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Agency and the Language of the Novel


Stuart Culver*

Irene Tucker’s A Probable State: The Novel, the Contract, and the Jews is an intelligent, closely-argued book that deals insightfully and valuably with a number of issues students of literary and legal history find pressing today. She has three major stories to tell: how liberal—which for Tucker means Lockean—assumptions about individual agency, property, and representation failed to withstand the new ideas and social facts of the late nineteenth century; how the narrative conventions of realism were challenged and remade by new conceptions of literary authority and the act of reading; and how the Jew became the figure for a new relation between culture and identity. Along the way, Tucker offers a persuasive critique of the role context has come to play in the historicist literary study influenced by Michel Foucault. The largest claims Tucker makes in A Probable State are neither strikingly original nor unexpected to any reader familiar with the territory she covers. Still, one’s journey through the book’s complex and subtle readings is rewarding and at the center of A Probable State is an essay on the role of contract in Henry James’s What Maisie Knew that seems to this reader an extremely successful example of how legal and literary studies can interact.

Tucker introduces A Probable State as an innovative departure from the currently dominant style of historicist reading. Dissatisfied with the Foucauldian approach, which regards the nation as an overarching context just because it is understood as a unified field of discursive and disciplinary practices and institutions, Tucker juxtaposes texts from the same moment but from markedly different milieus. Her book focuses on two novels published in 1896, What Maisie Knew and the Hebrew language version of Shalom Yaakov Abramovitch’s The Travels of

* Associate Professor of English, University of Utah.

Benjamin the Third (published a decade earlier in Yiddish. The two novels are presented as responses to George Eliot’s final novel, Daniel Deronda, and the “crisis of narrative authority” that emerges in its final chapters, but each is also read as responding to different events of 1881: the pogroms in Russia and the revival of Hebrew in the one case and the publication of Oliver Wendell Holmes’s The Common Law in the other. Among the realist conventions Eliot’s novel starts to question is the narrator’s “meanwhile” that holds together the multiple plots of the novel and insists on the unity of the fictional world and the real world it represents. Tucker’s critical approach offers a different sort of simultaneity in which texts and the events with which they interact echo one another but still remain distinct and alien. The contexts she elaborates are supposed to work, then, not to enclose or situate their respective texts but to open them up to other traditions and debates.

It is worth noting that Tucker never convincingly establishes What Maisie Knew as a response to Daniel Deronda any more than to the hundreds of other novels James read and reviewed between 1876 and 1896. As a result, this chapter reads as a conventional contextualization of the novella, placing it as a moment in the controversial life-long intimacy between Holmes and James and a representation of the modern English world James had come to call home. Maisie is by no means a conventional realist novel but, rather, the inaugural performance of the novelist’s late style with its tension between the narrative language and the always oblique and constrained point of view or center of consciousness through which the story is experienced. In Maisie, James employs a child’s eye as his only window on the sexual and economic scandals of London’s fashionable society, a world Maisie experiences intimately but can know only superficially. At the same time, James registers the centrality of contract in this world. Maisie Farange comes on stage entangled in a mesh of contracts—divorces, remarriages, custody and child support arrangements—most of which are broken; and yet, perversely, the society James depicts needs to believe that the logic of contract can govern all its relations and, even more perversely, that the child can be treated as herself the free, autonomous subject envisioned in the Lockean theory of contract. Thus, James’s novel, as Tucker describes it, captures all the pressures modern conditions place on this theory of contract as a meeting of minds between equal, self-conscious and self-interested parties.

Tucker suggests that the prominence given to contract in James’s novel can best be deciphered by a study of Holmes’s effort in The Common Law to recover the obligatory nature of contract while acknowledging the inadequacy of the Lockean model. Holmes’s discussion is inspired by the notorious 1864 decision in Raffles v. Wichelhaus2 in which the court held

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that, though the two parties may have used the same word, they may not have shared the same sense; in other words, the gap between unreliable external signs and unknowable internal states is such that this contract cannot be enforced. Tucker argues that Holmes tries to recover the obligatory force of contracts by giving up on internal states altogether and by so doing he redefines the promising agent. Contract is not a meeting of minds made possible, however unreliably, by a common language; it is, rather, a speech act that creates, rather than represents, intentions and obligation. Courts, therefore, should consider not what the parties meant but what they said, and they should interpret these words according to the norms of the language and culture at that moment. This version of the reliance theory foregrounds the pragmatist notion that what one is is a function of what one says and does. Cultural norms and the idea of a normal speaker function here as context does for the historicist critic by promising to bring certainty or at least predictability in the absence of any valid appeal to an autonomous intending agent.

James’s Maisie challenges Holmes’s solution to the crisis of contract. In scene after scene, the adults around the child demand that she make choices, but in every situation her ability to choose freely is compromised by her inability really to know her situation and the consequences of her choices. Too often Maisie clearly does not know what she is saying or how what she is saying is normally interpreted. Comedy and pathos are inseparable in James’s novel because Maisie tries to make choices based on what she thinks others expect her to want to do. She never really knows in a Lockean empirical way; she merely allows herself to be supposed to know. At times, Maisie seems an innocent whose interpretations redeem the actions of the adults. At other times, reminding us that in 1896 Freud is just beginning to suggest that desire and knowledge follow their own paths, Maisie seems to have desires she cannot yet understand. But Tucker offers a third possibility when she describes her as “a child who trades on the liberal split between internal mental states and externally perceptible behavior to create, if not quite liberal autonomy, then at least the strategically useful form of it.”

This differently canny Maisie learns how to win for herself a sort of limited agency very much akin to the narrative authority James creates for himself through the delegation of point of view in his late style. Thus, as the novel closes, we find Maisie effortlessly slipping into French, finding agency in a language that is not “naturally” her own and that will always create obligations and commitments in advance and in excess of her intentions: “The wildly implausible Francophone . . .” Tucker argues,

emerges as free at the end of What Maisie Knew not because she behaves as ‘normal speakers of English’ behave in the same

3. TUCKER, supra note 1, at 176.
Acknowledged
the novel genre, Tucker’s larger argument falls short. Her commitment to 
rethinking context results in an argument that relies on just three novels to 
describe the rise and demise of a moment and a literary convention she 
calls realism, and *Daniel Deronda* is made to stand as both the 
representative realist novel and the first sign of a crisis in the genre. 
Realism’s crisis is reduced in Tucker’s account to just the questioning of 
the authority of the narrative voice, a questioning that one could easily 
describe as the sine qua non of realist narrative rather than as a symptom 
of its decline. Indeed, the book never feels as if it is really about realism or 
realist narrative as much as it is about the ways in which nineteenth 
century novels can be read against the classic liberalism of the seventeenth 
and eighteenth centuries. Tucker prefaxes each of her readings with a 
lengthy discussion of Locke or Johnson. Given Tucker’s own repeated 
allusions to the “new epistemologies” that put pressure on realist narrative 
conventions as the nineteenth century progressed, Locke and Johnson 
seem like strange precursors and antagonists for James and Abramovitch, 
if not for George Eliot herself. At the same time, they allow Tucker in her 
best moments to enter an old problem in a new way and thereby to make 
vivid how language and agency are entangled and how, in 1896, the novel 
proved a unique medium for making the consequences of this 
entanglement palpable.