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The Salve of Duty: Global Theatre at the American Border (1875-1900)

Abstract

This essay argues that national borders impede the flow of theatre around the globe. I examine nineteenth-century American disputes about tariffs on the importation of theatrical production materials as an example of theatrical protectionism. I argue that we must balance utopian visions of global theatrical culture against the real national culture industries that sometimes view international trade as a threat to their livelihoods. As these nineteenth-century tariff debates demonstrate, theatre is subject to the same pressures on the trans-national movement of goods and labour as other industries.

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> I am a theatrical Protectionist, and I care not who knows it. In my opinion, the gentlemen who are conferring and memorialising over Municipal Theatres and State Opera Houses would be at least as practically employed in promoting a Tariff Bill for Safeguarding the British dramatist against the pressure of foreign competition. A nice little impost—say ten per cent of the gross receipts on translations and fifteen per cent on adaptations in which the scene is transferred to England—would do a power of good. It would bring little enough into the exchequer (except indirectly, through the additional income-tax paid by native playwrights), but it would save managers from many a blunder, and it would make us a self-supporting, self-respecting nation in matters theatrical. (Archer, 1899, p. 39).

William Archer wrote those words, as he himself confessed, 'in jest, of course.' His plea for a theatrical tariff to stay the flow of proven, usually French, plays onto the English stage does seem comically farfetched. Although many nineteenth-century British writers deprecated the English stage's reliance on Parisian theatre—Matthew Arnold, Archer, Bernard Shaw, and Henry Arthur Jones come to mind—none actually sought to restrict such commerce itself. Yet, as Archer's joke hints, the balance between the international trade in theatre and the vitality of national drama was not exclusively aesthetic. It was also commercial and legal, particularly at international borders, where it took precisely the form imagined by the humorous Archer: a tariff.

Across the Atlantic from Archer's besieged London stages, the blossoming American theatre scene confronted its own influx of foreign drama, often from France, but almost always by way of, or directly from, Britain. Just as British theatre's proponents jealously complained of French imports, so too did many Americans bemoan the tide of British dramatic productions flowing into their country. One small levee held back, however minutely, the flood of foreign drama: a levy on imports. Not the tariff on translations or adaptations that Archer imagined, nor a tax on theatrical productions per se, but rather a duty assessed on the physical goods—costumes, scenery, properties—that make up a production.

It may seem strange to think of theatrical trade in this literal sense, but theatre receives the same scrutiny as any other industry that organises goods and people. When a theatrical trade route—that is, the path by which theatre moves from one site to another—crosses a national border, nations scrutinise the goods and people along that route. Some of that scrutiny is artistic: Is this theatre of high quality? Does it differ from our native theatre? Is it better or worse? And some of that scrutiny is economic: What is this theatre worth? To whom do its incomes accrue? Does it help or hinder the incomes of our native theatre-makers?

This essay concerns the latter form of scrutiny, tracing a series of American disputes about the importation of foreign theatrical production materials. When actors or managers brought scenery and costumes to the United States, tariff laws regulated those items. As I will detail, those laws, and how government agencies and courts interpreted them, changed over the latter part of the nineteenth century. The history of the tariff on theatrical goods falls into roughly three phases. In the first, up to 1885, theatrical properties were subject to duties on the material of which they were made, though with some notable exceptions. Between 1886 and 1894, many properties were admitted duty-free, though not without protest and occasional confusion. The final phase began with the passing of a new tariff law in 1894, under which theatrical properties received a time-limited duty-free status, subject to the payment of a bond.

The changing fortunes of the tariff on theatrical goods mark new understandings of the theatre as an industry. From the late 1870s, when records of theatrical tariff disputes first appear, to the late 1890s, the government began acknowledging theatrical professionals as professionals, recognising the role managers played as organisers of theatrical productions, and enrolling theatrical properties among the list of unique commodities scrutinised by federal revenue laws. Many American artists and artisans, meanwhile, protested the importation of foreign drama, using the tariff—or lack thereof—to critique the flow of foreign theatre into the US. In so doing, they made Archer's fantasy a reality, adopting a protectionist economic mindset towards the international trade in theatrical productions. Some scholars have seen resonances between ideologies of free trade and the theatre industry's nineteenth-century organization, or have interpreted theatrical border-crossings as opportunities to contest national or racial identities.[1] No one, however, has yet articulated the importance of tariff law (and its sibling, immigration law) to the history of theatre. As the epigraph hints, the tariff speaks most directly to the interaction between theatrical trade routes and what Loren Kruger calls the ‘national stage.’ Hitherto, most scholars examining the rise of national dramatic literatures in the US and other countries approach that process as one

of aesthetic self-definition (though writers such as Kruger have underscored the fact that national theatre cultures are industrial, as well as artistic constructs). (Kruger, 1992)[2] This essay firmly emphasizes theatre as a national industry. In so doing, it locates moments when the theatre community—the people who owned, managed, acted in, and made theatres and productions—organised itself *as* a national industry, one which existed always in relation both to other industries and to global theatrical trade.

Free Trade Ascendant

A tariff is a tax levied on imports or exports. As a practical matter, customs officers assessed tariffs based on invoices, declarations by importers, and physical inspection of goods by customs officials.[3] In the nineteenth-century US, tariff law was among the most fiercely contested categories of federal legislation, with implications for the balance of economic power among different regions of the country. Absent a federal income tax, the national government relied on tariffs as its primary source of revenue. The mid-nineteenth-century tariff debates divided mostly along party lines, with Whigs (later Republicans) supporting a high tariff to protect Northern industries by keeping their prices competitive, and Southern Democrats seeking only enough revenue to run the government. When the Civil War placed heavy demands on federal resources, a high tariff became the norm. Despite some shifting at the margins, tariffs remained high into the twentieth century.

Prior to the 1870s, there existed, as far as I have discovered, no recognition that theatrical imports were in any way unique. Rather, in the earliest disputes and controversies over theatrical goods, the Treasury Department, as the arbiter of appeals for local Customs House decisions, treated the specific materials in question without regard for their function as stage properties. In 1877, for instance, Charles F. Conant, then Acting Secretary of the Treasury, affirmed the New York Collector of Customs' decision to classify 'decorations, girdles, rosettes, diadems, and other ornaments used as parts of theatrical wardrobes, and composed of paste imitations of diamonds and other precious stones' at the thirty-percent rate levied on 'compositions of glass or paste when set.'[4] In other words, to assess the proper duty on theatrical materials, the Customs House categorized each item among like goods intended for personal use or sale. The focus was thus on the kinds of materials being imported (in this case, mock jewelry), with no regard to their use on stage.

The tariff laws of the period, however, exempted an important category from this strict regime of duties: 'wearing apparel in actual use, and other personal effects, (not merchandise,) professional books, implements, instruments, and tools of trade, occupation or employment of persons arriving in the United States.'[5] In 1880, a number of artists asserted this provision to exempt their goods from the usual rates. Assistant Secretary of the Treasury H. F. French refused, however, to construe the law to apply to 'properties owned by managers of theatres to be used by actors or actresses in their employ,' insisting on the goods' 'personal use' by the importing party.[6]

Individual performers had more success in claiming the 'professional implements' clause's exemption. When Sarah Bernhardt arrived in the US on the *Amérique* on 27 October 1880, she brought forty-two trunks packed with 350 gloves, 'enough shoes to

stock a store, dozens of bonnets,' and expensive gowns to be worn in *La Dame aux Camélias*, *Adrienne Lecouvreur*, *Phèdre*, and *Hernani*. *The New York Times* valued her stage wardrobe at $20,000.[7] Though customs officials permitted her trunks to be removed to the Booth Theatre, where she was to perform, rather than to a warehouse, officials inspected the trunks at the Booth, as Bernhardt wrote in her memoir. (Bernhardt, 1907, p. 387) Recalling a 'jealous' inspection by dressmakers brought in to appraise her wardrobe, Bernhardt remembers their 'asking for "justice" against foreign invasion.' (Bernhardt, 1907, p. 388)[8] To the dressmakers/appraisers, Bernhardt's wardrobe represented a clear threat, undermining the value of their native work. The $1,560 duty customs officials levied on Bernhardt acknowledged, however meagerly, the protectionist interests of native dressmakers and other American theatrical workers.

Bernhardt, however, appealed the duty, on the grounds that her costumes served only her personal use on stage. Assistant Secretary French, who had denied a manager's 'tools of trade' plea a few months earlier, granted Bernhardt's wardrobe that status. Her dresses, hats, shoes, and other clothes were 'professional implements,' and Bernhardt 'intended in good faith' to use them in her capacity as an actress. The wardrobe was therefore not dutiable, and the customs collector was ordered to remit to Bernhardt the full amount of the tax.[9]

The jealous American dressmakers were not the only theatrical labourers who used the tariff to oppose 'foreign invasion.' Even when Customs Houses did assess duties on theatrical properties, workers challenged the self-reported value of imported goods, urging customs officials to levy a higher tax. If successful, this strategy would effectively increase the cost of a foreigner's doing business in the US and, even if unsuccessful, hassled alien managers.

Although Bernhardt's appraisers ultimately caused little harm, a New York theatrical supplier named Wolf Dazian managed to disrupt the Savoy Opera Company's US premiere of *Iolanthe* in 1882.[10] Correspondence by Helen Lenoir, then Richard D'Oyly Carte's representative in the US, with the Customs House and Treasury reveals her extreme irritation at the extra government scrutiny stirred up by the tariff dispute. In brief, the disaffected Dazian, engaged by Lenoir on previous occasions to provide 'materials for costumes, trimmings, etc.,' informed customs officers that Lenoir had severely underreported to the Customs House the value of *Iolanthe*'s costumes. As Lenoir complained to the Collector of the Port of New York, Dazian, the informer, was the very man selected by local customs inspectors to reappraise the imports' value, which he put at £1,627 (or $7,923.49, at an exchange rate of $4.87 to the pound sterling).[11] Lenoir countered with her own expert, a Mr. Godchaux. Examining all the items and estimating 'the number of yards of material and trimming, the labour etc in it,' Godchaux calculated $4,151.67 as the value of the costumes.[12] What impact, if any, this investigation had on the production of *Iolanthe* is unclear. New York papers, however, reported the fraud accusations against Carte's company and noted an investigation by a special customs agent. So harmful did Lenoir feel these reports to be that, when the government's appraisers upheld the original, smaller invoices, Lenoir published a letter explaining the outcome in *The New York Herald* on 25 February 1883. Her correspondence reveals a strong sense of outrage at the effect the investigation and its reporting had on her and Carte's reputations for upright behaviour.[13]

Lenoir's *Herald* letter also hinted that, in her view, the costumes were best construed as a theatrical manager's 'tools of trade,' and as such, ought to be duty-free. In other words, she and likeminded foreign managers sought recognition that theatrical managers themselves were professionals whose 'implements' and 'tools' were the costumes and scenery on which the law currently levied duties. Such a ruling would have overturned the Treasury's interpretation cited above, in which costumes intended to be worn by employees did not fit the law's definition of 'personal use' by the importer.

Contesting this interpretation fell to Colonel James Henry Mapleson, the British opera impresario, who successfully established duty-free rights for producers. Mapleson's name first appears in connection with the tariff in the same *New York Times* article announcing Bernhardt's arrival. In that context, the *Times* noted that the Customs House, contrary to the Treasury Department's rulings noted above, used to permit scenery and properties free entry. According to the article, the 'tools of trade' clause existed to permit immigrants 'to bring with them their household effects and trade tools.' Over the years, customs officials expanded its interpretation to include any professionally useful goods, including theatrical properties. Such leniency, however, led to abuse. Performers gained a reputation for bringing extra 'costumes' and selling them to fashion-conscious clients eager for the latest European styles. In 1875, a French dressmaker was convicted of smuggling dresses for private customers under the pretense of their being theatrical costumes.[14] These abuses led to a customs crackdown. Taxed under the newly stringent regime, Mapleson set out to establish a firm precedent granting producers duty-free import privileges.

One strategy Mapleson pursued to avoid paying duties was to assign individual costumes to the performers who used them. Under the interpretation that permitted Bernhardt to import her large store of dresses, all actors were entitled to bring their personal wardrobes duty-free. Logistically, this procedure proved complicated. Arriving from London with a large collection of wigs that had been refurbished there, Mapleson found himself taxed by customs officials who insisted that, if Mapleson's chorus members did indeed own the renovated wigs, the performers' luggage, rather than the company's trunks, should have transported them. Newspaper reports of the incident do not mention the outcome of Mapleson's appeal, but he promised a reporter 'a procession of 54 dark-visaged Italians down to the custom house to swear that their wigs are tools of their trade.'[15] Richard D'Oyly Carte used a similar tactic when he brought his expensive *Mikado* costumes into the US in 1885. His actors each 'individually made oath that his or her flowing silk robes and other rich apparel in his or her trunk were his or her personal property, and belonged to no one else. On such declarations all the packages and contents were passed free of duty.'[16]

Asking actors to declare costumes their own property, however, was no panacea. So, in 1882, Mapleson sued, urging courts to recognize costumes, scenery, and other properties as his 'tools of trade.' After numerous judicial delays, in December, 1885, Mapleson won. A jury agreed with Mapleson that parsing the difference between actors and managers in the interpretation of customs laws was unworkable.[17] In response, the Treasury Department reversed its official policy, accepted the jury's decision, and refunded Mapleson the money in question.[18]

Protectionism Strikes Back

Officially, the US government now recognised theatrical properties as a manager's professional implements just as personal costume wardrobes were an actor's tools, and passed all such items free of duty. Yet the new practice remained unsettling to the Treasury Department, as well as to many in the American theatre industry. The government's discomfort became clear almost immediately. An 1886 report on tariff law from the Secretary of the Treasury to the House of Representatives listed 'theatrical scenery' among the problematic dutiable materials demanding a legislative solution.[19]

The theatre industry appears to have responded somewhat more slowly and with poor organization. In 1888, Louis Aldrich, later President of the Actors' Fund, joined other actors in asking Congress to restrict the immigration of foreign performers.[20] Available evidence suggests that actors formed a far more coherent lobbying force than wardrobe- or scenery-makers. Although the Aldrich complaint focused on immigration, not tariffs, it provides the most thorough piece of evidence available about how native theatre artists regarded the problem of foreign imports. I recognise that immigration regulations and tariff laws are not identical: the former restricts the flow of people, the latter, of goods. But the actors' plea provides an excellent case study for two reasons. First, immigration speaks directly to the question of labour at the heart of all tariff disputes. (That is, even the most dyed-in-the-wool protectionist does not really care whether the sheep that produced the wool be native or foreign, what matters is the nationality of the farmer, sheep-shearer, dye-maker, etc.) Secondly, the actors themselves recognised the relationship between their complaint and that of producers of material goods. Thus, I read the Aldrich protest as evidence of a nativist theatrical economics because both immigration and tariff laws draw from the same well of nationalism in which cultural, racial, and economic concerns commingle.

When Aldrich and his peers demanded a halt to foreign performers, they spoke against a virtually unimpeded flow of immigrant actors. Most performers who arrived in the US came as 'contract laborers.' (An 1885 immigration law exempted such workers from a general prohibition against immigration for the express purpose of labouring in the country).[21] Their constant arrival, while perhaps irritating to native actors, likely had a limited effect on the labour market in the antebellum and Reconstruction years. During the Gilded Age, however, the number of professional performers exploded: censuses in 1870 and then in 1890 reveal a nearly fivefold increase in the number of citizens claiming acting as their profession over that period. (Watermeier, 1999, p. 446.) To this substantial and growing body of native talent, foreign performers, particularly of average quality (as most actors, by definition, are), posed a serious impediment to employment.[22] In other words, the 1888 protest against immigrant foreign actors arose from precisely the same economic concerns that gave rise to disruptions over the tariff, namely anxiety about the viability of native theatrical labour.

Although opposed to the wholesale immigration of foreign performers, Aldrich and his colleagues recognised that the labour economy among actors was unevenly distributed between stars (who are, conceptually, rentiers, able to charge more for their unique skills) and other actors, who are wage-labourers. Thus Aldrich supported a continued exemption for star performers ('Irving, Coquelin, Patti and others'). But Aldrich and his

colleagues loudly protested the influx of run-of-the-mill foreign performers, particularly whole companies at a time. Interviewed in the newspaper, the complainants underlined that with the alien actors came duty-free 'wardrobes, scenery and other properties of the companies.'[23] Under current policies, then, a manager who produced a play locally, with American-made materials and American actors, was at a distinct disadvantage. The combination of lower labour costs for British actors and duty-free importation of scenery and costumes was simply too lucrative for producers to resist.[24] As a result, the American stage became a prosperous after-thought for English and European companies. Aldrich told the reporter that these practices cast American theatre artists as 'provincials' and turned New York into 'Oshkosh.' Indifference from legislators and opposition to immigration restrictions from theatre owners seem to have sunk Aldrich's efforts at the time.[25]

Yet the battle over theatrical goods continued, moving from Congress back to the Customs House. In August, 1889, a committee from the Actors' Fund appealed in person to the Collector of Customs at New York 'not to admit free of duty the scenery and properties' for a Richard Mansfield production of *Richard III*. The Collector turned them away, citing the Mapleson precedent.[26] The actor Wilson Barrett was less fortunate than Mansfield. A Boston Collector levied a duty on 'several tons of theatrical scenery' he imported. (As one newspaper noted, while 'the "barn storming" stage strutters are in high glee on account of this latest "protection" freak,' the result would likely be higher ticket prices for Barrett's performances, a transfer of the tariff's cost onto the American consumer.)[27] Upon appeal, the Treasury Department ordered the duties refunded to Barrett, but not before a New York protest against Barrett's properties.[28] As *The New York Times* noted, although the Collector denied this petition, as he had the Mansfield protest, the 'extravagant' duty-free importation of theatrical goods had become 'more and more objectionable in the eyes of certain "members of the profession" on this side of the water. They are therefore apparently determined to make it an unprofitable proceeding for the English actors.'[29]

While such protests led to no official change in government policy, Customs House scrutiny seems to have increased in the following years. In 1890, ballerinas of the Madison Square Garden Company each arrived with a trunk full of costumes that they testified to be their own individual property. Of course, the clothes belonged to the company. Alerted to this discrepancy, customs officers confiscated the 240 dresses, which one paper valued at $10,000.[30] Although the Treasury Department eventually ordered the costumes released, officials levied a fine equal to the duties that would have been assessed on each costume if not exempt, plus $100 per item, coming to $7,356.[31] While the law would have permitted the importation of the costumes by the producer, his attempt to pass them off as the private property of the performers gave the government an excuse to tax the goods.[32]

A similarly close interpretation of the law drove a kerfuffle over costumes for Fanny Davenport's production of *Cleopatra* by Victorien Sardou. Benjamin Stern, who had arrived with the costumes as Davenport's representative, had declared the costumes to be his personal property and exempt as his tools of trade. Chief Special Agent Wilbur of the Customs House called Stern's claim 'perjury,' given that the clothes belonged in fact to Davenport, who had purchased them herself in London. Because she travelled separately

from her costumes, Davenport owed the government, according to Wilbur, forty-five percent on the estimated $15,000 value of the items.[33] In the event, a fire at the Fifth Avenue Theatre, where Davenport was performing, destroyed almost everything, though whether she paid the tax or no remains unclear.

Perhaps anxious over these disruptive precedents, in 1891 Sarah Bernhardt's attorneys preemptively sought a definitive statement about theatrical goods from the Treasury Department. The Treasury responded to the petition not by affirming the Mapleson precedent, but by 'suggest[ing] that the duty should be levied on such scenery, property, and costumes' and the matter should be settled through the protest and appeal process.[34] Not Bernhardt, but another foreign star, Agnes Huntington, ended up inspiring the capstone legal interpretation of the duty-free era. Huntington arrived in 1891 with a set of costumes for which she was charged duties. When the Board of General Appraisers reversed the Collector's assessment of a tax, the Treasury Department appealed to the Federal Courts. Huntington won at both the circuit and appellate courts. In the lawsuits, the government relied on a small change to the law's discussion of 'professional implements.' An 1890 revision of the tariff explicitly excluded from the exemption any articles imported 'for any other person or persons, or for sale.'[35] The government argued that this clause meant that costumes brought into the US for use by employees or other actors were dutiable. But the court determined that the new clause applied only to 'voluntary transfers' of goods. As a Treasury Department letter summarized, 'the use of the implements of a profession by the servants of the importer, she retaining the title to and controlling them, was an importation for herself so far as to bring such implements within the exemption' for professional implements.[36]

Despite this clear interpretation in favour of exempting managers' goods, the Customs House continued rigidly to interpret the law. In 1893, the Kiralfy Company imported theatrical effects for the Columbus Spectacular Exhibition, under the auspices of Barnum & Bailey at Madison Square Garden. The cash-poor Kiralfy troupe relied, however, on Barnum & Bailey's funds and had purchased the goods in the larger troupe's name. The Kiralfy Company expected to transfer title to themselves after earning sufficient money at the Exhibition to repay Barnum & Bailey. Because Barnum & Bailey, not Kiralfy Company, was the registered owner of the goods, the Customs House refused to admit the items free of duty.[37] Even when admitting theatrical goods, customs officials found ways to harass foreign managers. The unlucky Wilson Barrett found himself paying duties on a 'carpenter's chest, brace and bit, sewing machine, and towels' that he included among his theatrical tools. While conceding that such items might be 'useful and necessary' for play production, the appraiser determined them 'not a feature of, or directly connected with, a stage exhibition,' and thus dutiable.[38]

Compromise

The tensions between the official interpretation of tariffs on theatrical goods and the practice of customs officials demanded a legislative solution. In 1894, the solution arrived: a compromise that permitted foreign managers to import theatrical materials while preventing those materials from lingering in the US past their usefulness for the stage.[39] Why Congress passed this particular revision my research has not discovered.[40] The Senate Committee on Finance, which had held extensive hearings on all aspects of

the bill, recommended the clause's insertion.[41] The 1894 tariff act revised the law's 'professional implements' section. The new law included a specific provision for theatrical goods, stating that the 'professional implements' exemption shall not

> be construed to include theatrical scenery, properties, or apparel, but such articles brought by proprietors or managers of theatrical exhibitions arriving from abroad for temporary use by them in such exhibitions and not for any other persons and not for sale and which have been used by them abroad shall be admitted free of duty under such regulations as the Secretary of the Treasury may prescribe; but bonds shall be given for the payment to the United States of such duties as may be imposed by law upon any and all such articles as shall not be exported within six months after such importation: Provided, That the Secretary of the Treasury may in his discretion extend such period for a further term of six months in case application shall be made therefor.[42]

The new clause struck a balance between protectionism and free trade. First and foremost, the clause officially excluded theatrical materials from the ordinary class of professional items. On the one hand, by placing the theatrical goods provision within the professional implements exemption, Congress implies that, ordinarily, theatrical goods would be professional implements, thus confirming the professional status of theatre artists. Yet by explicitly excluding theatrical scenery from the exemption applied to other professional tools, the law also affirmatively marks out theatrical goods for review, acknowledging the concerns of native theatre-makers.[43] Second, the law exempted only materials that had 'been used by [managers] abroad,' thus preventing the importation of items produced cheaply overseas solely for use in American productions.[44] Third, the personal relationship between the immigrant manager and the imported goods was now made explicit ('brought by proprietors or managers [...] not for any other persons'). And, finally, a clear appraisal, backed by a bond, occurred upon importation, assuring native producers that, should any funny business arise, the offender would have already paid the duty. From the foreign manager's perspective, the new clause helpfully enshrined the exemption then semi-officially in place, while leaving plenty of leeway to support a long, successful tour.

Unfortunately, given the current limitations of the archive, one can but hazard a guess as to why the revised clause took the form it did. Given that the clause is a compromise, we must conjecture pressure from lobbyists who supported greater restriction on imports than the clause finally allowed and, against them, lobbyists opposed to any duties. The question then remains: who would these lobbyists be? I hazard that the former group might be the Actors' Fund, the Actors' Order of Friendship, or a similar group, acting in conjunction with the Dramatists Guild. Bronson Howard, the latter group's President, petitioned Congress that same year for new legislation regarding performance rights laws, which eventually passed in 1897.[45] Opponents to the theatrical tariff seem harder to pin down. While foreign actors and performers may have attempted to put in their oars, Congress was unlikely to listen to alien pleas regarding a bill that, after all, was fundamentally protectionist in its mindset. The most likely opponents of a theatrical tariff are theatre owners. To them, a foreign success from an established company represented as sure a proposition as one could hope for in the theatre. If such companies had to pay duties, the companies' revenues would be diminished, encouraging the company managers to negotiate for a higher percentage of the returns from the theatre

owners. Those owners, in turn, could either accept a smaller percentage of a show's income or raise ticket prices, in which case they would be less competitive vis-à-vis other theatres, particularly those featuring native productions. Thus, among the native theatrical community, theatre owners (as well as booking agents and similar industry professionals) had the most to gain financially from a low tariff, and thus seem most likely to have boosted the new clause. While such conjecture must remain merely that, this reasoning demonstrates how finely one must parse economic motivations to understand who stands to benefit from legislation that alters the flow of capital in the entertainment industry.

Whether jubilation or dismay ultimately attended the new clause I have not been able to discover. Regardless, the new law neither fully accounted for the nature of international theatrical production nor entirely assuaged protectionists. One writer, for instance, complained that American managers remained at a disadvantage. If they mounted a show abroad, they had to pay the duty outright, as their materials would remain in the US past six months. The same author laughed at the absurdity of Henry Irving's paying duties on those of his materials that could not fit on the same boat in which Irving himself crossed the Atlantic, while passing duty-free those items on Irving's vessel: the former were not, under one customs house's interpretation, in Irving's 'possession,' and thus dutiable.[46] When Mapleson's opera company went bankrupt in Boston in 1897, creditors had difficulty managing the sale of his properties, as the goods' remaining in the US past six months would require the payment of customs duties.[47] Such problems reveal the ongoing tensions between the desire for free international trade in theatrical art and the need to ensure a viable national culture industry. While the 1894 Tariff Act established clear statutory guidelines for theatrical goods, the refined law still failed to account for the complexity of late-nineteenth-century theatrical commerce.

The tariff was one means among many of negotiating the rise of international theatre in an era of growing national feeling. And although William Archer's humorous fantasy in the epigraph remained unrealised, his jest was not entirely absurd. As this history of the American tariff demonstrates, the flow of theatre across national borders ensured that theatre would find itself enmeshed in debates about protectionism and trade. Concern over the health of national drama was not merely an aesthetic, cultural problem, propounded in an Arnoldian vocabulary that blended criticism with nationalist fervour. Rather, the quality of domestic theatre was always related to the status of domestic play production as an industry. Thus when Arnold—and, in his wake, Archer, Henry Arthur Jones, and Harley Granville Barker—appealed for a national British theatre, they simultaneously derided the French drama exported to Britain while praising the structure and operation of the Comédie Française. (Gay, 2007, pp. 59-87)[48] Published plays, too, became battlegrounds for national identity. When the US finally passed an international copyright law in 1891, Congress explicitly excluded musical and dramatic works from a protectionist manufacturing clause. Many courts and legal observers, however, interpreted the exclusion to apply only to play productions, suggesting that printed dramas literally had to be made in the USA. (Miller, 2013, pp. 363-369) Together, these examples expose a profound gulf between the global yearnings of the late-nineteenth-century theatre and the realities of that period's modes of theatrical production. Absent consensus about the flow of the goods, people, and plays that populate the stage—without, that is, an international understanding of how art and

commerce work together—a global, free-flowing theatrical culture remained (and remains) a pipe dream.

The story of the American theatrical tariff demonstrates that, in imagining a nineteenth-century theatrical trade route, we must attend to theatre as something nations literally trade. Such trade is, and always has been, subject to transaction costs, some of them imposed to gratify a protectionist impulse. These costs underline that theatre (or, more evanescently, performance) was not immune to ideologies of international commerce, but rather was subject to precisely the same pressures on goods and labour as other industries.[49] Reporting on the actors' plea for Congress to restrict the immigration of foreign performers and materials, one newspaper noted that they 'tell the same story that miners, mechanics and others have told of being supplanted by cheap labour under contract. Like the artisans, they want protection.'[50] Modes of theatrical production, like all modes of production, were subject to national and international debates about trade. Theatre's movement across borders, far from an unimpeded flow, dammed up at the Customs House. The reservoir created there formed a swirling eddy of aesthetic, economic, and nationalist ideologies that no utopian transnationalism can navigate in complete safety.

Endnotes

[1] Tracy C. Davis (2000) draws numerous parallels between the growth of the Victorian theatre and free trade ideologies. Davis also reads some instances of theatrical censorship as a way to protect British national culture from foreign influence. In the 1990s, the casting of British actor Jonathan Pryce to star in *Miss Saigon* on Broadway drew attention to the immigration of actors. Scholarly assessments of that incident focus, however, not on immigration policy, but on the choice of a white performer to play a half-French, half-Vietnamese character. See, for instance, Angela Pao (1992) and Karen Shimakawa (2002).

[2] See also Marvin Carlson (1961) for a comparative analysis of the free theatre movement as both an artistic and an industrial movement.

[3] Customs forms are still in use today, and customs officers rely on the same combination of testimony, documentation, and physical examination.

[4] *Synopsis of Decisions of the Treasury Department under the Tariff and other Acts*, No. 3099, 3 February, 1877.

[5] *United States Statutes at Large*, Act of March, 2, 1861, ch. 68, 12 *Stat*. 196. The clause, in more or less the same form, dates from the first protectionist tariff, Act of April 27, 1816, ch. 107, 3 *Stat*. 313.

[6] *Synopsis of Decisions of the Treasury Department under the Tariff and other Acts*, No 4686, 19 October 1880. This decision was reaffirmed in No 4773, 14 February 1881.

[7] *The New York Times*, 28 October 1880. Another paper reported only sixteen trunks, containing 'some thirty dresses, 300 pairs of thirty-button gloves, 180 pairs of shoes and other articles of wear in proportion.' *The New York Herald*, 28 October 1880.

[8] According to Bernhardt, one dressmaker estimated her *La Dame aux Camélias* gown, embroidered with pearls, at $10,000.

[9] *Synopsis of Decisions of the Treasury Department under the Tariff and other Acts*, No 4721, 10 December 1880. The letter from French to the Collector of Customs at New York was reprinted in *The New York Tribune* two days later.

[10] Dazian's continues to conduct business today as one of the largest suppliers of theatrical draperies. Dazian founded the firm in 1842. For a brief history of that firm, see Timothy R. White's (2015, pp. 52-54) history of theatre workshops.

[11] *Lenoir to Robertson*, 15 January 1885, p. 115. The exchange rate comes per Lawrence H. Officer (2013). Lenoir puts the conversion at $8,095 later in the same letter (ibid., p. 120).

[12] Ibid., p. 117. Lenoir goes on to explain that even Godchaux's estimate was likely high, as British labour was much cheaper than Americn labour. That, of course, was part of the reason for the dispute: at such disparate labour costs, only a high duty gave American workers any chance at earning business from foreign—or even domestic—clients. Lenoir also explains that workers simultaneously fabricated Savoy costumes for multiple productions in Britain and the US, a practice that further drove down costs. The only reason Carte had the work done in England, Lenoir insists, was so Gilbert and Sullivan themselves could supervise the costumes' construction.

[13] Carte, however, celebrated the Custom House's zeal when brought to bear on a competitor. During the race to premiere *The Mikado* before an unauthorized production by James C. Duff, Carte wrote happily to Lenoir that Duff's imported 'costumes have been seized by the Collector at New York. You will understand how this has occurred. I hope they will keep them for a month.' (*D'Oyly Carte to Lenoir*, 26 June 1885, p. 417)

[14] *Cincinnati Daily Gazette*, 18 February 1875.

[15] *The Musical Visitor*, December 1884, p. 326.

[16] *The Sun*, 22 August 1885. See also *The Morning Journal*, 22 August 1885.

[17] *The New York Times*, 8 December 1885.

[18] The Treasury's letter to the Collector of Customs at New York confusingly suggests that the verdict for Mapleson was 'in accordance with the Department's previous rulings in somewhat similar cases.' *Synopsis of Decisions of the Treasury Department under the Tariff and other Acts*, No. 7321, 19 January 1886.

[19] *United States Public Documents*, 49th Cong., 1st Sess., Ex. Doc. No. 68, p. 6.

[20] Aldrich appeared alongside Harley Merry and Louis M. Sanger, representing the Actors' Order of Friendship, a secret charitable association founded in Philadelphia in 1849. The New York chapter, named after Edwin Forrest, was founded in 1888. (Bordman and Hischak, 2004).

[21] *United States Statutes at Large*, Act of February 26, 1885, ch. 164, 23 Stat. 332. The law prohibited paying to transport foreigners for labour and voided any contracts for alien labour. The exemption applied 'to professional actors, artists, lecturers, or singers, [and] to persons employed strictly as personal or domestic servants'.

[22] Interviewed about the actors' protest, one producer, Bolossy Kiralfy, declared that he had ceased importing foreign actors 'six or seven years ago.' He declared American actors to be both as talented as their foreign counterparts and less risky, as one could fire them with ease if they proved unsatisfactory. Kiralfy claimed that foreign female dancers, however, did not 'compete with American labour' because 'there is no school or market for them in America.' (*The New York Herald*, 14 December 1888)

[23] *The New York Herald*, 14 December 1888.

[24] See *Jackson Daily Citizen* (30 July 1894), for a similar complaint about the unequal position of American and foreign managers.

[25] *The New York Herald* (19 December 1888) reports planned testimony from leading entertainment lawyer, Judge A. J. Dittenhoefer, who would speak on behalf of New York theatre owners against any immigration restriction.

[26] *The New York Times*, 29 August 1889.

[27] *Patriot*, 3 October 1889.

[28] *Springfield Republican*, 22 November 1889.

[29] *The New York Times*, 5 October 1889. Customs officers again seized and released Barrett's goods in 1892. (*The Philadelphia Inquirer*, 4 November 1892)

[30] *The New York Herald*, 13 May 1890.

[31] *The New York Herald*, 18 May 1890.

[32] For similar confusion over personal and company property, see *Idaho Daily Statesman* (22 March 1893).

[33] *The New York Herald*, 24 December 1890.

[34] *The New York Times*, 24 January 1891; As another paper noted, 'the duty, if collected, will be a substantial item in Mme. Sarah's American expenses.' (*The Sunday Oregonian*, 25 January 1891) Later that year, a gathering of appraisers divided over the dutiability of 'oil-painted theatrical scenery' from Australia that arrived with Bernhardt in San Francisco. Five appraisers (New York, Philadelphia, Cincinnati, St. Louis, San Francisco) voted to tax the canvases at fifteen percent, against two (Boston and Detroit) who supported the canvas's exemption as a tool of trade. (*Treasury Department*, 1891, pp. 7-8) After a protest, the decision to assess a duty on the scenery was reversed (*Synopsis of Decisions of the Treasury Department under the Tariff and other Acts,* No. 13796, 4 February 1893).

[35] *United States Statutes at Large*, Act of October 1, 1890, ch. 1244, 26 Stat. 609.

[36] *Synopsis of Decisions of the Treasury Department under the Tariff and other Acts*, No. 13632, 7 January 1893. The Appraiser's decision, appended to the letter just cited, discusses the rationale by which theatrical costumes are tools of trade. Almost simultaneously with this decision, the General Appraisers, and then the Circuit Court, ruled that one could not import professional implements on behalf of a corporate entity, in this case, the American Extravaganza Company owned by Wemyss and David Henderson. (*ibid.* 13789, 2 February 1893) Two years later, the Second Circuit Court overturned that interpretation on appeal. (*Henderson v. United States*, 1895)

[37] *Synopsis of Decisions of the Treasury Department under the Tariff and other Acts*, No. 13811, 8 February 1893. In 1895, an appellate court affirmed that the actual owner must arrive with the goods to claim the exemption. *Ibid.*, No. 15762, 14 March 1895, reporting *Rosenfeld v. United States* (1895).

[38] *Synopsis of Decisions of the Treasury Department under the Tariff and other Acts*, No. 14049, 18 April 1893.

[39] As a general proposition, the 1894 tariff act made 'no deep-reaching change in the character of our tariff legislation', as a contemporary economist observed. 'We have simply a moderation of the protective duties. A slice is taken off here, a shaving there; but the essentially protective character remains. [...] As far as it goes, it begins a policy of lower duties; but most of the steps in this direction are feeble and faltering.' (Taussig, 1894, pp. 590-591)

[40] Despite voluminous records of testimony to Congress on virtually every aspect of the law (for example, six pages of detailed explanation and figures about glove manufacturing), no mention appears of the extremely explicit exemption made for theatrical goods. See *Senate Reports* (1893).

[41] *United States Congressional Record*, 26 Cong. Rec. 6528, 19 June 1894.

[42] *United States Statutes at Large*, Act of August 27, 1894, ch. 349, 28 Stat. 543.

[43] An analogy: I could say that I dislike foods with coconut, eel, or rosemary. Or, I could say that I dislike coconut and eel, and I like all herbs, except rosemary. The latter version both points up rosemary's status as an herb and singles out its value relative to herbs as a class.

[44] This clause was added due to a last-minute floor amendment from Arkansas Senator James Kimbrough Jones. (*Congr. Rec.* 1894)

[45] *The Washington Post* (8 May 1894) reports Howard's lobbying. *The New York Times* (21 June 1894) notes testimony to Congress by Dittenhoefer, the entertainment lawyer, on behalf of Howard and the Dramatists' Guild. The 1897 law is Act of January 6, 1897, ch. 4, 29 *Stat.* 481.

[46] 'Every custom house seems to have a different understanding of the law', complained the writer. (*The Daily Inter Ocean*, 19 September 1895)

[47] *The New York Times*, 13 January 1897.

[48] Archer, from his first exegesis of a possible national theatre (Archer, 1886) to *A National Theatre Scheme & Estimates* (Archer, 1907) co-authored with Barker, thought carefully about the French and German models of theatre-making.

[49] For the most thorough situation of the theatre industry within a national economic culture see Davis (2000).

[50] *The New York Herald*, 14 December 1888.

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