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THE LAWYER'S LIBRARY IN THE EARLY AMERICAN REPUBLIC

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The Lawyer's Library in the Early American Republic

Alison L. LaCroix*

In November 1826, Chief Justice John Marshall wrote a letter to his friend and fellow justice Joseph Story in which he commended Story's recent address before Harvard's Phi Beta Kappa society. "I have read it with real pleasure and am particularly gratified with your eulogy on the ladies," Marshall wrote. "It is a matter of great satisfaction to me to find another Judge, who, though not as old as myself, thinks justly of the fair sex, and commits his sentiments to print."

Here Marshall's praise for the speech ended, though, and the letter took a remonstrating tone. "I was a little mortified, however, to find that you had not admitted the name of Miss Austen into your list of favorites. I had just finished reading her novels when I received your discourse, and was so much pleased with them that I looked in it for her name, and was rather disappointed at not finding it." The chief justice then proceeded to defend his favorite: "Her flights are not lofty, she does not soar on eagle's wings, but she is pleasing, interesting, equable, and yet amusing." Therefore, he warned his colleague, "I count on your making some apology for this omission."[1]

In Story's defense, he had listed nine other female authors in the Phi Beta Kappa address, among them Madame D'Arblay (better known to Anglo-American readers as Fanny Burney), Ann Radcliffe, and Maria Edgeworth. But he had not included Jane Austen. Twenty-five years later, Story's son William Wetmore Story, himself a lawyer-turned-artist, provided an exculpation of his father. "It is due to my father to say, that he fully recognized the admirable genius of Miss Austen. Scarcely a year passed that he did not read more than one of them, and with an interest which never flagged," the younger Story wrote. He continued:

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[1] Marshall to Story, Nov. 26, 1826, in Charles F. Hobson, ed., *The Papers of John Marshall*, vol 10 (Chapel Hill: University of North Carolina Press, 2000), 315.

Electronic copy available at: http://ssrn.com/abstract=2177007

> I well remember, in the year 1842, while I was engaged in finishing a bust of him in marble, for which he gave me several sittings, that 'Emma' was read aloud at his request to beguile the time. With what relish he listened, his face lighting up with pleasure, and interrupting my sister continually to comment on the naturalness and vivacity of the dialogue, or the delicate discrimination of character,--to express his admiration of the author's unrivalled power of exciting and sustaining interest in groups of common and prosaic persons, merely through her truth and felicity of delineation,--and to draw parallels between the characters in the novel, and persons of our acquaintance. . . . Our little family group was then enlarged by the addition of Emma, Mr. Knightley, Mr. Woodhouse and Miss Bates, who almost became real persons to us, as we read. But the ludicrous impatience with which my father always greeted the entry of Miss Bates, plainly showed that she was a fiction, for had she had an actual existence, he would have been sure to receive her with patience and kindness.[2]

Taken together, Story's Phi Beta Kappa address, Marshall's gentle rebuke, and William Wetmore Story's recollections offer a vivid, if unexpected, picture: two of the greatest legal minds of the early American republic arguing over which of them demonstrates the proper reverence for the writings of a female English novelist who, at the time of the speech in question, had been dead for nine years.

Three aspects of this brief look into Marshall's and Story's reading habits are likely surprising to twenty-first-century observers. First, the justices of the Supreme Court of the United States were reading novels. Second, they were reading British novels. Finally, they were reading British novels written by women, and speaking and writing publicly about the importance of those novels. Why? What did novel-reading in particular, and literature more broadly, mean to Marshall, Story, and their fellow lawyers and statesmen in the early years of American nationhood?

This essay explores the role of fiction in the early American republic, in particular the central place that reading literature, and reading fiction in particular, occupied in the thought of lawyers and judges. Such late-eighteenth and early-nineteenth-century

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[2] William Wetmore Story, ed., *The Life and Letters of Joseph Story*, volume 1 (Boston: Charles C. Little and James Brown, 1851), 506-07.

Electronic copy available at: http://ssrn.com/abstract=2177007

political and legal luminaries as John Adams, Thomas Jefferson, Marshall, Story, James Kent, and William Wirt were avid readers – and in some cases producers – of fiction. Moreover, these lawyers and judges were not at all reticent in discussing their love of reading and the depth of their familiarity with contemporary works of fiction; indeed, they peppered their correspondence with allusions to popular novels and their characters, gave public addresses on the importance of literary culture, and in some cases penned their own literary works for publication, including Marshall's five-volume *Life of George Washington* (1799)*;* Wirt's *Letters of the British Spy* (1803), *The Old Bachelor* (1814), and *Life and Character of Patrick Henry* (1816); and Story's lengthy poem *The Power of Solitude* (1801). James Kent, the eminent New York chancellor and treatise author, also found time to pen criticism of the works of a diverse group of authors, including Shakespeare, Sir Walter Scott, Ann Radcliffe, Thomas Carlyle, Cicero, and Juvenal.[3] Literature was far from a guilty pleasure for these lawyers. On the contrary, they regarded the cultivation and flowering of American letters as an important complement to what they viewed as the young republic's signal contributions to law, politics, and the institutions of government.

For many statesmen of the period, the consumption and production of literature by Americans was proof of membership in a broader Atlantic world of letters, a civilized environment of learning, culture, and Enlightenment sensibilities. In addition to a marker of participation in a community of lettered nations, the building of an American "republic of letters," in literary critic Michael Warner's phrase, was also a sign of a particularly American blend of literacy, public debate, and dedication to a special set of political commitments based on civic and personal virtue and participation in the public sphere.[4] Reading fiction thus offered a medium of personal interaction and engagement with the lives and emotions of other members of the republic. Reading novels offered a way for individuals to experience a specifically republican and therefore socially desirable form

[3] Robert Ferguson, *Law and Letters in American Culture* (Cambridge: Harvard University Press, 1984), 68.
[4] Michael Warner, *The Letters of the Republic: Publication and the Public Sphere in Eighteenth-Century America* (Cambridge: Harvard University Press, 1990), ix.

of sympathy – an emotion that had a distinctly political cast in this period.[5] By the early nineteenth century, a newly romantic sensibility complemented this republican interest in the relationship among the individual as reader, the individual as republican citizen, and the character of the republic itself. For Story, Wirt, and many of their fellow early national statesmen, their predecessors' emphasis on the Republic had been replaced by a focus on the Union, the nation, and on nurturing and celebrating what Story termed "a national feeling."[6] The use of the word "feeling" here is significant, for it illustrates early-nineteenth-century commentators' fascination with activating sentiments in the population that would give the American people greater connection with the almost-metaphysical political and emotional entity, the nation.

Although many legal and literary scholars have focused on the significance of literature in the Revolutionary and founding periods of the late eighteenth century, the early decades of the nineteenth century have received less attention. As this essay will demonstrate, however, the period between roughly 1800 and 1845 was important because it witnessed the struggles of the second post-independence generation of lawyers and statesmen to give concrete, institutional meaning to the sometimes-conflicting ideologies of the founding, and because many of these deeply political actors viewed literature as a necessary component of the project of creating a nation. In a legal and constitutional sense, the Declaration of Independence had announced the arrival of the United States on the international stage, and the Constitution had enunciated a normative system to meld the several states into a single general government.[7] But many of the cohort of lawyers and statesmen who came of age after 1800 believed that an equally important task lay before their generation: to bolster their predecessors' assertions of membership in the community of nations with evidence not only that the United States was a legally

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[5] Andrew Burstein, "The Political Character of Sympathy," *Journal of the Early Republic* 21 (2001), 631-32.

[6] Joseph Story, "Discourse Pronounced at Cambridge, Before the Phi Beta Kappa Society, on the Anniversary Celebration, August 31, 1826," in ibid., *The Miscellaneous Writings, Literary, Critical, Juridical, and Political, of Joseph Story, LL.D., Now First Collected* (Boston: James Munroe and Co., 1835), 17 (hereafter "Phi Beta Kappa Address").

[7] See David Armitage, "The Declaration of Independence and International Law," *William and Mary Quarterly* 59, 3d ser. (2002), 61 (distinguishing between statehood and nationhood in the late eighteenth century and arguing that the Revolutionary period achieved American "statehood in the international order," but that American nationhood was a product of the Civil War).

functioning state, but that America was capable of producing a national culture, even a civilization. In their view, that culture ought to be based on accomplishments in the fields of literature, science, and the arts, as well in government.

Even among this generation of lawyers who also aspired to a life of letters, Story stands out as a remarkable and towering presence. Throughout his career, Story wrote and spoke extensively about the importance of literature to American nationhood, explicitly invoking the nation's political achievements and presumed destiny to urge his audience to devote themselves to producing an equally important literary culture. Prior to the 1826 Phi Beta Kappa address, Story (class poet of the Harvard College class of 1798 and author of the patriotic ode sung at that year's commencement exercises) wrote numerous poems, including two published editions of *The Power of Solitude*, as well as essays on chancery jurisdiction and maritime and commercial law for the influential *North American Review*.

Later in his career, after adding a professorship at Harvard Law School to his duties as associate justice of the Supreme Court, Story continued to deliver public addresses on subjects as varied as "The History and Influence of the Puritans" (1828), "Developments of Science and Mechanic Art" (1829), and "Consecration of the Cemetery at Mount Auburn" (1831), while also producing his three-volume *Commentaries on the Constitution* (1833) and prominent treatises on bailments, conflict of laws, agency and partnership, equity jurisprudence, bills of exchange, and promissory notes. In 1835, he published a collection entitled *Miscellaneous Writings, Literary, Critical, Juridical, and Political*, which included the Phi Beta Kappa address, several additional "literary discourses," and a poem titled "Lines, Written on the Death of a Daughter, in May, 1831," which gave voice to Story's anguish following the loss of his ten-year-old daughter, Louisa. In 1842, three years before his death, Story again explicitly took up the question of literature and American national identity in "Literary Tendencies of the Times," an address before the Harvard alumni society.

The tone of the 1826 Phi Beta Kappa address and the 1842 alumni speech differ somewhat, with the latter taking a decidedly more elegiac tone suggesting Story's increased pessimism about the future of the Union, both literary and political. Taken together, however, the two speeches suggest the central place that literature occupied in Story's, and his contemporaries, vision of the American nation. Story clearly regarded the reading and writing of literature as vital activities for the developing United States and its citizens. In the Phi Beta Kappa speech, he celebrated literature as a site of activity recently opened to women, suggesting that literary production and consumption raised the potential of "human virtue and human happiness" for people in general and for women in particular.[8]

In the late eighteenth century, many members of the founding generation believed that literature – especially fiction – ought to be part of a gentleman's education because it provided individual moral instruction on membership in a republic. By the early decades of the nineteenth century, in contrast, not only were statesmen such as Story and Wirt producing literary works of their own, they were arguing that involvement in literature was a symbol of national virtue, progress, and membership in the community of civilized nations. To be sure, these second-generation early nationals were motivated in part by anxiety about the place of the United States in the world, and about the prospect for future national achievement to match that which they obviously felt they had missed by being born too late to have participated in the Revolution. Moreover, the Revolutionary generation had spent little time on developing the letters, arts, and sciences, leaving an obvious gap for their progeny to tackle. A fascination with literature spurred Story, Wirt, and their contemporaries not in spite of their professional role as lawyers and politicians, but because of that role. For them, building a union that could both command the respect of the community of nations and touch the emotions of its citizens required novels, poems, and essays as well as digests, statutes, and common-law decisions.

[8] "Phi Beta Kappa Address," 10.

I. The Generations Contrasted.

Like the second generation of Puritan settlers in New England, who feared that God had abandoned their project, and the historians who later argued that this declension was a precondition for the emergence of America identity, many nineteenth-century lawyers and statesmen displayed profound ambivalence toward their Revolutionary inheritance.[9] On one hand, they worried that they had missed an epochal historical moment by only a decade or so. Story, who was born in 1779, spent his childhood in Marblehead, Massachusetts, hearing stories of his father Elisha's participation in the Boston Tea Party and solo disarming of a British sentry on Boston Common during a raid by the Sons of Liberty to abstract His Majesty's cannon.[10] Story later recalled that his father had impressed upon him "an ambition for excellence" and the importance of working for "distinction as a man."[11] To complete the picture of a generation anxious not to disappoint, Story's mother Mehitable is said to have told the boy, "Now, Joe, I've sat up and tended you many a night when you were a child, and don't you dare not to be a great man."[12]

At the same time, however, this "collective pressure to succeed," as historian R. Kent Newmyer describes it, appears clearly to have instilled in many members of the post-Revolutionary generation a conscious ambition to carry on and expand the work of their forebears.[13] In 1832, William Wirt's biographer P.H. Cruse speculated that the renowned attorney general must have come to view his birthplace of Bladensburg, Maryland, with a "complacent satisfaction." Although the town was now a "decayed, ruinous hamlet" (and an infamous dueling ground for District of Columbia quarrels), it had presented a different aspect when Wirt was born in 1772. "At that day the free

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[9] See, e.g., Perry Miller, *Errand Into the Wilderness* (Cambridge: Harvard University Press, 1956) ("Some historians suggest that the second and third generations suffered a failure of nerve; they weren't the men their fathers had been, and they knew it. . . . [A]ll these children could do was tell each other that they were on probation and that their chances of making good did not seem very promising."), 3.

[10] R. Kent Newmyer, *Supreme Court Justice Joseph Story: Statesman of the Old Republic* (Chapel Hill: University of North Carolina Press, 1985), 10.

[11] Story, *Life and Letters*, 1:22 and 26-27.

[12] Newmyer, *Supreme Court Justice Joseph Story*, 19.

[13] Ibid., 34.

empire in which he was to be an ornament and a conspicuous actor, had not even an existence, and little did those foresee, who caressed him as an apt, imitative boy, that on hills almost within sight of his humble patrimonial roof, proud domes were to arise in which he was to discharge the functions of the highest legal office of the republic, and sit in council on its most momentous concerns."[14] For young Americans coming of age in the early nineteenth century, the long shadow of the Revolution and the founding era provided both a daunting yardstick and a spur to action.

As Story, Wirt, and their contemporaries appreciated when they looked back at their storied forbears, the members of the founding generation were not simply producers of theory; they were avid consumers of words and ideas. And those ideas came not only from political tracts and works of philosophy, but also from fiction. Along with their Locke, Montesquieu, and Rousseau, late-eighteenth-century Americans read novels – many novels.[15] Consider a letter that Thomas Jefferson wrote to his prospective brother-in-law, Robert Skipwith, in August 1771. Skipwith had asked Jefferson to provide a list of books that would be the basis of his library. "I would have them suited to the capacity of a common reader who understands but little of the classicks and who has not leisure for any intricate or tedious study," Skipwith wrote to Jefferson. "Let them be improving as well as amusing."[16]

In response to Skipwith's request, Jefferson drafted a list comprising 148 titles, which he broke down into nine groups: "Fine Arts," "Criticism on the Fine Arts," "Politicks, Trade," "Religion," "Law," "History, Antient," "History, Modern," "Natural Philosophy, Natural History &c.," and "Miscellaneous." Of these categories, the most numerous by far was "Fine Arts," which included 75 titles, among them plays by dramatists such as Molière and Dryden as well as the poetry of Homer, Virgil, and Pope.

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[14] [P.H. Cruse,] "Biographical Sketch of William Wirt," in William Wirt, *The Letters of the British Spy . . . To Which is Prefaced, a Biographical Sketch of the Author*, 10th ed. (New York: Harper & Brothers, 1832), 14-15.

[15] The following paragraphs draw on my essay "The Founders' Fiction: Reading Eighteenth-Century Novels in Company With the American Revolutionaries," *Common-place* (www.common-place.org), vol. 3, no. 9 (April 2009).

[16] Skipwith to Jefferson, July 17, 1771, in Julian P. Boyd, ed., *The Papers of Thomas Jefferson*, vol. 1 (Princeton: Princeton University Press, 1950), 74-75.

Having exceeded Skipwith's proposed budget of "about five and twenty pounds sterling, or if you think proper . . . thirty pounds" by some £70, the biblio-generous Jefferson excused the inclusiveness of his list by saying he "could by no means satisfy myself with any partial choice I could make" and that he had therefore "framed such a general collection as I think you would wish and might in time find convenient to procure."[17]

The prominence of fiction on the list is striking to modern eyes. More than a third of the books listed under "Fine Arts" are works of fiction. All are by European authors. They include classics that are still read today, such as Cervantes's *Don Quixote*, Henry Fielding's *Tom Jones* and Chaucer's stories, as well as more arcane works more likely to be found on the syllabus of a course on eighteenth-century English literature than on the shelf at Barnes & Noble, such as Tobias Smollett's *Peregrine Pickle* and Frances Sheridan's *Memoirs of Miss Sidney Bidulph*. Along with the works of philosophy and law that one would expect to see on a founder's reading list (Xenophon's *Memoirs of Socrates*, Blackstone's *Commentaries on the Laws of England*), Jefferson's list made the case that a gentleman's library ought to include literary fiction. "[T]he entertainments of fiction are useful as well as pleasant," Jefferson wrote to Skipwith. "[E]verything is useful which contributes to fix in the principles and practices of virtue."

Perhaps the principal lesson to draw from Jefferson's list is that many of the founders were humanists who valued literature, and not only scientists of politics who delighted in building models of government. Indeed, Jefferson is an ideal exemplar of this late-eighteenth-century blend of the humanistic interest in the particular with the scientific zeal for the general. The same Jefferson who collected mastodon bones in an effort to disprove European assertions of America's biological inferiority also accompanied his list of recommended reading with a defense of fiction as a tool for developing what he termed "the moral feelings." Fiction, Jefferson claimed, could serve as a tool for cultivating a virtuous citizenry. To Skipwith, Jefferson wrote, "I appeal to every reader of feeling and sentiment whether the fictitious murther of Duncan by

[17] Jefferson to Skipwith, Aug. 3, 1771, in *Thomas Jefferson: Writings* (New York: Library of America, 1984), 740-45.

Macbeth in Shakespeare does not excite in him as great a horror of villainy, as the real one of Henry IV by Ravaillac as related by Davila?"[18] As literary scholar Douglas L. Wilson has noted, Jefferson's insistence in his letter to Skipwith on fiction's power to elicit "the sympathetic emotion of virtue" borrowed heavily from the writings of the Scottish jurist and philosopher Lord Kames, especially Kames's *Elements of Criticism*.[19]

For Jefferson, as for others of his generation, reading literature provided two important benefits: first, a means of participating in European norms of gentility, and second, a course of individual moral instruction on membership in a republic.[20] As Jefferson wrote to Skipwith, "When any signal act of charity or of gratitude, for instance, is presented either to our sight or imagination, we are deeply impressed with it's beauty and feel a strong desire in ourselves of doing charitable and grateful acts also." Therefore, he continued, "[E]very emotion of this kind is an exercise of our virtuous dispositions; and dispositions of the mind, like limbs of the body, acquire strength by exercise. But exercise produces habit; and in the instance of which we speak, the exercise being of the moral feelings, produces a habit of thinking and acting virtuously."[21] Writing to Samuel Adams in 1790, Vice President John Adams put the case for republican moral education more bluntly: "'The love of liberty,' you say, 'is interwoven in the soul of man.' So it is . . . in that of a wolf; and I doubt whether it be much more rational, generous, or social in one than the other, until in man it is enlightened by experience, reflection, education, and civil and political institutions."[22] Members of the founding generation such as John Adams, who peppered his correspondence with references to *Tristram Shandy*, regarded literature as an instrument for taming the passions and training the selfish individual will into a productive republican virtue.

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[18] Id. at 741.

[19] Douglas L. Wilson, "Thomas Jefferson's Library and the Skipwith List," *Harvard Library Bulletin* 3 (1992-93), 66-68.

[20] On the period between 1700 and 1790 as an "era of gentility," see Richard L. Bushman, *The Refinement of America: Persons, Houses, Cities* (New York: Vintage, 1993), xii-xiii. On American literature in transatlantic context, see Leonard Tennenhouse, *The Importance of Feeling English: American Literature and the British Diaspora, 1750-1850* (Princeton: Princeton University Press, 2007).

[21] Jefferson to Skipwith, 741.

[22] John Adams to Samuel Adams, Oct. 18, 1790, in Charles Francis Adams, ed., *The Works of John Adams* (Charles C. Little and James Brown, 1851), 6:417-18.

In the early nineteenth century, the relationship between political and literary culture appears to have changed. Scholarly characterizations of this early national shift vary along a spectrum from decline to rebirth, with mixed accounts of literary ambition and stunted political fortunes in between. Some scholars have argued that the dynamic founding-era connection between politics and letters withered because American literature itself became stagnant at the same time the political groups most invested in the political dimension of literature fell from power. Among the most influential proponents of this view was the early-twentieth-century historian Vernon L. Parrington, whose polemical three-volume *Main Currents in American Thought* (1927) insisted that the early years of the nineteenth century had witnessed a wholesale decline in American letters, especially in the Federalist stronghold – and former literary bastion – of New England.[23]

As evidence for his argument for New England's "intellectual lapse," Parrington pointed to an 1852 journal entry by Ralph Waldo Emerson in which Emerson derided the era in which his own father, the Reverend William Emerson, had achieved literary renown as the editor of *The Monthly Anthology, or Magazine of Polite Literature*, beginning in 1804, and as a founding member of Boston's Anthology Society. The *Monthly Anthology* was the predecessor to the *North American Review* (founded 1815), and the Anthology Society was the predecessor to the Boston Athenaeum (founded 1807).[24] Ralph Waldo Emerson, however, had little patience for what he described to his brother as "that early ignorant & transitional *Month-of-March*, in our New England culture."[25] But he saved his strongest language for his journal, which Parrington quoted:

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[23] Vernon Louis Parrington, *Main Currents in American Thought: An Interpretation of American Literature from the Beginnings to 1920* (New York: Harcourt, Brace and Co., 1937), 296, 317 (characterizing Boston in the early years of the nineteenth century as beset by "snug provincialism" and "utter sterility").

[24] See T.A. Milford, *The Gardiners of Massachusetts: Provincial Ambition and the British-American Career* (Durham: University of New Hampshire Press, 2005), 204-05.

[25] Ralph Waldo Emerson to William Emerson, Feb. 10. 1850, in Ralph L. Rusk, ed., *Letters of Ralph Waldo Emerson* (New York: Columbia University Press, 1939), 4:179.

> To write a history of Massachusetts, I confess, is not inviting to an expansive thinker. . . . Since, from 1790 to 1820, there was not a book, a speech, a conversation, or a thought in the State. About 1820, the Channing, Webster, and Everett era beg[a]n, and we have been bookish and poetical and cogitative since.[26]

As several recent scholars have noted, however, Parrington's dismissal of early-nineteenth-century New England literary production was misplaced, privileging the younger Emerson's disdain for his father's generation and overlooking the significant literary production represented in journals such as the *Monthly Anthology* and the *North American Review*.[27] Indeed, during the first decade of the nineteenth century, Boston's litterateurs were part of a broader cohort of eastern writers and editors who founded magazines and journals with the express aim of establishing themselves as "professional men of letters."[28] Besides the *Monthly Anthology*, early national readers could peruse Joseph Dennie's *Port Folio* (Philadelphia, 1801-1811), Charles Brockden Brown's *Literary Magazine and American Register* (New York, 1803-1807), and William Coleman's *New York Evening Post* (1801-1829), among others. These literary journals, many of which also featured essays on contemporary politics, represented not the product of a static intellectual backwater but the flowering of a new literary form that sought to connect literary and political culture.

Moreover, as Robert Ferguson has demonstrated, many of these professional men of letters were also lawyers. Dennie, Brown, and Coleman all studied law, as did their contemporaries and fellow editors Noah Webster, Washington Irving, Edward Everett, Richard Henry Dana, Sr., Theophilus Parsons, Jr., William Cullen Bryant, and Hugh Swinton Legaré.[29] Their legal training gave many of these men of letters a conviction that literary production ought to be viewed not only as an aesthetic enterprise, but as a site of political engagement and development of a national sensibility. Thus, it is a

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[26] See Edward Waldo Emerson and Waldo Emerson Forbes, eds., *Journals of Ralph Waldo Emerson* (Boston: Houghton Mifflin Co., 1912), 8:339.

[27] See Lewis P. Simpson, introduction, in ibid., ed., *The Federalist Literary Mind* (Baton Rouge: Louisiana State University Pres, 1962), 7 (ascribing Ralph Waldo Emerson's scorn for the earlier generation to "the mid-century sense of achievement" and "Emerson's complete refusal of the eighteenth-century rationalistic heritage").

[28] Ibid. at 10.

[29] See Ferguson, *Law and Letters in American Culture*, 71-72.

mistake to describe the early nineteenth century as witnessing "the Federalist retreat from history, a long and complex withdrawal in which Federalism, banished from the civic sphere by a triumphant Jeffersonian ideology, [sought] an alternative home in . . . the republic of letters."[30] To view the surge of literary journals and editorial work as evidence of a withdrawal from the public sphere is to ignore these literary figures' deep engagement in public discourse of all kinds, much of it explicitly commenting on contemporary politics and culture.

II. Lawyers and Writers.

Story's years at Harvard placed him squarely in the midst of this group of artists, litterateurs, and literary lawyers. The Harvard class of 1798 included Story's close friend William Smith Shaw (nephew of John and Abigail Adams), who was among the founders of both the *Monthly Anthology* and the Boston Athenaeum, as well as Shaw's fellow Athenaeum founder Arthur Walter, Joseph Dennie of *Port Folio* fame, and the painter Washington Allston. The class of 1796 numbered among its illustrious members Joseph Stevens Buckminster, who became a renowned theologian and preacher as well as one of Daniel Webster's early teachers.[31]

Buckminster's 1809 address to Harvard's Phi Beta Kappa society, titled "On the Dangers and Duties of Men of Letters" and published in the *Monthly Anthology*, sounded the combined notes of aspiration and anxiety that so preoccupied the generation. Buckminster, the influential minister of the Brattle Street Church, urged his audience to embrace a life of scholarship befitting both their own education as men of letters and their role as republican intellectual leaders. Again, the theme of declension occupied the center of the narrative. "When we look back to the records of our learning before the American revolution," Buckminster wrote, "we find, or think we find, (at least in New England) more accomplished scholars than we have since produced; men, who conversed more familiarly than their children with the mighty dead . . . men, in short, who had not

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[30] William C. Dowling, *Literary Federalism in the Age of Jefferson: Joseph Dennie and the* Port Folio, *1801-1812* (Columbia: University of South Carolina Press, 1999), ix.
[31] See Newmyer, *Supreme Court Justice Joseph Story*, 34-35.

learned to be ashamed of being often found drinking at the wells of antiquity."[32] The United States was undoubtedly on the path to political and territorial greatness, but would the nation's cultural and intellectual progress be able to keep up with these formidable achievements? On this question, Buckminster expressed a characteristically provocative early-nineteenth-century pessimism:

> In the usual course of national aggrandizement, it is almost certain, that those of you, who shall attain to old age, will find yourselves the citizens of an empire unparalleled in extent; but is it probable, that you will have the honour of belonging to a nation of men of letters? The review of our past literary progress does not authorize very lofty expectations, neither does it leave us entirely without hope.[33]

Yes, Buckminster implied, national expansion and American empire were within his contemporaries' sight. But American learning and scholarship had stalled, in contrast to post-revolutionary France, where at least progress in science had offset the decline of literature, and England, where classical learning had managed to survive despite the "tempest of reform." In the United States, in contrast, "a pernicious notion of equality" and the "secret influence of public opinion" had "tainted our sentiments . . . impaired our vigour, and crippled our literary eminence."[34]

But Buckminster reassured his audience that all was not lost. National greatness in the literary as well as the political realm might still be achieved, and "the dawn of our Augustan age" might still break, if individual men of letters committed themselves to the hard work of scholarship and cultivated the appropriate sentiments within themselves.[35] To elevate American literary production to its deserved position of greatness, Buckminster argued, required both an embrace of the type of "active learning"

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[32] J.S. Buckminster, "On the Dangers and Duties of Men of Letters; An Address, Pronounced Before the Society of Phi Beta Kappa, on Thursday, August 31st, 1809," *The Monthly Anthology and Boston Review*, 7 (1809), 146.
[33] Ibid.
[34] Ibid., 148.
[35] Ibid.

appropriate to "the citizens of a republick," as well as a genuine willingness to allow literature to touch one's deepest feelings.[36]

Buckminster repeatedly invoked the "hearts" of his fellow scholars and men of letters to dramatize his point that in order for American literature to reach its potential, individual litterateurs must make themselves vulnerable to earnest emotional engagement with their work. "[W]here the *heart* remains uncultivated and the *affections* sluggish, the mere man of curious erudition may stand, indeed, as an object of popular admiration," Buckminster insisted, "but he stands like the occasional palaces of ice in the regions of the north, the work of vanity, lighted up with artificial luster, yet cold, useless, and uninhabited, and soon to pass away without leaving a trace of their existence."[37] Moreover, he warned his audience of Phi Beta Kappans, "about to enter upon the business of manly life," that "literature, whether it be her pride, or her misfortune, will disdain to divide the empire of your heart."[38] Banausic concerns for "the love of money" or "the ambition of noisy distinction" were therefore fundamentally incompatible with the openness to sentiment and emotion that was the calling of the true man of letters.[39]

Both early and late in his career, Story echoed many of these sentiments, insisting on the value of literature both for its own sake and for its ability to draw out morally desirable emotions from writers and readers. In an 1835 memorial to the recently deceased Marshall, Story lauded his colleague's earnest sensibilities. Marshall's "romantic chivalry in his feelings," evident only in the "confidential intercourse" with his closest friends "when his soul sought solace from the sympathy of other minds," led him to "dissolve in tears at the recollection of some buried hope, or lost happiness."[40] As further evidence of the admirable character of Marshall's emotions, Story cited the "high value in which he held the female sex, as the friends, the companions, and the equals of man." In particular, Story emphasized Marshall's "voluntary homage to their genius, and to the beautiful productions of it, which now adorn almost every branch of literature and

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[36] Ibid., 150.
[37] Ibid., 153 (emphasis added).
[38] Ibid., 155.
[39] Ibid.
[40] Story, "Life, Character, and Services of Chief Justice Marshall" (1835), in *Miscellaneous Writings*, 680.

learning."[41] Story thus portrayed the chief justice as the exemplar of the lawyer-as-man-of-feeling. Whether the picture was accurate or not is largely immaterial. What is significant is Story's determination to celebrate not only Marshall the legal thinker, but also Marshall the reader, the refined yet genuine man of sentiment, and the admirer of women's intellectual and cultural contributions.

In 1801, fresh from his apprenticeships and with his Republican affiliation beginning to make a name for himself as a "notorious character" in Federalist-dominated Essex County, Massachusetts, Story opened his own law office in Salem.[42] That same year, he published his first written work: a one-hundred-page poem titled *The Power of Solitude*, which he had begun writing in 1799. In the preface, Story wrote that the poem was designed "less to exhibit descriptions of rural life and local scenery, than to mark the influence of Solitude upon the passions and faculties of mankind."[43] The poem comprised two parts: "On the Heart" and "On the Mind." Each part began with a brief abstract or "analysis" setting forth the general themes of that portion of the poem. Part One, "On the Heart," canvassed "the pleasures of Solitude" and "the laws of association and sympathy," with specific reference to the "love of classic ruins, and of the retreats of departed genius" and "the love of sublime, picturesque, and beautiful scenery." The part then moved to a meditation on "the inefficacy of social scenes to afford consolation to the heart in the unfortunate incidents of life, in disease, despair, disappointment, and sorrow" and the "corresponding benign influence of Solitude in awakening kind and benevolent emotions, and alleviating the miseries of life." Finally, Part One ended with observations on the immortality of the soul and upon friendship.[44] Part Two, "On the Mind," began with "an invocation to the spirits of the lighter Gothic mythology" and went on to discuss "the bold developement [sic] of the mind in Seclusion contrasted with its languor in society" and the consequent "necessity of retirement to the artist, the poet, and the philosopher." Then followed description of the Scottish Highlands and Lowlands and the

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[41] Ibid., 681.
[42] Newmyer, *Supreme Court Justice Joseph Story*, 48.
[43] Joseph Story, *The Power of Solitude: A Poem in Two Parts*, 2d ed. (Salem: Barnard B. Macanulty, 1804), 1. The poem, with notes, ran to 187 pages in the second edition. In addition, the second edition included some miscellaneous poems, some of which Story noted were not his own.
[44] Ibid., 8.

"influence of local scenery in awakening the poetic powers." Part Two concluded with an "address to Poetry."[45]

To a modern reader, the poem is dense, filled (perhaps overfilled) with detailed description and digressions, but highly evocative of Story's youthful mood and ambition. The frontispiece of the poem was an engraving of a female figure holding a book and sitting alone before a small stone cavelike structure, next to a brook and before a desolate clump of conifers and under a brooding sky. "And muse with truth in Wisdom's sacred cell" read the legend below the illustration. Even as he worked to establish himself as a lawyer and a political presence in the close-knit environment of Essex County, Story paired his orations in support of the Louisiana Purchase with a highly public gambit for renown as a poet. In so doing, Story was a living illustration of the early national belief that politics and literature were not only not incompatible endeavors for a young man, but that they were in fact mutually reinforcing elements of a broader commitment to building a national culture that encompassed government, law, and letters.

Moreover, the poem's emphasis on the beneficial effects and profound consequences, both psychological and societal, of solitude suggests the depth of Story's fascination with individual emotional experience as a crucial site of human endeavor. Even in a republic, Story's poem suggested, there was room for individuals to retreat from society and undergo potentially cathartic interactions with their own thoughts and emotions, as well as with the natural world. In addition, the titles of the two parts of the poem suggest Story's conviction that the old Enlightenment dichotomy between heart and mind could be reconciled, and indeed that solitude – and nature – could provide solace to miseries that stemmed from both emotional and intellectual causes. Solitude, Story suggested, was powerful, but not in the way that his founding-era heroes might have believed. In contrast to the attacks of John Adams and other eighteenth-century thinkers on private passions and the withdrawal from the public sphere that those

[45] Ibid., 68.

passions might bring about, Story embraced solitude as a necessary antidote to the ills of too much society, too great an engagement with other citizens of the republic.[46]

In *The Power of Solitude*, Story thus embraced a romantic vision that bore political consequences, and that differed in important ways from the republican perspective of his predecessors.[47] Rather than urging individuals to suppress their personal emotions and sentiments in favor of a substantive vision of the public good, Story insisted that the Republic not only had room for, but depended on, individuals' having opportunities for emotional release and exploration of their innermost sentiments. Beginning while he was at Harvard, Story had rapturously devoured the works of Rousseau, especially *Emile* and *Julie, ou la nouvelle Héloïse*. In 1798, he wrote to his close friend Samuel P. Fay, "I perceive by a hint in your letter, that you have read Emilius. Pray write me your folio opinion of it. I know you admire it. Read his Eloisa and be crazy. Oh, Fay! conceive me in Marblehead, and you must know that I am wretched."[48] The following year, Story reported to another friend that he had been reading the work of several German romantics, including Wieland, Schiller, Goethe, and Kotzebue, but he lamented that "the German plays acquire their effect . . . from their power to excite surprise, rather than their expression of the tender passions."[49]

Although *The Power of Solitude* does not speak directly to the connections among emotions, solitude, and government, the poem's emphasis on the salutary effects of solitary contemplative activity suggests an alternative to the totalizing civic realm

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[46] See generally Alison L. LaCroix, "'Bound Fast and Brought Under the Yoke': John Adams and the Regulation of Privacy at the Founding," *Fordham Law Review* 72 (2004), 2331 (discussing Adams and his contemporaries' distrust of the private sphere and insistence that republicanism required individuals to engage fully in the public realm).

[47] On romantic nationalism in the early-nineteenth-century United States, see, e.g., Ferguson, *Law and Letters in American Culture*, 238-40, 266-72; Daniel Walker Howe, *The Political Culture of the American Whigs* (Chicago: University of Chicago Press, 1979, 234-35. On Story as a romantic, compare Perry Miller, *The Life of the Mind in America From the Revolution to the Civil War* (New York: Harvest, 1965), 147 (describing Story as having an "aversion" toward "the new literature of the 'Romantic Movement').

[48] Story to Fay, Sept. 6, 1798, in *Life and Letters*, 1:75-76. Immediately following this letter, Story's son William Wetmore Story, editor of the volume, described his father as a young man as "passionate, enthusiastic, at times greatly depressed, always very sentimental, and often morbid. He vaults from the deepest glooms into the highest hopes; for his natural vivacity and morbid sensibility alternately reacting upon each other, push him to as great extravagancies of joy as grief." *Life and Letters*, 1:80.

[49] Story to Thomas Welsh, Oct. 19, 1799, in *Life and Letters*, 1:82.

embraced by strong versions of republicanism in the eighteenth century. Story's poem did not advocate a retreat from public life, however, but rather called for a broader conception of public life that included space for occasional forays into "wisdom's sacred cell."[50] Indeed, especially when one takes into account Story's increasing political and professional prominence at the time of the poem's publication, one can see *The Power of Solitude* itself as Story's explicit demonstration that even the most public men needed space for creative intellectual and spiritual pursuits. In short, Story the man appears to have viewed Story the politician, Story the lawyer, and Story the writer as equally important components of his overall identity.

Story's old Harvard classmates at the *Monthly Anthology*, however, lambasted *The Power of Solitude*. A review published in 1805 critiqued the poem's "general insipidity" but noted that the piece's shortcomings stemmed not from "want of talents in the author," but from "an imbecile surrender of his powers to the modern school of writers." But the poem's real failing, the reviewer argued, lay in "the subject itself, or at least in the view which Mr. S. has taken of it." The reviewer objected to the poet's willingness to find solitude "in every pause from social intercourse, and every reflection excited when alone."[51] Stung, Story retreated from printed, public effusions of poetry, confining himself to recitations to entertain his companions on long coach rides and privately circulated verses, such "Lines, Written on the Death of a Daughter, in May, 1831." Story later told a young Josiah Quincy that the response to *The Power of Solitude* had shown him "that the Muses were not favorable to his invocations" and that he had "actually bought up and burned all attainable copies" of *The Power of Solitude*.[52] Still, "[p]oetizing remained a lifelong outlet for his emotions, but henceforth he wrote for himself only or for his friends," Newmyer observes.[53] (Quincy, for his part, noted that Story "had the knack of rhyming with ease, and it was said that he would sometimes beguile the hours of tedious argument to which he was compelled to listen by making his

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[50] See generally Eric Slauter, "Being Alone in the Age of the Social Contract," in Slauter, *The State as a Work of Art* (Chicago: University of Chicago Press, 2009), 215-40.
[51] Review of "The Power of Solitude," Article 52, *Monthly Anthology, and Boston Review*, 2 (July 1, 1805), 379, 381.
[52] "A Journey With Judge Story," in Josiah Quincy, *Figures of the Past From the Leaves of Old Journals* (Boston: Roberts Brothers, 1888), 194.
[53] Newmyer, *Supreme Court Justice Joseph Story*, 52.

notes in verse."[54]) Indeed, Story never recanted the ideas he expressed in *The Power of Solitude*. On the contrary: for the remainder of his life, Story found other literary avenues through which to articulate his belief that a vigorous national culture required room for individual emotional experience.

III. Lawyers and Readers.

More than two decades after Story had ceased attempting public invocations of the poetic muse, he continued to propound his conviction that the young nation had a special cultural and intellectual mission, as well as a political one. The Supreme Court justice and soon-to-be professor of law regarded a literature-loving people as essential to the success of the Republic, and reading as an enactment of liberty. In 1826, he told his Phi Beta Kappa audience, "This is emphatically the age of reading. In other times this was the privilege of the few; in ours, it is the possession of the many."[55] Story's narrative was one of progress, according to which the combined effect of freedom of the press, the inexpensiveness of printed material, free schools, "that liberal commerce, which connects by golden chains the interests of mankind," the Protestant "spirit of inquiry," and political liberalism was to liberate Americans from the "timid under-tones" that still characterized public debate in Europe.[56] The political consequences of a reading public were dramatic and salutary, Story told his audience. In particular, a literature-consuming population was a strong one, prepared to embrace the muscular blessings of liberty. "[W]herever the press is free, it will emancipate the people; wherever knowledge circulates unrestrained, it is no longer safe to oppress; wherever public opinion is enlightened, it nourishes an independent, masculine, and healthful spirit," Story argued.[57]

Reading was therefore no longer a luxury, a decadent pursuit that distracted individuals from important public affairs. Rather, reading had earned the right to be "classed among the necessaries of life" precisely because it activated readers' – and thus

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[54] Quincy, *Figures of the Past*, 194-95.
[55] "Phi Beta Kappa Address," 6.
[56] Ibid., 7.
[57] Ibid.

citizens' – emotions and sympathies. Authors, Story maintained, "possess a hold on the human mind, which grapples closer and mightier than all others. . . . [E]very just sentiment, every enlightened opinion, every earnest breathing after excellence, will awaken kindred sympathies, from the rising to the setting sun."[58]

Moreover, by providing an avenue of emotional connection between citizens, literature would draw those citizens ever closer into the national fabric, giving them a deeply felt sense of membership in the Union itself. Here Story specifically cited the *North American Review*, to which he was a frequent contributor, and lauded the journal for having "done as much to give a solid cast to our literature, and a national feeling to our authors, as any single event since the peace of 1783."[59]

This "national feeling" lay at the heart of Story's celebration of literature. Throughout his career as a justice, a law professor, and a writer of legal and constitutional treatises, Story's focus was on union: on strengthening national ties and minimizing what he viewed as the parochial, fissiparous interests of localism. As Story's Phi Beta Kappa speech demonstrates, the ability of literature to inspire "national feeling" made it an integral element of the Union-building project, alongside his more workaday enthusiasms for a general federal common law and a robust system of lower federal courts.[60] As Abraham Lincoln put it in his speech before the Young Men's Lyceum of Springfield, Illinois, in 1837, American government was based upon "the attachment of the People" and was therefore imperiled when the "best citizens" suffered an "alienation of their affections from the Government."[61] Lincoln's solution was for "Law" – in particular, the Declaration of Independence and the Constitution – to become the "political religion" of the nation.[62] Similarly, Story looked to the combined force of the Constitution's power to structure the Union, and literature's power to touch citizens with

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[58] Ibid., 9.
[59] Ibid., 17.
[60] On the crucial role of the lower federal courts in Story's conception of the Union, see Alison L. LaCroix, "Federalists, Federalism, and Federal Jurisdiction," *Law and History Review* 30 (2012), 205.
[61] Abraham Lincoln, "Address Before the Young Men's Lyceum of Springfield" (1837), in Richard N. Current, ed., *The Political Thought of Abraham Lincoln* (New York: Macmillan), 11-21.
[62] Ibid.; see also Abraham Lincoln, "Speech on the Kansas-Nebraska Act" (1854), in *Political Thought of Abraham Lincoln*, 67-78 (re attachment to particular sources of law).

the type of deeply felt emotions that could educate them in attachment to the Union, to complete what he viewed as the American mission to achieve recognition in every sphere of activity befitting a member of "that community of nations of which we form a part."[63] Story urged his audience to carry out this national cultural mission in the name of "American genius." To be sure, he noted, "[i]t may not be our lot to see our celebrity in letters rival that of our public polity and free institutions. But the time cannot be far distant."[64]

Women as readers, but even more crucially as authors, were central to Story's vision of the flourishing of national culture. Here, too, the narrative was one of progress. "By slow but sure advances education has extended itself through all ranks of female society," giving women the tools not only to enjoy literature but to produce it and to support themselves by its production. "There is not a parent, whose pride may not glow at the thought, that his daughter's happiness is in a great measure within her own command, whether she keeps the cool sequestered vale of life, or visits the busy walks of fashion. A new path is thus open for female exertion . . . . Man no longer aspires to an exclusive dominion in authorship."[65] And then followed the list that had elicited Marshall's reproach:

> Who is there, that does not contemplate with enthusiasm the precious Fragments of Elizabeth Smith, the venerable learning of Elizabeth Carter, the elevated piety of Hannah More, the persuasive sense of Mrs. Barbauld, the elegant Memoirs of her accomplished niece, the bewitching fictions of Madame D'Arblay, the vivid, picturesque, and terrific imagery of Mrs. Radcliffe, the glowing poetry of Mrs. Hemans, the matchless wit, the inexhaustible conversations, the fine character painting, the practical instructions of Miss Edgeworth, THE GREAT KNOWN, standing, in her own department, by the side of THE GREAT UNKNOWN?[66]

Notwithstanding the absence of Austen, Story's lengthy enumeration of favorite female writers lent heft to his insistence in the address that women could be authors

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[63] "Phi Beta Kappa Address," 22.
[64] Ibid., 29.
[65] Ibid., 11.
[66] Ibid.

without sacrificing their dignity or modesty, and that women's "genius" was a vital part of the American project of creating national feeling and awakening kindred sympathies.

According to Josiah Quincy's description of his journey with the justice in early 1826, Story was eager to discuss novels and the talents of female authors with his fellow companions during the coach ride from Boston to Washington. "As we jogged on, the conversation fell upon novels, and, this being a subject we could all talk about, it remained there for a good many miles," Quincy reported. He went on:

> After the tribute to the powers of Scott, which was a matter of course, Justice Story spoke of Mrs. Radcliffe in terms of great admiration, and wished she could have had some of the weird legends of Marblehead upon which to display her wealth of lurid imagery. Miss Burney's 'Evelina' he thought very bright and fascinating, while the conversations of Maria Edgeworth were Nature itself, and yet full of point – the duller speeches of her characters being simply omitted, as was proper in a work of art. On a subsequent occasion, I heard him place Jane Austen much above these writers, and compliment her with a panegyric quite equal to those bestowed by Scott and Macaulay.[67]

Moreover, Quincy maintained, Story was not only an admirer of female literary talents, the justice was so enlightened in his views toward women that he compared favorably with such early feminist thinkers as John Stuart Mill. "'It is only the nature of their education . . . which puts women at such disadvantages and keeps up the notion that they are our inferiors in ability,'" Quincy recounted Story as saying. Story "would not admit that sex or temperament assigned them an inferior part in the intellectual development of the race. It was all a matter of training." In short, Quincy maintained, "many of the theoretical opinions published by Mr. Mill were anticipated by Joseph Story."[68]

Even allowing for amendments and modifications to Quincy's recollection of the journey by the time he published his account in 1888, the portrayal of Story as committed to women's intellectual equality is striking. In contrast to Jefferson's library

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[67] "A Journey With Judge Story," 195.
[68] Ibid., 195-96.

recommendations, which included only one female novelist (Frances Sheridan), Story's roster of exemplary novelists in the Phi Beta Kappa speech listed only female authors. Even in the conversation in the coach, Walter Scott appears to have received only a glancing mention as a prelude to Story's praise for Radcliffe, Burney, Edgeworth, and Austen. For Story, the shining practitioners of the novelistic craft, with their virtually unlimited potential to awaken kindred sympathies, were women. They also happened to be British (indeed, all English, with the exception of the Anglo-Irish Edgeworth), a fact that appears not to have concerned Story except perhaps as yet another spur to American ambition.

Sixteen years after the Phi Beta Kappa address, in 1842, Story again took the lectern before a group of Harvard alumni to deliver a speech on literature. The remarks, titled "Literary Tendencies of the Times," struck a more pessimistic note than had the 1826 speech. Story began by warning his audience that Western civilization might have long since passed the height of its literary achievement. Story suggested "much delusion and error in this notion of our superiority over former ages," such that "it may . . . be fatal to our just progress in literature, as well as to the permanent interests of society." Indeed, he continued, "[t]he truth is, that no single generation of men can accomplish much of itself or for itself, which does not essentially rest upon what has been done before."[69] Following these ambition-dampening sentiments, Story noted that the real problem with the literary tendencies of the age was "the vast predominance of the taste for light reading and amusing compositions over that for solid learning and severe and suggestive studies." In particular, Story blamed the proliferation of periodicals, as well as "[n]ovels and romances, and other exciting fictions," which he described as circulating frenziedly through interstate and transatlantic commerce.[70]

What hope was there, then, for Story's ambitions for American culture? Or, as Story put it, "What do we mean by a National Literature?"

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[69] "Literary Tendencies of the Times: A Discourse Pronounced Before the Society of the Alumni of Harvard University, At Their First Anniversary, Aug. 23, 1842," in *Miscellaneous Writings*, 749, 750.
[70] Ibid., 753 ("They fly on our railroads, and swim in our steamboats, with a dazzling and almost dizzy activity. Not a passenger-ship crosses the Atlantic, which is not freighted with the wet sheets of the last weekly or monthly, or quarterly, or the last story of the Jameses and Blessingtons and Bulmers.").

> Do we mean by it a literature fostered and cultivated by American authors, addressing themselves to themes common to the world of letters? Or, do we mean by it a literature, which deals altogether in local topics, and busies itself only with institutions, and manners, and feelings, and discussions, peculiar to ourselves?

The answer was quick and decisive. A literature of the local and the particular, Story argued, "would sink us down to the level of a provincial dependency rather than elevate us to the rank of equals in the republic of letters."[71] The goal of American authors should be to produce works "addressed to interests, affections, and principles, common to all mankind." Indeed, all great authors had shared this focus on the universal rather than the local. But Story suggested that the appeal of the particular, like the appeal of the sensational romance and the serialized novel, might be especially alluring to American writers, and this was the tendency that he was determined to combat. The lure of an "indigenous, exclusive, and national" literature must be resisted, and the "just ambition" of American authors "should be to make our literature a component part of the literature of the world, for the use of all nations and all ages."[72] American literature should possess "the bold impress of American genius, and the masculine vigor, and the brave spirit of inquiry and expression, which fitly belong to a free government, and an unshackled press." But it should also "speak a universal language, and address passions, feelings, sympathies, and principles, which glow with equal fervor at the poles and at the equator."[73]

At the time of this speech in August 1842, just three years before his death in 1845, Story had recently completed one of the most grueling and important periods of his tenure on the Supreme Court. On January 25, 1842, the Court had decided *Swift v. Tyson*, a victory for Story insofar as it authorized federal courts to apply federal common law, rather than state common law, in cases of diversity jurisdiction.[74] On March 1, the Court had handed down its decision in *Prigg v. Pennsylvania*, a decision that caused

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[71] Ibid., 768-69.
[72] Ibid., 767, 773.
[73] Ibid., 773.
[74] 41 U.S. 1 (1842).

Story a great deal of concern as he attempted to settle the question whether the Constitution and the federal fugitive slave laws prohibited states from enacting personal liberty laws that protected African Americans from rendition.[75] The year 1842 also saw the events that William Wetmore Story described in his anecdote about one of his sisters reading Austen's *Emma* aloud to entertain their father while he sat for a bust sculpted by the son.

What, if anything, had changed between the 1826 and the 1842 addresses on literature? To be sure, the later speech contains unmistakable notes of melancholy and warnings to the next generation, urging them not to become consumed in their technological advances and lose sight of the ageless principles that Story believed characterized great literature. Yet the line between 1826 and 1842 is not entirely discontinuous. One important similarity between the two speeches is the shared theme of the importance of individuals' belonging to a political and emotional entity outside themselves, and connecting through literature with experiences and sentiments beyond their own particular domain. The "national feeling" that Story had emphasized in the Phi Beta Kappa speech still lay at the heart of the later address, for both speeches contrasted national feeling with local, parochial feeling. By 1842, Story had become even more fearful that sectional discord and the increasingly unavoidable constitutional confrontation over slavery would tear his beloved Union apart, and he sought in his speech to urge Americans to rise above their allegiances to region, state, and "domestic institutions" (to use the contemporary euphemism for southern slaveholding) in the name of universal principles of the Republic and the Union. Story's conviction that a speech on literature provided a forum to address these issues, albeit indirectly, demonstrates his belief that the worlds of politics, letters, and sentiment were fundamentally and inextricably connected.

[75] 41 U.S. 539 (1842).

IV. Conclusion.

Between the late eighteenth and early nineteenth centuries, American lawyers and statesmen developed a complex constellation of ideas about the importance of literature to the new nation. From Jefferson's list of titles that belonged in a gentleman's library, to Adams's citations of novels in his correspondence, to Story's romantic search for American national identity through the paired discourses of law and letters, these first- and second-generation founders immersed themselves in literature and spoke candidly about the value that reading and writing fiction offered to citizens of the federal republic. Moreover, by the early nineteenth century, literature became not only a vehicle for developing republican sentiments in individuals, and by extension between individuals and the polity, but a marker of a people's achievement of all the qualities of nationhood. For Story in particular, law, politics, culture, and letters were all essential elements to establishing the United States' right to assert itself in the community of nations. As important was the connection between individual citizens' personal, emotional engagement with literature and their feeling of affiliation with the Union. Literature, then, was an essential component of creating not only a nation, but the national feeling that would sustain it.

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