

## CHARLES DICKENS, INTERNATIONAL COPYRIGHT, AND THE DISCRETIONARY SILENCE OF *MARTIN CHUZZLEWIT*

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There is no binary division to be made between what one says and what one does not say; we must try to determine the different ways of not saying . . . things, how those who can and those who cannot speak of them are distributed, which type of discourse is authorized, or which form of discretion is required in either case. There is not one but many silences, and they are an integral part of the strategies that underlie and permeate discourses.

—Michel Foucault, *The History of Sexuality*<sup>1</sup>

Some architects are clever at making foundations, and some architects are clever at building on 'em when they're made.

—Charles Dickens, *Martin Chuzzlewit*<sup>2</sup>

After finishing *Barnaby Rudge* in 1841, Charles Dickens set off with his wife for the United States, full of enthusiasm for the young country, but he returned, so the well-known story goes, thoroughly disillusioned. The texts that evince the grounds of that disillusionment are of course the *American Notes* of 1842 and the novel *Martin Chuzzlewit* of 1843-44: the braggart insularity, the vulgarity of manner, the rapaciousness of real estate speculation, the political corruption, the unattractiveness of the landscape both urban and rural—all such reasons emerge clearly enough in the critical comments within both texts, if in the American section of *Martin Chuzzlewit* most virulently.

But even during his lifetime, the argument circulated that perhaps the primary and most personal cause of Dickens's bitterness concerned his disappointments surrounding the issue of copyright law. For one of the undeniable reasons Dickens had gone to America was to work for the acceptance of International Copyright so that his books, among those of others to be sure,

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<sup>1</sup> MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY* 27 (Robert Hurley trans., 1978).

<sup>2</sup> CHARLES DICKENS, *MARTIN CHUZZLEWIT* 555 (Oxford University Press 1991) (1844)

would no longer be pirated by unscrupulous American publishers. It was a mission in which he entirely, humiliatingly failed, and a copyright agreement between England and the United States was not concluded until 1891.

But one has little direct sense of the authorial impact of that failure in reading either the *American Notes* or *Martin Chuzzlewit*. So, at any rate, James Spedding argued in an anonymous 1843 review of *American Notes* in the *Edinburgh Review*:

[Dickens] went out there, if we are rightly informed, as a kind of missionary in the cause of International Copyright; with the design of persuading the American public (for it was the public to which he seems to have addressed himself) to abandon their present privilege, of enjoying the produce of all the literary industry of Great Britain without paying for it;—an excellent recommendation, the adoption of which would, no doubt, in the end prove a vast national benefit . . . . In this arduous, if not hopeless enterprise, Mr. Dickens, having once engaged himself, must be presumed, during the short period of his visit, to have chiefly occupied his thoughts; therefore the gathering of materials for a book about America must be regarded as a subordinate and incidental task—the produce of such hours as he could spare from his main employment. Nor must it be forgotten that in this, the primary object of his visit, he decidedly failed; a circumstance (not unimportant when we are considering his position and opportunities as an observer of manners in a strange country) to which we draw attention, the rather because Mr. Dickens makes no allusion to it himself. A man may read the volumes through without knowing that the question of International Copyright has ever been raised on either side of the Atlantic.<sup>3</sup>

As Alexander Welsh comments in his study of Dickens and copyright, there is a hidden, all but prosecutorial assumption in Spedding's argument<sup>4</sup> not unlike that of the psychoanalyst who argues doublebindingly that an analyst's reticence on a matter *must* be the sign of repression: Dickens's silence on the copyright issue in *American Notes* (and I would add in *Martin Chuzzlewit*) thus seems to Spedding, who did not know Dickens personally, to be an admission of some kind, most "decidedly" an admission of failure. But of course if Dickens failed, he must have intended to succeed in what Spedding insists was the "main employment" of

<sup>3</sup> James Spedding, *Dickens's American Notes*, 76 *EDINBURGH REVIEW* 500-01 (1843), quoted in ALEXANDER WELSH, *FROM COPYRIGHT TO COPPERFIELD* 36-37 (1987).

<sup>4</sup> WELSH, *supra* note 4, at 37.

his visit. And as Welsh comments upon such attribution of intention, "The positive argument from circumstances, that since Dickens spoke on behalf of copyright he probably intended to speak, is a strong one. Much weaker is the argument, from his silence [in *American Notes* and *Martin Chuzzlewit*], about his state of mind."<sup>5</sup> Welsh also adds, however, that Dickens's subsequent change from silence to fierce denial that he went to America to work for International Copyright serves "to etch [Spedding's] argument deeper."<sup>6</sup>

It is within such a context of the positive of Dickens's speech and negative of his silence that I would like to consider an incident in *Martin Chuzzlewit* which may or may not provide evidence of Dickens's novelistic voicing of a concern with copyright. I say "may or may not" since it is up to the listener to accept or reject the argument. That is another way of saying that what follows is an example of the positive of speech and the negative of silence, but now displaced onto the reader who "hears" or "does not hear" the voicing of what this reader takes to be the novelist's concern.

In chapter thirty-five of *Martin Chuzzlewit*, Martin and his servant Mark Tapley, having just disembarked in Liverpool from their American trip, seek out a cheap tavern in order to formulate plans for their immediate future. Their lodging is

one of those unaccountable little rooms which are never seen anywhere but in a tavern, and are supposed to have got into taverns by reason of the facilities afforded to the architect for getting drunk while engaged in their construction. It had more corners in it than the brain of an obstinate man; was full of mad closets, into which nothing could be put that was not specially invented and made for that purpose; had mysterious shelvings and bulk-heads, and indications of staircases in the ceiling; and was elaborately provided with a bell that rung in the room itself, about two feet from the handle, and that had no connexion whatever with any other part of the establishment.<sup>7</sup>

The passage throws off a striking architectural metaphor and conceptual phrase for the structure of *Martin Chuzzlewit* as a whole: that novel too feels as if it were put together by a drunken architect—has more angles to it than the brain of an obstinate

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> MARTIN CHUZZLEWIT, *supra* note 2, at 549.

man; is replete with mad closets, mysterious shelvings, and useless bells; is full of odd, discrete units (notably the disproportionately long American section) that seem to have questionable connection with anything else in the novel. The greatness of *Martin Chuzzlewit* (and it is a great novel, arguably Dickens's funniest) arises from a disjunctive fecundity of character and scene rather than from the tight coherence of its comic, melodramatic, and romantic plots. For better and worse, it lacks what Coleridge valorized as a unity of feeling; the qualities we admire are rather its energy and variety, its sharp discontinuities—the newspaper virtues of Dickens's early years. The novelist, that is, harks back to—as he never will entirely disavow or escape—the tendencies of the sketch-collector as he piles up memorable portrait after portrait, self-contained scene after scene to generate the impression of a drunken architect's variegated but rather disorderly urban structure.

Of course, the question of what does and what does not constitute aesthetic order, of how much *discordia* Coleridge's *concor*s will allow, is always debatable once we get text specific. As linguistically-inspired structuralists have taught us, all works of art (i.e., buildings and novels for the sake of the present argument) may be read like sentences with varying degrees of coherence. The certainty that even the most apparently seamless of works are marked by disruptions and redundancies, what Michael Riffaterre has called "ungrammaticalities,"<sup>8</sup> is the operative assumption of semiotic theory. In some cases such ruptures seem momentarily healed when the work's grammar is construed from a wider focus; in others, however, the effort to transcend ungrammaticalities of structure results in a specious papering-over of a work's heterogeneity, in the falsification of parataxis into syntax, of mere contiguity into analogy, of metonymy into metaphor. The appeal of some works—of some novels and some buildings—is that they seem programmatically ungrammatical; they stubbornly refuse to satisfy first the writer and then the reader's profound psychological yearning for a stable integration of part and whole. The arts—indeed, the human sciences as a whole—may thus be seen collectively as a kind of "grammar school" through which we readers and viewers move as children, construing as best we can, accustoming ourselves to various sorts of texts, learning "to cipher and to sing," as Yeats puts it so

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<sup>8</sup> See MICHAEL RIFFATERRE, *THE SEMIOTICS OF POETRY* 1-22 (1978).

memorably in "Among School Children."<sup>9</sup>

Consequently, chapter thirty-five of *Martin Chuzzlewit*, which concerns itself with the disputed origin and hence the intellectual ownership of a grammar school, may be taken as yet another "allegory of reading," in Paul de Man's sense. For that chapter offers us a comic version of the structuralist's paradigm, the grammar of part for whole. To begin with, the "drunken architect's" room in which Martin and Mark plot their future seems a perfect architectural correlative for the idea of the "ungrammatical" in Riffaterre's sense. As I have said, the parts of the novel do not seem to cohere very well; they seem merely contiguous; no part of *this* structure leads very efficiently or directly to another, whatever the straightforward desires of its characters. As Mark and Martin are sitting in their tavern room, they are intent upon "losing no time," of "travel[ling] straight" to the Dragon Inn<sup>10</sup> where they hope to link up with the novel's other major characters, Tom Pinch and Mary Graham, in a meeting that will forward Dickens's plot. But in this leisurely, tangent-seeking, drunken idler of a novel, there are few straight lines: as Mark and Martin look out the window, their gaze is arrested by a figure that "slowly, very slowly" (and paratactically) passes:

Mr. Pecksniff. Placid, calm but proud. Honestly proud. Dressed with peculiar care, smiling with even more than usual blandness, pondering on the beauties of his art with a mild abstraction from all sordid thoughts, and gently travelling across the disc, as if he were a figure in a magic lantern."<sup>11</sup> In their astonishment Mark and Martin make inquiries of the tavern's landlord and discover that they have indeed seen Pecksniff—that they have returned to England just in time for a momentous architectural event, the laying of the first stone of a new grammar school by the local Member of Parliament under the supervision of "[t]he great Mr. Pecksniff, the celebrated architect,"<sup>12</sup> whose design for the school has carried off first prize in a competition. As an interested onlooker to the subsequent ceremony, Martin, catching sight of the plans, realizes that Pecksniff had stolen *his* plans, ones that Martin had undertaken as an exercise during his architectural apprenticeship to Pecksniff. "My grammar-school. I invented it. I did it all," Martin exclaims at his discovery. "He has only put four

<sup>9</sup> W.B. YEATS, *THE POEMS* 242-43 (1961).

<sup>10</sup> MARTIN CHUZZLEWIT, *supra* note 2, at 549-50.

<sup>11</sup> *Id.* at 550.

<sup>12</sup> *Id.* at 551.

windows in, the villain, and spoilt it!"<sup>13</sup>

The false building of the House of Chuzzlewit throughout its history (one of the earliest of the Chuzzlewits may have been Guy Fawkes, the unsuccessful underminer of the Houses of Parliament) has all sorts of local expressions in the novel, though that architectural/dynastic theme achieves its most rhetorically overt and all-embracing form in Old Martin Chuzzlewit's climactic verdict upon the entire race of Chuzzlewits: "The curse of our house . . . has been the love of self; has ever been the love of self."<sup>14</sup> That English "false building" had had its American equivalent during Martin and Mark's disastrous cross-Atlantic journey in Mr. Scadder's description of the factitious Eden (Cairo, Illinois in Dickens's actual American odyssey) to which he sends the gullible pair as a "flourishing . . . architectural city," a thriving community of "banks, churches, cathedrals, market-places, factories, hotels, stores, mansions, wharves" and other public and private edifices.<sup>15</sup> The naive Martin discovers the reality beneath the verbal facade, the "paper city" of Phiz's illustration,<sup>16</sup> soon enough in the fetid wilderness that is all but the death of him; and of course his cocky certainty that he will make his fortune in America through the application of "ornamental architecture" to "domestic American purposes" is shown to be a ludicrous pipe-dream when exposed to the enterprising scams of America's real estate swindlers.

But it is in Pecksniff's professional deceit that the novel launches its initial, most blatant and most comic attack upon the "natural right" of property, for his appropriation of his students' architectural plans shows him to be the first and paradigmatic of the novel's believers that one can "own" a building—and by extension a House in the dynastic sense. I have asserted above that, as an example of the novel's "ungrammaticality," the laying of the grammar school's first stone in chapter thirty-five seems like a discrete, redundantly incremental instance of Pecksniff's villainy only loosely related to the larger plot. But that scene is at least prepared for by an earlier one in chapter six, where Pecksniff defines his aesthetic principles while offhandedly assigning Martin the exercise of designing a grammar school, precisely the design which Martin and Mark stumble on in chapter thirty-five:

<sup>13</sup> *Id.* at 553.

<sup>14</sup> *Id.* at 804.

<sup>15</sup> *Id.* at 355.

<sup>16</sup> *Id.* at 357 (illustration by Halbot K. Browne ("Phiz")).

"Stay," said [Mr. Pecksniff]. "Come! as you're ambitious, and are a very neat draughtsman, you shall—ha ha!—you shall try your hand on the proposals for a grammar school: regulating your plan, of course, by these printed particulars. Upon my word, now," said Mr. Pecksniff, merrily, "I shall be very curious to see what you make of the grammar-school. Who knows but a young man of your taste might hit upon something, impracticable and unlikely in itself, but which I could put into shape? For it really is, my dear Martin, it really is in the finishing touches alone, that great experience and long study in these matters tell."<sup>17</sup>

Such a master-apprentice procedure was typical enough for Pecksniff: to the preliminary sketch of his pupils he habitually added a "few finishing touches from the hand of a master . . . an additional back window, or a kitchen door, or half-a-dozen steps, or even a water spout"—and then claimed the design as his own work.<sup>18</sup> "[S]uch," says the Dickensian narrator, "is the magic of genius, which changes all it handles into gold."<sup>19</sup> And as a matter of fact, Pecksniff, hypocritical parasite that he is, is endowed with alchemical powers, if not quite of the sort that he believes he has. Rather his genius is that of a subversive absurdity capable of estranging both the conventional moral and aesthetic orders of the novel's surface—specifically, in the present emphasis, throwing into question nineteenth-century assumptions about the ownership of intellectual property. For no matter how virulent the attacks upon him, Pecksniff's confidence in the virtue of his procedures throughout the novel is absolutely unshakable: he is sincerely, unaffectedly, naturally pompous—the quintessential expression of an unimpregnable narcissism. For the rest of us, self-deception can never be complete because the reality principle will probably not allow it, but Pecksniff's self-deception is totally sincere and therefore perversely heroic, a comic exemplification of Romantic egoism.<sup>20</sup>

Pecksniff's invulnerable egoism carries over quite naturally from his ethics to his aesthetics. When in the speech quoted above from chapter six he avers that he habitually adds the "finishing touches" of the master to the apprentice efforts of his pupils, he is merely defining a time-tested guild ethos whose suc-

<sup>17</sup> *Id.* at 87-88.

<sup>18</sup> *Id.* at 88.

<sup>19</sup> *Id.*

<sup>20</sup> See Gerhard Joseph, *Pecksniff and Romantic Satanism*, 2 *THE DICKENS WORLD* 1-2 (1986).

cessful results we see celebrated in the stone laying ceremony of chapter thirty-five. We must assume that he sees nothing dishonest in that method, that were Martin to accuse him of plagiarism to his face, he would answer quite sincerely in the tones of martyred innocence with which he outfaces Old Martin in the novel's closing confrontation scene. And indeed we (or at least I) believe him and are tempted to come to his defense, if only because his "theft" of Martin's design raises—again, in a comic register, to be sure—questions of serious import to intellectual property rights in general and to the authorship of architectural and literary texts in particular. As Peter Jaszi has pointed out to me in correspondence, a strictly legal analysis of the competing claims to the architectural work in question between master and apprentice would, in the nineteenth century, have supported Pecksniff's claim to ownership: he is arguably the intellectual "owner" of the grammar-school twice over, by virtue of his status as Martin's master *and* by the addition of those marginal windows which by contemporary standards would have absolved him of any charge of plagiarism, a charge which has always been more common in a literary context than in an architectural craft anyway. Indeed, it was not until late in 1990 that changes in American copyright law for the first time embraced architectural designs (as distinct from plans and drawings) as copyrightable subject matter.<sup>21</sup>

Furthermore, while it is easy enough to laugh at the broad absurdity of Pecksniff's appropriation of his pupils' work in an extra-legal, moral context, what seems less obvious is that Martin's pride of invention ("*My* grammar-school. *I* invented it. I did it *all*.") is morally suspect in its turn.<sup>22</sup> Indeed, the combined activity of master and pupil highlights the controversial status of originality, both architectural and—by extension—literary, in the nineteenth century.

As the career of Coleridge among others makes clear, authorial plagiarism became a significant moral and aesthetic issue in the nineteenth century precisely because of the high premium put upon the ideals of "originality" and "invention" at the expense of classical "imitation." (Hence, Dickens's half-joking characterization of himself as *The Inimitable*—and the public acceptance of the tag). It is certainly not true, as one sometimes

<sup>21</sup> Architectural Works Copyright Protection Act of 1990, Pub. L. No. 101-650, 104 Stat. 5135 (codified at 17 U.S.C. §§ 101, 102(a), 106, 120 and 301(b)).

<sup>22</sup> MARTIN CHUZZLEWIT, *supra* note 2, at 553 (emphasis added).



hears, that writers before the nineteenth century were not concerned with originality: they were concerned, but not so deeply and urgently as the Romantics. The key document in the transvaluation of imitation and originality was of course Edward Young's *Conjectures on Original Composition*<sup>23</sup> in 1759. But as Thomas McFarland has recently shown, originality and imitation have never existed in isolation but have always been two terms of a ratio, two sides of a "paradox."<sup>24</sup> As originality is defined against its counter-ideal of imitation (and always involves a certain amount of it), so imitation is never merely slavish but always inclines toward its opposite, originality or invention.

All this sounds high-minded enough until we get to the dangerous ground of plagiarism, which is after all a dark variant of imitation and influence.<sup>25</sup> Because it brings the bourgeois conception of individual identity into conflict with itself, plagiarism tends to be easily dismissed from our cultural consciousness and has occasioned relatively little theoretical discussion, considering the number of writers who have been guilty or at least accused of it. At any rate, precisely because the honorific status accorded the concept of originality by Romantic writers came into conflict with their universal indebtedness, plagiarism is one of the central embarrassments of the nineteenth century—as the careers of Coleridge in a serious register and Pecksniff in a comic one demonstrate.

For Pecksniff's architectural plagiarism may within such a context be seen as a mock commentary upon the imitation/originality paradox that McFarland describes.<sup>26</sup> That is, we are no doubt meant to side with Martin in his outrage at Pecksniff's theft, but that theft also serves a critical function, putting into question the egoism and pride of ownership out of which such outrage arises. If *Martin Chuzzlewit* as a whole is meant to condemn the "love of self" that built the House of Chuzzlewit, that selfishness had been given an aura of theoretical respectability by the heroic egoism of post-Renaissance thought generally and the "egotistical sublime" of Romanticism in particular. Martin's in-

<sup>23</sup> EDWARD YOUNG, *CONJECTURES ON ORIGINAL COMPOSITION* (Ewing J. Webb ed., 1969).

<sup>24</sup> THOMAS MCFARLAND, *ORIGINALITY AND IMAGINATION* 1-30 (1985).

<sup>25</sup> And Harold Bloom's "anxiety of influence" is arguably a disguised form of apprehension about plagiarism, the later writer's anxiety about his appropriation of an earlier one's intellectual property, so much so that McFarland suggests that plagiarism might well be added as an "ugly duckling" seventh to Bloom's six "revisionary ratios." *Id.* at 22.

<sup>26</sup> *Id.* at 1-30.

sistence upon his originality does of course indict Pecksniff's knavery, his stealing of the sign of another's personality (not to mention whatever monetary theft is involved), which is what plagiarism attempts. But Pecksniff's theft serves in turn to question the pride of personality and ownership in Martin—and by extension in the entire graspingly individualistic House of Chuzzlewit.

Such an ambivalence swirls about the structure of a grammar-school whose lessons are instructively hard to construe. Affirming the psychic dangers of plagiarism for *both* the plagiarizer and his accuser,<sup>27</sup> that ambivalence captures the boundary of anxiety concerning the structure of a fragile, coherent self which is relatively muted in plagiarism's more respectable cousins, imitation and influence. Perhaps Mark Tapley's generous estimate of the combined work of Pecksniff and Martin is the most forgiving way to defuse the anxiety implicit in both sides of the originality paradox: "Some architects are clever at making foundations, and some architects are clever at building on 'em when they're made. But it'll all come right in the end, sir; it'll all come right."<sup>28</sup> Wise servant that he is, Mark may thus be said to anticipate a major thrust of postmodernist theory—the insistence upon the "intertextuality" and therefore the inter- or transpersonal nature of all intellectual enterprises.

On the grounds of such an argument it is now time to turn back to the subject with which we began, the silence of Dickens on the subject of International Copyright law in *American Notes* and *Martin Chuzzlewit*. And I trust the reader can anticipate what I am now going to say: the American piracy of Dickens's novels (as well as those of other English writers), arguably the primary reason for his American journey, gets displaced in *Martin Chuzzlewit* onto a meditation on Pecksniff's theft of Martin's grammar-school plans. On the face of it, such a connection may sound a bit bizarre; the differences between the two situations may at first glance seem more striking than the similarities, if only because the relationship between an architect and his apprentice in a comic fiction seems so very different from that between a master novelist and the publishers of his work in that more naturalized fiction, our construction of an author's life. And yet it is surely true that the dispute about authorial rights to an intellectual property within a fiercely individualist humanist/capitalist ethos

<sup>27</sup> For a discussion of the "scapegoating" of the plagiarist by his accuser in the "grammar school" of academia relevant to the novel's continuing scapegoating of Pecksniff, see NEIL HERTZ, *Two Extravagant Teachings*, in *THE END OF THE LINE* 144-59 (1985).

<sup>28</sup> MARTIN CHUZZLEWIT, *supra* note 2, at 555.

is what is at issue for both Martin the apprentice and Dickens the author. To be sure, there is no money involved for Martin (at least the text mentions no prize money for the grammar-school design) as there was for Dickens over copyright, but that just makes the psychic connection tighter because it is less exclusively mercenary: the very fact that intellectual rather than monetary rights are in dispute for Martin would seem to argue, in the displacement I posit, that for Dickens the money seemed (or so he would have told himself) less important than the principle of a creator's "natural rights" to his words subject to whatever contractual arrangements he might wish to make.<sup>29</sup> The high ground of intellectual more than financial rights was, at any rate, the position Dickens tried publically (and Pecksniffianly?) to occupy during his American journey—to the studied and deeply humiliating derision of American newspaper commentators.

The Inimitable Dickens no doubt felt he was entirely in the right in matters literary and financial—but why then the fierce denials once he returned from his American journey that International Copyright was a significant reason for the trip and why the discretionary silence about the matter in both *American Notes* and *Chuzzlewit*? Perhaps an oblique answer may be gained from the foregoing reading of the grammar-school episode: Dickens's text surely asks us to side with Martin's indignation at Pecksniff's highhandedness, and that authorial advocacy seems clear enough. But that text also, I would suggest, asks us to recognize the House of Chuzzlewit's "love of self" that taints, however slightly, Martin's self-affirming "My grammar-school. I invented it. I did it all."<sup>30</sup> The reason that Dickens was so perceptive about the corrupting egoism of the House of Chuzzlewit (and the way in which it frequently expressed itself through mercenary calculation) was that he was hardly a stranger to Pecksniffian hypocrisy, rampant egoism, and mercenary calculation himself. That was arguably the case in his reasons for the American journey, wherein he tended to mask a self-serving advocacy of International Copyright behind the less strictly commercial, more high-minded motives of gathering materials for a book. Peck-

<sup>29</sup> Marxist critics like Pierre Machery have of course long held that the theory of writer as an independent "creator" belongs to a historically specific humanist and capitalist ideology, to what Foucault would call an aspect of the "author function" within a modern, post-classical episteme. See MICHEL FOUCAULT, *What Is an Author?*, in LANGUAGE, COUNTER-MEMORY, PRACTICE 116-38 (Donald F. Bouchard ed. & Donald F. Bouchard & Sherry Simon trans., 1977); PIERRE MACHERY, A THEORY OF LITERARY PRODUCTION 66 (Geoffrey Wall trans., Routledge & Kegan Paul eds., 1978).

<sup>30</sup> MARTIN CHUZZLEWIT, *supra* note 2, at 553.

sniff's theft of the grammar-school plans and Martin's response to it thus half reveal and half conceal Dickens's complicated, retrospective feelings about his reasons for the American journey.