

The Reasonable Man: An Exemplary Character?

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Nineteenth-century Anglo-American common law witnessed the remarkable growth of a new legal standard labeled the “reasonable man.” During the eighteenth century, courts began to evaluate parties by asking whether they had behaved in an acceptably “prudent” or “careful” or “reasonable” fashion under the circumstances, but these cases involved parties acting in a professional capacity—as sea captains, bill brokers, and the like. In the nineteenth century, the standard was applied in a new context, making all persons presumptively eligible to judge and to be judged by the same standard.

The reasonable man does not necessarily exemplify common sense, or prudence, or even reasonableness. The standard sets a minimum level of due care for others, such that a defendant cannot be held liable for any harm resulting from his actions. Hence while the standard invites the trier of fact to imagine an *example* of the conduct that would express due care for others, the example is not one to be held out as admirable or worthy of emulation; rather, it expresses the lowest acceptable degree of concern such that the actor cannot be characterized as careless to the point of negligence.

This standard involves the use of an imaginary and unexceptional figure as an evaluative yardstick—a figure that Catherine Gallagher and others have associated with the new model of fictionality offered by the mid-eighteenth-century novel. For its application, this new legal standard depended crucially on the routinization of a capacity for imagining how a reasonable (made-up) man would act in the defendant’s circumstances, a capacity that the novel helped to develop.