

“The common sympathies of our nature”: Moral Sentiments, Emotional Economies, and Imprisonment for Debt in Upper Canada

JEFFREY L. McNAIRN*

The campaign against imprisonment for debt in Upper Canada, at its peak in the 1820s and 1830s, gave new prominence to public expressions of emotion as part of a process of moral reflection. The feelings of ordinary colonists became more politically salient, as did friendship as a metaphor for the bonds created by such human sensibility. Legal reformers condemned imprisonment for debt for distorting moral reasoning and thus disrupting reciprocal social relations. This article traces how sensibility was mobilized by legal reformers and their critics in public debate, acts of charity, and narratives of suicide and death and by debtors in their own petitions. Sensibility delegitimized the principle of the law and fuelled a number of reforms, but its malleability ensured that its prescriptions were multiple, that particular emotional performances aroused suspicion of being perverse, and that existing hierarchies might be affirmed as well as challenged.

La campagne contre l'emprisonnement pour dettes au Haut-Canada, qui a atteint son paroxysme dans les années 1820 et 1830, a donné une importance nouvelle aux expressions publiques de l'émotion dans le cadre d'un processus de réflexion morale. Les sentiments des colons ordinaires ont gagné en pertinence du point de vue politique, comme l'amitié en tant que métaphore des liens créés par une sensibilité humaine de ce genre. Les réformateurs du droit ont condamné l'emprisonnement pour dettes parce qu'il altérait le raisonnement moral et perturbait, par conséquent, les relations sociales réciproques. L'auteur montre ici comment les réformateurs du droit et leurs critiques ont fait appel à la sensibilité dans le débat public, les gestes de charité et les récits du suicide et de la mort, tout comme les débiteurs l'ont fait dans leurs propres pétitions. La sensibilité a délégitimé le principe de la loi et alimenté nombre de réformes. Sa malléabilité a cependant fait que ses prescriptions étaient multiples, que des manifestations particulières d'émotion alimentaient les suspicions de perversité,

* Jeffrey L. McNairn is a member of the Department of History at Queen's University, Kingston. He repays his considerable debt to Carolyn Podruchny and the anonymous reviewers for their generous readings and constructive comments with gratitude.

et que les hiérarchies existantes étaient susceptibles d'être affirmées aussi bien que contestées.

FROM A KINGSTON courtroom in 1834, the conservative *Chronicle & Gazette* reported on a trial concerning whether documents had been forged to imprison a debtor. Marshall Spring Bidwell, a reform leader in the Assembly and prominent opponent of imprisonment for debt, represented the defendants. His legal arguments went largely unnoticed. Instead, the *Chronicle* recounted how Bidwell “became exceedingly affected, ... so moved that his utterance was choked for some time, and his appearance, in struggling to speak in defence of his friends, affected many of the jury and the audience to tears. A domestic chord of his bosom seemed to have been touched, and he was perfectly overcome” in what the paper could only describe as “this burst of feeling.” The *Chronicle*, a bitter political opponent, judged Bidwell’s speech “manly and generous, and such as does honour to the best feelings of human nature.” A second paper reported that Bidwell himself was “affected even to tears. He was perfectly unmanned when he reflected” on the injustice done to his friends.¹ The courtroom and the newspaper public became theatres of pathos, spectators to Bidwell’s visceral reaction to unjust suffering. Bidwell’s feelings counted alongside his legal reasoning as he and his audience felt their way to a moral consensus. Whether characterized as a momentary loss of the self-command associated with manliness or the epitome of virtuous manhood, crying in the pursuit of justice was praiseworthy. Tears signified finely tuned moral sentiments able to identify injustice and those worthy of befriending. Tears hailed others to right the wrong and extend bonds of sympathy among diverse, otherwise self-regarding, individuals. The jury found the defendants not guilty.

Bidwell’s tears and the reaction to them embodied a newly dominant culture of sensibility. The “affective turn” in a number of disciplines has drawn historians’ attention to how emotions are expressed and evaluated over time and their role in negotiating social and political relations. Bidwell’s tears belong to the history of sensibility as well since the power of such emotions to overcome indifference to the fate of others lay at the heart of a style of moral reasoning.² To understand such reasoning and its emotional cues historically, it is necessary to trace them at the level of concrete moral reflection across multiple, often ambiguous, circumstances as well as at the level of moral theory and to include, along with supporters, those opposed to the ends to which they were put.³ By the same token, only such a history can make sense of the campaign against imprisonment for debt.

Historians of early Canada have as yet paid scant attention to morality and emotion in relation to law and politics.⁴ The middle decades of the eighteenth

1 *Chronicle & Gazette*, September 13 and 20, 1834; *British Whig*, September 12, 1834.

2 Nicole Eustace *et al.*, “AHR Conversation: The Historical Study of Emotions,” *American Historical Review*, vol. 117, no. 5 (2012), pp. 1487-1531; Daniel Wickberg, “What is the History of Sensibilities? On Cultural Histories, Old and New,” *American Historical Review*, vol. 112, no. 3 (2007), pp. 661-684.

3 Margaret Abruzzo, *Polemical Pain: Slavery, Cruelty, and the Rise of Humanitarianism*, (Baltimore: The Johns Hopkins University Press, 2011), pp. 3, 7, 13-14.

4 This is less true of studies of gender, family, and religion: see William Westfall, *Two Worlds: The Protestant*

century are well known as the “age of sentiment,” but Upper Canada was created amidst the late-century reaction against its perceived excesses blamed for the overthrow of authority and the violence of the American and French Revolutions.⁵ Scepticism about claims that ordinary people’s feelings – unmediated by social subordination or cultural authorities – were guides to right action was sustained in the new colony by the struggle of “Tories” against “enthusiasm” in both evangelical religion and reform politics.

From the mid-1820s, however, sensibility re-emerged forcefully in the campaign against imprisonment for debt, the colony’s most prominent humanitarian cause. The campaign echoed those against slavery and other practices being re-imagined as cruel remnants of a less enlightened age, but in Upper Canada it was the confined debtor who became the prime site for thinking about the moral implications of pain and the power that inflicted it. While zealous appeals to the “heart” retained their association with subversion and discord, emotions as expressions of moral sentiments became an important adjunct to the “head” rather than its antithesis. Sensibility was thus elaborated predominately in law and politics where men served as both the figure of misfortune and of fellow feeling. Expressing these ties of sympathy, the metaphor of friendship grew in political salience. The campaign also allied many political conservatives with reformers against the legal status quo (if not always in favour of the same proposals), uniting political as well as other sorts of “strangers” in a common moral framework but diluting its political message. By the 1830s, few defended imprisonment for debt. The campaign redrew the circle of moral concern to include honest insolvents and exclude the creditors who imprisoned them. It mobilized the feelings of others – the “friends of humanity” – to re-evaluate a long-accepted and widespread practice and revise the law to achieve a new emotional equilibrium that the Third Earl of Shaftesbury called a proper “economy of the passions.”⁶

Yet the campaign revealed that economy’s limits too. Investing heavily in the imprisoned debtor as a victim of both misfortune and arbitrary power diverted attention from debtors’ own actions and from more structural aspects of the colony’s economy. By the 1830s, the moral imperatives of sensibility were rarely denied, but proved capacious enough for legal reformers of all shades and their opponents. Agreement on a moral philosophy disguised persistent disagreement about alternative insolvency laws. Those opposed to a particular measure turned compassion for distress away from legal reform towards charity for the deserving. As the response to suffering, alms reaffirmed existing cultural presumptions and social hierarchies. The dwindling number of supporters of imprisonment

Culture of Nineteenth Century Ontario (Montreal and Kingston: McGill-Queen’s University Press, 1989); Cecilia Morgan, “‘When Bad Men Conspire, Good Men Must Unite!’ Gender and Political Discourse in Upper Canada, 1820s-1830s” in Kathryn McPherson, Cecilia Morgan, and Nancy M. Forestell, eds., *Gendered Pasts: Historical Essays in Femininity and Masculinity in Canada* (Don Mills: Oxford University Press, 1999), pp. 12-28.

5 Thomas Dixon, *Weeping Britannia, Portrait of a Nation in Tears* (Oxford: Oxford University Press, 2015), pp. 96-122; Sarah Knott, *Sensibility and the American Revolution* (Chapel Hill: University of North Carolina Press, 2009).

6 Quoted in Michael L. Frazer, *The Enlightenment of Sympathy: Justice and the Moral Sentiments in the Eighteenth Century and Today* (New York: Oxford University Press, 2010), p. 19.

for debt even learned to defend the law in sensibility's terms. Finally, the more legal reformers insisted that fine sentiments led only to legal change, the more they aroused suspicion that displays of such sentiments might be self-serving, excessive, or directed at unworthy recipients. Such suspicions tempered the social and political consequences of shared moral commitments. The debate about imprisonment for debt hailed a new emotional regime in Upper Canada that commanded considerable power but was hedged by reservations and contradictory in its implications. The imprint of that regime is archived across a number of contexts from the law and moral philosophy to charity, narratives of suicide and death, and the petitions of imprisoned debtors themselves.

Imprisonment for Debt's Affective Economy

Dating from the thirteenth century, imprisonment for debt was part of English property and civil law received by Upper Canada in 1792. The debtor's body was taken into custody when a creditor-plaintiff swore out a writ of *capias* rather than have any eligible assets seized and sold. Nominally, arrest was not to punish default but to prevent a debtor from absconding or to pressure the debtor-defendant if he⁷ had concealed assets or conveyed them to trusted surrogates to put them beyond the creditor's reach. With no bankruptcy law by which assets might be inventoried or any fraudulent conveyances identified and with certain types of property (such as cash and negotiable instruments) immune to seizure, imprisonment for debt was the only means to compel debtors to account for all assets that might be used to satisfy a creditor.

Creditors might also arrest in the expectation that family or friends would pay the debt rather than see the debtor imprisoned. Once sympathy for another's pain became the basis of the campaign against the law, such a strategy was re-imagined in its terms: the practice could now be justified on the grounds that the willingness of others to come forward was evidence of a debtor's probity. As one legislator put it, "it is a right principle to think that every honest man has a friend who will prevent him from being imprisoned."⁸ Opponents of abolition insisted that, for this and other reasons grounded in sensibility, few honest insolvents were arrested: an honest man would do everything to meet his obligations since he "feels more pain in not being able to pay his debts, than he does in going to jail;" creditors had no reason to arrest unless they believed a debtor had secreted assets or would abscond; and, like other moral agents, creditors would exercise compassion towards an innocent victim of a misfortune that prevented him from paying what was owed. Conversely, "there can be no cruelty or hardship in committing a man to jail if he refused to pay his honest debts, when the means are within his power."⁹

Sensibility was more typically turned against imprisonment for debt. The law seemed especially designed to pervert creditors' moral reasoning. Creditors were

7 Few if any women were gaoled, a result of a combination of coverture and cultural expectations, which rendered a woman's imprisonment especially shocking: "Common Decency," *Kingston Chronicle*, December 1, 1826. Imprisoning women for debt was abolished in 1843.

8 Christopher Hagerman, *Chronicle & Gazette*, April 11, 1835.

9 Jesse Ketchum and Christopher Hagerman, *Cobourg Star*, January 23, 1833.

left to decide whether a debtor might hide assets or abscond and were empowered to act on that decision. From 1800, to arrest a debtor prior to a trial to determine if a debt was legally due, a creditor had to swear to being “apprehensive” the defendant would abscond “without paying his debts.” From 1822, creditors also had to swear that they did “not sue out such process from any vexatious or malicious motive.” A creditor had to monitor his fears and other passions more carefully, but was still “held accountable only to his own conscience!” one legal reformer exclaimed: “a very partial tribunal, it must be confessed.”¹⁰ Creditors might seek revenge or be so enraged as to be incapable of calmly calculating whether an arrest would increase the likelihood of repayment.¹¹ Bidwell also abhorred the idea of creditors arresting on the calculation that “friends will out of humanity ... come forward and pay the debt.” Such creditors inflicted “misery” to provoke those more humane than themselves. Speculating in the pain of some and the sympathy of others, they stood condemned as especially “merciless and hard-hearted.”¹²

No other controversy attracted such sustained moral attention. A bill to abolish imprisonment for debt in whole or in part was first introduced in the assembly in 1823 and again in each parliament from 1825. One such bill, sponsored by a political conservative in 1831, declared it “demoralizing” and inconsistent “with that forbearance and humane regard to the misfortunes of others which should characterize the Legislature of every Christian country.” Newspapers spearheading the campaign such as Francis Collins’s reform *Freeman*, the *Western Mercury*, or George Gurnett’s conservative *Courier of Upper Canada* framed the issue in these terms and kept it before their readers in reports of legislative and judicial proceedings, debtors’ petitions, editorials, prose and poetry, and letters to the editor, contributing to a print culture of sentiment. While abolition was not achieved prior to union with Lower Canada, reforms were enacted from the early 1820s that reflected the heightened significance of suffering. Beginning in 1822, for instance, debtors for whom sufficient security was posted could be bailed to “the limits,” an area not more than six acres surrounding the district gaol. Renewed in 1826, the limits were extended in 1830 and again in 1834. If “friends” were willing to risk their own money to vouch for a debtor, their trust in his honesty militated against a creditor’s suspicion of fraud.¹³ The campaign culminated in the 1835 *Act to mitigate the Law in respect to imprisonment for debt*, which explicitly narrowed its justification to compelling debtors to surrender assets, abolished arrest for small debts, and limited the duration of imprisonment for larger sums.¹⁴

10 *An Act to amend part of an act passed in the thirty-fourth year of the reign of his Majesty ...*, 39 G. III, chap. 2 (1800); *An Act to repeal part of and amend the Laws now in force respecting the practice of His Majesty’s Court of King’s Bench in this Province*, 2 G. IV, chap. 1 (1822); *Courier of Upper Canada*, October 6, 1832.

11 See, for instance, *Western Mercury*, April 7 and October 27, 1831.

12 Marshall Spring Bidwell, *British Whig*, April 9, 1835.

13 For the preamble, see *Niagara Gleaner*, December 17, 1831; for friendship regarding bail, *Brockville Recorder*, January 26, 1830.

14 Although the terms of the debate were set, statutory resolution required years of experimentation. See R. C. B. Risk, “The Golden Age: The Law and the Market in Nineteenth-Century Ontario,” *University of Toronto Law Journal*, vol. 29 (1976), pp. 324-326.

Each year between 1828 and 1835 roughly one arrest was made for every 500 men in the colony. Many more were threatened or feared being imprisoned. A campaign framed by sensibility resonated because Upper Canada's economy relied on credit more than on barter or cash. All social ranks were caught in webs of private credit and were thus vulnerable to shifts in how their own creditworthiness and that of others was appraised. Moreover, those who were creditors in one relationship were likely debtors in another. In essence, these contracts were social bonds of obligation concerning a willingness to pay in the future and might be secured by little more than confidence in the moral character of others. Thus the fraudulent debtor not only stole a creditor's property, but was a "betrayal of trust and a violator of true ties of friendship and gratitude." To its critics, imprisonment for debt compounded the problem. It brought out the worst in everyone as "one angry man sues another ... who perhaps as angrily resists repayment." This "species of hostility" ought to be replaced, they argued, with a new emotional economy in which the law encouraged more just and socially cohesive outcomes.¹⁵

Moral Philosophy

Attorney General John Beverley Robinson accused John Rolph of relying too heavily on the "opinions of great moralists" in support of his bill to abolish imprisonment for debt.¹⁶ The charge slighted the contribution of Protestantism, medical science, and literary culture to sensibility, but rightly identified the importance of British, especially Scottish, moral philosophy. A philosophy of mind indebted to John Locke posited a human capacity to receive sensations from the external world through the nerves or senses. This older view of the mind was overlaid with newer notions of an internal character or moral sense that transmitted moral, emotional, and aesthetic judgments through the heart and moral fibres of the body. In Daniel Wickberg's apt summary, "the humanitarian sensibility united an ethics of feeling with an empiricist epistemology, a moral universalism and a notion of necessary action to alleviate suffering."¹⁷ Figures such as Shaftesbury, Francis Hutcheson, David Hume, and Adam Smith rejected the premise associated with Thomas Hobbes and Bernard Mandeville that humans were egoists by nature; in different ways, each posited man's natural sociability and benevolent concern for others.¹⁸

15 *Western Mercury*, November 7, 1833, and copied in *Patriot*, November 19, 1833; *Courier of Upper Canada*, copied in *Upper Canada Herald*, November 20, 1831. For more on credit relations, see Douglas McCalla, "Rural Credit and Rural Development in Upper Canada, 1790-1850" in Roger Hall, William Westfall, and Laurel Sefton MacDowell, eds., *Patterns of the Past: Interpreting Ontario's History* (Toronto: Dundurn, 1988), pp. 37-54; Nancy Christie, "A 'Painful Dependence': Female Begging Letters and the Familial Economy of Obligation" in Nancy Christie and Michael Gauvreau, eds., *Mapping the Margins: The Family and Social Discipline in Canada, 1700-1975* (Montreal and Kingston: McGill-Queen's University Press, 2004), pp. 82-83. For these statutes and statistics, see Jeffrey L. McNairn, "'A just and obvious distinction': The Meaning of Imprisonment for Debt and the Criminal Law in Upper Canada's Age of Reform" in G. Blaine Baker and Donald Fyson, eds., *Essays in the History of Canadian Law XI: Quebec and the Canadas* (Toronto: University of Toronto Press, 2013), pp. 193-196, 203-204.

16 John Beverley Robinson, *Colonial Advocate*, February 7, 1828.

17 Wickberg, "What Is the History of Sensibilities?," p. 680.

18 See Frazer, *The Enlightenment of Sympathy*, for an overview.

In his *Theory of Moral Sentiments* (1759), Smith argued that, when we see another suffer, “we place ourselves in his situation, we conceive ourselves enduring all the same torments ... and we then tremble and shudder at the thought of what he feels.” From imagining the feelings of others, “we sympathize with the sorrows of our fellow creatures” unless we have become insensitive. If our own reaction to the situation is similar to the actor’s, “so we likewise enter into his abhorrence and aversion for whatever has given occasion to it.” To correct this moral instinct for our partiality towards ourselves and those closest to us, we also compare our reaction to the reactions of others, striving thereby to internalize the detached perspective of an impartial spectator. Smith, then, offered an individual and collective process of reasoning about justice dependent on but not limited to how ordinary people felt about particular cases.¹⁹ That process was applied in “On Debt,” an essay by one of Smith’s pupils republished in Upper Canada at the outset of the campaign against imprisonment for debt. At the first lie to a creditor “compunction is felt,” but, pressed by obligations he cannot meet, the debtor learns to deceive “without a blush,” trades on the sympathy of his friends to have them give security for obligations he no longer intends to honour, and, finally, his own heart now hardened against the feelings necessary for virtue, “surrenders nothing which he can secret, tramples on human laws, and takes God’s name in vain.”²⁰

John Rolph applied this process of ethical reflection to imprisonment for debt, but directed sympathy exclusively towards the confined debtor by emphasizing the distorted moral reasoning of the cruel creditor rather than the mendacious debtor. Both a lawyer and medical doctor first elected to the assembly in 1824, Rolph’s extensive and much-discussed speeches in support of the abolition bills he sponsored in 1826, 1827, 1828, and 1829 comprise the colony’s most systematic statement of sensibility.²¹ Far from sanctified by time, imprisonment for debt was “borrowed from barbarous ages.” As nations “became more humane,” default was punished less severely. Justice, then, was not fixed, but shifted as pain attracted heightened moral concern. In this narrative – informed by Scottish conjectural history – commercial society itself reflected refined sensibilities. Thus Rolph refused to countenance the suggestion that the colony’s credit relations were sustained by the “terrorism” of imprisonment for debt. Like slavery, capital punishment, and whipping, it was an “ancient” or “savage” anachronism to be discarded if Upper Canada aspired to be a “refined and polished” society. A mental psychology premised on human benevolence and sociability underwrote this progressive history. “Naturally disposed to sympathize with a sufferer,” men

19 Adam Smith, *The Theory of Moral Sentiments*, eds. D. D. Raphael and A. L. Macfie (Indianapolis: Liberty Classics, 1982), pp. 9, 70; Frazer, *The Enlightenment of Sympathy*, pp. 100-101; Abruzzo, *Polemical Pain*, pp. 53-57, 134. Works by Locke, Hugh Blair, Hume, and Smith were advertised in the colony as early as *Upper Canada Gazette*, November 25, 1797.

20 Samuel Charters, *Weekly Register*, October 28, 1824 [1786].

21 Speeches on the last three bills were reported most extensively in *U.E. Loyalist*, January 20, 1827; *Colonial Advocate*, December 18, 1828, and January 1 and 15, 1829; and *Upper Canada Herald*, April 8, 15, and 22, 1829, from which all quotations are taken. My exposition is indebted to Abruzzo, *Polemical Pain*, especially pp. 51-52, 56, 63, 66-70, 73, 77, 123.

should find it “at all times painful” to see “a fellow creature” imprisoned and thereby excluded from that “communion with his family, and that intercourse with the world, which are the natural destiny of every man.” The principle of abolition thus “forces itself upon the favourable attention of every humane mind.”

The pain of the imprisoned debtor reduced the “sum of public happiness,” but the sympathetic pain of others was of greater moral import. When, for instance, the Court of King’s Bench tried a case concerning a debtor’s right to access the gaol yard, Rolph imagined his anguish at being unable to “see the earth, breathe a purer air and look for a moment of transient cheerfulness to the canopy of heaven,” but it was how others felt that identified the injustice and necessitated legal change: “Every man who heard” why debtors had to remain in close confinement “seemed shocked at the law ... even the judges ... looked as if their native gravity changed to horror at the doctrine propounded to them with so much truth and learning. There was no solemn decision, ... but the motion seemed to be lost by the general consent in the silence of disgust.” As Bidwell’s tears moved one courtroom to see what was just, so a lawyer’s able exposition of the law shocked another into recognizing cruelty. The legislation creating limits for the colony’s gaols flowed from that recognition. Ethical judgment, then, was collective and affective as much as individual or rational and arose from the reaction of ordinary colonists to particular cases, not by deduction from first principles made by moralists and judges. “There is,” Rolph told his audience, “such a spectacle of human woe, as a living testimony” to the injustice of the law “in one of our eastern jails.” Imprisonment for debt persisted, in part, when a debtor’s “fate is unheeded because his civil death is not perhaps sensibly felt beyond the circle of his own friends;” his “pain is secret, unseen and unpitied.” Legal reformers set out to change that.

For Rolph, liberty was a prerequisite for individual virtue just as such visibility was necessary to correct the moral reasoning of others. An insolvent might suffer numerous misfortunes, including the loss of his earthly possessions, but if free he retained the “consolation of hope.” He could begin anew and labour to meet his obligations to creditors and family alike. Forced by imprisonment into aberrant idleness and solitude – perhaps on the basis of the mere suspicion of a malicious creditor – a debtor brooded on the injustice and indulged in “indignation against the author of it.” Such anger could “so weaken a finer sense of honesty” as to excuse in a debtor’s own mind a fraudulent conveyance of property to support his family that he would otherwise have used to satisfy a creditor, “a course, which had he enjoyed his liberty, his mind would have revolted at.” Confronted with a choice between a vicious act and “ruin in gaol,” only the “heroic in their sentiments and martyr-like in acting up to them” could be counted on to reason correctly. The law was perverse, tempting once honest men into the very fraud it meant to deter.

Imprisonment for debt was especially “ill suited to human nature” because it empowered creditors to exercise dominion from similarly inflamed passions. The creditor who imprisoned the unfortunate was “hard hearted and merciless,” abnormally deaf to the demands of sympathy: “you may appeal to his feelings, and find them inaccessible.” More often, he acted from the wrong feelings: “obdurate,”

“disappointed,” “vindictive,” “angry,” and so consumed by “avarice” that natural self-regard warped into naked egoism. Impartial spectators could only draw away in antipathy from such turbulent sentiments and the indifference to others they licensed. In the absence of sufficient self-restraint or an external judicial authority “to govern his caprice or control his malice,” creditors did not act impartially, calculate their own best interests, or judge a debtor fairly. Abolishing imprisonment for debt at a creditor’s discretion would remove this irresponsible power and thus promote the moral discipline of creditor and debtor alike. “Further reflection” on its nature and consequences would confirm that imprisonment for debt was indeed “a cruelty from which every mind must revolt.” Moral instincts and the emotions that expressed them joined reason in a shared process of reflection.

Other legal reformers reiterated key elements of this process. Imprisonment for debt was routinely condemned in starkly moral terms: creditors who imprisoned became stock figures of insensibility; insolvents were typically presented as blameless victims of economic misfortune, but on the rare occasions when their dishonesty was acknowledged it was attributed to the law rather than providing a justification for it.²² Particularly common was resort to the “melancholy spectacle” to interest strangers in the fate of others and to channel the resulting moral outrage against the law. Henry John Boulton, whose legal arguments against a right to access prison yards had once shocked the Court of King’s Bench, pointed to York’s gaol to invite his fellow legislators to “consider the situation of an unfortunate debtor, immured within the walls of yonder prison” and to imagine his suffering: “what must be the anguish of that man’s mind?” the Attorney General wondered. Such imaginative projections created the moral consensus necessary to rewrite the law: “How long,” asked the inaugural editorial of the *British Colonial Argus*, “will suffering humanity be unheeded and the common sympathies of our nature withhold from this unfortunate class, ... and by one united voice unbolt the prison door and set the unfortunate free?”²³

Such demands for sympathy drew attention to suffering, but also to one’s own reaction to it. Well into the 1830s, Rolph’s speeches were praised for their “eloquence, feeling, and force” by political friend and foe alike.²⁴ One, recalling how Rolph had drawn “tears from the eyes of those men of feeling” in the assembly, urged his readers to sustain those “whose heart flows with sentiments of humanity to alleviate the condition of the unfortunate, The present time is propitious; let the country consult their feelings.”²⁵ Upper Canadians were to monitor how they felt and support legislators who felt as they did. Awareness of the political efficacy of such feelings, however, increased anxiety about their authenticity. If esteem and

22 For examples in both reform and conservative papers, see John Wilson, *Kingston Chronicle*, June 13, 1823; *Colonial Advocate*, December 18, 1826; *Western Mercury*, February 24, 1831; A Farmer of Gore, *Patriot*, October 16, 1835; *Royal Standard*, November 18, 1836.

23 Benevolous, *Patriot*, April 29, 1836; Henry John Boulton, *Western Mercury*, January 26, 1832; *British Colonial Argus*, August 6, 1833.

24 *Courier of Upper Canada*, copied in *Brockville Recorder*, January 31, 1833. See also *Colonial Advocate*, February 7, 1828; *Gore Gazette*, February 9, 1828; *Upper Canada Herald*, March 11, 1829; Marshall Spring Bidwell, *Western Mercury*, January 26, 1832; William Lyon Mackenzie, *Sketches of Canada and the United States* (London: Effingham Wilson, 1833), p. 207.

25 Z. to *Gore Balance*, copied in *Freeman*, August 19, 1830.

votes could be won, might emotional display, far from a natural “burst of feeling,” be a calculated performance better suited to the theatre than to the legislature or courtroom? Whatever tears he may have witnessed, Robinson could not tell whether Rolph’s sentiments were “actually felt or merely avowed.”²⁶ “Shewy rhetorical nothings” was the reformer William Lyon Mackenzie’s dismissal of what he scorned as empty moralizing.²⁷ Legal reformers might also question each other’s sincerity. When the changes proposed by Boulton’s bill stopped short of abolition, did the gap between his “very feeling speech” and the “meager” measure it seemed to justify suggest that his performance of fine feelings was partly pretence?²⁸

Even if they accepted that expressions of sentiment on behalf of honest insolvents were sincere, opponents of the particular reforms could argue that these were selective – ignoring unpaid creditors and mendacious debtors – without challenging the tenets of sensibility.²⁹ Political conservatives, however, also worried that insisting on almost routinized expressions of sympathy might unleash emotion from the restraint of reason. Indeed, the first bill to abolish imprisonment for debt was opposed on the grounds that “the arguments used were not addressed to the judgment of the house, but to their feelings.”³⁰ Yet, as moral sentiment was accorded greater authority and an increasing number of political conservatives supported at least some form of amelioration, they became the most insistent that reason and sentiment were complementary. Thus, “Simcoe” judged Boulton’s speech as having done “honour to his head and heart” and “Benevolous” called for abolition on the grounds of “sound policy” as well as “humanity.” The latter concluded by asking the editor of a conservative newspaper for his “sentiments” on the subject, a reminder that the word denoted one’s reasoned reflection as well as moral intuitions.³¹ Concerns that expressions of sympathy might be insincere or selective became part of the public process by which moral instincts were corrected and refined.

The worry that expressions of sentiment were morally praiseworthy but insufficient seemed particularly apt in the context of law-making. Solicitor-General Christopher Hagerman insisted that legislators go beyond “considering the question on the single and only plea of humanity.” They had to obey moral imperatives, but also calculate the consequences of particular insolvency laws prudentially. To avoid being “excited by some cases” of unusual harshness, Hagerman suggested that legislators direct sheriffs to compile returns of the number of debtors committed, the length of their confinement, and the sums for which they had been arrested. Statistics would make imprisoned debtors visible

26 John Beverley Robinson, *Colonial Advocate*, February 7, 1828. As the presiding judge, what did Robinson make of Bidwell’s tears in defence of the alleged forgers?

27 William Lyon Mackenzie, *Colonial Advocate*, February 9, 1828. Questions of sincerity dogged Rolph’s career, but should be read in the context of a culture of sentiment, not solely as matters of personal character. See Nicole Eustace, *Passion Is the Gale: Emotion, Power and the Coming of the American Revolution* (Chapel Hill: University of North Carolina Press, 2008), pp. 82-89.

28 Peter Perry, *Western Mercury*, January 26, 1832. See also *Western Mercury*, February 24, 1831.

29 For example, Robinson, *Colonial Advocate*, February 7, 1828.

30 James Gordon, *Kingston Chronicle*, June 13, 1823.

31 Simcoe, *Brockville Gazette*, January 3, 1832; Benevolous, *Patriot*, April 29, 1836.

as numbers abstracted from the bodies whose suffering served as spectacles. Numbers invited a less intimate form of reasoning based on counting and the statistical norm rather than one prompted by stories of anguish recounted to paint the law's moral implications all the more vividly.³² The nature of sensibility and its relationship to law-making vexed philosophers, but in Upper Canada a tempered sensibility was being fashioned by the debate about imprisonment for debt.

Benevolence and Gratitude

The political meaning of sympathy was also explored in acts of charity. If humanitarian sentiment flowed in channels well worn by Christian charity,³³ Rolph avoided explicitly religious themes and idioms. His non-theocratic philosophy did, however, resonate with a liberal theology centred on a benevolent God – a deity who had designed a providential order observable in human nature by which virtue was rewarded with happiness and vice punished with pain in this world. Moral sentiments and the emotions that expressed them were thereby sanctified, making it easy for Upper Canadians to equate being humane with being Christian.³⁴

Charity, the exemplary Christian response to suffering, muddied Rolph's attempt to fasten compassion tightly to legal reform.³⁵ Upper Canadians might pity imprisoned debtors in general or only those deemed worthy. They offered charity to alleviate acute crises without passing judgment on the law. Some were moved to support improved gaol conditions or reforms to address alleged abuses instead of more comprehensive legal change. Moreover, by appealing to individual cases of need, legal reformers invited scrutiny of the worthiness of those cases and how best to relieve their suffering. In response to Rolph's invocation of debtors' distress, for instance, Robinson did not deny its moral import but sought to return benevolence to the voluntary offering of alms to supplicants: "Let the hon. mover and himself visit these dungeons and let an appeal be made to them to relieve the inmates, and he would go as far as that gentleman – but he did not wish to be considered as inhuman" because he "could not consider the feelings of the hon. mover of the bill" sufficient reason to abolish imprisonment for debt.³⁶ Similarly, York's "proverbially benevolent gentry" were entreated to subscribe to a fund organized by the district sheriff, who had "humanely interested himself" in the plight of the widow and children of a debtor who had died in custody. Potential subscribers were assured that the widow was "very respectably connected, of unblemished and amiable character."³⁷ Sympathy enjoined action on behalf of

32 Hagerman, *Chronicle and Gazette*, April 11, 1835.

33 Peter N. Stearns, "Modern Patterns in Emotions History" in Susan J. Matt and Peter N. Stearns, eds., *Doing Emotions History* (Urbana: University of Illinois Press, 2014), p. 29.

34 Abruzzo, *Polemical Pain*, pp. 58-61; Thomas Dixon, *From Passions to Emotions: The Creation of a Secular Psychological Category* (Cambridge: Cambridge University Press, 2003), pp. 62-97. See, for example, *Brockville Gazette*, March 20, 1829; Jurisprudence, *Upper Canada Herald*, December 21, 1831. The fall, man's depravity in the absence of God's grace, happiness reserved for the afterlife, and God as a wilful sovereign acting in the world were downplayed in favour of man's natural goodness and God as the benevolent architect of the soul.

35 Abruzzo, *Polemical Pain*, pp. 7, 14, 79, 81, 118.

36 Robinson, *Colonial Advocate*, February 7, 1828.

37 *Courier of Upper Canada*, copied in *Western Mercury*, January 31, 1833.

others, but the social distance between gentlemen whose compassion justified their social standing and wealth and deserving dependents was sustained. The law's responsibility and that of the sheriffs who administered it for the debtor's and his widow's suffering was also effaced.

Debtors themselves might require charity, creating conditions for a rare extension of what Nancy Christie has called the typically female "narrative of need" or "begging letter" to a class of dependent men.³⁸ Imprisoned by private litigation, debtors were not entitled to the gaol rations provided at public expense to criminals imprisoned by the Crown. They had to rely on their own resources (creditors had seized their bodies, not their goods), the assistance of family and friends, or, if destitute and otherwise eligible, a court-ordered weekly allowance from the creditor at whose suit they were held. Those bereft of assets or friends and awaiting or ineligible for the statutory stipend subsisted on the charity of fellow prisoners, the gaoler, sheriff, and local magistrates or other "strangers" who, in the words of one group of debtors, pained by their suffering, could not "bear to see them starve."³⁹ In return, destitute debtors expressed gratitude, drawing donor and spectator closer by acknowledging the debt and holding up such "praiseworthy" acts for emulation.⁴⁰ Debtors might also try to shame officials into intervening by anticipating a response worthy of such esteem. Had the lieutenant governor visited Niagara's gaol on his recent visit to the district, Charles Walsh expected he "would assuredly have *seen much* that would have excited commiseration [*sic*], and all the most humane feelings of Your *Excellency's heart*." Bonds of sympathy might be indistinguishable from deference expressed in moral terms. Indeed, as Nicole Eustace observes, "records of the expression of love and affection stem primarily from situations where power imbalances needed to be finessed."⁴¹

Yet the social solidarity embodied in charity could fuel rather than deflect demands for legal reform and contest abuses of power and existing hierarchies. Debtors at York contrasted the "humanity of their fellow prisoners" who shared their food to the "base and unmanly disposition of their creditors" who had imprisoned them. Obeying the dictates of conscience, not solvency or social status, marked true men. A debtor at Brockville dutifully acknowledged the "truest sensations of gratitude" towards those who had secured his release, but felt equally the need to denounce the law as "abominable."⁴² Debtors at Niagara acknowledged alms received more effusively:

If there is a time when a kindness and sympathy of strangers imperceptibly entwine with the most [?] secret fibres of the heart, it is, when the gloom of adversity has

38 Christie, "A 'Painful Dependence'," pp. 69, 71, 87, 92.

39 Report of debtors meeting, *Brockville Recorder*, August 25, 1831. First enacted in 1805, the allowance was extended to a new class of debtors in 1834, another instance of reform fuelled by sensibility. On the provisioning of debtors, see McNairn, "'A just and obvious distinction,'" pp. 195-196, 208-209.

40 See the acknowledgement of Home District prisoners for potatoes from a legislative councillor and a Christmas tree from Attorney-General Boulton, *Colonial Advocate*, May 27 and December 30, 1830.

41 Archives of Ontario, RG5 A1, Civil Secretary's Correspondence [hereafter Sundries], v. 169, 92334-42, Walsh to J. Joseph, August 2, 1836 [emphasis in original]; Eustace, *Passion Is the Gale*, p. 113.

42 Sundries, v. 117, 65934-37, Donald Cameron, JP, and eleven others, late June, 1832; James Breakenridge, *Brockville Gazette*, November 1, 1832.

gathered darkly around, and friends and acquaintances have dropped off one by one, until all are gone, and left us in a sea of troubles, to be borne down on by some merciless wretch, or driven to desperation by despair. These [?] soothing of the stranger who, prompted [?] by humanity, stretches forth a hand to succor the unfortunate, duly appreciated, and deep and lasting gratitude awakened, which no change of fortune can extinguish in a breast of ordinary sensibility.

Imprisonment levelled individual histories of credit relations into a shared narrative of misfortune and suffering. The law sundered relations of credit and friendship, accelerating debtors' descent towards despair that was only arrested by strangers moved to selfless acts by a humane sensibility. When met with gratitude, such sympathy created bonds of true friendship strong enough to withstand shifts in material fortune. Such reciprocal ties of sentiment did not contest contractual rights or economic inequalities but did dispute their moral relevance in the face of a shared humanity. The "man of feeling" was very much alive (if not entirely well) in the Niagara gaol, although Christie found no evidence of him earlier in the courts and gaol of counter-revolutionary Montreal. Such statements of gratitude were, then, the currency of cultural repayment for benevolent gifts, establishing imprisoned debtors as moral equals who understood their reciprocal obligations even if they could make no more material repayment to their creditors. They were insolvent, not insensitive, and thus victims of oppression. Creditors – "some merciless wretch" – were expelled from the moral community of debtors and those strangers moved by their plight.⁴³

Legal reformers further politicized munificence. The conservative *Courier of Upper Canada* supported the subscription to relieve the "unfortunate" widow and her children already mentioned, but added that her husband was an "unhappy and wretched martyr, to the sanguinary law of imprisonment for Debt."⁴⁴ Francis Collins, editor of the reform *Freeman*, took aim at the town's magistrates instead. They claimed to be prohibited from using district funds to relieve destitute debtors in prison, yet declined to subscribe their own money instead. The Stranger's Friend Society, comprised of the town's most prominent as well, also rejected an application on the grounds that imprisoned debtors were undeserving of funds intended for destitute emigrants. Collins mocked them as "persons of *extreme* piety – that is, of an extraordinary disposition towards long crashing prayers, without an adequate proportion of good works." He called for an Insolvent Debtor's Friend Society to organize the sincere, if less prominent, for none stood more in need of "a 'Friend' than the 'Stranger' whose hands are chained down in a prison."⁴⁵ Christian charity could challenge the law and, in more radical hands, social and political leaders who remained indifferent to the suffering it caused.

43 Debtors to ed., *Niagara Gleaner*, March 31, 1832; Nancy Christie, "He is the master of his house": Families and Political Authority in Counterrevolutionary Montreal," *William and Mary Quarterly*, 3rd series, vol. 70, no. 2 (2013), pp. 347-348; on gratitude as cultural reciprocity, see Christie, "A 'Painful Dependence'," especially pp. 74-75.

44 *Courier*, copied in *Western Mercury*, January 31, 1833. See also "True Benevolence," *Correspondent*, April 26, 1834; *British American Journal*, May 6, 1834.

45 *Freeman*, December 11, 1828. On the Society for the Relief of Strangers in Distress, see Rainer Baehre, "Paupers and Poor Relief in Upper Canada," *Historical Papers*, vol. 16 (1981), pp. 57-80.

Yet, as with Rolph's tears, such political uses of charity raised suspicion about its disinterestedness and the worthiness of its recipients. A proposed philanthropic society in Kingston along the lines Collins had suggested for York was repaid with "A Debtor's" disdain rather than gratitude. The town's truly benevolent quietly relieved distressed debtors and were thanked in return, but the proposed society's chair did nothing when approached about a case of need. Moreover, many of the society's supporters were likely no more solvent than those they loudly proclaimed their readiness to assist, seeking only "to make a Newspaper flourish."⁴⁶ Even the sincere might not be certain of the merits of those whose plight aroused their sympathy. A newspaper editor feared criticism for publishing Jonah Brown's anguished plea that "unless some guardian angel should befriend me" his suffering would persist. The editor knew nothing of the circumstances by which Brown had been arrested and remained confined. Sensibility, however, excused such ignorance, for "we will cheerfully contribute our mite towards *liberating* a fellow creature from '*durance vile*.'" A legislator who knew something of those circumstances reckoned Brown "perverse." He had chosen to remain in gaol by refusing to agree to terms with his creditor despite having the means to do so. His suffering was a just result of his own moral choices and thus not a fit object for sympathy.⁴⁷ When another editor printed what proved to be false accusations against a creditor and gaoler, he pleaded in mitigation that "in our indignation at what we conceived a case of peculiar cruelty ... we gave way rather hastily to our feelings; We thought it a case of cruelty, and whether friend or foe suffered, meant to expose it."⁴⁸ Being moved by suffering was central to both Christianity and legal reform, but it could lead even individuals of goodwill astray. What they were to be moved to do was also in dispute and might re-affirm or challenge existing structures of power.

Death and Despair

Without benevolence (and the gratitude it summoned), there was only egoism and self. For the unfortunate, there could be nothing but suffering. Unrelieved by hope, such suffering might turn to despair. Financial disappointment remained the stock explanation for male suicide,⁴⁹ but the campaign against imprisonment for debt turned sympathy away from doubts about the suicide's commercial or moral character and focused it against the law. In 1822, before the campaign was underway, John Inglis, a leading London merchant, suffered "occasional paroxysms," physical symptoms of his disturbed emotional state – and shot himself. Yet the sympathies of York's *Weekly Register* rested squarely with those in the colony whose fortunes were linked to Inglis's failed mercantile house. It was "humiliating" that even men of the first rank were "so fatally overthrown" as to forget their obligations in this world and the next. Inglis had been unmanned,

46 A Debtor, *Chronicle & Gazette*, January 16, 1830.

47 *Weekly Register*, January 27, 1825; Charles Jones, *Colonial Advocate*, February 7, 1828.

48 *Chronicle & Gazette*, April 4, 1835.

49 *Chronicle & Gazette*, copied in *Patriot*, May 5, 1835.

his suicide a cowardly abdication before the trials and tribulations of commercial life.⁵⁰

Suicide remained a sin but, reflecting broader trends, coroner's juries typically avoided a verdict of *felo-de-se* (felon of himself) and the profane burial and confiscation of assets by the Crown it entailed, freeing legal reformers to imagine voluntary death in new ways.⁵¹ Upon his arrest for debt, a Niagara labourer was allowed to enter the privy where he cut his throat with a razor "in such a manner as to cause his immediate death," yet the jury returned a verdict of temporary insanity. The law robbed him of his reason as well as his liberty.⁵² Three months later the *Freeman* seized on the coroner's report of another who had hanged himself. The only motive ascribed was that "being prosecuted for a debt which he said he was unable to pay ... seemed to disturb his mind." Unlike the *Register's* discussion of Inglis and Toby Ditz's findings regarding failed merchants in an earlier period, no doubt was cast on this man's forbearance. In fact, he was "considered an honest man" driven to either insanity or mortal sin by a law that failed to distinguish him from the dishonest.⁵³ The same year both cases were reported, Rolph told fellow legislators that imprisonment for debt was so cruel that "despair" had "driven many a melancholy victim to seek relief from his misfortunes by one frightful plunge into eternity's abyss," an act frequently "palliated by assumed insanity."⁵⁴ Men of feeling were driven to a catastrophic choice by imagining the horror of the law.

Even when the suicide of a Montreal debtor was judged felonious, it was framed by reports reprinted in Upper Canada as an indictment of imprisonment for debt, not insufficient manliness. Imprisoned by tenacious creditors for almost a year, W. H. Field acknowledged in a suicide note that the gaoler had been kind, unlike "friends" who he had "lived to see ... my worst enemies." Field hanged himself because "death is the only remedy for my peculiar and accumulated misfortunes," which involved mental anguish more than economic and legal problems or physical discomfort. Imprisonment for debt perverted natural sympathies and disordered social relations, turning trusted economic allies into tyrants, friends into enemies, gaolers into confidants, and men of sentiment into self-murderers. This "melancholy instance" ought to awaken, thought the *Montreal Gazette*, spectators to "the absolute necessity there exists of abolishing that remnant of feudal times" regardless "of the circumstances under which he was arrested, or which led to it."⁵⁵ Suicide had not lost its stigma, but legal reformers shifted culpability to the law – from Field to the false friends who had abandoned him when his circumstances

50 *Weekly Register*, October 17, 1822.

51 Janet Miron, "Suicide, Coroner's Inquests, and the Parameters of Compassion in Ontario, 1830-1900," *Histoire sociale / Social History*, vol. 47, no. 95 (2014), pp. 577-600.

52 *Freeman*, June 12, 1828; *Niagara Gleaner*, June 16, 1828.

53 Thomas Hamilton, *Freeman*, September 25, 1828; Toby Ditz, "Shipwrecked; or, Masculinity Imperiled: Mercantile Representations of Failure and the Gendered Self in Eighteenth-Century Philadelphia," *Journal of American History*, vol. 81, no. 1 (1994), pp. 51-80.

54 John Rolph, *Colonial Advocate*, January 1, 1829.

55 *Montreal Gazette* and *Montreal Courant*, copied in *Canadian Emigrant*, December 12, 1833.

ought to have excited their keenest regard and to his creditors hardened to the suffering they had caused.

In each case, suicide was a desperate act of resignation, not a courageous choice; the victim was a tragic object of pity for the edification of spectators, not a purposeful agent who had resisted injustice, as more militant opponents of slavery in the United States re-imagined suicide in this period. The political protest against the law came not from debtors but from legal reformers who harnessed the “moral capital” of their suffering shorn of any doubts about their behaviour (whether towards their creditors or in taking their own lives) that might devalue its currency.⁵⁶

If, as coroner’s jurors typically supposed, imprisonment for debt could rob men of their reason temporarily, the *Courier* claimed knowledge of several instances in which the theft had proved permanent. Moral sentiments aided reasoning, but excessive despair or other disordered passions might upend reason entirely. The body and social relations were then left at the mercy of ungovernable passions. With their awful finality, narratives of lost hope and life provided especially powerful spectacles from which to wring a moral consensus, rendering gauche the doubts that disrupted narratives of lesser suffering. The *Courier*’s narrative of one such casualty was carefully crafted to intensify moral outrage and motivate political judgment: A respectable merchant became insolvent when forced to pay a security he had posted for someone else and was arrested by one creditor after surrendering his property to come to terms with all his creditors. He had vouched for someone he trusted, but his friendship was betrayed; he acted in good faith towards his creditors, but was punished. His exemplary conduct rendered his anguish at being imprisoned especially intense, but it also meant he had friends willing to pay the obstinate creditor rather than see his suffering continue. In a final cruel reversal, outstanding legal fees kept him imprisoned; “this had such a shock upon his faculties that it drove him crazy, and he became a hopeless idiotic maniac, tearing at his own flesh and assailing every one who came in his way.” His body became the target of his own anguish as it had been for his angry creditor; he assailed his relationships as they had been disrupted by the “iniquity and impolicy” of imprisonment for debt. The solitary death of a virtuous and thus sociable merchant, friend, husband, and father as a confined lunatic was “a most terrific object” to contemplate. A sentimentalized death humanized and simplified complex questions about sureties, priority among multiple creditors, and the administration of the law: “if ever there was a case more eminently calculated to enlist the sympathies of the humane than another, it is the case.”⁵⁷ How this conservative legal reformer narrated the case was, of course, part of the calculation.

56 See Richard Bell, *We Shall Be No More: Suicide and Self-Government in the Newly United States* (Cambridge: Harvard University Press, 2012), especially pp. 5, 9, 38, 201-246. Legal reformers made no comment on the suicide of a female creditor despondent after the man to whom she had entrusted her money absconded (*Grenville Gazette*, copied in *Hallowell Free Press*, March 27, 1832).

57 *Courier*, copied in *Brockville Recorder* and *Western Mercury*, January 31, 1833. See David J. Denby, *Sentimental Narrative and the Social Order in France, 1760-1820* (Cambridge: Cambridge University Press, 1994).

Evident in this and other cases, family and friendship were privileged sites of sensibility and thus models of social cohesion. Such relationships could be idealized as based on affinity and sentiment rather than power or instrumental calculation, both of which posed greater risk of conflict.⁵⁸ Like charity, these affective relations became more politically charged. Disrupting them was an oft-repeated charge against civil imprisonment. James Strobidge, contractor for the Burlington Bay canal, who was imprisoned at York “far from my family,” was repeatedly said to have “died of broken heart” rather than the fever he contracted in prison (a cause of death that hardly exonerated the law). Despite being liberated by friends, including Francis Collins, and returned “to the bosom of his family,” Storbidge died two days later, leaving his family “to deplore the loss of a[n] affectionate husband and a tender parent.” A heart capable of binding family and society together had been broken like the Storbidge family itself, leaving another widow and children whose plight united conservatives and reformers in benevolent concern, if not in agreement about whether such concern ought to extend to changing the law.⁵⁹

Yet were debtors themselves little more than objects of pity, from which others might wring meaning? When Hugh McDougall died of a pre-existing pulmonary condition in the Kingston gaol, readers of the *Chronicle & Gazette* were assured that “despair” at circumstances that would “excite the indignation of any one who possesses the ordinary feelings of humanity” had hastened his demise. Fellow inmates counted themselves among the ordinary; some on the coroner’s jury, which included five prisoners, sought to append to the verdict of death by “visitation of God” a “severe censure against the inhumanity of the detaining creditor,” apportioning blame to a more earthly source.⁶⁰

Anger and Resentment

The absence of debtor agency in legal reformers’ narratives sits awkwardly alongside frequent press reports of debtors who concealed assets, absconded, resisted arrest, and escaped from prison.⁶¹ Legal reformers avoided debtors’ own decisions that might raise questions about their selfishness or honesty; yet, before the campaign against the law, it had been possible to read such decisions as acts of defiance. Responding to a creditor’s reward for the recapture of an escaped debtor in 1798, “Veritas” detailed why the debtor had chosen to flee: “let every man apply the circumstances of mr. M’N’s case to himself, and ask his own heart what other remedy he would have pursued in a like situation.” Once each had consulted his own moral instincts, “the public will impartially decide whether the conduct of mr. M’N’s has not been such as a man of strictest probity and honor would have adopted under the pressure of similar misfortune.” While legal reformers adopted this process of ethical reflection, the patient suffering of a tragic victim was less

58 Knott, *Sensibility and the American Revolution*, pp. 109-151, 227.

59 Storbidge to ed., *Freeman*, January 31, 1833; *Freeman*, March 14, 1833; *Patriot*, November 2 and 9, 1833, and February 19, 1836.

60 *Chronicle & Gazette*, April 1 and 4, 1835; *British Whig*, copied in *British American Journal*, April 9, 1835.

61 For example, *Kingston Spectator*, November 25, 1836; *Upper Canada Herald*, July 27, 1831; *Hallowell Free Press*, January 4, 1831.

problematic than actions that might draw attention to a debtor's own reasoning rather than the law. Indeed, a debtor's escape from the Hamilton gaol in 1831 sparked the demand that British soldiers be posted sentry, rather than prompting another of the local *Western Mercury's* frequent calls to abolish imprisonment for debt.⁶²

Confined debtors also actively petitioned against creditors, prison conditions, the administration of the law, and imprisonment for debt itself. Like accounts made on their behalf, debtors' own petitions sought to interest strangers in their plight and insisted they were honest victims of "unforeseen misfortunes" such as personal accidents and crop failures.⁶³ Debtors proceeded in sentimental terms in only two limited contexts: as objects on which "to bestow your charitable humanity" already considered, and when detailing the suffering of their families left, as John Newell put it, "naked and starving in the Bush."⁶⁴ They embraced their obligations to family as well as to creditors, but this material conception of family often blended with a more affective one. Matthew Leech had been "torn from all domestic Comforts" while G. S. Waldron pleaded to "restore me to the bosom of my family again." These were powerful demands for moral standing in the face of insolvency by men of domestic sensibility as well as protective patriarchs who, like other moral agents, were moved by the suffering of others. Thus another confessed, "I was child enough to weep" tears of sympathy for his family, not unmanly ones at his own suffering.⁶⁵

Otherwise, many debtors' petitions were remarkably unsentimental. If legal reformers stressed their subjective anguish, debtors emphasized its physicality: the product of negligent officials, over-crowding, poor ventilation, inadequate food, and disease.⁶⁶ They were aggrieved parties who demanded justice even if some also appealed to the "mercy and humanity" of those they called to account.⁶⁷ Their situation violated the principles of British liberty and the British constitution and, more radically, was "contrary to the rules of natural justice" or "the purest principles of justice."⁶⁸ Their demands included specific legal reforms and the abolition of what John Wollstencroft informed the lieutenant governor from gaol was as great a "public curse as the *Capias*!!!"⁶⁹ Sympathetic identification was sought, but remedies were a matter of right. Scholars have identified sensibility's belief in a shared humanity and abhorrence at the infliction of pain as key grounds for the development of individual rights. In Upper Canada, rights language was

62 Veritas, *Upper Canada Gazette*, April 6, 1798; *Western Mercury*, copied in *Chronicle & Gazette*, November 12, 1831.

63 Sundries, v. 54, 27175-87, Lester H. Forward, October 20, 1821.

64 Sundries, v. 171, 93243-4, James Bergin, October 4, 1837; v. 150, 82476-78, John Newell, February 10, 1835.

65 Sundries, v. 63, 33803-8, Matthew Leech, n.d. 1823; v. 149 81409-11, G. S. Waldron, January 4, 1835; A Farmer in Hastings, *Hallowell Free Press*, July 31, 1832. On conceptions of the family, see Christie, "A 'Painful Dependence'," pp. 71, 74.

66 See Sundries, v. 85, 46537-39, Alexander Hover, August 31, 1827; v. 197, 109615-18, James Gray, June 28, 1838.

67 Clifton Jackson and others, *Colonial Advocate*, June 13, 1823.

68 Sundries, v. 93, 52081-3, William Young, April 28, 1829; v. 63, 33803-8, Matthew Leech, n.d. 1823.

69 Sundries, v. 108 61667-69, John Wollstencroft, August 15, 1831. See also Wollstencroft, *Colonial Advocate*, December 19, 1831.

mutated and came more from debtors than legal reformers, who emphasized the moral obligations of onlookers over the rights of debtors.⁷⁰

The less sentimental aspects of many debtor narratives reflected the ambiguous status of anger.⁷¹ If gratitude repaid benevolence, resentment was due injustice. As a reasonable appraisal of unmerited treatment, impartial spectators could share an injured party's judgment. Anger, too intemperate to win sympathy, instead identified those whose moral reasoning was suspect. Creditors lashing out in revenge or debtors refusing just demands were its archetypes. One debtor deemed the Johnstown sheriff similarly as "without consideration," for he "immediately inflames into a passion, and pays your petitioner with language and threatening him" rather than addressing legitimate grievances.⁷² Given its association with confrontation, anger required careful calibration. While the editor of the reform *Brockville Recorder* published a series of debtors' protests against conditions in the local gaol, the magistrates who administered it, and the law, the conservative *Brockville Gazette* declined: "we shall always feel happy in assisting with all our might to ameliorate the condition of our fellow creatures, when in distress." When such distress provoked anger, however, its political demands ought to be ignored, replaced with a modicum of charity that affirmed the very structures of authority against which debtors were protesting.⁷³

Sensibility at Work

Historians might attend more to such moral reflection, not to ignore socio-economic forces and political calculations that helped shape morality in turn, much less to pass moral judgment on the past, but to explore how ethical considerations were understood, expressed, and refashioned in concrete circumstances as well as systematic statements of moral philosophy.⁷⁴ Tears, fervent speech, vigorous underlining and multiple exclamation marks or claims that circumstances were too painful to express at all might appear overwrought embellishments, but they signalled a newly ascendant pattern of moral reasoning and did significant cultural and political work. At once deeply personal and profoundly social, they were cues about the sort of person speaking, the situation that person had witnessed, and the type of human connections to be cultivated. They re-imagined the moral significance and political relevance of pain and, rooted in a shared humanity, they offered space for ordinary individuals to participate in a process of defining the principles by which they would be governed.

Sensibility fuelled a number of humanitarian causes in Upper Canada and became central in the 1840s to Egerton Ryerson's school reforms. A humanistic

70 Elizabeth B. Clark, "'The Sacred Rights of the Weak': Pain, Sympathy, and the Culture of Individual Rights in Antebellum America," *Journal of American History*, vol. 82 (1995), pp. 463-493; Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton & Company, 2007).

71 Smith, *Theory of Moral Sentiments*, pp. 10, 34-50, 68, 76-77, 240; Eustace, *Passion Is the Gale*, pp. 151-199.

72 *Sundries*, v. 54, 27175-87, Lester H. Forward, October 20, 1821.

73 *Brockville Gazette*, September 20, 1832; *Brockville Recorder*, August 9 and September 20, 1832.

74 Gaines M. Foster, "Towards a Synthesis of Morality in America," *Modern Intellectual History*, vol. 10, no. 2 (2013), pp. 463-475.

pedagogy sought to make students self-governing by training their “higher sentiments” and receptivity to feelings and thus their capacity for moral action.⁷⁵ Such education of the feelings was already underway in the public sphere, where the debate about imprisonment for debt revealed the presumptions and mechanisms of a tempered sensibility. It made the long-accepted practice visible as a moral problem and was, in turn, shaped by that context.⁷⁶

Legal reformers condemned imprisonment for debt as demoralizing, an instrument of affective disorder, and sought to better direct behaviour when parties were least able to regulate their own moral reasoning – when they were likely to be too partial to themselves or indifferent to others and when they were angry or without hope. This was not a campaign in the name of more “modern” or impersonal contractual relations between abstract individuals against a law still predicated on personal relations and character. Instead, it sought to ensure that such moral agents who were typically left to order their own relations by voluntary contract did not become untethered from moral sentiments and the human bonds they sustained when those contracts went awry. A radically selfish world, divorced from the affinities of sentiment that spoke to a limited but no less real form of social solidarity, was precisely what legal reformers feared. They sought social cooperation in the self-regulated transactions of individual mutual interest and moral sentiment and in laws that promoted such emotional and political economies, not in less universal relations of servile dependence on patron, church, or state. If the period witnessed an emerging liberalism, legal reformers developed a sympathetic liberalism of virtue as well as reason: a liberalism that disassociated praiseworthy prudence and a concern for those closest to oneself from selfish egoism and a callous disregard for more distant others; a liberalism that disassociated a situated individualism based on the universal capacity to feel pain and to imagine the pain of others from an atomistic world without friends. It was a liberalism of fear of arbitrary power and the cruelty it could inflict; a liberalism, in other words, indebted to both *The Theory of Moral Sentiments* and *Wealth of Nations*.⁷⁷

John Rolph reminded colonial legislators that the suffering revealed by an early debtor petition had elicited “mirth.”⁷⁸ By the 1830s, the campaign against imprisonment for debt made expressions of sympathy, even tears, a cultural imperative. This shift was the work of Rolph’s moral philosophy; of repeated narratives of reversals of fortune, suffering innocents, false friends, and relentless tyrants designed to evoke spectators’ sympathy; of charity and the gratitude of men of feeling to be found even in the colony’s gaols; of suicide and death that impugned the law rather than one’s manhood; and of debtors attesting to their

75 Bruce Curtis, “Preconditions of the Canadian State: Educational Reform and the Construction of a Public in Upper Canada, 1837-1846,” *Studies in Political Economy*, vol. 10 (1983), pp. 108-110.

76 Wickberg, “What is the History of Sensibilities?,” p. 663.

77 Stephen Darwall, “Sympathetic Liberalism: Recent Work on Adam Smith,” *Philosophy & Public Affairs*, vol. 28, no. 2 (1999), pp. 139-164; Jean-François Constant and Michel Ducharme, eds., *Liberalism and Hegemony: Debating the Canadian Liberal Revolution* (Toronto: University of Toronto Press, 2009). On a liberalism of fear, see Judith Shklar, *Ordinary Vices* (Cambridge, MA: Harvard University Press, 1984).

78 Rolph, *Colonial Advocate*, January 1, 1829.

innocence, pain, and fellow feeling as they navigated between resentment and anger. Changes to the law followed, and the principle of imprisonment for debt was discredited. The *Mitigation Act* of 1835 narrowed its justification and scope; the failure to agree on an alternative legal framework alone deferred its abolition.⁷⁹

Why was sensibility so persuasive in this context? It certainly associated the campaign with more celebrated humanitarian causes, especially anti-slavery,⁸⁰ but imprisonment for debt raised its own moral questions. Would a debtor keep his word even when adverse circumstances tempted him to act otherwise? When debtors pleaded inability to pay, did a creditor have good reason to fear dishonesty and believe that imprisonment would deter or correct it? Made transparent in their countenance and conversation, sensibility offered a way to think about the motives of others and to evaluate their actions. Such questions were part of everyday moral experience. The escaped debtor for whom a reward was advertised, “mr. M’N,” was Allan MacNab, whose son, Allan Napier MacNab, stood security to prevent his father’s later return to prison. In a less praiseworthy act of partiality, MacNab misappropriated public funds to save himself from being imprisoned: “would to God that I had chosen the latter.” The campaign against imprisonment for debt politicized such sympathies even as they humanized and simplified complex questions of insolvency law. As a conservative legislator in the 1830s, the younger MacNab denounced as “cruel and inhuman” imprisonment at the discretion of a potentially “rapacious and vindictive” creditor. Treating individual cases as moral spectacles was, in part, an attempt to extend to others the “moral immediacy” many colonists experienced in their own credit and familial relations.⁸¹

Sensibility’s ascendancy owed more, however, to its capaciousness. It encouraged the sort of social solidarity across status, gender, religious, and political divisions presumed by its moral reasoning without suggesting that such divisions did not exist.⁸² At issue was their moral relevance. When most creditors were themselves debtors, when an itinerant clock peddler threatened a respectable farmer with arrest or labourers jailed a contractor, and when magistrates were confined to the gaols they superintended, the line separating the tyrant, sufferer, and humane mapped poorly onto the social hierarchy.⁸³ As Sarah Maza has argued in the French context, “this denial of social difference might seem a shallow and transitory phenomenon,” but the universal language of friendship and family reflected how imprisonment for debt could decouple solvency from social status and how a moral consensus might be possible despite social difference. Friendship as a metaphor for positive social relations also reflected the disappearance of older ways of imagining society in the language of orders before newer ways

79 For an alternative explanation, see Philip Girard, “Married Women’s Property, Chancery Abolition, and Insolvency Law: Law Reform in Nova Scotia, 1820-1867” in Philip Girard and Jim Phillips, eds., *Essays in the History of Canadian Law III: Nova Scotia* (Toronto: University of Toronto Press, 1990), pp. 97, 99-105.

80 A Farmer of Gore, *Patriot*, October 16, 1835.

81 Sundries, Second Series, v. 66, 34750-56, A. N. MacNab, March 20, 1824; MacNab, *Western Mercury*, January 26, 1832; Abruzzo, *Polemical Pain*, p. 72. What did A.N. MacNab’s many long-suffering creditors make of such a characterization?

82 Clark, “Sacred Rights of the Weak,” p. 487.

83 *British Whig*, July 25, 1834, and June 23, 1835; Sundries, v. 103, 58709-10, Edward Wilson, November 30, 1830; v. 117, 65934-37, Donald Cameron, JP, and eleven others, late June, 1832.

expressed in the language of class had emerged.⁸⁴ Not monopolized by one status group, neither was sensibility limited to a single sex. Although often associated with women, sensibility was invoked by men who were both legal reformers and imprisoned debtors, broadening the acceptable emotional range of men and highlighting the bonds they freely crafted as individuals. Men of sensibility had to avoid enervating excess or loss of self-command still often coded as female or childish, but also a brutish absence of feeling now similarly censured as unmanly.⁸⁵ Likewise, as a form of moral reasoning, sensibility drew on potent Christian themes without falling victim to the colony's sectarian divisions.

Neither did sensibility belong to a single political faction. As Margaret Abruzzo has emphasized in the American context, a common approach to moral reasoning mandated no single conclusion.⁸⁶ It was deployed against imprisonment for debt without committing legal reformers to a shared programme, whether abolition or more limited measures of amelioration or bankruptcy laws to administer insolvency and punish fraud. Imprisonment for debt was occasionally defended in its terms, but more often particular legal proposals could be forestalled by offers of charity because they too obeyed the injunction to relieve suffering. Sensibility provided a language of protest against the arbitrary power of creditors without questioning the socio-economic structures within which credit relations were negotiated. It extended the circle of moral concern and enjoined reforms, but its particular uses might affirm rather than contest existing norms and hierarchies.

Even as sensibility challenged irresponsible power and made legal reform necessary, it made devising alternative solvency laws more difficult. It crowded out other styles of moral reasoning more favourable to trade-offs and balancing interests. It did so by emphasizing the imperative against cruelty and consensus among all but the ignorant or ill-intentioned over differing viewpoints, the unfortunate over the mendacious debtor, and the harmony of interests presumed among friends over the potentially competing interests of different types of debtors and creditors. Sensibility proved more effective as a weapon against imprisonment for debt than as a guide to new insolvency laws.⁸⁷

In Adam Smith's formulation, navigating the ambiguities of sensibility meant internalizing the perspective of the impartial spectator. In the campaign against imprisonment for debt, it meant attending to the public sphere. Jürgen Habermas's suspicion that the appeal to emotion in royal spectacle invited passive spectatorship and acclamation over the engaged participation and critical reasoning needed to contest undemocratic forms of authority is well known.⁸⁸ Chastened by the backlash against the excesses of the eighteenth-century age of sentiment and taken up by political conservatives as well as reformers, anxiety that expressions of

84 Sarah Maza, "The Social Imaginary of the French Revolution: The Third Estate, the National Guard, and the Absent Bourgeoisie" in Colin Jones and Dror Wahrman, eds., *The Age of Cultural Revolutions: Britain and France, 1750-1820* (Berkeley: University of California Press, 2002), pp. 118-120, quotation at p. 120.

85 Knott, *Sensibility and the American Revolution*, pp. 100-101; Eustace, *Passion Is the Gale*, p. 247.

86 Abruzzo, *Polemical Pain*, pp. 14, 79-84, 117-118.

87 *Patriot*, February 1, 1833.

88 Nicole Eustace, "Emotion and Political Change" in Matt and Stearns, eds., *Doing Emotions History*, pp. 163-167.

sentiment might be calculated, misdirected, or excessive persisted. Yet, expressed in the colonial public sphere, such reservations became part of the process by which moral instincts were corrected and refined. It was a process that required both head and heart. Participants in the public sphere learned about a stranger's suffering, the reaction of the stranger and of others, and how they themselves might be expected to react. They learned too the various arguments about what caused the suffering, whether it was warranted, and how it might be alleviated. The public sphere, in short, cultivated the type of moral agent sensibility sought: the self who trained its own sentiments and ability to reason as moral agents and recognized others of a similar subjectivity. Such moral agents were encouraged to modulate, for instance, anger or self-conceit to a pitch with which those other selves could sympathize. In the debate about imprisonment for debt, the public sphere – at once sentimental and critical – worked to make Upper Canada a moral as well as political community. Justice was a conversation among strangers who could be friends.