings*, vol. 24, pp. 336-37. Lady Asgill’s arguably “perfect” chord is defined, of course, by “right” results and not by *complete* (or absolute) sympathy.

\(^{377}\)Heymann on the ‘transformativeness inquiry’, p. 455.
into a host of sympathies exchanged and into interpretive communities constructed, through an analysis that uniquely complicates our understanding of post-revolutionary representations of the sensible self. My examination now unfolds, by way of this discussion, along two final paths: along the first, it considers how the factual and fictional representations of American “stock types” are being translated abroad into “sentimental republican figures” (or moral republican ideals) during the post-war period (treating Lady Asgill and General Washington as moderate examples of sympathy’s radical polemic); and along the second, it considers the American *borrowing back* of then transnational, trans-political character-forms for domestic enrichment and the strengthening of national, legal and logical, self-expression.

MODEST DISPLAY / BENEVOLENT COMMAND

In discussing the role of the theatre in shaping republican nationalism, Bruce McConachie identifies the parameters defining American citizenship: ‘As in all modern nationalisms’, he writes, ‘Americans defined the ideal citizen partly on the basis of what he—and “he” is the relevant pronoun here—was not. Women were placed on the margins of republican citizenship, [whilst] African and Native Americans were excluded altogether.’378 While it falls outwith the scope of this thesis to discuss gendered and racial constructions of sympathy (particularly with regard to citizenship), there remains a valuable point of interest for our purposes in considering the space between often-times gendered (emotional versus rational) and racial (savage versus civilised) extremes—the space wherein republicanism is discovered, via Smith, to be principally concerned with ideal figures who are cast always ‘as against what [one] is not’: conceived as against modest and impartial ideals, and in light of universal principles of interconnection that (when drawn to the full) democratise traditionally exclusive, and hierarchical fields of relational discourse. Focusing on this self-reflexive stance relative to the *character of propriety* that supports Smith’s system (and thus reading McConachie in a more generalised sense), the Asgill Affair suggests a host of figurative transformations that signify the importance of original self-

construction relative to this space of negotiation. Lady Asgill and General Washington personify two expressions of one figurative ideal—so composed in the national/international psyche as to suggest a unified representation of that ‘which one is not’—and to render a marketable image of moral sensibility against which the general citizen might measure his own republican stature: where sympathy indicates the ‘natural and original measure of [the] proper degree’ of virtue as it consists ‘in all the passions’ (TMS VII.ii.3.21).

Opening Part VII of his TMS, concerning the systems of Moral Philosophy, Smith identifies the following question as his point of departure: ‘wherein’, he asks, ‘does virtue consist?’ (VII.i.2). Qualifying this somewhat, he continues: ‘what is the tone of temper, and tenour of conduct, which constitutes the excellent and praise-worthy character, the character which is the natural object of esteem, honour, and approbation?’ (ibid.). Combining Lady Asgill’s manner of presentation with the factual miseries of the case, her character accedes to virtue by tempering grief to meet the pitch that general observers can understand. Her modest appeal is not only appropriate to the circumstances, but labours to flatten intense grief by presenting its case in a measured, rational tone. She here relies upon a universal appreciation for her position: ‘What are the pangs of a mother’, Smith writes,

when she hears the moanings of her infant that during the agony of disease cannot express what it feels? In her idea of what it suffers, she joins, to its real helplessness, her own consciousness of that helplessness, and her own terrors for the unknown consequences of that disorder; and our of all these, forms, for her own sorrow, the most complete image of misery and distress. (I.i.1.12)

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There is a great deal more to be said about Smith’s arguably “masculine” system relative to feminine ideals, not least in relation to a 1798 translation of Smith’s TMS by Sophie de Grouchy, madame de Condorcet, see Deidre Dawson, ‘Is Sympathy so Surprising? Adam Smith and French Fictions of Sympathy’, Eighteenth-Century Life, 15 (February and May 1991), 147-62. This section rather prioritises the moderation of the passions at the space between gendered constructions of rationality and emotion, leaving a more thorough analysis of these larger issues to another study.
In a situation not unlike this, Lady Asgill’s virtue consists in her overwhelming regard for the spectators weighing in on the case: her “model” stature is determined as much by what is said as by what goes unspoken. Her audience “hears”, as it were, her motherly distress.

With regard to General Washington, the obverse is true. Washington’s overwhelming concern with the authority of Congress, with his military duty, and with the importance of public response—acting together with a deep impression of his ethical duty to the national feeling—all reflect his willingness to soften the military “excesses” of his command with sensible codes of honour and virtue. In a prologue to his study on the Siege at Yorktown, Richard Ketchum opens with a commemorative gesture to Washington’s role in the victory and to a life-mask of the General as cast by Jean-Antoine Houdon in 1785: ‘He was the American Revolution’, writes Ketchum, ‘this man whose life mask reveals so much about his character.’\(^{380}\) Washington’s professed interest in doing right by as well as within each sphere elevates his masculine sentiments to virtuous proportions. He has balanced these and constructed the ideal ‘spectator in the breast’, so to speak, so as to rightly judge of the case before him, counterbalancing the concerns of each individual community with the call to prudent action. In his ability to subdue ‘all his private, partial, and selfish passions’ is discovered the ‘free air of liberty and independency’ so desired by ‘wise men’ of the new republic (TMS VII.ii.1.40).

This form of spectatorial benevolence is marked by virtue as a hallmark of Propriety (because covered by principles of self-control and self-command). This quality is worn in the person of Washington as Commander-in-Chief who, once again, by virtue of his supposed objective stance is worthy of republican emulation. His bearing suggests a certain universal cast and quality, where his representative stature might be beneficially deconstructed into the language of sentiment and sympathy by which he is construed—his virtue borne out in the republicanism he reflects and in the moral integrity that supports his composition. Furthermore, he is distinguished in the historical imagining by a cast of “good company”, as it were. In le Barbier’s Asgill, for instance, he is qualified by individuals who emphasise singular aspects of his

\(^{380}\)Ketchum, *Victory at Yorktown*, p. 1.
character: Major Gordon, reflecting his steadfast loyalty and resolve; his fellow-soldiers, the principles of duty and honour; and Lady Asgill, his profound, yet moderated sentiment.\textsuperscript{381}

The virtue of Washington’s self-command extends from his attention to \textit{universal Benevolence}. His actions in the field are marked in this regard by his own ‘habitual and thorough conviction of the truth’ of a system which admits to an all-wise Being as ‘direct[ing] all the movements of nature … and who is determined to maintain in it, at all times, the greatest possible quantity of happiness’ (ibid.). Spectators approve of his character in part because of Washington’s personal conviction: his belief that all circumstances fall under the provenance of this greater security, and that the smaller, partial systems of life, must submit their aims to its higher authority (VI.i.3). Smith illustrates this in his \textit{TMS} with reference to the ‘Meditations of Marcus Antoninus’ and by illustrating the character of that commander for whom ‘Good soldiers’ will march to the ends of their civic duty, filled with a joy befitting the sacrifice: ‘A wise man’, writes Smith, ‘should surely be capable of doing what a good solder holds himself at all times in readiness to do’ (VI.i.3.4). For Washington, this is a delicate negotiation, as his correspondence suggests:

while my Duty calls me to make this Decisive Determination, Humanity dictates a Fear of the unfortunate Offering, and inclines me to say that I most devoutly Wish his Life may be saved…. I must beg that you will be pleased to treat Capt Asgill with every tender Attention and politeness (consistent with his present Situation) which his Rank, Fortune and Connection, together with his Unfortunate State, demand, I am &c.\textsuperscript{382}

The American borrowing back of these character forms for domestic/legal and logical improvement occurs via right principles of approval, where the sympathetic imagination in turn affords a singular right of passage for these characterisations. In an effort to resolve his inquiry into virtue, Smith interrogates cognitive approbation: ‘by what power or faculty in the mind is

\textsuperscript{381}M. J. L. Barbier, le jeune, Asgill, 1785.

it’, he asks, ‘that this character, whatever it be, is recommended to us? … how and by what means does it come to pass, that the mind prefers one tenour of conduct to another, denominates the one right and the other wrong; considers the one as the object of approbation, honour, and reward, and the other of blame, censure, and punishment?’ (TMS VII.i.2). Unfolding his analysis by considering systems of self-love, reason and moral sense perception, Smith resolves his investigation by returning to his notion of sympathetic exchange, whereby approbation is shaped by principle of modification and impartial judgment. It is with this view in mind that Lady Asgill and General Washington are recommended to the public acclaim. In their actions and affections, the two are found tempered and moderate in their means of self-expression; their affections are found suitable to the cause that excites them; and their actions are found useful to the public good. Each surrounding community affirms this justification. With each new judgment on the case (whether political, economic, moral or theatrical) the expression of virtuous conduct (though remaining the same in principle) is transformed through the characters that reproduce it—thereby granting new message and meaning to the features of the case in principal. These meanings are best weighed relative to the sympathetic cause/conceit of each discursive community that forms around a particular representation.

Cast as against the backdrop of Bradburn’s ‘citizenship revolution’, therefore, Lady Asgill and General Washington together embody overlapping principles of modesty, benevolence and self-command, becoming character copies of these qualities in their ideal form.383 And it is the discursive communities that spring up around them, with direct reference to these moral sensibilities, that then infuse new meaning into the principles themselves: the meaning of sociable codes becomes bound to figurative outworkings of sensible citizenship. The two characters are pictured together in dialogical harmony, each one qualifying the other and receiving qualification at the point of mediation between them: her arguably “feminine” emotional excess here moderated by logical self-command, whilst his arguably “masculine” command is mitigated by a modest and empathetic temper. The “excessive sentimentalist”, as a generalised stock type, is psychologically modified to reflect a thoughtful harmony of passions

383Bradburn, Citizenship Revolution.
and a tempered expression of self-conceit. An analysis undertaken in this manner once again leads us to conclude that with each discursive community that is formed around the Affair, the meaning of its central characters is being continually changed and transformed—such that the meaning of the American nation as a coherent community (marked by its representative character in principle) is continually changing with it.

“TRANSLATED” ASGILL

Discursive communities need not exist only as formal or scholarly communities; they can be ... geographically dispersed and temporally ephemeral....

Thus it is that numerous characters are put on trial—whilst the character of the nation hangs (as it were) in the balance. The ‘tribunal of the world’ is figured at a seemingly impartial distance, watching to see how early citizens will respond: how they will engage with the international community and what ‘degree’ of sensibility will govern their moral decisions. International validity and commercial credibility are here secured always with reference to the moral standards of republican citizenship, thus developing a sort of transnational barometer from which can be read the ‘true spirit’, in Sir John Hill’s phrase, of the nation’s fundamental character. From all of this, it is possible to assess how a range of transnational identities, projections that blend the real and the imaginary, are then borrowed back for domestic development and commercial increase. American citizens are rendered credible/creditable (even amongst themselves) by virtue of their transnational presence, and by the degree to which the national drama rises or falls in accordance with sympathies conveyed.

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385 Ibid., p. 449.
In 1700, nearly a century before Asgill’s incarceration, one of his distant relatives, John Asgill, published a divisive tract entitled: *An Argument proving that ... Man may be Translated.* In this controversial treatise, John Asgill established one of the earliest theological proofs for why death is not obligatory for Christians, elaborating a figurative progress of ‘translation’ from mortality to eternal life. The piece earned him the nickname “Translated” Asgill and proved to be one of the earliest arguments contending, from the Scriptures, that man might be translated into eternal life without ever experiencing death, and that, by reverse, Christ (as man) needed to pass through death in order to supply right atonement. Decreed as heretical, the governing council immediately refuted its claims and ordered the local hangman to burn the tract. Although Captain Charles Asgill’s fate would prove, in the end, graciously earthbound (sans gibbet), the reality of his translation—from a place of death into life, as it were—parallels nicely this early conceit. His situation is marked by that same rather ephemeral passage of character (a journey through both language and community) that marks man’s progression through life more generally; and his release is rendered possible by a similarly substitutive sympathy—where his own mother’s grief acts as a sensible exchange (in almost Christ-like manner, placing herself on ‘the rack’, as it were) for the penalty that marks his due. Underwritten, therefore, by his own ‘real chronology’, Asgill’s dramatic life offers an interpretive re-working of his relative’s translatable theology. The history of the Asgill Affair might thus be read as a narrative of transformative translation. Asgill’s plot might be understood as the sort of ‘thick’ history that Sarah Knott suggests, read with a scholastic approach that prioritises Smithian sympathy in comprehending American

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388 Sowerby, III, p. 135, #2743.
revolutionary and post-revolutionary self-construction. In its narrative of transition and transformation can be read numerous representations and political realities bound up in the sentimental project of transnational and proto-Romantic development. The Asgill Affair, in other words, is frequently crosscut, qualified by alternate accounts that register different aspects of the modern self. This plays out methodologically according to Smith’s eighteenth-century belief that dramatic fiction, communicated via sympathetic conceit, functions interchangeably with the factual concerns of lived reality—an idea that finds purchase in the American scene through Jefferson’s contemporary admonition to ‘be as warmly interested for a fictitious as for a real personage. The spacious field of imagination [being] laid open to our use….’ Insofar as theatre and drama emphasise the relevance of le passage as essential to these maturing dialogues of citizenship, re-formation and national re-invention, they here prove significant steps, supporting Heymann’s ‘transformativeness inquiry’, in the life of the historical narrative. Every real figure or feature of the case gains added meaning through its fictional aspects—and acquires altogether new meaning, even more pointedly, through the inter-semiotic passage of political narrative into fictional form. The rhetorical fluidity of sympathetic passage thus reflects the elegant precision of military dressage: a performance enlivened by deft exercise, careful figuring and graceful movement; where a notion of presence is itself transformed via fictional conceit, sentimental communication, and underlying principles of social execution.

389Knott, Sensibility and the American Revolution, p. 15.
391Heymann, ‘Everything is Transformative’. 
VI

SYMPATHY AS A RHETORICAL STRUCTURE IN

LIVINGSTON V. JEFFERSON, CASE OF THE NEW ORLEANS BATTURE

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‘I MUST BE GOVERNED BY THE LAW—

...

MY PRIVATE FEELINGS MUST NOT ENTER INTO—’

Judge Marmaduke Temple, The Pioneers, 1823

James Fenimore Cooper

TRANSLATING MONTESQUIEU

Thirty-four years after writing the Declaration of Independence, in the summer of 1810, Thomas Jefferson undertook to correct and distribute an English translation of Destutt de Tracy’s Commentaire sur Montesquieu, or A Commentary and Review of Montesquieu’s Spirit of Laws. The task involved a close reading of Destutt’s handwritten original, revisions to the manuscript in full and a translation of the commentary concerning Montesquieu’s Book II. Devoted to the linguistic challenge and to the political text in substance, Jefferson spent nearly two years translating and editing the Review, forwarding modified sections to Philadelphia publisher William Duane.  

Articulating Montesquieu via Destutt proved a lofty ordeal, involving strict attention to grammatical nuance and offering Jefferson a valuable opportunity to trace, translate, and once

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again test the promises of the Declaration through to the now-groundbreaking limits of American law and Constitutionalism. Jefferson had long charted Montesquieu’s thought, including his dispositive approach to the maturation of national jurisprudence. This theory of socio-political development runs analogous, as D. D. Raphael reflects (citing John Millar’s report to Dugald Stewart) to Smith’s later views, likely drawn from the same source, which relate ‘the gradual progress of jurisprudence, both public and private, from the rudest to the most refined ages…’ In Jefferson’s early Commonplace Book, therefore, appear lengthy passages from Montesquieu’s *De l’Esprit des lois*, grappling with such varied issues as:

… popular sovereignty, the characteristics of different types of government, inheritance procedure, standing armies, the properties of crimes and punishments, luxury, corruption, the assumption that a geographically extended republic cannot endure, the concept of political liberty problems of taxation, the nature of slavery, the notion of climate and its effect on society, the function of commerce and money, marriage and population concerns, the idea that human and divine laws must be separately considered, uniformity and ostracism, and finally the fate of political prisoners.

From a post-revolutionary perspective then, Jefferson could position Montesquieu within a even wider field of vision, including him among such luminaries as Dugald Stewart, Adam Ferguson and, indeed, Adam Smith in the nation’s intellectual development: ‘In political economy’, he writes, ‘I think Smith’s *Wealth of Nations* the best book extant, [and] In the science of government, Montesquieu’s spirit of laws is generally recommended.’ Of Destutt Jefferson predicted that the Review would ‘form an epoch in the science of government’—and would laud it for executing an analysis of its subject, ‘by way of Commentary and Review; not by criticising words or sentences but by taking a book at a time, considering its general scope, &

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proceeding to confirm or confute it.” Of even greater importance, however, the *Commentaire sur Montesquieu* would serve as an important corrective to a host of pro-monarchy sentiments being then circulated throughout the country, supplying a necessary ‘confutation’, as he saw it, ‘of substitution of true for false principle: and the true principle is ever that of republicanism.’

In its revaluation of the law Jefferson adjudged Destutt’s text as ‘worthy of our high approbation’ and deemed it a vital qualifier to Montesquieu’s otherwise ‘pro-British’ thought. Despite Jefferson’s professed interest in Montesquieu’s thought, however, he lauded Destutt for ‘reduc[ing]’ him to a ‘just level’, as it were, and for advancing instead a ‘true spirit … of republicanism.’

In July 1811 Jefferson finished his corrections and forwarded a copy of the publication, complete with an original Introduction, to the Marquis de Lafayette. The Marquis then passed it along to Destutt. Because the text was published anonymously, namely to protect the Frenchman from insurgency, many readers assumed Jefferson to be the original author and granted him credit for writing the *Commentary* on whole. One such reader was Pierre Samuel Du Pont de Nemours, who granted the authorial honour to Jefferson and began to translate the now English book, on the basis of these false origins, back into the original French. But unlike the Asgill affair, with its analogous foray into narrative conversion, there seemed no improvement to be gained from the proposed doubling; such an effort could only be, to Jefferson’s mind, a futile exercise of ‘retranslating into French a work the original of which is so correct in its diction that not a word can be altered but for the worse: and from a translation, too, where the author’s meaning has sometimes been illy understood, sometimes mistaken, and often expressed in words not the best chosen.’ In keeping with his earlier accolades, Jefferson’s self-effacing objection here safeguarded Destutt’s original as both linguistically and

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400Ibid.


‘ontologically superior’, in both message and manner, even to his own careful derivative. Of the first translation editor William Duane vented a similar opinion: ‘I am not perfectly satisfied with the manner of the translation; …’ he writes, ‘it is very difficult unless to a person equally conversant in both languages; there are some passages very difficult … the translation is generally too dry and frigid for the original; and the Whys & Wherefores and moreover are too frequent for the English idiom.’

Yet this dialogue of rough passage again highlights the value of originary form and vests “original character” with geopolitical reference. This discourse over translation asserts an awareness of local origins, prioritising the structurally vague ‘whys, wherefores and moreover’ that mark the original dialect, over and above any efforts at precise translation, thereby conceding the impossibility of translating the text in such a manner as could carry the integrity of the original. Jefferson’s reflection here exposes the linguistic challenge behind translation in practice, whilst his dedication to the project at the same time reveals an eagerness to participate in cross-Atlantic, inter-lingual exchange. Throughout the course of his life, from his earliest exposure to the Welsh dialect; to his college instruction in Latin and Greek; to his reading of Don Quixote as the “principle translation of its time”; to his wrestling with Macpherson and his immersion in the native tales of Ossian; to his appreciation for Native American vocabularies and Americanised spellings … the principle of translation as both preservative force and national self-corrective, remained essential to Jefferson’s thinking. Despite its many mistakes and misnomers, the translation of Destutt boasted a political ‘depth of thought, precision of idea, of language & of logic, which’, Jefferson believed, ‘[would] force conviction into every mind.

The force of this conviction unfolds with a characteristically Smithian ‘perspicuity of style’—that is to say through words commonsensically ‘naturalised’ so as to become, at least in theory,
‘as familiar’ (or transparent) as those ‘originally’ owned \((LRBL\text{ i.I})\). And the naturalisation of both language and text in this manner unfolds via translative sympathies – or the drawing together of local communities, by way of fresh linguistic and dialogic connections. Thus Destutt’s sympathetic translation introduces a possibility for fresh cross-Atlantic exchange, enhancing communication through the precise execution and conveyance of language and thought. It marks an opportunity for the original text as territory to re-imagine itself and to communicate its unique character—both personal and national—in a more convincing manner to the international world. New cords of political attachment thus spring from Destutt’s faithful re-visioning of Montesquieu’s legal language and from Jefferson’s American translation of the French text.

Such translative or sympathetic conceit took shape for Jefferson across other fields as well. Earlier in 1786 he had supplemented a French edition of his \textit{Notes on the State of Virginia} with a map requiring cartographic translation.\footnote{Coolie Verner, ‘Mr. Jefferson Makes a Map’, \textit{Imago Mundi}, vol. 14 (1959), 96-108.} He sent the drawing to Samuel Neele for inclusion with the Abbé Morellet’s publication, requiring that his map be finished, even in translation, with ‘nothing wanting in the execution, as to precision, distinction, exactness, the form of … letters, and whatever else constitutes the perfection of a map.’\footnote{Thomas Jefferson, letter to William Stephens Smith, Paris, August 9 [i.e. 10], 1786, \textit{Papers}, vol. 10 (1954), pp. 211-13 (p. 212); Verner, p.101.} From the privacy of personal study, therefore, to his more detail-oriented, overseas correspondence, translative practice afforded Jefferson the opportunity to preserve foreign vocabularies; to incorporate them into his present geopolitical thinking; and to imagine his way into complicated networks of human emotion, philosophical motivation and ethical behaviour. Furthermore, it played a formidable role in Jefferson’s legal discourse, articulated by way of sympathy (read according to Smith’s construction) as a vehicle for logical communication and rational exchange.

An analysis of Jefferson’s ‘Preface’ to the \textit{Commentary} is thus uniquely telling. Expressions of friendship and gratitude invite sympathy for the translation as a text, and are supported by numerous professions of good faith and reassurance. Jefferson opens the book by standing back
from its subject so as to arrive for the first time on American shores, crafting his prose as under the eye of an anonymous persona. By adopting the voice of a naturalised (if not natural) citizen, Jefferson assumes the unburdened weight of anonymity and achieves the candid force of rhetorical distance: objective fact-finding, scientific cataloguing, and an authoritative air of simple curiosity characterise his expression. His unbiased spectator finds footing by conceeding his foreignness from the start, and by articulating the very limitedness of that perspective by which he authorises and indeed assumes the role of impartial observer. He dons a mantle of narrative authority by stepping into an imaginatively shaped and philosophically superior standpoint, a Smithian position deemed essential for accurate surveillance and “right” evaluation of the territory before him. And interestingly enough, the guise reflects back on itself as well, functioning in reverse as a sort of character reference for the text itself. In addition to concealing the identity of the original author (‘I think it best’, he writes, ‘to divert enquiries after the author to a quarter where he will not be found…’), Jefferson’s opening becomes the requisite letter of introduction—a subtle petition asking ‘fellow citizens’ to receive the foreigner’s perspective by recognising the productive value of imported intellect.\textsuperscript{409+}

In this regard, Jefferson’s very act (even art) of translation elaborates a certain transplanting impulse, and participates in the translative process whereby law itself is removed from one place and reconstituted in the next. And it is the sheer impossibility of his task more generally, the rhetorical frustration, as mentioned earlier, of ever adopting another’s original character (legal, linguistic, political, geographical, or other)—that speaks most forcefully to post-revolutionary democracy-building, guarding a space for uniquely transformative decision-making by articulating sensible self-construction as an ongoing negotiation between imitation and innovation. Jefferson writes to Destutt: ‘I think however it [the translation] is substantially correct, without being an adequate representation of the excellencies of the original; as indeed no translation can be. I found it impossible to give it the appearance of an original composition

\textsuperscript{409}Sowerby, III, pp. 6-7; Thomas Jefferson, letter to Destutt de Tracy, January 26, 1811, RS, vol. 3, pp. 334-49 (p. 335).
\textsuperscript{+}See Appendix III: \textit{from Jefferson’s Preface}. 
in our language.\textsuperscript{410} No matter its style and dress, the imitation could in no way match the original, and neither, apparently, could it be so transfigured as to result in something altogether new. Nevertheless, Jefferson’s faithful revision comprehended translation as an essential component of republican (re)-invention: the ‘true spirit’, in Hill’s theatrical conceit, of the modern law.\textsuperscript{411}

Capturing the power of this spirit is Philip Freneau’s 1795 poem entitled, ‘On the Approaching Dissolution of Transatlantic Jurisdiction in America’. In this piece, Freneau introduces lady COLUMBIA as a caricature of sensible authority claiming her rightful place in the Americas, depicting her victory as an act of noble liberation from Britain’s tyrannical ‘grafp’.\textsuperscript{412} In the first stanza, Freneau captures COLUMBIA’s ‘glor[y] in the deed’ as she wages war against British judicial authority and successfully transplants herself to the now liberated American soil:

\begin{verbatim}
FROM Britain’s grafp forever freed,  
COLUMBIA glories in the deed:  
From her rich foil, each tyrant flown,  
She finds this fair estate her own.
\end{verbatim}

‘COLUMBIA’ is here personified as rightful claimant of American ground, a property whereupon and wherein she can freely trace her legal limits without being ‘swayed’ by those transatlantic powers (of monarchy and precedent) that have hitherto hindered her glory. She has successfully ‘abridg[ed] the fway of foreign lands’ so that she might arrive unshackled on the American scene, ‘each tyrant [having been] thrown’ / ‘[f]rom her rich foil’ to the point where she can successfully ‘[find] th[e] fair eftate her own’. Although Freneau goes on to then picture COLUMBIA’s woe at the slavery that incarcerates her elsewhere (‘PERU beneath a monarch fighs, / And MEXICO in fetters lies!’) he likewise captures her unbridled enthusiasm as she

\textsuperscript{410}Thomas Jefferson, letter to Destutt de Tracy, January 26, 1811, \textit{RS}, vol. 3, pp. 334–49 (p. 335); Sowerby, III, p. 7.
\textsuperscript{412}Philip Morin Freneau, ‘On the Approaching Dissolution of Transatlantic Jurisdiction’, \textit{Poems written between the years 1768 & 1794, by Philip Freneau, of New Jersey} (New Jersey, 1795), Early American Imprints, Series 1, no. 28712, pp. 437–38.
anticipates, with great hope, that happy moment in time when ‘other \textbf{WASHINGTON’s} fhall rife!’ so that she might stake her claim in territories throughout the Americas—released entirely from her European fetters:

\begin{quote}
To abridge the fwayne of foreign lands,
Time, with his years, leads up new bands:
To annul the power of Europe’s kings,
To life, once more, fome \textbf{WARREN} fprings!
Once more, \textbf{TO ARMS}!—Fate’s herald cries—
And other \textbf{WASHINGTONS} fhall rife!\footnote{ibid.}
\end{quote}

That Freneau pairs the ‘dissolution’ of ‘\textit{Trafatlantic Jurifdiction}’ with both the military call to arms and the creative innovations of scholar, playwright and poet (‘To life, once more, fome \textbf{WARREN} fprings!’), identifies the progression of the law not only with \textit{COLUMBIA}’s ongoing battle to transplant her universal limits (\textit{COLUMBIA} here reflects a global justice that supersedes the boundaries of any nation-state), but with those creative processes of ‘annul[ment]’ that effectively rewrite her legal limits in new territories and spaces, and that imaginatively \textit{refigure justice herself} for the benefit of ‘native’ citizens. Unlike ‘the [Canadian] native’ who ‘finds his vigour broke’ by \textit{COLUMBIA}’s continued bondage, the American ‘native’ is here modestly identified as an individual who can become the very master of himself—rendered autonomous (sensible and civilised) in direct relation to \textit{COLUMBIA}’s newly-won freedom.\footnote{ibid.}

It is in such manner, therefore, that Freneau’s poem comprehends the law as both transcending national bounds (\textit{COLUMBIA} becomes translatable across transatlantic space), and as best realised only when reconceived in relation to the ‘native’ territory. And it is in keeping with \textit{COLUMBIA}’s innovative spirit, and with her newfound claim upon the grounds of American jurisdiction and jurisprudence, that Jefferson’s ‘enthusiastic’ translation participates in an
analogous moment of sensible self-construction, this time relative not only to national
development generally speaking, but to particular instances of legal transplantation and
translation.\textsuperscript{415} That it proves instructive for a series of more pressing concerns, therefore,
suggests a point of departure for this chapter. Jefferson’s revision of Destutt precedes a dramatic
legal case wherein translation is once again governed by interpretive realms of sympathetic
conceit. Jefferson’s translative efforts bear fruit in the latter part of 1810, stretching to inform
the character of individual autonomy—and an emergent character of law—much closer to
home.

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This case study considers a legal dispute between Edward Livingston and Thomas Jefferson
over a stretch of land running along the banks of the Mississippi River: the New Orleans
Batture. In this chapter I will read \textit{Livingston v. Jefferson} (an action brought against Thomas
Jefferson by Edward Livingston in 1810) through the lens of ‘sympathy as a legal structure’,
taking my cue from advances in Critical Legal Studies (and from notions advanced in Andrew
Burstein’s work on ‘The Political Character of Sympathy’) to apply an otherwise theoretical
exploration of the construct to a reading of the law in fact.\textsuperscript{416} Along these lines I will extend
Smith’s notion of sympathy as both a cerebral concept—one that preserves the legal/logical
functioning of the court by eschewing emotions in favour of impartial judgment and critical
reasoning—and also as an emotional vehicle for transporting judge and jury into imaginative
realms of social harmony and fellow-feeling. My intention in this application is to highlight not
only the intense quality of feeling exhibited by both men during the course of “trial”, but to
identify their complex rhetorical manoeuvres as conscious attempts to win judicial favour.
Smithian sympathy is here tested and deployed in terms of its legal function, offering a unique
juxtaposition of Smith’s moral sense theory with such juridical notions as dispute resolution and
practical jurisprudence. I read the case as a legal-literary narrative within the democratic context

of westward expansion, taking the thesis one step further so as to engage with the provocative interplay ongoing between the “sensible citizen” and the now “sensible nation”—engaging with identity as a geographical conceit and with Smith’s notion of sympathy as both a persuasive strategy and democratic equaliser.

LOUISIANA: LANDSCAPE ET L’HISTOIRE

‘Virginia is bounded on the East by the Atlantic … On the West by the Ohio and the Mississippi, to latitude 36° 30’ North: and on the South by the line of latitude last-mentioned. By admeasurements through nearly the whole of this last line, and supplying the unmeasured parts from good data, the Atlantic and Mississippi are found in this latitude to be 758 miles distant….’

In his 1748 publication of *Des lois d’esprit*, or *The Spirit of Laws*, Montesquieu highlights the ‘geographic character of community’ as essential to the success of republican government. He argues that the national law and the extension of federal governance can succeed only in small geographic arenas, where the bonds of local community might tie together otherwise disparate factional interests. His logic takes into account the physical parameters of place and space and prioritises a rational restructuring of visible limits; his overarching principle of checks and balances at the same time seeks to federate separate branches of government into a single functioning unit, grappling with their joint collaboration whilst conceding the climatic bounds that delimit its authorial reach. Montesquieu’s argument thus participates in a provocative contest over American space.

Jefferson’s principal contribution to this geography came six years before his re-working of Destutt’s *Commentary*, with the Louisiana Purchase of 1803. His executive act resulted in a

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doubling of United States territory that expanded the nation westward beyond the Mississippi River all the way to the Rocky Mountains. Questions arising on the heels of this purchase exposed a national contest over regional interest and the reach of federal authority. Could the national government oversee such an expansive and expanding territory? Or was Montesquieu correct in believing that republican government could succeed only in small geographic arenas? How could local practise and regional custom develop in a manner coextensive with federal growth and governance? And in relation to local jurisprudence: what laws could properly govern the Louisiana territory? What would or could be done with conflicting legal traditions and linguistic differences? And how could the Washington seat govern a region so far removed from its proximate authority? All of these queries reflected the peculiar complexities inherent to a territory being translated out of itself and into a new national reality. In expanding this landscape Jefferson sought tighter cords of union to steady the national frame—believing new bonds of sentiment and affection to be material, as Peter S. Onuf suggests, for drawing the nation together whilst moving it towards the Pacific.419

Characterised by French, Spanish, English and now American political authority, the Louisiana territory traced a complicated, multilingual history back to the earliest days of legal settlement. Property disputes forced thick legal questions to court. A reading of Smith’s larger theory of jurisprudence (expanded in his Lectures on Jurisprudence) dovetails with this development in interesting fashion, exposing the interpretive overlaps/oppositions occurring between sympathy in principle and justice in practise.420 Smith’s philosophy registers a Montesquieuian awareness that develops in accordance with the view that reason must be counterbalanced by passion—but that accommodates the law itself as sympathetic co-labourer in guarding the virtuous manners


of a nation. By relation, Nicholas Phillipson offers an apt summation of Smith’s theory: ‘our sense of justice’, he argues, ‘is derived from our sympathetic response to the resentment a person feels when the impartial spectator assures us that their person or their property has been unjustly violated … that sense of justice is shaped by the system of property that operates in a particular form of society, by the social system that is built upon it and, eventually, by the way in which it is governed. [This view] was an approach to the subject that stressed the essentially historical, or as we might say, sociological roots of our understanding of justice.’

It is within this legal environmental then that sentimental discourse and sympathetic exchange reveal perhaps the earliest rhetorical and philosophical restructurings of socio-political networks in the Louisiana territory. Dialogues of sympathy are seen layering invisible cords of national affinity onto—and into—a pre-existing matrix of local connections, communities and consanguineous bonds. And in no place was this more true, perhaps, than in the Mississippi River region, where national expansion charted a way through commerce and culture to post new limits for American legal development.

**LIVINGSTON V. JEFFERSON, 1810**

The suit of the decade, *Livingston v. Jefferson*, opened a complicated affair for New Orleans citizens. Years of local custom came under threat of federal revision, with the public interest being drawn into a now tense dialogue with national ideals. The case evolved from an action filed against Thomas Jefferson by Edward Livingston in the circuit court of Richmond on May 16, 1810. For our purposes it proves a useful if uneven terrain for mapping transatlantic strains of sympathetic discourse as geodetic lines across the field of Early American jurisprudence (Dumbauld 37). Governed by numerous pleadings over justification, judicial precedent, and jurisdiction (including a lengthy and now precedent-setting evaluation of ‘transitory’ vs. ‘local’ action), the case intensifies as well a set of provocative social disputes concerning reputation,

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sympathy and moral character.\textsuperscript{423} Within this context, sympathy designates the normative structures that facilitate legal practise—the four corners of the law—whilst promoting the plasticity of the same, facilitating evocative/emotive arbitration that bends language; translates and transposes legal precedent; and diachronically shifts narratives of prejudice and culpability.

From its origins, the controversy followed a course through an uncertain and at times perilous geography, modified along its route by interpersonal/inter-governmental dispute, and intercepted by coordinates reflecting a provocative synthesis of inherited tensions and animosities (feelings of ill-will already straining relationships between Marshall and Jefferson, Jefferson and Livingston, Wickham and Jefferson, and others).\textsuperscript{424} The lawsuit commenced succeeding an Executive action instigated by Jefferson at the request of territorial Governor William Claiborne in 1807. This action resulted in the forced removal of private citizen Edward Livingston from beachfront property that had accumulated as deposit along the banks of the Mississippi River: a piece of land called the Batture of the Faubourg St. Marie, or more generally, the \textit{batture}, or \textit{alluvion}. Livingston had commenced construction on the riverbank after acquiring an ‘ownership interest’ in the property in 1805 (Degnan 116). Local residents responded with outrage to his claims and called on Governor Claiborne to intervene, demanding that he put a stop to building procedures and restore the Batture to the public. Finding it impossible to quell the dispute, Claiborne petitioned Washington for help. Jefferson responded by asking Secretary of State James Madison to involve the U. S. Marshall, and Livingston was subsequently forced from the site. Following Livingston’s removal from the Batture (and notably after Jefferson stepped down from the Presidency) Livingston sued Jefferson for $100,000, arguing his right to the alluvial land by asserting title to adjacent property. This initiated a case against the government and against the public that would persist in variable form

\textsuperscript{423} Transitory’ vs ‘local’ action: Edward Dumbauld records that a differentiation between the two was secured in a famous decision by Lord Mansfield in the 1750s: a case involving \textit{title} must be tried in the area where the land is located—a ‘local’ action; a case involving \textit{damages} may be tried elsewhere— as ‘transitory’ (Dumbauld additionally notes that ‘a Minnesota case in 1891 took the contrary position’) (Dumbauld 186, fn 4). Incidentally, in his \textit{Rhetoric} Smith records that Lord Mansfield was both ‘perspicuous and orderly’ in both declamation and argument: a characteristic not at all unlike Jefferson, and not at all unlike himself \textit{(LRBL 200)}.

\textsuperscript{424} Wickham numbered among Aaron Burr’s advisors in \textit{U.S. v. Burr}, 1807. In \textit{Livingston v. Jefferson} Wickham declined Jefferson’s request to act as defence counsel and represented Livingston instead (though he believed from the start that Livingston would lose) (Dumbauld 186-87: Footnote 9).
for well over a decade. The 1810 suit as examined here, however, would fail on December 5, 1811, favouring Jefferson on jurisdictional grounds (Dumbauld 36, 37).†

Notwithstanding the anticlimax, Livingston saw an incendiary post-mortem in publications rendered by both parties—principally Jefferson’s ‘Proceedings of the [United States] government’, a lengthy explication of federal action, Presidential decision and law, as prepared for his counsel, and Livingston’s subsequent ‘Answer to Mr Jefferson’s Justification’, a similarly incensed exposition—each one attending to the case on its merits and devoted to substantive explanations of theory and fact (hereafter Proceedings & Answer). Overburdened with pleadings, both factual and fictitious, and heavy with legalese (of the French, Spanish, and now provocatively American variety), the case is generally classified as ‘languishing’ nightmare—swept into lengthy footnotes, mentioned briefly in chapters about the Louisiana Purchase, included in 1L Civ. Pro. casebooks as a synopsis of the ‘local action’ ruling, or produced as an aside to Marbury v. Madison (Dumbauld 54). Exceptions in the variorum include, among others, Edward Dumbauld’s detailed précis concerning the ‘Plasticity’ of the Case; Dumas Malone’s almost reluctant inclusion in his Sage of Monticello (where he concedes that Jefferson was ‘not at his best in this affair’ (or, in the words of Judge Joseph Story, ‘Who … can remember, without regret, his conduct in relation to the batture of New Orleans?’); a concise investigation by George Dargo concerning Jefferson, the Louisiana Purchase and early American law; and Ronan Degnan’s article entitled, no surprise, ‘Livingston v. Jefferson – A Freestanding Footnote’ (Malone 73; citing Story, Degnan 127).

† See Appendix IV: Timeline concerning the Batture.


Marbury v. Madison, 1803: establishing the precedent of judicial review; Chief Justice John Marshall presiding.

Scholars who investigate the case generally leave quite troubled, not only about the particular nuances of the affair, but also about the conduct of its principle actors, not least because those actors are, themselves, inordinately concerned with the same. With regard to Jefferson, critics express marked hesitation over how one might read the circumstances of his involvement without detracting any from the brilliant hues of his otherwise enlightened career. Unlike the Hemings scandal, which has by now been so widely contextualised as to render it an almost “consistently inconsistent”, *Livingston* has been routinely hung backstage, discarded as overtaxed and potentially distracting accessory, I suppose, to other more brilliant costuming.428 To conclude his own appraisal, Degnan articulates a standard review:

This piece does not dispute that Thomas Jefferson was a great national hero whose memory is properly revered to this day. Still, if all one knew about Jefferson was his conduct in the matter of the New Orleans batture and his treatment of Edward Livingston, a different conclusion would emerge, a portrait of a petty politician and a contriver extraordinaire who was not at all above manipulating the federal judiciary to serve his own selfish purposes. I end still admiring Jefferson, but less ardently than before… (127-28).

The summary hedges its bets against a simple “hero-done-fall” scenario by folding the affair into the silhouette of Jefferson immemorial. But as history can attest, and as Degnan’s larger analysis makes clear, the Batture case proves singularly more complicated. And where Livingston is concerned, the account is hardly more forgiving. His vindictive rhetoric paints another desperate scene in this legal affair ‘of power, interest and reputation’ (Dargo 84).


So it is into a conventionally reluctant and yet potentially incisive account that Smith’s notion of sympathy interjects its novel dialogue, functioning as an attractive gateway for legal and discursive exchange whilst providing fresh access, by way of its tripartite logic, into an otherwise oppressive suit. And so we shift slightly, turning to the outworkings of post-revolutionary sympathy in practice—as both a rhetorical device and moral imperative: offering a discourse invaluable for discovering new meaning in the case itself. Smith’s notion of sympathy here designates the parameters of a controversy that, at its heart, tests fundamental principles of constitutional and ethical behaviour.
Fig 6: Mississippi River & Alluvion (Livingston, Answer 2)
Justice ... is the main pillar that upholds the whole edifice [of society]. If it is removed, the great, the immense fabric of human society, that fabric which to raise and support seems in this world, if I may say so, to have been the peculiar and darling care of Nature, must in a moment crumble into atoms. In order to enforce the observation of justice, therefore, Nature has implanted in the human breast that consciousness of ill-desert, those terrors of merited punishment which attend upon its violation, as the great safe-guards of the association of mankind, to protect the weak, to curb the violent, and to chastise the guilty. (TMS II.i.3.4)

CEREBRAL CITIZENS

As argued in a *Harvard Law Review* article concerning sympathy in the legal realm, sympathy as a rhetorical (or ‘textual’) structure lends itself to a cerebral ‘structuring of encounters’ by securing a logical framework wherein institutional actors might, as rational observers, pursue apposite lines of arbitration and justice. To this end, sympathy supplies a number of relatively static positions, each one functioning as a counterpoise to the next. In *Livingston* these positions are first evident in the suit’s formal posture, defined by the letter of the law: Plaintiff Livingston (retaining John Wickham as counsel), Defendant Jefferson (retaining William Wirt, George Hay and eventually Littleton Waller Tazewell), Chief Justice John Marshall presiding, and the Richmond circuit court as choice of venue. But even within this simplified composition, we

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*The Harvard Law Review* Note from which the following analysis takes its cue, offers an excellent example of how Critical Legal Studies is drawing upon advances in literary criticism so as to analyse the finer points of courtroom process and litigation procedure. In particular, the Note locates its starting point in a thesis by Ann Wierda entitled “The Enabling Paradox of Sympathy: A Study of Sympathy in Joseph Conrad’s Nineteenth-Century Fiction” (Apr. 1990) (unpublished M.Phil, thesis, Trinity College, Oxford University, on file at the Harvard Law School Library) (*HLR* 1962). The Note borrows several literary ideas from this paper for use in legal inquiry, especially in relation to ‘sympathy as a legal structure’: where ‘sympathy ... becomes [for the Note] a textual interaction rather than one of direct interpersonal contact’ (*HLR* 1974, emphasis mine). It is my intention to now return the legal-literary inquiry of the Review’s ‘Critical Legal Study’ to a literary analysis of *Livingston v. Jefferson*, folding these terms back into a field of lived interactions—via Smith’s system more particularly—in order to questions sensible self-construction and the development of the law in fact: ‘Sympathy as a Legal Structure’, *Harvard Law Review*, 105.8 (Jun., 1992), 1961-80 (cited in text as *HLR*).

might direct our attention to the fundamental relationship between judge and party as offering what the *Review* records as a first-phase ‘dramatization of sympathy; [where] the courtroom intensifies differences between judge and party, but ultimately offers them an easy path toward reconciliation’ (*HLR* 1969). Visually actualised by structures of bar and bench, the separation between litigant and judge is sustained as well by regulatory limits that mark the parameters of argument and deposition. Although the law functions in such a way as to facilitate dispute resolution, the conciliatory nature of the courtroom encounter is constantly qualified by an enforced distancing among participants: by prohibitions forbidding any one person to cross particular court lines or to act in any capacity that exceeds his institutional role. Sympathy invites participants to ‘*enter into* the concerns of others,’ but always ‘stops short of [inviting] total identification and communion’ (paraphrasing Burke, 1963). That litigation relies upon sympathy’s ultimate failure, then (i.e. the philosophical impossibility of its ever facilitating perfect union between one man and another), is reflected in hierarchies of authority that remain intact even as arbitration calls petitioners to impress the court with stories that generate sympathy for the individual cause and with narratives that will draw participants into the reality of standing in another man’s shoes. Strict rules of deliberation and declamation are quick to fix limits and draw lines (even in sand, as it were) so as to render binding the authority of precedent, the governance of the court, and the law’s ‘refusal to bend for its victim’ (1979).

The primary site of the ‘law’s refusal’, the adjudication of the court, is diachronically situated in relation to an ideal (regularising) model of rationality and logic: the ‘*reasonable person.*’ The ‘*reasonable man*,’ as he is generally termed, appears only once in Smith’s moral theory, introduced in relation to the subject ‘Of Merit and Demerit’ with regard to the ‘proper objects of gratitude and resentment’. Smith therein contends that one’s deservedness of either reward or punishment—i.e. his deserving of either applause or censure—falls to the verdict of the ‘*reasonable man*’ (or, the ‘*indifferent by-stander*’) as the world’s most natural judge. Writes Smith:
He, therefore, appears to deserve reward, whom to some person or persons, is the natural object of a gratitude which every human heart is disposed to beat time to, and thereby applaud: and he, on the other hand, appears to deserve punishment, who in the same manner is to some person or persons the natural object of a resentment which the breast of every reasonable man is ready to adopt and sympathize with (TMS II.i.2.3).

Although not formalised until Vaughan v. Menlove in 1837, the legal paradigm of the “reasonable man/person” thus surfaces much earlier in legal development as a rhetorical conceit, essential for standardising the contours of judicial inquiry. The judge must, for instance, lest he overstep his principal role and function, ‘[invoke] the standard of the ‘reasonable person’ so as to avoid risky, ad hoc decision-making, or the temptation to subscribe his rulings to subjective sympathies rather than to more stringent norms: ‘adjudication’s rigidity insures that the distance between judge and party is always greater than sympathetic relations’ will ever permit when empathically conceived (HLR 1970, 1969). ‘Reason’ in law thus serves as logical syllogism and impartial objective—even as it is empowered to execute justice by way of the emotive energies that characterise (and thus by the quote/unquote “reasonable” motivations that constitute) more self-centred, empathic connection: ‘To prevent the confusion which would attend upon every man’s doing justice to himself’, writes Adam Smith, ‘…not only judges are appointed for determining the controversies of individuals, but rules are prescribed for regulating the decisions of those judges…’ (TMS VII.iv.36). The law thus defends its purpose by breeding amongst institutional actors an overarching (and overriding) sympathy for such normalising principles as reason, objectivity, and national unity, thereby encouraging legal narrative to lean ever so slightly inward so as to discover an ideal focus—justice itself—as recurrently translated, from case to case, via affective sympathies for the reasonable person: a connection between justice and sympathy is in this way rendered possible, in the words of H. B. Acton, because ‘sympathy is not as partial and impulsive as it might at first appear to be’.432

Smith’s idea of sympathy here interestingly supports one of Stanley Fish’s most controversial points relative to the idea that legal *practise* (rather than legal principles) gives rise to legal decisions. Smith’s consideration that ‘rules are prescribed’ prioritises the law as a prescriptive field that is created by regularising conventions of juridical procedure. The norms of judicial decision-making play out according to sensible habits of approval or disapproval: always in relation to an arbitrary spectator. The decisions that are rendered according to these practises then lend themselves to the creation of rules and moral strictures, which, in turn, critically fashion legal precedent. Subjectivity in Smith’s view is always already involved in these determinations, ‘I judge of your sight by my sight, of your ear by your ear, of your reason by my reason … I neither have nor can have any other way of judging about them’ (in other words, even the objective law is, in fact, a subjective *habit*, a fiction) (TMS 1.i.3.10). And because of this, the *practise* of the law must be seen to under-gird legal decision-making in the way Fish envisions: habits of approval and disapproval lending themselves towards legal decision-making—and that decision-making then laying the groundwork for legal and ethical principles. Insofar as it can be argued that such principles inform these habits from the start (so as to precede them), there remains always, at root, a fundamental choice for each judge to make over whether or not to adhere to normative prescription—he can either stand on the base rules prescribed, or create new precedent—and in Smith’s conceit, it is invariably the man within *his own* breast (the habits and inclinations of his own conscience) that will direct that choice.

Nevertheless, throughout *Livingston*, sympathy at once generates (at least imaginatively) an impartial vantage point from which to survey the law in fact (a position secured by ladders of institutional hierarchy), whilst at the same time providing an organisational norm towards which legal rhetoric is then predisposed: Jefferson and Livingston incline their language, in this one degree at least, towards a common perspective. Jefferson’s rhetoric, in particular, traces its way again and again, via repetition and creative analogy, along a logical path whereby narrative efforts are geared towards inviting judge and jury to become impartial observers in the most rational and *objective* sense—where the substance of his declamation is aimed at convincing
individual listeners that their always already impartially subjective judgments (Smith’s “I judge of your faculties by my own”) accurately reflect the more prescriptive fiction of the law’s reasonable person (TMS I.i.3.10).

To this end he organises his thoughts in a manner analogous to the strategy so characteristically employed by Smith, who excels, as J. C. Bryce argues, in the art of ‘pin-pointing … an author’s essential quality by putting his work alongside that of a practitioner in the same field or a kindred one … [such that] the values he invokes in his judgments are not narrowly technical, but comprehensively human and humane—common-sense…’ (Intro. LRBL 31). Jefferson draws out chords of natural sympathy between ‘kindred’ practitioners so as to structure theoretical encounters within a logical frame. Jefferson’s common sense language evokes comparative impressions so as to locate and subsequently defend a normative criterion of objective reasoning, summarised in such statements as: ‘I trust it will appear to every candid and unbiased mind, that they were not mistaken in believing [the authority of law as presented in this narrative]’ (Proceedings 113). By addressing a thoughtfully candid observer, he crafts his American spectator into Lincoln’s ‘candid citizen’ of later years, the ideal fellow-countryman and model juror, whose eyes are fixed not on the subjective self as governing standard, but on logical reason as the primary object and mainstay of law.433 Jefferson succeeds in this by drawing allies and opponents alike, as fellow-litigants into his narrative. As with Lincoln, who interpretatively translates his ‘fellow-countrymen’ into ‘friends’ so too does Jefferson woo spectators, through a language of commonality and connectedness, into believing themselves capable—like him—of impartial, rational decision-making: using legal, spatial, and here geographical rhetoric he conceives territorial ‘neighbors’ as emotively connected via governing principles that protect ‘equal enjoyment’ of the land, and he imagines the legal regulation of the ‘public peace and safety’ as an affective bond uniting the ‘national family’ (Proceedings 123, 88, 102, 129).434 His language crafts an intricate sentimental link between the legality of


434William H. Seward, Lincoln’s Secretary of State, and his competitor in the contest for the republican nomination, suggested use of the term ‘fellow-countrymen’ to close Lincoln’s “First Inaugural Address”: Lincoln changed the term to read ‘friends’. Barack
Executive action and decision, and the interests—indeed expectations—of the nation at large. Via such rhetorical conceits as these he begins to locate, and we thus begin to recognise, “legal sympathy” as an expressive device employed for the fundamental preservation of the operating law in fact; through Jefferson’s articulations we begin to re-conceptualise it as not only facilitating networks of communication exchange, but as guarding a unique standard of moral judgment, wherein even emotive language is directed towards conceiving the reasonable person (purposefully impressed upon the minds of supposed candid observers) as a more fixed manifestation of Smith’s impartial spectator.

So who then is the ‘reasonable man/person’ discerned in this case? And who is he when comprehended through Livingston’s unique ‘structuring of encounters’? Surely, case dialogue would direct us to consider, as previously noted, the reasonableness of Executive action above all else: was Jefferson’s decision to forcibly remove Livingston from the Batture appropriate as that decision which would have been enacted by any ‘reasonable man’ placed in his position and circumstances, operating within the context of his specific skills and abilities? Although it falls outwith the scope of this discussion to engage with the query itself, it remains valuable to consider how the very dialogue that structures the case in point, inherently preserves a distance between and among institutional actors (through a continual ‘intensification of differences’) and actively directs participants to conceive a shared sympathy for the fixed ‘corners’ of the law as upheld by the ‘reasonable man’ standard (HLR 1969). In formulating a defence for his actions, Jefferson argues that his role as President obliged him to defend the nation above all else—even appealing to the consensus among his Cabinet so as to qualify his adherence to the letter of the law and to prove that he at no point overstepped his Constitutional authority. Although there is agreement then as to the central question (“was Jefferson’s decision appropriate as that which…?”—the burden of proof falling to Livingston), there is rather a bit more uncertainty as to the role of the Executive itself: what are the circumstances surrounding the Executive

position? What are its limits? In order to appease (and effectively conceive) the ‘reasonable man’ standard, the court must first discern the figure of the ‘reasonable President.’ To this end, sympathy is rhetoricised by both parties as much for the sake of the role itself (which here qualifies the ‘reasonable man’ standard) as for the Constitutional law in question. The defensive ‘Plea in *Livingston v. Jefferson* on the Ground of Acting Officially’ reads as follows:

... the said Thomas ... in the year 1807 aforesaid, being then and long before and since President of the said United States, in order to perform his duty as president aforesaid, according to his judgment and conscience, did acting solely & exclusively in his character & office of President aforesaid, without any malice against the said Edward, direct the Marshal of the said territory, to remove, in the name & for the benefit of the United States, from the said lands messuage [sic] and Close aforesaid, any and every person, who Should have taken possession thereof or of any part thereof...

Within this and various other constructions, we see the language of the law struggling to discern its ‘reasonable man,’ his appropriate ‘character & office’, whilst ever guarding the principles whereby he is constructed—not those of “guilt” or “innocence”, in which case any subjective preference might prevail, but principles of duty, unmitigated justice and truth, understood to arise outside of the self in origin and to function as overarching tenets of the law in practice. It is only in spaces where the law remains silent, or has yet to be decided, that sympathy’s cerebral/rational structure begins to falter, and it is in the context of such ambiguity that sympathy’s empathic function becomes critically important for deciding the course of trial.

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435 Another question arising here asks, ‘What actions can legally be brought against the President himself?’: ‘Good God!’ writes John Adams, ‘Is a President of the U. S. to be Subject to a private Action of every Individual? This will soon introduce the Axiom that a President can do no wrong; or another equally curious that a President can do no right’ (John Adams, letter to Thomas Jefferson, May 1, 1812, *Letters*, vol. II, p. 301). Although sovereign immunity didn’t present itself as a legal question on this occasion, the issue still bubbles just under the surface of the case. One of the earliest rulings by the Supreme Court in this particular *is found in Spalding v. Vilas, 161 U.S. 483, 1896; see also Nixon v. Fitzgerald, 50 U.S.L.W. 4797, June 24, 1982.*

Bearing this in mind, we begin to then consider that the power that qualifies empathic discourse, in turn marks a viable threat to normative forms. Exposed in Jefferson’s rhetoric as a ‘dangerous tenderness’, he depicts the ‘wonderful, not to say imprudent’ prejudice contained at times almost insidiously within the very makeup of the law, threatening the outworkings of justice by preserving pockets of space that leave room for bias and imbalance (Proceedings 98). Preference is hidden in such a way as “legally” promotes the wellbeing of a select few without securing justice for the community on whole.

Following a nuanced discussion of French law in the Louisiana territory, Jefferson references a protective act passed by the ‘territorial legislature, on the 15th of Feb., 1808’ (97). This legislation, which defended traditional use of the Mississippi deposit, required that specific authorisations be secured before commencing constructions/ levees/ improvements that might in any way ‘alter the course of the [Mississippi] river’ or render ‘navigation (or anchorage) less convenient’ (97). Although Jefferson here defends the power and right of the territorial legislature to supply this regulation, he at the same time strips away excess legalese so as to reveal the law’s inherent predilection for ‘riparian proprietors, who are thus made the sole judges in cases where their own personal interests may be in direct opposition to the interests, and even the safety of the city, to which it gives no participation or control over the power which may devote it to destruction’ (98). Bringing his thoughts to bear on the Batture, Jefferson interrogates the process by which Livingston (as one such proprietor) pursued (or failed to pursue) the apposite course of pre-approval before commencing his own ‘aggressive’ system of improvements: ‘it was safer to be his own judge’, Jefferson writes, ‘to seize boldly, and put the public on the defensive…. seiz[ing] the ground he claim[ed], and refer[ing] his title to no competent tribunal’ (112, 102). Jefferson further locates Livingston’s actions (& requisite failure to act) in his innate comprehension of the law’s internal bias—his understanding that the law here retained not only a degree of inherent partiality, but that it guarded a space as well for the continued enactment of riparian influence. Gesturing towards the exchange of sympathetic ‘feeling’ within the community, Jefferson suggests that Livingston refused proper legal channels because he understood the prejudice that might be executed by alternate ‘interpretive
communities’ against him—the legal power held by fellow-proprietors who might, upon hearing his case, choose to then enter into and successfully envisage the ‘fate’ of neighbours other than himself: ‘Has he even carried his case before a jury of 12 brother riparians?’ asks Jefferson, ‘or does he fear to trust it even to those having similar interests with himself? Lest the virtuous feeling of compunction for the fate of their fellow citizens should scout his proposition with honest indignation?’ (101-02).

These pockets in law are grammatically expressed in Jefferson’s own rhetorical preference for poise and pause, an attention to spaciousness in the Proceedings (or speciousness, if we read Livingston) that modifies his use of language and actually invites the very ‘danger’ he is wont to expose: Jefferson’s ‘exposition of the Batture question’, writes William Wirt, ‘is by far the best piece of grecian architecture that I have ever seen, either from ancient or modern times. I did not think it possible that such a subject could be so deeply and at the same time so airily treated—because I never before had seen such an union of lightness and solidity, of beauty and power, in any investigation.’ Jefferson’s text enunciates an altogether fluid harmony of legal thought and sentiment, in a manner that sounds John Quincy’s ‘harmonizing’ lyre and that echoes, in true Orphic spirit, ‘an eloquence that draws forth the indwelling moral and social nature of its auditors, compelling them to submit to the law’—seeking, in a manner perhaps not improper for this case, to divert the very course of a river (DI 39-40).

Whilst following a detailed train of logic, however, Jefferson invites readers to enter his narrative as coadjutors to his petition, carefully expressing relevant issues in such a way as to permit the very form of declamation to speak for itself in its call for judgment: ‘like the architectural or the geometrical grid Jefferson would later impose on the Western territories, the pauses (whether heard by an auditor or by “the well-organised ear” of the silent reader) are a mode of framing, of dividing his discourse into units that [can] be engaged and absorbed’ (16). In other words, saying: here is

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448 Ibid. In 1816, John Quincy Adams called upon the Greek myth of Orpheus when proposing the Lyre as ‘a new seal for the “federal association of American States”’. Writes Fliegelman: ‘The harmony Adams was talking about [in reconceiving the Orphic lyre as an emblem for the American States] is … the harmonizing power of an eloquence that draws forth the indwelling moral and social nature of its auditors, compelling them to submit to law in charmed silence’ (DI 39-40).
the geography of the law and the relevant precedent to date; and here is how we are going to
decide together, as sensible citizens, if we need to change any of that.

But how is Jefferson’s approach any different from, we might ask—or how can it properly
defend justice when, his discursive technique might amount to nothing more than what Charles
Brockden Brown describes in another context as a ‘weaving together of “subtleties and
sophisms calculated to mislead the consciousness of justice implanted in every human
being”—a rhetoric marked not by any genuine effort to guard philosophic ideals, but rather by
shallow tricks-of-the-trade and conscious manipulations (Fliegelman, Intro. xiv)439 Livingston,
for one, certainly urges the public to concede Jefferson’s articulacy as cheap, if sophisticated,
sophistry: ‘Why this obscurity of expression?’ he asks, ‘Why this confusion of ideas? Why all
this from the pen of Jefferson? I have before hinted at the cause; it is no longer drawn in defense
of truth; it is prostituted to the purposes of expression!’ (Answer 113). Even if this is the case,
however, a practical distance still remains among institutional actors in the scene—upholding a
cerebral structuring that secures the letter of the law and the burden of proof that must be
carried … in spite of emotive manoeuvres by either party that might plead the contrary. Not to
be outdone by his rival’s rhetorical preference for cavity and elision, then, Livingston tests the
bounds in his own way, soliciting affection for his cause by striking ‘mystic chords’ with a
more incendiary, some might argue a more deliberate turn of phrase, pouring forth ‘one of the
most able and masterly performances that ever came from the pen of a lawyer or scholar in any
country’, in a rival exposition that editor John E. Hall called a ‘model of judicious eloquence
and argument’ (Malone, citing John E. Hall, Editor, American Law Journal, v, 281).440

Exposed through both narratives, therefore, is a contest over form, where sympathy’s cerebral
function and empathic fluidity are invariably drawn together in a dialogue that marks fixed
terms of reason, and that reflects each man’s strategic effort to bolster his argument by poking

holes in the other man’s fabric of thought. And it is this persistent effort to expose and depose that draws the many strands of their litigation narrative ever and again to a common centre point, a central bond mediated by the reasonable person who, by way of his normative role, ever modifies the radical propensities of process and procedure. Even the rhetorical flourish thus traces its way towards logic and protects the strict limits of the law. Emotive manoeuvres are rendered valid only insofar as they can reveal—and subsequently defend—the reasoned and reasonable cause: i.e. blind justice and the venerated doctrine of stare decisis. Of Jefferson’s exposition Attorney General Caesar Rodney could attest: ‘It is true, [that] it does not possess the strict method required in a legal argument, but the full & satisfactory explanation which it contains of the whole transaction is peculiarly gratifying. It traces by regular steps all the occurrences in the order in which they took place, & happily combining law & argument with the facts in their rational course, leads us in an easy & familiar manner to a correct result.’

Jefferson’s grammatical constructions (explored in greater detail in §II) thus prove the legal and literary enactment of sympathy’s internal logic of accountability, played out in the binding of one man to another within a rhetorical nexus that secures, through a fluid intercourse of sentiments, the normative function of the law’s guiding principles. That the text was written with a professional audience in mind, only grants his emotive gestures increased relevance for discerning the role of sympathy in the legal realm. This was not, as Jefferson specifies, a publication cast in ‘popular dress’, but the Commentaries ‘were written [rather] for those to whom the matters they contain were familiar’, that is to say, as Douglas Wilson puts it, ‘the private eye of counsel’.

His work consequently retains an exacting breadth of form and content: ‘It is a masterly pamphlet’, writes Adams, ‘[t]here is witt and fancy and delicate touches of Satyr enough in it to make it entertaining while the profusion of learning, the close reasoning and accurate Criticism must have required a Patience of Investigation...’.

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reasoning is the *sine qua non* of his discourse, held in balance by imaginary considerations exchanged among ‘candid’ spectators. As Adam Smith writes: ‘The man within the breast, the abstract and ideal spectator of our sentiments and conduct, requires often to be awakened and put in mind of his duty, by the presence of the real spectator: and it is always from that spectator, from whom we can expect the least sympathy and indulgence, that we are likely to learn the most complete lesson of self-command’ (*TMS* III.3.38). In the context of law, then, this logic of accountability (or, this call to duty, as it were) is awakened by the court itself, by the depositions, pleadings and narratives contained therein, and by the imagined presence of the ‘reasonable man’ *outside* the breast, who is enlivened by institutional actors (Livingston and Jefferson alike) who are themselves rigidly governed by the law’s ‘refusal to bend’ (*HLR* 1979).

Though endorsing a controlled and rational course, it remains clear that the possibility of empathic connection here also retains the power to generate a complicated doubling—even at times a tripling—of sympathy’s ‘fictive imaginary’ (considered more fully in a later example regarding Jefferson’s use of Shakespeare), with the consequence that shifting degrees of prejudice and bias are ever informing the procedural and evidential calculations that must be taken into account by arguing participants. Writes James Wilson, delegate to the Constitutional Convention: ‘Truth may indeed, by reasoning, be rendered evident to the understanding, but it cannot reach the heart [Smith’s ‘inmate of the breast’—the very seat of judgment], unless by means of the imagination’ (*TMS* III.i.3.160). And so it is to feelings as well that each man here makes his appeal, bending language, if not the law, so as to secure judgment by way of a Smithian reflexivity that is fluid even as it gestures towards regulatory structures—each deponent playing upon the rhetorical *I* (or eye) that defines the impartial observer—hoping to sway juridical interpretation and challenge even precedent itself if necessary: to paraphrase Smith, ‘Every faculty in one man is *still ultimately* the measure by which he judges of the like faculty in another. I judge of your sight by my sight, of your ear by my ear, of your reason by my reason … I neither have, nor can have, any other way of judging about them’ (*TMS* I.i.3.16).

Even institutional choices, in this regard, thus betray a reliance on the power of subjective bias.

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Livingston’s determination to bring suit in Richmond, couched in fictitious claims concerning the land in dispute (the Louisiana Batture was never located in Virginia), is arguably a direct play on the ill-will already straining the relationship between Marshall and Jefferson (antagonism that dates back to *Marbury v. Madison* and *U.S. v. Burr*). Ultimately, each man submits his case to an audience whose support might add clout to individual claims, winning sympathy (either public or collegial) so as to place a certain degree of pressure on a judge who might genuinely waver between invoking past precedent and establishing new legal ground.

With this in mind, we recognise throughout *Livingston*, an illuminating and provocative convergence of rival sympathies, opening up questions about the prejudice in play: is Marshall more sympathetic with Livingston’s plight because of his animosity towards Jefferson? Or do his sympathies more fully reside with fellow judges and with his responsibility to support the judiciary as a whole? Where does the fiction of a united judicial front begin to splinter so as to reveal political sympathies that give way to the fractures of party and faction? And how much persuasion is then required to exploit Marshall’s personal/party bias such that he is willing to overturn a precedent of law? Jefferson’s correspondence articulates real concern over these and related issues, and communicates a sincere fear regarding the ‘plasticity of the law’ in Marshall’s hands (Jefferson was in fact so convinced he would lose the case that he endeavoured to stack the Supreme Court in his favour so as to pave the way towards what he hoped would be a successful appeal). Referencing the court’s impending response to the plea on jurisdiction, Jefferson remarks with some irony that it is not the letter of the law but rather, ‘The feelings of the judge, [that] are too deeply engraven…’. He complains again that: ‘What the issue of the case ought to be, no unbiassed [sic] man can doubt. [But] what it will be, no one

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445And as a “social” aside, it may be of interest to note as well that John Marshall’s wife, Mary Ambler Marshall, was the daughter of Jacquelin and Rebecca Ambler. Rebecca (née Burwell) was the object of Jefferson’s aforementioned courtship (in theory if not in practice) during his college career; Jacquelin Ambler, who eventually won her hand, was a rival suitor. To William Fleming, Jefferson writes: ‘With regard to the scheme [involving the courtship of Rebecca Burwell] which I proposed to you some time since, I am sorry to tell you it is totally frustrated by Miss R. B’s marriage with Jacquelin Ambler which the people here tell me they daily expect: I say, the people here tell me so, for (can you believe it?)…. Well the lord bless her I say!’ – and indeed he did, with a daughter to marry his political rival (Thomas Jefferson, letter to William Fleming, March 20, 1764, 11 o’clock at night, *Papers*, vol. 1 (1904), p. 16).

can tell. The Judge’s inveteracy is profound....'\(^{447}\) And in a letter to William Charles Jarvis, dated September 28, 1820, Jefferson grants his specific distrust of Marshall, a more wide-ranging application: ‘Our judges are as honest as other men and not more so. They have with others the same passions for party, for power, and the privilege of their corps. Their maxim is *boni judicis est ampliare jurisdictionem* [good justice is broad justice]....’\(^{448}\) And where the reality of party passion is concerned, Livingston expresses similar hesitation. Arguing against the right of the U. S. to claim title in the Batture, he questions the court’s weak dependence on false sympathies and bias: ‘Why then is this subject introduced? Because in a bad cause, it is easier to address the passions and prejudices of men, than to consult their reason, or convince their understanding; – because it was supposed that the name of Mr Jefferson would give new currency to the forgotten calumnies of New Orleans; and because some men can never forgive those whom they have injured’ (*Answer* 15). This boils down, of course, to the oppressive effect (and affect) of influence as a hinge by which the ‘cause’ (good or bad) is wont to swing.

Nevertheless, as the decision in *Livingston* declares, “legal sympathy” remains capable of effectively moderating myriad subjective standards (the risky ebb and flow of fellow-feeling) by holding up, in contradistinction to the fickle judge, a standard of reason that suggests an immovable logic, its cerebral structure supporting Paine’s fundamental assertion that: ‘however prejudice may warp our wills, or interest darken our understanding, the simple voice of nature and of reason will say, it is right’ (Paine, *Common Sense* 68). Marshall concedes in kind: ‘If however, this technical distinction be firmly established, [concerning the ‘local action’ rule and jurisdiction of the case], if all other judges respect it, I cannot venture to disregard it … [I]t would require a hardihood which I do not possess, to pass this limit…. From the cases which support this distinction, no exception, I believe, is to be found among those that have been decided in court, on solemn argument ... I must submit to it. The law upon the demurrer is in favor of the defendant’ (cited in Dumbauld 50-51).


Sympathy thus designates a number of positions that reinforce conterminous structures of observation and spectatorship, within which exist overlapping networks of discursive interchange created and sustained by the force of sympathy acting as a conduit for expression. Sympathy’s empathic/emotional logic ensures fluidity, counterbalancing an oftentimes-fraught rhetorical invective by inviting fellow-feeling to play a mediating role in deciding the course of trial. Sympathy becomes a force, as it were, that configures human encounters: by it one ‘enters into the concerns of others’ and through it one is invited, via the intimacy of entrance and the closeness of interpersonal contact, to understand, interpret and then rightly judge of another man’s condition (citing Edmund Burke, *HLR* 1963, emphasis mine). Sympathy thus supplies a perpetual sense of uncertainty as to effect, the continual transmission (and re-transmission) of its own incompleteness, and an endless dependence upon fluctuating waves of expressive energy transfer. At times, sympathy’s rhetoric actually belies its own cerebral logic, forcefully shifting narratives of prejudice by functioning according to Jonathan Lamb’s ‘dialectic of [both] immediacy and artifice’.449 Such becomes readily apparent through the rhetorical/grammatical figures (metaphorical tropes and ornamental schemes) present both in Jefferson’s *Proceedings* and Livingston’s *Answer*, conveyed via shared articulations of fellow-feeling, fictive analogy, and exaggerated imagery.

Livingston opens his *Answer* with the following:

When a public functionary abuses his power by any act which bears on the community, his conduct excites attention, provokes popular resentment, and seldom fails to receive the punishment it merits —Should an individual be chosen for the victim, *little sympathy*

is created for his sufferings, if the interest of all is supposed to be promoted by the ruin of one…. (Answer 1, emphasis mine)\(^{450}\)

Governing his assertion is an overt scepticism as to whether sympathy has ever been granted proper (read successful) access to his cause. In his *Answer*, Livingston inverts any prejudicial sympathy by recasting himself as Smith’s sufferer on the rack, entering a republican dialogue of rights and autonomy by way of sympathy, empathically conceived, so as to foreground a persuasive (if dubious) appeal to his public audience: ‘how would you feel if you were me?’ his rhetoric inquires; ‘what emotions would you experience?; do you recognize that my situation could in fact be your own?’. Livingston thus emotes ‘the ruined sufferer’ whilst seeking monetary vindication (*TMS* I.i.1.3; *Answer* 2). In his *Address to the People of the United States*, an earlier publication on the case, Livingston similarly pleads for the sympathies of his nation, making a heartfelt appeal via the Constitution itself: ‘Private injuries’, he contends, ‘when offered in violation of Constitutional principles, become proper objects of public attention …The selection of a remote scene for the exercise of arbitrary power, and of an *unfriended or unpopular individual* for its object, render the case more dangerous …’ (cited in Dargo, 89, emphasis mine). Thus Livingston defends his appeal by drawing the idea of friendship (or the lack thereof) into his experience of private injury; he argues that his own arbitrary selection as ‘an unfriended or unpopular individual’ in the case proved a shrewd means of overstepping Executive authority, of violating the Constitution, and of suggesting popularity as sufficient evidence of moral rectitude. Livingston submits these concerns to his audience with the intention of pushing the public to see the inconsistencies in Jefferson’s persona:

That he should do all this [justify his intrusion], and still talk of conscious rectitude, must amaze all those who look only to the reputation he has enjoyed, and who do not consider the inconsistency of human nature, and the deplorable effects of an inordinate passion for popularity. (*Answer* 177)

\(^{450}\)Livingston continued: ‘The gloss of zeal for the public is therefore always spread over acts of oppression, and the people are sometimes made to consider that as a brilliant exertion of energy in their favour, which, when viewed in its true light, would be found a fatal blow to their rights’ (*Answer* 1).
Livingston goes on in another provocation, this time published in his *Answer*, to accuse
Jefferson of incriminating his own Cabinet, by drawing advisors into the suit so as to pad his
case with a team of ‘fellow-sufferers’— colleagues who might bear the weight of personal
responsibility by highlighting the shared nature of Executive decision (thereby increasing public
sentiment in his favour): ‘the president of the United States’, argues Livingston, ‘wished the
innocent ministers of his illegal acts to be made fellow-sufferers with him, for executing his
orders’ (*Answer* 4, footnote).\footnote{That this accusation actively accommodated Hamilton’s views
(an arrow sharply barbed) regarding powers to be delegated to the executive branch, called into
play a national dialogue over the way in which powers were to be divided within the federal
government. In an effort to shift the weight of blame more forcefully onto Jefferson, Livingston
sought to exploit Hamilton’s suggestion in *Federalist* 70 that ‘the “multiplication of the
executive tends to conceal faults and destroy responsibility”’ (citing Hamilton, *Federalist* 70:
Fliegelman, *Intro.* xvii). Undeterred, however, Jefferson’s argument in response then carefully
justifies the appropriateness of that ‘conduct in which all concurred’ as the outworking of a
constitutionally governed Executive, acting in its principle role as guardian of the public
interest.\footnote{And in a tone reminiscent of Paine (‘there is something exceedingly ridiculous…’)
he remarks upon the absurdities of considering that the President could in any matter be found
so easily swayed, or so infallible in his every action:

… were the Executive, in the vast mass of concerns of first magnitude, which he must
direct, to place his whole fortune, on the hazard of every opinion; were the members of
the legislature to make good from their private substance every law productive of public
or private injury; in short were every man engaged in rendering service to the public,
bound in his body and goods to indemnification for all his errors, we must commit our

\footnote{Jefferson’s Cabinet: [James] Madison (Jefferson’s secretary of state, now president; Caesar A. Rodney (Jefferson’s attorney
general at the time, and continuing to hold that post under Madison); Albert Gallatin (Treasury); and Robert Smith (secretary of the
navy under Jefferson and secretary of state under Madison’ (Dumbauld, p. 46).}
\footnote{Thomas Jefferson to Caesar A. Rodney, September 25, 1810, *RS*, vol. 3, pp. 117-19 (p. 118).}
public affairs to the paupers of the nation, to the sweepings of hospitals and poor-houses, who, having nothing to lose, would have nothing to risk. (*Proceedings* 129-30)\(^{453}\)

In response as well to Livingston’s manipulation of the public sympathy, Jefferson crafts the rhetoric of his *Proceedings* so as to goad analogous sentiments, arguing the equally valid point that not only had Livingston betrayed the public’s vested right in the Batture, but that the judiciary had itself—when considering the case—overlooked the public interest. Referencing government powers that were guaranteed by the Act of Congress in 1804, and enumerated in the Ordinance of 1787, Jefferson reminds his audience (citing the latter) that: ‘The inhabitants of the said territory … [should] always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury’ (*Proceedings* 118). Arguing the court’s failure to uphold this assurance, namely by situating itself under the authority of *chancery* rather than *common law jurisdiction*, he avows an emotional betrayal as equally responsible for undermining the sovereign course of justice: ‘And have they [the judges] adverted to the *national feelings*, he asks, ‘when they have ventured, on their own authority, to abolish the trial by jury pledged by the Ordinance to the inhabitants forever?’ (122-23, emphasis mine). Coupled with this, he locates judicial wrongdoing in a manifest failure to observe ‘the example of their *neighbors*, of the Mississippi territory’ (returning us again to cerebral structures of sympathy—those rigid networks of spectatorship meant to check and conjoin fellow judges). In other words, Jefferson pinpoints a failure in the court to observe the local body of judges who remained appropriately ‘sensible’ to the powers in their grasp, and who, on behalf of the entire community and in adherence to the governing law of the territory, understood that ‘the assumption of [the chancery (i.e. the power to overlook the right to ‘trial by jury’) did not fall] within their competence’ (123, emphasis mine). As if to underscore his point, whilst at the same time avoiding any direct allegations, Jefferson more subtly aligns his private sympathies with the public interest: ‘I shall not ascribe either favoritism, or intentional wrong to them [the judges]: but they ought not to be surprised, if those do whose interests and safety are so much jeopardised by this shuffle of the judges into the place of the jury’ (123). Taking this in another direction, Livingston concedes at least the

one point about a confused ‘shuffling’ of roles, but only by inverting, or at the very least realigning the public sympathy so as to work against Jefferson in this particular. Criticising Jefferson’s use of (on other occasions) the royal ‘we’—a ‘style’ repeatedly ‘assumed’ so as to establish some credibility in the affair, Livingston catalogues the ‘unconstitutional’ and ‘despotic’ manner by which Jefferson confused, through pure right of assumption, the role of President with various other political capacities, shuffling himself, as it were, into the aforementioned jeopardy:

As LEGISLATOR, he was to make a new law to fit the circumstances of the case; as JUDGE, he was to apply to it those facts which as a JUROR he was to ascertain, and to pronounce that sentence which, as EXECUTIVE OFFICER he was himself to carry into effect; as PRESIDENT, he was to reclaim the lands of the United States; as COMMANDER IN CHIEF of the armies, a sufficient military force was to be prepared to overawe opposition;…as MAYOR….; as HIGH CONSTABLE….; as STREET COMMISSIONER…[etc.]. (Answer 112 & 136)

It is through a shared grammar of sympathy then that the legal contest plays out: in a provocative sequence of sentimental inversions. And the fact that both men employ such rhetoric in order to strategically strengthen cords of affection—as well as to dissolve them—highlights the importance of empathy as a conduit by which to simultaneously curry favour and diachronically shift narratives of prejudice and culpability.

As previously noted, however, this language of fellow-feeling as readily gives way to more hot-headed syntax, expressed in a corresponding rhetoric of fiery invectives, character deconstruction, and smear tactics. In his ‘Contents’ alone, Livingston responds to Jefferson’s Proceedings with a lengthy assortment of irritated allegations, accusing the former President of disingenuity and the ‘coquetting’ of authority so as ‘bring [others] over to his opinion’ (Answer vii). Paraphrasing Livingston: ‘Mr Jefferson’s Declamation [is] calculated to excite prejudices against me…’; and again, ‘My complaints laughed to scorn, and styled Jeremiades by Mr J. My
circular letter to the members of the Congress, selected as one of the objects of his pleasantry’ (ix, x). In this way, Livingston slants his appeal perhaps even more forcefully than Jefferson, towards popular sentiment and the public eye, submitting his objections to a national jury by angling his allegations so as to intersect with an ongoing pamphlet war considering the details of the case and the character of its participants (locally flagged in papers such as the Orleans Gazette and Louisiana Courier—the former inclined in his favour). In such format he gives vent as well concerning Jefferson’s style, tone, and more percaline-bound castigations, and in a piqued summation states: ‘Mr Jefferson’s skirmishing attacks [are] repelled’ (v). His Answer accuses Jefferson of ‘having had a natural sympathy for those who were guilty’ of ‘an opposition to the execution of the laws’ and characterises the onslaught against him as motivated by an aversion to ‘playing at pushpin with judges and lawyers’ (Answer 23, Proceedings 132 & Answer 15).

Despite the arch criticism, Livingston’s arguably “connective” language fails to temper its pitch and is thus implicated in its own failure: ‘Grief and resentment for his private misfortunes and injuries’ simply run ‘too high’, in Smith’s terms, and thus express only ‘weakness and fury’ (TMS II.intro.). His invective slides beyond the sympathetic principles of self-command that guide affective meter and moderate display, giving way instead to a rhetoric characterised by expressive excess rather than control and balance. His grammar falls prey to that coarse naturalness of presentation once so richly contested in theatrical debate, thoroughly substantiating George Campbell’s observation in his Philosophy of Rhetoric, 1776, that: ‘when the passion displays itself preposterously, so as rather to obstruct than to promote its aim; in these cases a natural representation, instead of fellow-feeling, creates amusement, and universally awakens contempt.’

So what then of Jefferson’s rhetoric? What of his manner? And what of his distaste, as it were, for ‘playing at pushpin’? Concerning the Proceedings, Douglas Wilson writes the following:

‘This uncompromising work … in spite of its forbidding legalisms and long quotations in foreign languages contains some surprisingly choice examples of Jefferson’s dry wit and keen sense of irony. A routine rehearsal of facts is given heightened interest, for example, as Jefferson employs an allusion to one of Shakespeare’s most hilarious scenes to point up an inconsistency [and here he quotes Jefferson]: “But how those 7 arpents [arpent meaning ‘area of land’], like Falstaff’s men in buckram, became 12 in the sale of the widow Pradel to Renard, 13 in Gravier’s inventory and nearly 17, as is said in the extent of this fauxbourg, the plaintiff is called on to show”. 455 This rhetorical intonation proves a theatrical point in the truest sense of the word, not in form only, but in substance—ushering readers into his opprobrium by way of careful fictive analogy: his is the Prince’s speech, as it were, exposing Falstaff’s falsity.456 And what proves most interesting here is Jefferson’s choice of reference, directed as it is not only towards specific categories of identity, dramatically conceived (his poke at a character who must imagine his way into life), but chosen more intentionally so as to evoke the sympathy of what he considers to be a judicious audience. He reminds his listeners of sympathies already secured and of judgements universally rendered, subsequently effecting a discursive transfer of shared sentiment onto the situation on trial at present, and implementing, in other words, a narrowing of declamation that calls into effect an a priori notion of sameness, or an already shared verdict that derives from an analogous arena of due process and judgment (the theatre): ‘For rights to go along with autonomy, as one historian has argued, requires “new forms of empathetic identification with individuals who are now imagined to be in some fundamental way like you.”’ 457

To this end, Jefferson supplements his allusions with exaggerated descriptions so as to ‘arouse emotions’ à la Kames, ‘by the contemplation of images’, attending to the insufficiency of words that Susan Manning finds seminal to Smith’s rhetorical constructions and to Henry Mackenzie’s ‘imaginative’ writing: ‘Because the visual is associated in the human mind with reality’, as Jay

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455Fauxbourg: addition to the city of New Orleans; Wilson, in Jeffersonian Legacies, p. 71.
Fliegelman contends, ‘and the will and passions operate largely in response to images, [as]
Kames argues, whatever serves to enhance the visual or material character of a spoken text,
whatever transforms a text into a drama that one “beholds”, both strengthens the illusion of the
immediate engagement with truth and more effectively influences future behaviour.’\textsuperscript{458} In one
such evocation, Jefferson writes provocatively concerning the ground that is both literally and
figuratively at stake: ‘The Mississippi’, he contends, is ‘certainly a river of a character marked
by strong features. It will be very practicable, by exaggerating these, to draw a line of separation
between this and the mass of rivers of our country, to consider it as \textit{sui generis}, not subject to
the laws which govern other rivers, but needing a system of law for itself’ (\textit{Proceedings} 79). He
goes on from there to stress the importance of individual character, here geographically
conceived, as an ideal that functions in harmony with what is best for the nation on whole—
ever moderating his argument by inclining his narrative towards the rhetoric of common ground
that is so aptly secured by Smith’s impartial spectator and more rigidly conceived by the law’s
reasonable person: (quoting Jefferson) ‘it is certainly for the good of the whole nation to
assimilate as much as possible all its parts, to strengthen their analogies, obliterate the traits of
difference, and to deal law and justice to all by the same rule and same measure’ (79-80). His
effort to empathise with both the ‘individual’ and the ‘nation at large,’ thus proves an
illustrative \textit{synecdoche}—a picture-fragment representing a larger political canvas of democratic
rights upon which the contest between individual autonomy and the public interest is taking
shape; a representation evoking sympathy in such fashion as to conceive affective linkages and
unique, if varying, degrees of political accord.\textsuperscript{459}

This notion of character, however, whereby the Mississippi possesses its own distinctiveness, is
worth further evaluation in light of sympathy’s inherent propensity to accommodate sympathy’s
dialectic weighing immediacy and artifice.\textsuperscript{460} Jefferson’s enlarged portrait of the River offers a
magnification of evidence that invites judgment to fall swift on the facts at hand, his


\textsuperscript{460}Lamb, \textit{Evolution of Sympathy}, Publicity Abstract.
characterisation acting as a rhetorical expedient for raising justice to view and calling the impartial reader/judge to rule at the place between fact and façade (DI 16). ‘[All] prejudice aside’, as Jeremy Bentham reflects, ‘the game of pushpin is of equal value with the arts and sciences of music and poetry.’

The child’s ‘game’ becomes rhetorical stratagem. The lawyer learns to emphasise only those ideas—verbal or visual—that have the greatest subjective worth, by properly discerning and then arousing the value judgments that belong to the audience involved. The practise thus accounts for the degree to which subjective values are understood to reflect (and indeed must reflect, by legal standards) objective truths. Whether childish or mature, subjectivity is ever in play. The rhetorical scheme requires accurate recognition of ‘the traits of character [that] they [the notions in question] are thought to express’… and whether those traits are, or will be ‘judged’ by an interpretive community to be ‘morally right or wrong’.

To this end the legal inquiry foregrounds a moral narrative by fracturing itself again and again into subjective categories of taste.

The principle of enlargement, as here conceived, takes shape as well in numerous artificial proofs constructed by both litigants, each man drawing “logical” caricature-sketches of his opposition so as to sway relevant sympathies by (mis)-aligning representations of individual identity with the standards of the law in fact. Livingston responds to Jefferson’s Proceedings, for instance, with a lengthy assortment of irritated allegations, breaking his character into a catalogue of immoral aspects and accusing the former President of disingenuity, contrivance, obscurity, a lack of seriousness, and mutilation (Answer, Intro). He calls Jefferson to task for authorising an unconstitutional execution of law (by overstepping his Constitutional role as Chief Executive), and even more vehemently for relying upon underhanded deceptions and a manipulative rhetoric of ‘art’ over ‘argument’ (172). On the subject of Jefferson’s underhanded conduct, Livingston writes as follows:

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I will not say, that his profession of conscious rectitude is insincere, because none but the Supreme Being can judge the purity of the mind; but this I can say, if he really think his own conduct to have been legal and meritorious, his sense of right and wrong is entirely confounded, and his principles are even more dangerous than his practice…. [o]ur belief in the sincerity of his professions must suffer some diminution, when we recollect that the unmolested possessors of this property, pretended to be that of the public, were men of influence and wealth, while the one selected for the display of executive energy was poor, and supposed to be unpopular…. (173)

Sympathy’s empathic fluidity thus exposes a rich contest over motives and functions at the heart of a socio-political dispute concerning ethical behaviour. Definitions of right and wrong are forced to shift as citizens of the nation are called to test the bounds for themselves, by conceiving their own behaviour in like circumstances—weighing their imaginings against Jefferson’s actions in fact. Despite Livingston’s tendency to slide away from balanced rhetorical figures, there is yet a force behind his words. He couches his complaint very carefully in terms of morality, adapting Matthew’s exhortation concerning the brother “who has done wrong” to his own grievance against Jefferson—as if to say: “he did not listen to me when I tried to rectify the situation in person (referencing several failed attempts to speak with Jefferson in Washington) … so it is now only right to turn this case over to the public tribunal”:

Though some may condemn me only on hearing the name of my opponent, there are many, very many in the nation, who have independence enough to judge for themselves, and the ability to decide with correctness, -- to such I submit the merits of a controversy which has been rendered interesting as well from the constitution as the legal questions it involves, and on which Mr. Jefferson has, by his management of it, staked his legal, his political, and almost his moral reputation… (177). \(^{463}\)

\(^{463}\)Matthew’s Gospel: on reconciling with ‘the brother who sins against you’ (Matthew 18. 15-27, The Bible, NKJV).
Implicit in Jefferson’s *Proceedings*, therefore, and in the act of their public circulation, is a fascinating character defence. He borrows back his now fragmented image in order to tie together apparent inconsistencies and to safeguard his moral reputation, carefully ensuring that his character will stand *sans serif* in the annals of history—free from Livingston’s indictment and from a finish that might blur the ethical bounds of his political persona. Jefferson thus retrieves his character, invests it with a new moral integrity, and invents subtle, sympathetic linkages between himself and a host of (hopefully) like-minded thinkers. From his home at Monticello, for example, he spends significant time manipulating the arrangement of key players in the affair so as to secure a network of friends that will sympathise with him on appeal, the desire to restore ‘his usual and natural tranquillity’ acting as a driving force behind his efforts: ‘Faction, intrigue, and cabal’, as Smith rightly notes, so ‘disturb the quiet of the unfortunate statesman’ (*TMS III*.3.33). It is in this manner that Justice John Tyler comes to occupy his Supreme Court seat.

Further to this, Jefferson turns to his friends as those most likely to reconstruct his character for him, to those with the power to secure his sensible reputation for posterity: namely, his fellow men of letters. Jefferson mailed copies of his *Proceedings* to a handful of those who would be interested in the legal particulars—and who could be convinced by the strength of his case. And the response did not disappoint. A letter from Elbridge Gerry reads:

> I thank you for the pamphlet this day received, respecting “the intrusion of Edward Livingston”; & for your polite & friendly manner of transmitting it. The publick is much indebted to you on this, & on numerous other occasions, for performances; to which few are equal, & still fewer have a disposition.\(^{464}\)

And from John Adams he received the following acknowledgement, conveying its vote of confidence through reverse character detraction:

Yesterday, I received from the Post Office, under an envelope inscribed with your hand, but without any letter, a very learned and ingenious Pamphlet, prepared by you for the Use of your Counsel, in the case of Edward Livingston against you. … Neddy is a naughty lad as well as a saucy one. I have not forgotten his lying Villany in his fictitious fabricated Case of a Jonathan Robbins who never existed. His Suit against you, I hope has convinced you of his Character.465

Further to these is a letter from Nathaniel G. M. Senter—a complete stranger to the late President:

In the Decline of Life—amid political Conflicts—amid Faction and Abuse—I am happy in seeing One Character of this Age, against which the Obloquy and contumelious Reproach of Slander has been vented, but not injured. Your political Life has been pregnant with those great and conflicting Sentiments which sometime agitates a Nation on its Rise to Glory and sometimes buries a great Nation in Ruin & Distraction….466

Whether or not Jefferson’s circulatory efforts reflect a conscious attempt to restore “rhetorical wholeness”, one thing is clear: Jefferson was exceptionally concerned with his reputation and contrived (if we might borrow the more systematic aspect of Livingston’s term), through both language and print, to offset the public scandal of slander.467 And among a few, at least, Jefferson need not have feared harsh judgment. In a letter to Jefferson dated May 19th, 1810, William Lambert included the following for his perusal: a NEWS-PAPER clipping concerning the late president’s affairs, and verse from his own ‘Ode for the Fourth of July, 1810’. Even before the Batture suit reached high water, the press could say the following of Jefferson’s character:

467For a discussion of Jefferson’s reputation more broadly, see Francis D. Cogliano, Thomas Jefferson: Reputation and Legacy (Edinburgh: Edinburgh University Press, 2006).
Thomas Jefferson.—Assailed in his retirement by malicious, unprincipled foes to our republican systems of government. Their persecuting malevolence is and ought to [be] requited by increasing contempt.—He served his country with applause.

William Lambert’s ‘Ode’ supplements this view and magnifies its sentiment, conceiving Jefferson’s stalwart reputation as one magnanimous tribute to Columbia’s victory over Britain’s ‘mighty … chain’ (from stanza one). Stanzas six and seven read as follows:

6. Let Jefferson, who lately fill’d
The president’s exalted seat,
For wisdom fam’d, in science skill’d,
Our praise and approbation meet.

Hail Columbia, &c.

7. Detractions rude and pois’nous tongue
Against his worth has spread its sound;—
The peals of envy may be rung,
But all these arts we shall confound.

Hail Columbia, &c.\(^{468}\)

One of the most empathetic replies to Jefferson’s Proceedings, however, arrives post-script from Justice John Tyler, who expresses genuine regret at being unable to render a formal Opinion in the Case. Writing in a vein similar to Gerry, Adams and Senter, Tyler applauds Jefferson’s vigorous defence, commending him for having ‘bounded over the Mount of the Muses’ and for turning an otherwise corrupt case ‘to gold’ in the true legal-literary sense: ‘Your Streams’, he writes, ‘are brought from so many fountains like the great Mississippi.

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\(^{468}\)This ‘Ode’ was presented as a toast at the meeting of the Tammany Society of Washington, May 12, 1810: William Lambert, letter to Thomas Jefferson, City of Washington, May 19, 1810, RS, vol. 2 (2005), pp. 398-401 (pp. 399-400).
irresistible that Livingston and his bold, but corrupt Enterprize, are swept together into the gulf without hope of redemption….”

Interestingly enough, as Tyler draws near Jefferson’s public/political cause he at the same time introduces a more private exchange, highlighting an agony of physical ailments in such manner as to both elicit the sympathies of an old friend and to offer a dose of more personal reassurance. Now in the winter of their lives the two men place faith in experience of a different sort, drawn together in present dispute (and its requisite call to judgment) by an altogether separate story, communicating in more delicate manner the trials and triumphs of a longer course of life. Their longstanding affinity gives way to a shared catalogue of weary complaints, where their dialogue administers a soothing balm, as it were, to dress the injuries of age. These same two men could trace their history back even as far as Patrick Henry’s impassioned Stamp Act resolutions, delivered in the Virginia House of Burgesses in 1765. Awed by the Orator’s finesse, both Jefferson and Tyler could recall the assembly’s cries of ‘treason, treason’ that ‘echoed’, as William Wirt records, ‘from every part of the house': ‘It was one of those trying moments’, for Henry and many more besides, ‘which [proved] decisive of character.’

Now almost fifty years down the road, Justice Tyler aligns himself not only with the “rightness” of Jefferson’s Batture cause, but also expresses sincere regret at his inability to support an old friend. And so to rectify the omission (and strengthen the cord of their former connection) he adopts a different tone, indicating that by way of his untimely bodily sufferings he is now better able to comprehend a separate discomfort to which Jefferson had been similarly subjected: ‘—I thought much of you,’ Tyler writes,

and sympathized with you, having heard you were afflicted in the same way; but two of the Mr Coles call’d to see me and gave me a pleasing account of your health and vigor, and that you bounded over the Mount of the Muses with out any difficulty; which God

469John Tyler, letter to Thomas Jefferson, Green-way May 17th 1812, RS, vol. 5, pp. 57-59 (pp. 58, 57).
grant you may long continue to do until your last Step may be short and easy into that undiscover’d Country….

Sympathy’s legal function (and Tyler’s opinion for Jefferson’s “re-construction”) thus returns to its dialogical roots, in a way, and is once again rendered complicit with sentimental exchange as the substantive language of brotherly friendship and the covenant bond of suffering and redemption. Interesting as well by this, is Tyler’s fairly blunt remark concerning Livingston’s ‘corrupt Enterprize.’ For inherent in Tyler’s grammar of lost redemption is the faint—if somewhat anticipated—call to pardon. And an analysis of the Livingston case through the lens of ‘sympathy as a legal structure’ would be incomplete without comprehending the vital importance of the synknome, or, the forgiveness of injuries, as a rhetorical device that drives the narrative towards completion. In the end, after all, it is redemption itself that raises the affair out of its muddy riverbed, to place it once again within reach of what Jack Greene refers to as that longstanding ‘Social Virtue of Forgetting injuries’ (despite scholarship that continues to remember Livingston’s Answer as excessively harsh and Jefferson’s Proceedings as vindictive). In the end, as in the play, it is Livingston’s true affection for “Prince Harry” that alone proves moderately redemptive:

The pamphlet [writes Livingston of his Answer] was written under circumstances, in which the author thought, and still thinks, he had suffered grievous wrongs; wrongs which he thought, and still thinks, justified the warmth of language in which some part of his arguments are couched: but which, his respect for the public and private character of his opponent, always obliged him to regret, that he had been forced to use. He is happy, however, to say, that at a subsequent period, the friendly intercourse, with which, prior to that breach, he had been honored, was renewed; that the offended party forgot the injury and that the other performed the more difficult task (if the French maxim is true), of forgiving the man upon whom he inflicted it. The court, I hope, will excuse this personal

digression; but I could not avoid using this occasion of making known, that I have been spared the lasting regret of reflecting, that Jefferson had descended to the grave, with a feeling of ill-will towards me.\textsuperscript{473}

To this end, perhaps, the history that attends their contest might benefit from a touch of redemptive sympathy on our part as well.

**Sympathy’s “Geodetic” Conservatism**

Moving finally into a consideration of sympathy’s transformative impact, I want to gesture briefly towards the importance of what I would like to call sympathy’s “geodetic” conservatism—as a quality by which to comprehend the possibilities that inhere in a more wide-ranging consideration of sympathy’s legal function. As defined by the Oxford English Dictionary, the term ‘Geodetic’ pertains to Geodesy, or ‘land surveying; the measuring of land.’\textsuperscript{474} Geodesy refers even more particularly to a ‘branch of applied mathematics which determines the figures and areas of large portions of the earth's surface (often in relation to gravitational pull), and the figure of the earth as a whole.’\textsuperscript{475} For our purpose, ‘geodetic’ thus denotes an immense, almost three-dimensional capacity for measurement. In such fashion it calls attention to sympathy’s inherent ability to connect individuals (across both time and space), and to at the same time ensure the preservation of vital distances from one position to the next.

Functioning as an arbiter of both conduct and truth, sympathy maps a landscape of law that is constantly being geographically and climatically conceived; it qualifies the notion of American ‘geojurisprudence’ by shaping justice out of that ‘mass of’ transnational law that constitutes

\textsuperscript{473}Livingston’s argument in *New Orleans v. United States*, 10 Pet. 662, 691 (1836).
\textsuperscript{474}*OED*, ‘Geodesy’ / ‘Geodetic’.
\textsuperscript{475}*OED*, ‘Geodesy’.
legal precedent. Furthermore, it illustrates the varying degrees to which American law stands
sui generis (à la Jefferson), or independent of other legal systems—showing the manner by
which the legal terrain is being continually transformed and transfigured by the nation’s unique
phrenology. Sympathy surveys even as it transports, transports even as it transforms—and
consequently marks a territory where, as Pascal once wrote in another context, ‘Three degrees
of latitude [can] reverse all jurisprudence, [and] a meridian [can] decide the truth…. [What] a
strange justice that is bounded by a river!’

In its Note on Sympathy’s place in Critical Legal Studies, the Harvard Law Review
distinguishes between sympathy’s social conservatism, which promotes a harmony among those
who can at any time ‘retreat’ from disparate views and ‘refuse to evaluate’ the potential threat
of conflicting opinions, and sympathy’s legal conservatism, which in light of its persuasive
‘tendency toward modification’ takes shape in such fashion as to require evaluation, disable
retreat, and force the ‘complex process of judicial decision-making’ to attain juridical
conclusion (HLR 1968). At the overlap between these two, is a site from which sympathy
encourages fluid, harmonizing sentiments, and from which it at the same time plots a rational
framework for the legal system by securing checks and balances—weights and measurements—
in such manner as to safeguard the law’s stability. Thus sympathy functions, not only as a
conduit for discursive exchange and as a site of cerebral structuring, but as a tool for measuring,
through an extensive network of ‘interpretive communities’, both distance and difference in the
shifts occasioned by transatlantic law (1968). This geodetic purpose incorporates the dual
notion of sympathy as outlined above, and is manifested both in its staid quality—its fixed
terms and propensity to secure limits—as well as in its proclivity to shift borders and render
porous the very limits that define that frame, adding multiplicity and moderate curvature to the
topographical face of jurisprudence. In order to form ‘just comparisons’ among legal variants,
we too are called as critical observers: to ‘[transport ourselves]’, to quote Smith, ‘at least in

476Geojurisprudenz: coined by Langhans-Ratezburg, 1928, meaning ‘the cartographic presentation of law’, in Bernhard Grossfield,
477Quoted in Grossfield, pp. 1510-19.
fancy, to a different station, from whence [we] can survey [these simultaneously conflicting and complementary objectives] at nearly equal distances, and thereby form some judgment of their real proportions’ (*TMS* III.3.2). With this in mind it becomes possible to begin as is done here, taking measurements on the bias, mapping sympathy along paths that traverse the political landscape of law, or the ‘national fabric’ as it were, with both the fixedness of trajectory and the freedom of angle—whilst at the same time recognising areas of regional flux that pull at the territory from just below the surface, threatening to so stretch the bias of cloth as to distort the shape of the piece being sewn.\textsuperscript{479}

With this in mind, we move a step beyond mere measurement. Sympathy allows us to *chart* distance and permits us to consider the topography of the law as adopting new shape throughout the Early American period. Reflected even through changes in the physical landscape, we perceive legal changes as here determining a much wider country: Jefferson’s *Proceedings*, for example, as with his *Introduction* to Destutt, or his 1786 map before that, marks yet another of his contributions to the national geography. Out of such works as these, exigent questions begin to coalesce: With which interpretive communities are legal actors most empathetically engaged? How are sympathies transformed throughout a case and, as a result, how and when do shifts in legal precedent begin to occur? How are legal decisions either encouraged or thwarted in relation to these dialogues? And how does sympathy function in relation to more nuanced gradations in the development of civil and criminal codes?\textsuperscript{480} In the formulation that I have here begun to describe, I recognise, in keeping with the *Review*, an immense capacity within Smith’s notion of sympathy (more particularly) to elucidate class actions and multi-layered judicial encounters, going a step beyond its argument to suggest that sympathy informs the analysis of an even wider participation (within and outwith the legal arena) than so far envisioned (*HLR* 1969). Whilst the relationship between judge and party proves an essential starting point for evaluating sympathy’s legal function, I would argue that the figure falls short of demonstrating


\textsuperscript{480}Interestingly, Edward Livingston drafted many of the earliest criminal and civil codes in Louisiana; his ‘Livingston Code’, though never formally adopted, proved instrumental in both the United States and Europe, and was available in both English and French.
the full force of sympathy’s moderating impact, eliding as it does the very slippages and overlapping structures that characterise its rhetorical value—the shifts it occasions from one moment to the next as it dissolve roles (and thereby laws in fact) even in the act of sustaining them. Sympathy, as the Review so rightly notes, is above all else a ‘dynamic of interpretation’, actively directing, and rationally informing, men of sensibility and their critics … down to the present (1968). As a rhetorical device that is always already theatrically informed, sympathy here shapes the contours of inquiry such that the resulting expression—in force, form and narrative substance—is uniquely transformative. Marshall’s decision in Livingston, concerning the value of precedent for determining the applicability of ‘transitory’ vs. ‘local’ action, illustrates just one nexus among many (both public and private) wherein sympathy governs an ongoing contest between institutional actors. By way of the imagined reasonable person, these individuals are engaged in the project of both expansively declaiming, and inevitably delimiting, legal narratives of prejudice and culpability—thereby offering an ongoing corrective to national decision-making.

If we continue beyond the notion of sympathy as mere conduit of expression, we are impressed with how sympathy in its practical outworking, as the outgrowth of transatlantic moral sense philosophy, might itself be key to unlocking provocatively multilayered and variegated legal decisions. Sympathy as an Enlightened and sensible language proves uniquely incisive in relation to the American socio-political moment when the very substance that covers normative ground is in question—everything from the governing law, to principles of representation and adjudication, to the very limits of the Constitution. Where a regional ‘spirit of law’, to invoke Montesquieu, is implicated in the national transplanting of legal traditions. Consider for instance this question over “which law ultimately governs the Batture? French, Spanish, English common law—American law?”—where uncertainty calls into a play a cross-Atlantic dialogue, instigating a complex interaction among legal traditions and political sympathies that challenges developing notions of individual autonomy as juxtaposed with the public right: the ‘democratic’

481 See note 421, p. 213.
versus the ‘social vision’ of the nation. This dispute is in itself politically charged, fuelled by a situation that is ever considering—often conflating—public opinion and international accountability, whilst at the same time exposing the very process of law as undergoing a sea-change. Viewed in this capacity, a comprehension of sympathy thus presents to us scenes not unlike those later fictionalised by Cooper, depictions revealing an overarching and ongoing contest between the institution of law as purveyor of justice, and the more fluid reliance on natural sentiment as source and ‘standard of right’. Each judgment is herein continually interrupted by the open-endedness that “resolves” our opening quote; each one characterised by a space employable for the judicial enactment of both rigidity and bias, wherein the potential for suasion proves an invariable threat to legal verdict. Sympathy in Livingston v. Jefferson, and in perhaps a great number of similar disputes, functions much like the Batture itself: ‘a kind of contested terrain’—a via media and discursive site—located somewhere ‘between earth and sea, belonging to neither and alternately claimed by both.’

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482 Brook Thomas, ‘The Pioneers, or the Sources of American Legal History: A Critical Tale’, American Quarterly, 36 (Spring, 1984), 86-111 (p. 94).
CONCLUSION

In a book entitled *Revolutionary Characters: What Made the Founders Different*, Gordon S. Wood introduces a portrait study of the American character by asking what it is about the early founding figures that continues to grab the national attention: ‘The British don’t have to check in periodically with, say, either of the two William Pitts’, he writes, ‘the way we seem to have to check in with Jefferson or Washington.’ He ties the transatlantic distinction to a transatlantic break, linking the cultural history of American self-construction to the Revolutionary severance with Great Britain: ‘Americans became a nation in 1776, and thus, in order to know who we are we need to know who our founders are.’ According to Wood, it is this originary event that supplies a declarative frame for American self-conception, supporting a performative space for envisioning ‘new message, meaning and character’ in executory self-governance. Keeping this moment in view, then, but stretching the plot somewhat, this thesis investigates the sympathetic nature of rhetorical self-construction, relative to the discursive process (and narrative progress)—of becoming.

This thesis *enters into* a story about socio-political change: it considers how sympathy is always already bound up in theatrical contours of *expression* that proffer an invitation to revolutionary revision—where such paralinguistic conceits as costume, composition and comportment, as in Rhys Isaac’s view, are essential to the transformative *practise* of executing characters that are worth believing. The foregoing case studies suggest the emergence of a sympathetic and transnational vocabulary for establishing social linkages and affective networks of public and private, national and international exchange; and furthermore, they contend with the degree to which sympathy is commercially manufactured via grammars of artifice and illusion. The sensible American character, as Nicole Eustace suggests, is bound up in the history of his

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486 ibid.
487 Fliegelman, *Declaring Independence*; Heymann, ‘Everything is Transformative.’
488 Isaac, *Transforming Virginia*. 
passions, and becomes a citizen in relation to fleeting points of sympathetic connection. This transition of the sensible subject into a sensible citizen—by way of transformative character development—is here considered through Adam Smith’s philosophic system acting a literary device for measuring and charting the trans-relational dialogues underwriting national self-construction. I argue that Smith’s transformative rhetoric affords a sensible return to the plight and purchase of character, as oil in the hinge of America’s liberal, republican economy.

489 Eustace, Passion is the Gale.
EPISODE  
SYPATHETIC RE-UNION

‘SYMPATHY IS GENERALLY CONSIDERED IN TERMS OF SPACE RATHER THAN TIME: TWO INDIVIDUALS OCCUPYING A PORTION OF THE SAME GROUND ARE ABLE TO BEAM THEIR EMOTIONS AT EACH OTHER, AND SHARE THEM. THIS SPACE … IS MOST EASILY FIGURED AS A THEATRE OR A SCAFFOLD, WITH A PERFORMER IN GENERAL VIEW AND SPECTATORS WHO RESPOND AS SINGLE PERSONS TO THE CONDUCT OF THE PERSON SUFFERING, OR SEEMING TO SUFFER, IN FRONT OF THEM. BUT WHAT IF THE THEATRE OR THE SQUARE WERE TO BE EXCHANGED FOR AN EVENT IN THE PAST, WITH THE LAPSE OF TIME MADE TO SUBSTITUTE FOR THE ARENA, AND A HISTORICAL NARRATIVE TO TAKE THE PLACE OF A TABLEAU?’


A GESTURE…

As Sarah Knott reflects in her study of *Sensibility and the American Revolution*, social sensibility is marked by a ‘sense of betrayal’ that qualifies it as at once ‘a constituent element of revolution and the falling short of the American goal of a sympathetic society to secure life, liberty and happiness’s pursuit.’ In Adam Smith, this ‘sense of betrayal’ is borne out in what he refers to as sympathy’s ‘illusive’ manufacture—its host of compositional fractures that frustrate its dialogic potential (*TMS* I.i.1.13; II.i.2.5). This epilogue offers a brief extension of these notions, highlighting a speech delivered by Union officer, Brigadier General Joshua Lawrence Chamberlain, in the aftermath of the American Civil War, 1861-1865. His

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492 Joshua Lawrence Chamberlain (1828-1914): After a college career at Bowdoin College, Chamberlain trained for the ministry at Bangor Theological Seminary. ‘The master’s oration delivered by him at Bowdoin in 1855 on “Law and Liberty” so impressed the officers of the college that they invited him to become an instructor in logic and natural theology. The following year he was elected professor of rhetoric and oratory. In 1861 he was elected to the chair of modern languages.’ In his military career he bears distinction as the Colonel of the Twentieth Maine Volunteers and the ‘Hero of Little Round Top’. He was chosen to receive the Confederate surrender and in a gesture of profound respect called for a final salute of arms to honour the Confederate foe. In Joshua
*Reminiscences* from the War Between the States and from the Confederate surrender at Appomattox Court House, April 9-12, 1865, highlight the power of sympathy as again implicated, by one final degree for this study, in the mythology of national self-construction, where the sensible citizen is matured as much by presence as by absence—by the narrative gaps underpinning his historical conceit. Following through on Andrew Burstein’s reading of America’s romantic self-imaging (identified as a point of departure for this thesis), Smith’s sympathetic system here again registers the transformative logic underpinning sensible self-conception. I read his system through one final execution into Chamberlain’s post-war narrative, this time employing it as a vanishing discourse, passing it as an interpretive trace through insensible figures and illusive conceits. In this way I broaden the contours of the foregoing analysis by discerning the relevance of Smith’s system as a literary device that both anticipates and resolves the vexed ‘sense of betrayal’—the insensate failure—that occludes the dream of social collaboration. His system offers a lens through which to perceive the sensible citizen as participating in a ‘deep time’ history, to invoke Wai Chee Dimock, psychologically bound by cords of illusive sympathy with the dead; and it highlights, in brief, yet another post-war moment where the sympathetic imagination might be read relationally into American self-construction.493

The following is an extract is taken from Chamberlain’s *Reminiscences* concerning the Grand Review of the Army of the Potomac, dated May 23, 1865:

I read to you from manuscripts dimmed with long, lone companionship with me, the story of my last vision of the Army of the Potomac,—the vision of its march out of momentous action into glorious dream. This is not an essay in composition,—military, historic, or artistic. I had only sought to hold fast the image which passed before my eyes. But this will no less be truth,—one aspect of the truth, which in its manifold, magnificent

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wholeness it would take the notes and memories of thousands to portray. It will be manifest that I cannot undertake to reduce all the features of the picture to a common scale, nor to exhibit merit equitably. Some points, no doubt, are set in high light, under the emotion which atmospheres them; but it is not meant to throw others into shadow. 494

Reducing any theatricality in the scene, Chamberlain dissolves latent artifice by deconstructing the spatial difference, as explored in Smith, between the ‘substance’ and the ‘shadow’, conflating them instead into one view—one image—as it ‘passed’ in imagination ‘before [his] eyes’. 495 Concerned, as David Bostwick once was, with his own inability to delineate the true character of the scene, he concedes his recollection as affording only one aspect of a much larger, ‘common’ picture. 496 He admits his own inability to ‘exhibit merit equitably’—to illustrate the myriad circumstances of the case in such a way as to ensure sound judgment for the figures of that ‘momentous action’. 497 Nevertheless (and despite his statement to the contrary) he composes and subsequently projects a sympathetic conceit of the ‘vision’ that ‘passed’ before him. 498 ‘For me, while this division was passing’, he writes,

no other thing could lure my eyes away, whether looking on, or through. These were my men; and those who followed were familiar and dear. They belonged to me, and I to them by bonds birth cannot create nor death sever. More were passing here than the personages on the stand could see. But to me so seeing, what a review,—how great, how far; how near! It was as the morning of the resurrection. 499

He characterises the scene in terms that concede the ‘through-[ness]’—the transparency, the perspicuity—of its empathetic quality, an impression made stronger by fraternal bonds than by

495 ibid.
496 ibid.
497 ibid.
498 ibid.
any consanguineous ties. ‘These were my men’, he writes, ‘familiar and dear.’ He conceives a translativ
e passage whereby the dead are quickened again to life as by right of sympathetic possession, and by principle of mutual familiarity and belonging: ‘They belonged to me, and I to them by bonds birth cannot create nor death sever.’ Chamberlain’s perception thus traces cords of sympathetic connection from person to person through the visible army before him, bridging invisible gaps in their ranks with cords of sympathy for an elusive past. In this way, the officer conjoins their literal passage, before a crowd of interested spectators, with the unseen passage as well of their fallen comrades-at-arms. Within his imagining, it is the very nearness of their presence that he then projects outward so as to create a wider field of view—‘how great, how far; how near!’, he proclaims, then becomes the ‘magnificent whole….‘

In a discussion concerning the propriety of sympathy, Adam Smith describes a notion of ‘illusive’ sympathy for the dead that augments these declarative conceits, inviting a new mythology to fill the national frame:

We sympathise even with the dead, and overlooking what is of real importance in their situation, that awful futurity which awaits them, we are chiefly affected by those circumstances which strike our senses, but can have no influence upon their happiness…. Surely, we imagine, we can never feel too much for those who have suffered so dreadful a calamity. The tribute of our fellow-feeling seems doubly due to them now, when they are in danger of being forgot by every body; and by the vain honours which we pay to their memory, we endeavour, for our own misery, artificially to keep alive our melancholy remembrance of their misfortune. (TMS I.i.1.13)

By enlivening the dead in such manner Chamberlain gives tribute to ‘so dreadful a calamity’, inviting not only an artificial sympathy for remembrance, but a complete sympathy for the Union itself as a now reasonable (re)-construction—in this way offering, by way of sympathetic
review, as it were, a means of resolving the profound ‘sense of betrayal’ within the national frame.\(^5\) The character of the nation, as Chamberlain conceives it, is now psychologically defined by a shared history of loss: ‘The man whose sympathy keeps time to my grief’, as Smith avers, ‘cannot but admit the reasonableness of my sorrow’ (\textit{TMS} I.i.3.1). The limitations of the sympathetic imagination here prove, however, as in Smith, to be ‘gap[s]’ in the narrative chain. These are the ‘chasms’ that Smith’s system theoretically resists, but where sympathy in practise is unable to sustain its ‘dialectic of immediacy and artifice’ (Intro, \textit{LRBL} 13).\(^5\) While Chamberlain can comprehend the wider vision, the truth of it remains ever beyond the perception of those ‘personages on the stand’.\(^5\) The possibility of impartial observation is consequently narrowed by the inability of general observers to \textit{enter into}, or \textit{bring home} to themselves (both literally and figuratively), the true character of the event (i.e. the true \textit{characters} of the event), and to thereby overcome the grief which colours their view. The full scope of impartial vision, or right surveillance, is intensely narrowed by the broken reality of the present. Chamberlain, however, is able to reconcile these losses in his own mind, imagining to life a different view because able to overcome the loss in principle, bound as he is by tighter cords of fraternity. He is truly \textit{conscious}, in a much deeper way, of the plight of the dead. And this consciousness, as he suggests, is ever lost in transmission.

The ideal of sympathetic exchange, then, even by way of the powerful imagination, falls short of realisation. Sympathy remains categorically elusive, despite its best efforts at facilitating perfect communion; it continually returns, in a way, to its origins of sorrow, pushing the limits of its own expression, but returning to an original position of loss. Chamberlain’s observation here requires an entrance again into the past, into the lives of those now missing on the field of action. His ability to look ‘on, and through’ highlights what is at once both the potential, and the illusion, of sympathy’s empathic quality—illustrating the manner by which cords of

\(^5\) ibid., p. 170.
sympathetic affection are discursively stretched, beyond the visible present, to create a wider field of vision.  

Included in Chamberlain’s *Reminiscences* is ‘An Oration on the One Hundredth Anniversary of the Birth of Abraham Lincoln’, where Chamberlain inclines his conceit in a slightly different direction, emphasising instead the profound relationship between Lincoln and the great mass of his fellow-soldiers: describing ‘the love he bore to them, and they to him; that communion of sorrows, that brotherhood of suffering that made them one with him in soul.’ Chamberlain thus enlivens a different imagining, pointing not towards the company itself, but towards a symbolic figure who arguably achieved right sympathy with the past. He encourages listening spectators to enter into Lincoln’s sorrow, Lincoln’s suffering, Lincoln’s love—even if it cannot sympathise with the anguish of a faceless throng. Lincoln’s defence of ‘freedom and right’ is characterised in itself as a declarative act, ascribed as a productive feature of the unified nation: ‘admonished of the passion he [Lincoln] was again arousing’, as Chamberlain describes it, ‘and with an oath of new consecration to the undying cause of freedom and right, he gave us back to ourselves, better soldiers, and better men.’ Chamberlain’s rhetoric here passes its conceit through sentimental variations, translating commutative passions into idealised figures, before transposing them again into rational form—returning them in one illustrative conceit: ‘back to ourselves’, as it were, in a more constructive view. It is in such manner that Chamberlain effectively con-join[s] to the change which has been produced upon them [the dead], our own consciousness of that change (TMS I.i.1.13). He passes the ‘review’ through Lincoln (as an idealised observer), inviting fellow-citizens to support the Union by sympathising with Lincoln, who is himself sympathising with the dead. In this way, putting ourselves in their situation, and from our lodging, if I may be allowed to say so, our own living souls in their inanimate bodies, thence conceiving what would be our

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506 ibid.
507 ibid., p. 260.
508 ibid.
509 ibid.
emotions…. It is from this very illusion of the imagination, that the foresight of our own [political/moral/economic] dissolution [becomes] so terrible to us…. (I.i.1.13)

ROMANTIC RE-CONSTRUCTION

The sensible citizen is here vested with new layers of moral accountability, where a new national history, forged by the tragic disbanding of the Union, is vested as much in its characterisations of the dead, as in the costs of visible repair. In Chamberlain’s view, the sensible citizen is imaginatively matured into a figure who is called to account not only for the nation’s internal fractures, but who is held psychologically (because sympathetically) responsible for its repair. He is bound to political reconstruction both by a sentimental interest in the tragedy behind him and by the imaginative possibilities (and practical necessities) of a post-war re-union. The communion conceived by Chamberlain thus extends beyond a fraternity of fellow-soldiers to embrace the nation as a whole. The ‘personages’, as he calls them, or observers who hold the highest and best vantage point, are no longer those who possess the best literal, or even imaginative view, but are those who—via cords of painful civil severance—comprehend and possess the greater company at large; who can overcome the ‘terrible dissolution’ of death itself so as to envision the true character of the present as co-labourer with the past. And it is only by this sort of romantic observation that national reconstruction, as Lincoln later describes it, is rendered possible in Chamberlain’s conceit (I.i.1.13).\(^5\) As with Aaron Hill, it might be said of them, ‘behold the stage one living group of figures, each placed properly, and touching and alarming the audience with his particular share in those contrasted yet adapted attitudes which would charm and animate the world by their force of passion and propriety.’\(^6\)

Although the power of the sympathetic imagination ever betrays itself, exposing fractures and gaps in its narrative chain, it yet resolves its epistemological failure by positing new bonds of

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\(^5\)ibid., p. 170.

\(^6\)Hill, *Prompter*, Friday, May 23, 1735, p. 68.
empathetic connection. In an excellent analysis of the Romantic Era (considered briefly in Chapter IV), Robert Mitchell invokes Esther Schor’s claims concerning Smith’s ‘gold standard’ sympathy (and Smith’s emphasis on the economic importance of both ‘a national dead and a local dead’) in order to comment on ‘the recursive nature of imaginative, social dynamics.’

Translating these ideas into his reading of literature and financial systems, Mitchell interprets the ‘normative morality’ within romantic culture as predicated upon a continued debt of remorse—an ‘emotional currency’, as it were, that circulates ‘sympathy, pity, compassion, approbation’ in such a way as to bear up the living, and to provide the necessary ‘censure by which the living [continue to] regulate their actions.’ This reconstructive capacity functions via grief as investment capital—an emotional surplus that is dialogically/linguistically outworked in practical social and moral exchange.

Throughout his speech, Chamberlain’s logic testifies to the value of such “possessive” remembrance; his tribute bears the presence, the substance even of sympathy’s theatrical trace, its dialogue of conviction proceeding by singular right of passage as the dead are raised to view and encompassed within a new national affinity. Smith’s notion of sympathy, alternately interpreted throughout this thesis as a dialogue of conviction, a grammar of economy, a translative rhetoric of passage, and a rhetorical conceit of logic and law, here constitutes a sort of ‘deep time’ illusion, legible, as in Dimock’s view, only through a ‘knot[ting] together [of] kinships’ across a much longer chain of remembrance. The sympathetic trace bears witness, through the passage of time, to the ‘dramatic Unity’ of an account that is being crafted at fleeting points of sympathetic contact, where coherent identities are being logically constructed, at every moment, relative to both individual conduct and the affinities of group connection. The practical failures that hinder the creation of America’s ‘sympathetic society’ are here nominally rectified in view of a composite whole, where the


513 ibid.

514 ibid.

national \textit{interpretive community} is secured via sympathies that transcend the limitations of time and space, so as to connect fellow-citizens across one narrative succession.\textsuperscript{516}
‘THE ACTOR’S EPIHOME’

He who would act must think, for thought will find
The art to form the body by the mind.
Weigh, for example, these few maxims right,
And steer your course by the befriending light.
On the raised neck, oft moved, but ever straight,
Turn your unbending head with easy state.
Shun rambling looks. Fix your attention high,
Pointedly earnest, meeting eye with eye.
Spread be your opening breast, oft change your face,
Step with a slow severity of grace.
Pausingly warm, (significantly) rise,
And affection’s empty swell despise.

Be what you seem. Each pictured passion weigh.
Fill first your thoughts with all your words must say.
Strong, yet distinguished, let expression paint,
Nor straining mad, nor negligently faint.
On rising spirits let your voice take wing,
And nerves, elastic, into passion spring.
Let every joint keep time, each sinew bend,
And the shot soul, in every start, ascend.517

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APPENDIX II

from ‘The Proceedings of the Revolutionary Committee of the Town of New Bern and the County Craven, North Carolina, 1775’, in Committee at New Bern, May 31, 1775

ASSOCIATION

We the Subscribers, Freeholders and Inhabitants of the County of Craven and Town of New-bern, being deeply affected with the present alarming State of this Province, and of all America, do resolve that we will pay all due Allegiance to his Majesty King GEORGE the Third, and endeavour to continue the Succession of his Crown in the illustrious House of Hanover, as by Law established, against the present or any future wicked Ministry or arbitrary Set of Men whatsoever. At the same Time we determine to assert our Rights as Men; and sensible that by late Acts of Parliament the most valuable Liberties and Privileges of America are invaded, and endeavoured to be violated and destroyed, and that under GOD the preservation of them depends on a firm Union of the Inhabitants, and a steady spirited Observation of the Resolutions of the General Congress; being shocked at the cruel Scene now acting in the Massachusetts-Bay, and determined never to become Slaves to any Power upon Earth, WE do hereby agree and associate, under all the Ties of Religion, Honour, and Regard for Posterity, that we will adopt and endeavour to execute, the Measures which the General Congress, now sitting at Philadelphia, may conclude on, for preserving our Constitution, and opposing the Execution of the several arbitrary and illegal Acts of the British Parliament; and that we will readily observe the Directions of our General Committee for the Purposes aforesaid, the Preservation of Peace and Good Order, and Security of Individuals and private Property.

(May 31, 1775)\textsuperscript{518}

from Jefferson’s Preface to the Commentaire sur Montesquieu, by Destutt de Tracy:

THE AUTHOR

to his Fellow citizens of the United States of America. I am a Frenchman by birth and education. I was an early friend to the revolution of France, and continued to support it, until those entrusted with its helm, had evidently changed its direction, Flying then from the tyrannies of the monster Robespierre, I found, and still enjoy, safety, freedom, and hospitality, among you. I am grateful for these boons, and anxious to shew [sic] that gratitude, by such services as my faculties and habits enable me to render ...

APPENDIX IV

TIMELINE CONCERNING THE BATTURE†

April 11, 1726 The Batture passes by Grant from Louis XIV of France to the Jesuits (Proceedings; Dumbauld 56).

As Livingston records: ‘The land was acquired by the order of the Jesuits in three different purchases: one in the year 1726 from Mr de Bienville, the governor of the province; another from the same person in the year 1728; and a third in 1743 from a Mr Breton’ (Answer 8).

1763 Jesuit order ‘abolished in France, and all its estates forfeited to the crown’ (8): ‘their property on the Mississippi was confiscated and sold, part of it to one Pradel’; Pradel’s ‘widow conveyed it to Renard’; Renard’s ‘widow married Bertrand Gravier’; ‘Gravier laid off the tracts into lots’ (Dumbauld 56).

1788 Bertrand Gravier established the lots ‘as a faubourg or addition to the city of New Orleans’ (56).

1789 Bertrand Gravier ‘sold a piece of land “frente al rio” (“fronting on the river”) in 1789 [to Poeyfarré]’ (72).

1803 Thomas Jefferson makes the Louisiana Purchase.

1803 Marbury v. Madison, 1 Cr. 137 (1803): establishes precedent for judicial decision.

Mar. 27, 1804  ‘Gravier conveyed a two-thirds interest in the batture to Peter de la Bigarre, from whom Livingston bought’ (57).

Dec. 14, 1806  Gravier ‘conveyed the entire batture, in a second secret deed which made no mention of the first one, and which was conditional upon the success of a lawsuit which Gravier commenced in his own name on October 22, 1805, against the city of New Orleans’ (57).


May 20, 1807  ‘Governor Claiborne … entertained the “impression that the United States are the legal claimants to … [the land made by the river, and over which the city has heretofore exercised a right of ownership]” (*Proceedings* 16; Dumbauld 58).

May 23, 1807  *John Gravier v. Mayor, Aldermen, and Inhabitants of New Orleans*: ‘the Superior Court of Orleans Territory “adjudged the property wholly to the very man, who, if he had ever had any right, had conveyed away two thirds of it, before he brought his action, and the whole while it was pending”—the citizens of the territory were alarmed’ (*Proceedings* 14; Dumbauld 57-58). [The case had been before the court three times: Dec. 18, 1805 when ‘Judge John B. Prevost recused himself, but granted an injunction’; April 9, 1806 when the injunction was extended to continue; May 2, 1807 when a full bench sat and
heard the case, including ‘judges William Sprigg, George Mathews, Jr., and Joshua Lewis’. A final opinion was rendered on May 23rd (58). 

Aug. 21, 1807  Widely published opinion by Pierre Auguste Bourguignon Derbigny—which, ‘according to Jefferson, first brought into view the right of the United States’ (citing Albert Gallatin, letter to Thomas Jefferson, July 14, 1810, in Dumbauld, 58)

Aug. 24, 1807  Livingston’s workmen begin digging a canal on the property: Governor Claiborne fears “tumult and perhaps much bloodshed” and is concerned lest the works injure ‘navigation and … damage levees along the river’ (Proceedings 17; Dumbauld 59).

Oct. 28, 1807  Jefferson obtains an opinion from the Attorney General Caesar Rodney (59).

Nov. 14, 1807  ‘…a grand Jury made a presentment that the “operations of Edward Livingston are calculated to obstruct the free navigation of the river … and … that all such measures should be taken as are consistent with law to arrest these operations which are injurious … and … hazardous in the extreme”’ (Proceedings 19; Dumbauld 59).

Nov. 27, 1807  Jefferson calls a cabinet meeting: Rodney has received a statement of facts from Secretary of State Madison and concurs with reflections put forth by opinions of Derbigny, Lisley [Moreau], and Gurley, the attorney general of the Orleans territory (59).

Nov. 30, 1807  ‘Madison wrote to Governor Claiborne, enclosing instructions to the marshal “to remove immediately, by the civil power, any persons from the batture Ste.

520 For a more detailed explication of court findings see Dumbauld, 58.
Marie, who had taken possessions since the 3d of March, and authorising the Governor, if necessary, to use military force” (59).

Jan. 25, 1808 ‘[Francis Joseph Le Breton] D’Orgenois received his instructions and ordered off Livingston’s laborers. Later they returned and refused to move unless compelled by adequate force. In the meantime Livingston procured an injunction from the Superior Court of Orleans Territory forbidding the marshal from disturbing Livingston’s possession of the batture. D’Orgenois obeyed the executive commands rather than the court order, collected a posse and ordered off the laborers. They peacefully retired…’ (59).

Feb. 15, 1808 ‘The territorial legislature passes ‘an act providing that no levee should be constructed or completed in front of those presently existing without the approval of a jury of twelve riparian proprietors’ (64).

March 7, 1808 Livingston sends a message to Congress ‘for consideration’: no response except to send the matter to Attorney General Rodney for another opinion (60).

June 12, 1809 Rodney adheres to his original opinion of Oct. 24, 1807 (received by Jefferson Oct. 28th) (60).

July 26, 1808 Peter S. Duponceau’s offers an opinion favourable to the plaintiff: “the most elaborate expression of the law favorable to Livingston”. Derbigny refuted this opinion; Duponceau published a reply, Feb. 27th, 1809; other supporters of the government’s title to the Batture included Thierry, Moreau, and Poydras (61).

Aug. 3, 1808 ‘Jared Ingersoll and Willlliam Rawle gave an opinion favourable to Livingston’ (61).
Aug. 16, 1808  Edward Tilgham and William Lewis also gave opinions favorable to Livingston (61).

Oct. 21, 1808  Livingston publishes: *An Address to the People of the United States, on the Measures Pursued by the Executive with respect to the Batture at New Orleans.*

May 16, 1810  Suit filed against Thomas Jefferson on behalf of Edward Livingston by John Wickham (Richmond attorney) (37).

July 4, 1810  Suit filed ‘in the federal district court of Orleans Territory [by Livingston] against the marshal Francis Joseph LeBreton D’Orgenois’ (52).

July 31, 1810  Jefferson finishes and signs (“in a bold hand”) the end of the *Proceedings.* 521

Fall 1810  Livingston resumes possession of the batture and is evicted (53).

Oct. 24, 1810  ‘[The] court delivered an opinion and judgment staying the proceedings [against D’Orgenois]’ (52).

Nov. 21, 1810  Livingston sues the marshal, [John] Michel Fortier (53).

Dec. 5, 1811  *Livingston v. Jefferson* dismissed on grounds that the Court lacked proper jurisdiction.

May 23, 1812  Case against Fortier proceeds on the merits (54).

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521 See *Prepared for Use of Counsel, by Thomas Jefferson, Sowerby #3501.*
May 29, 1812  Original edition of the *Proceedings* published by Ezra Sargeant in New York in 1812: ‘Jefferson paid Sargeant for printing $130), and on June 17, 1812, $21.50 more’ (Sowerby #3501; Dumbauld 186).

Aug. 3, 1813  ‘Judge Dominick Augustin Hall entered judgment in favor of Livingston [in case brought against D’Orgenois]’ (52).

Aug. 10, 1813  Governor Claibourne and the city of New Orleans petition Hall for writ of error (with no results) (53).

June 18, 1823  Jury begins deliberations in Fortier case, but is discharged (that same day) when unable to reach a verdict (54).

1823  Livingston begins to sell off parts of the property (73).

Feb. 27, 1830  Livingston reaches a settlement with the government (73).
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